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FEDERAL PROCUREMENT AND CONTRACTING TRAINING MANUAL FOR MINORITY ENTREPRENEURS

MAY 1975

U.S. Department of Commerce
Rogers C.B. Morton, Secretary
Office of Minority Business Enterprise
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FOREWORD

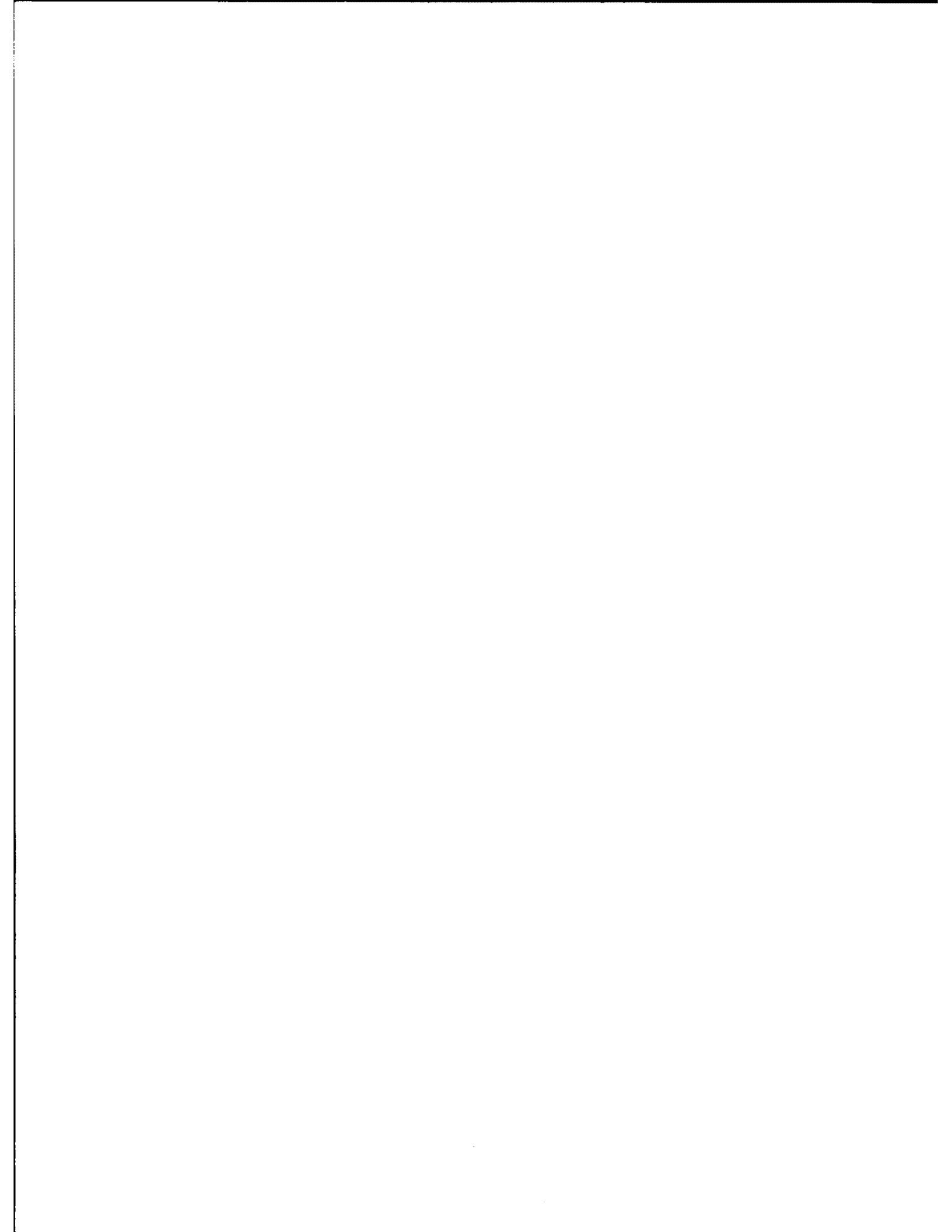
The Federal Government spends billions of dollars every year purchasing products and services to conduct the public business. The Federal Government, therefore, is a fertile market for minority-owned businesses.

This manual is intended to be a reference and guide for minority entrepreneurs who view the Federal Government as a market for selling their products and services. It details the rules, regulations, and requirements which govern Federal procurement procedures. It also is an excellent resource for planners of Federal procurement training programs, and a valuable reference for business assistance organizations which counsel minority clients.

We in the Office of Minority Business Enterprise are confident that use of this manual will significantly enhance the abilities of minority entrepreneurs to effectively pursue the Federal market.



Alex Armendaris
Director
Office of Minority Business Enterprise



This manual was prepared by James E. Cravens, Special Assistant to the Officer-in-Charge, Naval Regional Procurement Office, Long Beach, California.

Reproduction of the publication in whole or in part for use as training material or procurement guidelines for minority-owned businesses is authorized and encouraged by both the U.S. Department of Commerce, Office of Minority Business Enterprise and the Los Angeles Federal Executive Board.

The opinions expressed herein, except as specifically noted or quoted, are solely those of the author, James E. Cravens, and do not necessarily reflect the views of either the Department of Defense, Department of the Navy, the Los Angeles Federal Executive Board, Department of Commerce, Office of Minority Business Enterprise, or other cooperating and sponsoring departments or agencies.

P R E F A C E

This 1975 Manual for minority-owned firms is intended for use as a general introduction to Government contracting and as a refresher manual for those businessmen with limited recent experience with Government contracts.

Government contracting is a constantly evolving field. Thus, the material in this Manual is subject to revision by statute, regulation, Executive Orders, and the decision-making processes. Government procurement is based on public law, but it is not possible to develop hard and fast rules which might cover the wide variety of circumstances which could arise for each procurement situation.

The national interest requires increased involvement of minority business enterprises in Federal procurement programs. Government buyers will give minority-owned firms full support and cooperation and an equitable opportunity to compete in Government procurement programs; however, minority-owned firms should give themselves the advantage of securing all available information concerning procurement policy and procedures and business opportunities.

The Manual is not a regulation, directive, or policy manual. It is a training text and a reference text for operating personnel. Potential suppliers of goods and services to the Government should discuss any questions and problems concerning a particular procurement action with the authorized contracting officer. If suppliers employ legal counsel, the questions concerning peculiarities of Government contracting should be discussed with counsel. Also, the small business specialists of the Government Departments will aid, counsel, and assist the small business, minority-owned firms in understanding contractual requirements, and representatives of the Small Business Administration or procurement specialists of the Office of Minority Business Enterprise funded business development organizations are available for guidance in Government contracting practices.

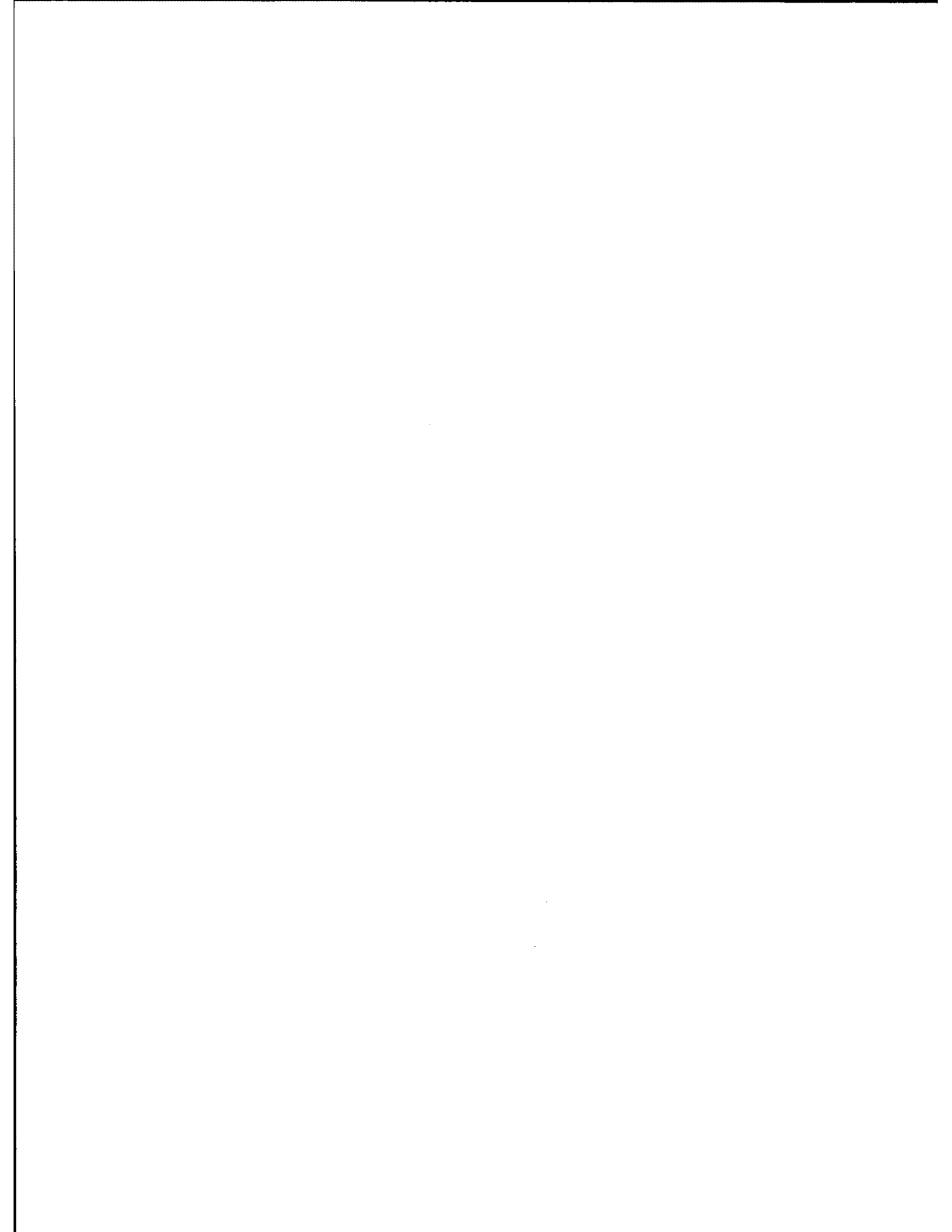
TABLE OF CONTENTS

| | PAGE |
|---|------|
| CHAPTER I INTRODUCTION | 1 |
| A. SCOPE OF GOVERNMENT PROCUREMENT | 1 |
| B. SELLING TO THE GOVERNMENT | 4 |
| CHAPTER II PROCUREMENT PRINCIPLES AND REGULATIONS | 15 |
| A. PROCUREMENT AND CONTRACTING BACKGROUND | 15 |
| B. FEDERAL PROCUREMENT POLICY | 17 |
| C. FORMAL ADVERTISING AND NEGOTIATION | 19 |
| D. SOCIO-ECONOMIC POLICIES | 23 |
| E. THE SECTION 8(A) PROGRAM | 31 |
| CHAPTER III BIDS AND PROPOSALS | 43 |
| A. INVITATIONS FOR BIDS | 43 |
| B. REQUESTS FOR PROPOSALS | 46 |
| C. SMALL PURCHASES | 50 |
| CHAPTER IV HOW TO PREPARE A BID | 55 |
| A. BID OPPORTUNITY INFORMATION | 55 |
| B. PREPARING THE BID | 60 |
| CHAPTER V PRICING | 91 |
| A. COST PRINCIPLES | 91 |
| B. ESTIMATING | 93 |
| C. GOVERNMENT COST OR PRICE ANALYSIS | 96 |
| D. PROFIT | 102 |
| E. RENEGOTIATION | 104 |
| CHAPTER VI TYPES OF CONTRACTS | 109 |
| A. NEED FOR DIFFERENT CONTRACT TYPES | 109 |
| B. SPECTRUM OF CONTRACT TYPES | 110 |
| C. ELEMENTS OF BASIC CONTRACT TYPES | 110 |
| CHAPTER VII CONTRACT ADMINISTRATION | 115 |
| A. CONTRACT ADMINISTRATION FUNCTIONS | 115 |
| B. PCO/ACO RESPONSIBILITIES | 116 |

| | |
|---|------|
| CHAPTER VII (CONTINUED) | PAGE |
| C. DEFENSE CONTRACT ADMINISTRATION SERVICES | 118 |
| D. INDUSTRIAL SECURITY | 119 |
| E. TERMINATIONS AND DISPUTES | 120 |
| F. SPECIFICATIONS AND STANDARDS | 123 |
| G. CONSTRUCTION | 128 |
| CHAPTER VIII EXTRACONTRACTUAL INFLUENCES | 131 |
| A. ACHIEVEMENT MOTIVATION | 131 |
| B. ENTREPRENEURIAL GOALS | 132 |
| APPENDIX DEFINITIONS | 137 |

INDEX OF FIGURES

| <u>FIGURE</u> | <u>TITLE</u> | <u>PAGE</u> |
|---------------|---|-------------|
| 1 | DD FORM 1155, Order for Supplies or Services | 51 |
| 2 | DD FORM 1155, General Provisions | 52 |
| 3 | Standard Form 129, Bidders Mailing List Application | 54 |
| 4 | Standard Form 129, Bidders Mailing List Application Information and Instructions | 55 |
| 5 | DD FORM 1707, Invitation for Bids, IFB Example | 66 |
| 6 | DD FORM 633, Contract Pricing Proposal | 95 |
| 7 | Weighted Guidelines for Profit | 103 |
| 8 | Range of Contract Types, with their Theoretical Advantages and Disadvantages | 108 |
| 9 | DD FORM 1425, Specifications Order | 121 |



CHAPTER I

INTRODUCTION

A. SCOPE OF GOVERNMENT PROCUREMENT

1. Businesses without Government contracting experience should not feel that the broad scope of the huge Government procurement program and the bidding, proposal, and administrative processes are so overly complex that entry into the Government market place should be avoided. The unknowns and the abundance of misinformation which is available about the Government procurement process, however, cause many potential suppliers of goods and services to be frustrated with the system before making an aggressive effort to sell to the Government.

Businessmen without Government contracting experience and representing big businesses, small businesses, or minority-owned businesses feel a sense of handicap prior to making an attempt to sell to the Government, but the requirements and conditions should be no more unusual than found under good commercial contracting practices. Several principles applicable to Government contracts respecting your offer and the Government's acceptance are evolved from common law, and the resulting Government contracts are subject essentially to the same common law rules of interpretation which are applied to commercial contracts.

In either Government or commercial contracting, businessmen must recognize the seriousness of properly evaluating the conditions of invitations for bids or proposals, of submitting only offers in full accordance with their intentions, and of fulfilling all contractual obligations. Businessmen also must recognize the potential contractual penalties for default or failure to perform in accordance with contractual requirements.

2. Procurement opportunities for minority-owned firms through Government contracting are not unlimited but are limited only by the firm's capabilities to deliver a quality product or service, at the required or agreed delivery time, and at a fair and reasonable price.

The impact of Government procurement on the Nation's economic and social well-being is more far reaching than depicted by the total amount of

money spent in contracts because of the flow-down effect of subcontracts and related consumer spending for supplies and services. In fiscal year 1972, the Federal Government estimated \$57.5 billion would be spent on procurement:

1972 Procurement

| | |
|--|----------------|
| Department of Defense | \$39.4 billion |
| Atomic Energy Commission | 2.9 |
| Department of Agriculture | 2.6 |
| National Aeronautics and Space Admin. | 2.5 |
| General Service Administration | 1.3 |
| Veterans Administration | .74 |
| Department of Health, Education, & Welfare | .72 |
| Department of Transportation | .70 |
| Department of Interior | .65 |
| Housing and Urban Development | .25 |
| Department of Commerce | .17 |
| Other agencies, GSA rents, and services | 5.57 |
| | <hr/> |
| | \$57.5 billion |

The above breakdown of Federal expenditures does not include salaries of personnel engaged in procurement activities or support activities. The breakdown shows that the Department of Defense (DOD) procurements accounted for 68.5 percent, civilian executive agencies procurements accounted for 25.2 percent, and other procurements accounted for 6.3 percent of the total.

The effect of inflation since 1972 of course is limited to a significant degree by the constraints of the Federal budget - meaning that in many cases the Government is paying more and buying less.

The huge, constantly changing procurement program can give birth to new industries or can close industries or segments of industry because of technological developments or because of changes in world politics. As reported by the Commission on Government Procurement, the award of a major contract can stimulate the growth of certain States and localities; the withdrawal or cancellation of a contract may cause the decline of long-established communities and enterprises, and may plunge sizeable areas into economic hardship.

3. It is important for the new minority-owned business firm to recognize that continuing viability will depend on planning for a broad-customer base. The ability to survive and grow will not be present with one customer or two customers connected with a single, Government-based procurement program. An equal mix of Government and commercial work should be sought because of the constantly changing needs through Federal procurement. Also, the minority-owned firm should not overlook opportunities to participate in Government procurement by providing subcontracting services.

The significant changes in procurement are highlighted by DOD statistics showing total DOD awards in Fiscal Year (FY) 1952 amounting to \$43.6 billion and being sharply reduced to \$13.3 billion in FY 1954, climbing to \$44.6 billion in FY 1967 and declining to \$36.9 billion in FY 1973. Since DOD procurements (not total budget outlays) represent the largest procurement percentage rate of the Government, the following DOD breakdown is submitted for information:

DOD Procurement - FY 1973

| | |
|-----------------------|-----------------|
| Army | 10.33 billion |
| Navy | 11.93 |
| Air Force | 10.75 |
| Defense Supply Agency | <u>3.91</u> |
| DOD Total | \$36.92 billion |

4. The Government procurement and contract support workforce in 1971 was estimated to total about 80,000, with 76 percent in DOD and 24 percent in the civilian agencies. It is not necessary for the new minority-owned firm to contact even one percent of that workforce to effectively cover the procurement opportunities which are available. Learn where the buying is performed in the geographic area near your location.

It is recognized that Washington, D.C. is the core of the small business and the minority business program, but it is not necessary for you to go to Washington to get answers on Defense procurement and civilian agencies procurement programs. Excellent local points of contact are found in each area's Small Business Administration offices, the small business specialists in the procurement offices, the Defense Contract Administration Regional and District offices, and the General Services Administration (GSA) Business Service Centers in ten major geographical areas of the United States.

Procurement by the civilian agencies is nationwide in scope, but generally is decentralized to permit regional and field offices to buy the bulk of their own operating requirements. Procurement by DOD also is nationwide in scope and is weapon systems or commodity oriented at decentralized locations.

The complex nature and facility requirements of much of the weapon systems and subsystems required by the Army, Navy, and Air Force limit the ability of most small minority-owned firms to fulfill the needs as prime contractors in some weapons areas; however, the talent of the smaller firms can provide effective subcontract support to larger prime contractors. The major prime contractors also have an assigned small business advisor at each major buying office and in some cases have an assigned minority business administrator. It will be advantageous for the small minority-owned firm to contact the prime contractors in the immediate vicinity, who can be made

aware easily of the firm's management and production capabilities. Local subcontract work offers advantages to both the prime and the subcontractor because of ease of inspection, shipping, and contract administration.

5. There is no doubt about which comes first, the chicken or the egg, in Government contracting and subcontracting. Marketing, selling, comes first and sometimes long before the first good contract. Know your customer and be sure that the customer knows you. Get on appropriate bidders lists. Blanket-mailing of the Standard Form 129 bidders applications to buying organizations which do not procure the supplies or services which you sell contribute only to postal expense and the sale of wastebaskets.

Use every available opportunity to be aware of procurement opportunities within your capability. Getting on the bidders lists is not an end in itself -- firms must get on appropriate bidders lists of those buying offices which have frequent repetitive needs for the supplies and services which you sell. For example, mailing bidders list applications when you make wooden pallets or boxes will not be effective if the activities receiving the application do not buy pallets or boxes. As another example, the Government seldom buys machining services (grinding, milling, deburring, drillpress work) or sheet metal process work, or plating and other processes but generally buys completed parts, components, and assembled operating subassemblies and assemblies. Smaller firms can act as subcontractors to provide many highly technical components for the most sophisticated weapons systems or transportation equipment and minority-owned firms have made vital contributions to the improvement and cost-effectiveness of these systems and equipments.

6. The Government buys a little bit of everything, but many Government buying offices buy only a few items or services in very limited quantities. While the U.S. Government is the world's largest buyer of goods and services, the buying activity nearest to the firm may never be in a position to procure from a local source because consolidated requirements may be purchased elsewhere.

B. SELLING TO THE GOVERNMENT

1. The thousands of supply contracts issued each year by the Government are executed at civilian agency field offices throughout the United States, at Army posts, camps and stations and Air Force base support offices and Navy Supply Centers and Defense Supply Agency consolidated centers, and at certain headquarters offices of Federal Departments or agencies in Washington, D.C.

The organization for procurement is different in each of the Federal Executive Departments. Each Department and agency is responsible for most of its own procurement but procurement functions are con-

solidated to the maximum extent possible, and GSA is responsible for centralized procurement, storage, and distribution of supply items in common use throughout the Government. Likewise, the Defense Supply Agency (DSA) through its Defense Supply Centers has procurement responsibility for various specific commodities assigned to each Center for military logistic equipment, supplies and items for the support of the Army, Navy, and Air Force.

2. The Federal Government is as interested in your competing for some of its business and becoming a strong supplier as you are in wanting some of the Government business. The people in the United States, including you, the owners and managers and other personnel of business firms, are the Government. The employees of the Government work for you, the taxpayers. All firms have an equal opportunity to share in supplying the needs of the Government. Special preference is frequently given to small business firms. Intermediaries or agents are not necessary to obtain contracts from your Government; however, you are advised to seek all of the available free help that may be obtained through many sources to enable you to sell more effectively.

3. There are many valuable published guides for minority-owned firms to use in determining "where to sell". The following listed sources of information are included in the long list of information sources which is available:

PUBLISHED SOURCES OF INFORMATION

Commerce Business Daily:

- Annual subscription \$75.00 plus \$66.90 for airmail, or \$141.90 per year.
- Make checks payable to Superintendent of Documents -- Mail order to Government Printing Office, Washington, D. C. 20402.
- Published daily, Monday through Friday, listing DOD proposed procurements estimated to exceed \$10,000 each and civilian agency procurements in excess of \$5,000 -- also subcontract opportunity information. Published for U.S. Department of Commerce.

U. S. Government Purchasing and Sales Directory:

- This publication contains a detailed listing of the products purchased by civilian and military agencies, location of purchasing offices, and summaries of procedural information for use by suppliers, contractors, and subcontractors in contract dealings with the U. S. Government. Prepared by Small Business Administration.
- For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Price \$2.35, domestic prepaid. Stock number 4500-00118. (July 1972).

Selling To The Military:

- Provides names, addresses and telephone numbers of major buying offices of the Army, Navy, Air Force, and Defense Supply Agency with summaries of the procurement responsibilities and types of major purchases for each activity. Prepared by Department of Defense.
- For sale by U. S. Government Printing Office, Washington, D. C. 20402. Price 90 cents. Stock number 0880-00194. (1973).

Selling to Navy Prime Contractors:

- This booklet provides a starting point and some initial guidance to firms that have the necessary talent and interest to contribute to the Navy's subcontract requirements.
- The tenth edition of the booklet, July 1973, includes a directory of firms: names, addresses, and telephone numbers of major prime contractors in listings by State. The booklet also provides the names of the company official who may be contacted for subcontract opportunities and a listing of the general category of defense items produced by each Navy prime contractor.
- For sale by the U. S. Government Printing Office, Washington, D. C. 20402. Price \$1.00; Stock number 0840-00061. (1973).

Doing Business With The Federal Government:

- Provides basic information about the "How, Where, and What" of Government procurement.
- Lists Departments' responsibility for broad categories of Government supply needs.
- Appendix contains Standard Forms commonly used in Government procurement.
- Published by U.S. Government Printing Office, December 1970 for General Services Administration.
- Available from GSA Business Service Centers.

The Armed Services Procurement Regulation (ASPR):

- Latest edition issued June 1974, effective 1 September 1974.
- For sale by the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402. Subscription basic price, \$33.85 postpaid for new subscribers. Subscriptions to ASPR includes additional material which may be issued as Defense Procurement Circulars during the year of the 1974 edition.

The SBA publishes a basic procurement information manual entitled "Selling to the U. S. Government", and the SBA has many Technical Aids and Management Aids pamphlets, several of which are available free from the SBA.

The "Directories" and "Selling To--" manuals in the listing of published sources of information are periodically updated. They are often available free from Departmental small business representatives during the counselling sessions at the Congressionally sponsored Business Opportunity/Federal Procurement Conferences held each year in several Congressional Districts where significant prime contract and subcontract opportunities exist.

4. Government buying programs are divided into three broad categories: military procurement, GSA procurement; other civilian agency procurement.

a. The Department of Defense provides unified procurement policy direction of the three military services and the logistic support arm, DSA. In DOD, the principal responsibility for procurement and contracting policy rests with the Assistant Secretary of Defense, Installations and Logistics, ASD (I&L). He is one of eight Assistant Secretaries in the Office of the Secretary of Defense who rank in order following the Secretary, Deputy Secretary, the Secretaries of the Army, Navy, and Air Force and the Director of Defense Research and Engineering (DDR&E). The Chairman of the Armed Services Procurement Regulation Committee (ASPR) - which develops and promulgates Defense procurement policy and procedures - is on the staff of the Deputy Assistant Secretary of Defense (I&L) for Procurement. The Office of the Secretary of Defense and the Installations and Logistics Offices do not contract for any military systems or supplies.

Each Military Department, Army, Navy, and Air Force, procures systems, supplies, and services which are peculiar to its own needs. Items which are common to two or more military services are included under DSA programs, and so-called "housekeeping" items and generally common supply items are requisitioned from General Services Administration. Local procurement under low dollar limitations is authorized. The latter is commonly purchased from competitive sources "next door" to the bases, camps, posts, or stations.

The Department of Army buying offices are systems or commodity oriented at various decentralized locations. The Army Missile Command at Redstone Arsenal, Alabama buys rockets, guided missiles, ballistic missiles and support equipment. The Munitions Command at Dover, New Jersey is responsible for nuclear and non-nuclear ammunition, rocket and missile warheads, fuzes and propellants, including research and development (R&D). Associated installations supporting the Munitions

Command are the Army's Edgewood Arsenal, Maryland, Picatinny Arsenal, New Jersey, and the Army Ammunition Procurement and Supply Agency, Joliet, Illinois.

The Army's Tank-Automotive Command is in Warren, Michigan. The Aviation Systems Command is in St. Louis, Missouri and is responsible for Army aviation design, research and development, and stock and supply control for all Army aircraft and equipment: typical procurements for helicopters and engines include aircraft, aircraft structural components, ground support equipment, wheel and brake systems, gas turbines, jet engines, parachutes, hydraulic pumps and starters.

Other Army commands with major buying offices include the Electronics Command at Fort Monmouth, New Jersey, the Weapons Command at Rock Island, Illinois, and the Mobility Command at St. Louis, Missouri. Over the nine major subcommands is the Headquarters, U.S. Army Materiel Command (AMC) which directs the procurement functions and activities of more than 60 installations.

Within the three Military Departments, the Assistant Secretary (I&L) of each Department is responsible for procurement and production. Matters relating to research, development, test and evaluation are the responsibility of the Assistant Secretary (Research & Development). The Offices of the Departments' Assistant Secretaries do not maintain bid lists or procure supplies and services and are primarily concerned with policy matters.

In the Navy, the Naval Material Command in Washington includes five principal subcommands: Naval Air Systems Command, Electronic Systems Command, Facilities Engineering Command (for construction), Sea Systems Command and Naval Supply Systems Command.

All of the Commands in the Navy have headquarters in Washington. The big, big dollars in Navy awards come out of the Systems Commands in Washington; however, the Naval Supply Systems Command Headquarters does not make contract awards but it does exercise control over procurement in most Navy field activities. The Navy Field Procurement System is a vital element in its Small Business and Minority Business Program. The field system accounted for more than 44 percent of Navy dollars awarded to small businesses last year. There are about forty-five field activities of the Supply Systems Command. The Aviation Supply Office in Philadelphia is responsible for procurements of various types of aeronautical equipment, and the Ships Parts Control Center in Mechanicsburg, Pennsylvania is responsible for procurement of ships components, ammunition parts, and electronic components. The Naval Regional Procurement Office in Long Beach is the largest regional office and the third largest Systems Command field purchase office, following ASO and SPCC.

Other Navy Regional Procurement Offices are located in Philadelphia, Pennsylvania and in Washington, D.C. Major Navy Supply Centers buying a broad spectrum of supplies are located in Norfolk, Virginia, Charleston, South Carolina, Oakland, California, Bremerton, Washington, and San Diego, California.

The Air Force procurement is generally divided between two Commands: the Air Force Systems Command (AFSC) with headquarters at Andrews Air Force Base, Maryland and the Air Force Logistics Command (AFLC), at Wright-Patterson AFB, (Dayton) Ohio. The AFSC major activities at the Aeronautical Systems Division, Wright Patterson AFB, the Electronic Systems Division at Hanscom Field, Bedford, Massachusetts and the Space and Missile Systems Organization, El Segundo, California procure major systems, equipments, and R&D, as well as engineering support for the aircraft, space, and missile weapon systems.

The AFLC activities at the various Logistics Centers are responsible for procurement of all supplies and services in support of weapons and other systems that are operational. The Logistic Centers are located at Tinker Air Force Base, Oklahoma City, Hill AFB at Ogden, Utah, McClellan AFB at Sacramento, California, Kelly AFB at San Antonio, and Robins AFB at Warner Robins, Georgia. Significant purchases are made also at various Air Force Test Ranges and Development Centers.

The Defense Supply Agency (DSA), with headquarters at Cameron Station, Virginia (Washington, D.C.) is responsible to provide common supplies and services to the military services. Its major buying offices are the Defense Personnel Support Center in Philadelphia, the Fuel Supply Center in Alexandria, Virginia, the General Supply Center in Richmond, Virginia, the Electronics Supply Center in Dayton, Ohio, the Construction Supply Center in Columbus, Ohio, and the Industrial Supply Center in Philadelphia.

DSA procures such common items as food, clothing, textiles, medical, chemical, industrial, construction, fuel, and electronics supplies. Interested bidders and suppliers should deal directly with appropriate supply centers and depots, but bid list information and commodity lists for each Center can be obtained from the Small Business Specialists at the Defense Contract Administration Regions (DCASR) Offices. The DCASR and DCAS District Offices also can supply prospective contractors with information concerning prime contract opportunities of all Military Departments and information concerning subcontract opportunities.

DOD purchases during the last ten years in excess of \$10,000 each were made from more than 20,000 firms. If the vast number of purchases under \$10,000 each are included, the total number of firms

involved in DOD procurement is approximately 80,000. While contracts are placed in every State, about 50 percent of the DOD procurement dollars is concentrated in only four or five States; however, about 50 percent of the prime contract dollars is subcontracted to one, two, three, or four tiers below the prime contractor.

The magnitude of the DOD buying is illustrated by the fact that over the last ten years, about 75 percent of the total Federal procurement outlay was in about 10 million annual procurement actions in DOD. Two-thirds of the dollars are spent by the major Commands. Hundreds of activities in each Military Department make purchases but every activity does not have the same dollar limit authority or assignment of items or commodities to purchase. Thus, a new firm may assume that an Army base or a Navy base, or an Air Force base buys for everything that is on that base - but that assumption is incorrect because the major buying and support buying may have been performed hundreds or thousands of miles away from a particular base, and the base may be responsible only for local purchases of housekeeping and support items not readily available from DSA or GSA.

The new firm or relatively inexperienced firm should realize that the major responsibility of each DOD procurement office is defense - procurement is not an end in itself, but rather a means to an end - to serve and support the primary mission which is defense.

b. The General Services Administration (GSA) has been assigned Government-wide responsibility to buy items of common usage for all military and civilian Departments. GSA in some cases buys and stocks items in warehouses or depots from which all Departments and agencies requisition as needed and reimburse GSA. In other cases, GSA writes Federal Supply Schedule Contracts with suppliers from which the Departments and agencies order and pay the supplier directly at the GSA contract price. GSA items include office furniture, office supplies, housekeeping items, batteries, commercial tires and tubes, hand tools, paint, and ADPE. The Commissioner of the Federal Supply Service reports directly to the Administrator of GSA.

In dealing with the GSA, the minority-owned firm has the advantage of a central source of information - the GSA Business Service Center. The Centers are located in Boston, New York City, Washington, D.C., Atlanta, Chicago, Kansas City, Ft. Worth, Denver, San Francisco, Los Angeles, and Seattle. The Centers provide information on current GSA procurement opportunities and possible subcontract opportunities, bids and related documents, and have available copies of Federal Supply Schedules, standard contract forms, and other procurement publications.

Businessmen wishing to participate in competitive bidding on regular items of supply should contact the nearest GSA Regional Office, directing inquiries to the Regional Director of Business Affairs, complete all necessary application forms received, and it is not necessary to submit additional forms to other GSA offices. The GSA buys approximately 50,000 common items for its supply depots and its Federal Supply Schedule Contracts cover more than 700,000 other commonly used parts, equipment, and supplies.

c. There is no uniform procedure by which the minority-owned firm can bring its capabilities to the attention of all of the civilian agencies and their field buying organizations; however, the Small Business Specialist at each of the headquarters of the civilian agencies and civil Departments in Washington, D. C. will direct inquiries to appropriate Regional offices. The headquarters offices generally have very little open-market purchasing and prospective contractors should first attempt to contact Regional or field offices.

The Department of Health, Education, and Welfare (DHEW) is a major buying organization - especially since the shift of budget outlays in the 1970's. In earlier periods, Defense received the largest amount of the budget, but after a reordering of National priorities, the 1973 budget request allocated only 33 percent to Defense and allocated 45 percent to Human Resources and 10 percent to Physical Resources - thus the DHEW budget exceeded the DOD budget for the first time in 1973. DHEW buys a wide variety of supplies, equipment and services for operational and research needs. The largest dollar volume of purchases in DHEW are made by the National Institutes of Health and the Public Health Service. In the research and related field, the former general practice of grants has changed to a greater number of contracts. Procurement inquiries may be made at the nearest DHEW Regional Offices, in Boston, New York City, Chicago, Philadelphia, Pennsylvania, Atlanta, Kansas City, Dallas, Denver, Seattle, or San Francisco. The National Institutes' procurement offices are in Bethesda, Maryland.

The Atomic Energy Commission (AEC) purchases are generally made in the field by AEC contractors operating plants for the AEC. The purchases are relatively small purchases of standard commercial items for operating supplies and maintenance. AEC purchasing offices can supply information in Oak Ridge, Tennessee, Richland, Washington, Berkeley, California, Las Vegas, Nevada, Grand Junction, Colorado, Argonne, Illinois, or Albuquerque, New Mexico.

The National Aeronautics and Space Administration procurement also is largely decentralized. Procurement policy and the approval of certain procurement actions is retained as a responsibility in NASA Headquarters in Washington, D. C. The Office of the Assistant

Administrator for Industry Affairs in NASA has been about equal in functions and responsibilities to the Office of the Assistant Secretary (I&L) in DOD. Major NASA Centers with procurement responsibility for mission oriented programs are Ames Research Center, Moffett Field, California (San Francisco), Flight Research Center, Edwards, California, Goddard Space Flight Center, Greenbelt, Maryland, J. F. Kennedy Space Center, Florida, Johnson Space Center, Houston, and the Marshall Space Flight Center, Huntsville, Alabama. In addition, Jet Propulsion Laboratory (JPL) is operated by Cal Tech for NASA in Pasadena, California and directly purchases R&D supplies, equipment, and services in support of its research programs for NASA.

Other major civil Departments engaging in procurement include Agriculture, Housing, Transportation, and Commerce. The Executive Departments' realignment may change certain procurement responsibilities for programs connected with environmental protection, highways, earth resources, energy, and scientific research.

5. The Commerce Business Daily will continue to be the primary source of hundreds of daily listings of new requests for products and services wanted by Government Departments and agencies for procurements in excess of \$10,000. If a firm is not a subscriber to the Commerce Business Daily, it is available to read in Department of Commerce field offices, at the GSA Business Service Centers, at Defense Contract Administration Regional offices, at the Small Business Administration offices, and at most of the offices of the Small Business Specialists in the military Departments.

Like other supplies and services affected by increased costs, the Commerce Business Daily has been increased in cost for subscriptions to cover its publication and mailing increases. In April 1969, the Daily subscription was \$15 per year for regular mail and \$52 additional for Air Mail. There were a series of increases through the ranges of \$40 then \$63.50 for regular delivery to the increase as of 1 January 1975 with a regular annual subscription rate of \$75 and \$66.90 extra for air mail.

6. For information on selling to the commissaries and exchanges of the military Departments, contact the following:

-Chief, Army Support Services
Department of the Army,
Washington, D. C. 20315

-Headquarters, U. S. Air Force,
Code AFSSSEB, Room 5B337, Pentagon
Washington, D. C. 20330

-Commanding Officer, Navy Ships Store Office
29th St. and 3rd Ave.
Brooklyn, New York 11232

-Marine Corps Exchange Service Hq.
Code CHX, U.S. Marine Corps
Washington, D.C. 20380

-Commandant
Code FSU, U.S. Coast Guard
400 7th St. S.W.
Washington, D.C. 20590

Each military installation in this country establishes its own procurement requirements. Procurement is made at the installation level or at Exchange Regions. The Army and Air Force Exchange Service Headquarters address is Code AAFES, Dallas, Texas 75222, and the Navy address is Navy Ships Stores Office, 29th St. and 3rd Ave., Brooklyn, N.Y. 11232. Regional Exchange Offices for the Army and Air Force are in San Antonio, Alexandria, Virginia, San Francisco, Charleston, Indiana, and Montgomery, Alabama.

In selling to individual post exchanges in the U.S., a firm may arrange for visits to each exchange in its geographic area or use the mails for distributing descriptive literature, and prices and discounts; however, personal calls are more effective. Like the earlier caution about mailing Standard Forms 129 to many, many activities, it is better to know your prospective customer and its needs and to have the prospective customer know you and your capabilities.

Probably the most complete listing published of local military installation locations is contained in Part III of the SBA publication, U. S. Government Purchasing and Sales Directory, 1972; for sale by the U. S. Government Printing Office, Washington, D.C. 20402, and priced at \$2.35 (stock number 4500-00118).

CHAPTER II

PROCUREMENT PRINCIPLES AND REGULATIONS

A. PROCUREMENT AND CONTRACTING BACKGROUND

1. The major changes in procurement practices and regulations have occurred during or shortly after periods of war or as a result of practices which emerged because of military emergencies.

During the decades of 1950, 1960, and 1970, the use of Federal contracting to promote social and economic benefits has grown significantly.

Military procurement captured the attention of leaders and the public and became of concern to the Congress long before attention was directed to the growing procurement of the civilian Departments:

-In 1792, the Congress provided that war supplies would be purchased by the Treasury Department.

-In 1809, the first Federal statute requiring advertising of bids was enacted.

-In 1842, a specific procedure for advertising was made a law and it covered purchase of stationery supplies.

-In 1843, a statute was enacted providing for bid abstracts.

-In 1860, Revised Statutes permitted two exceptions to advertising.

-In 1916, the National Defense Act permitted emergency procedures during wartimes.

-At the close of World War II, a study was made to develop effective peacetime procedures. The proposed bill in 1946 was enacted as the Armed Services Procurement Act of 1947. The Act was implemented by development of the Armed Services Procurement Regulation (ASPR).

-The Federal Property and Administrative Services Act was enacted in 1949. It is implemented as the procurement regulations for the civilian agencies in the Federal Procurement Regulations (FPR).

-Each regulation has grown; some changes have been made to cure isolated instances of incorrect practices. The ASPR now contains over 3000 pages, divided into 26 sections and 15 appendices. One of the sections, Section VII covering contract clauses was recently issued separately and is for sale as a separate document by the Government Printing Office. Section VII, Contract Clauses, is 521 pages in length!

2. The new or inexperienced minority-firm should recognize at the outset that the ASPR is confusing to one without military contracting experience. If the firm deals with civilian agencies as well as military Departments, one will be more confused because of the inconsistencies between the ASPR regulation and the FPR regulations and the different implementing internal regulations as may be issued by various civilian agencies.

The regulations have been called voluminous, exceedingly complex, and at times difficult to apply by the Comptroller General of the United States. If the regulations appear complex to the Comptroller General, imagine how they must seem to a new contractor or subcontractor who is faced also with "flow down clauses" or purchase order "boilerplate" which incorporates many clauses by reference and in addition applies other industrial clauses to protect the prime contractor. It is important to note that the majority of the prime contract clauses, however, are mandatory. About 32 of the clauses are mandatory for flowdown from prime contractors to subcontractors.

3. The magnitude of procurement regulations is hard to comprehend. As an example, a contracting officer at one installation had a five-foot shelf of procurement and related procurement regulations which he was responsible for knowing and applying to the extent that they governed his area of procurement.

There are more than 4,000 statutes which affect Federal procurement and contracting transactions. The statutes are backed-up by Public Laws, policies reflecting the sense of the Congress, Executive Orders, and the regulations and implementing procedures. The ASPR has the force and effect of law. A complete understanding of all of the inconsistent, duplicative, or conflicting policies is impossible. Even if it could be made possible, there are changes being introduced at every moment. Thus to achieve a workable understanding of the regulations, look first to the solicitation - the invitation for bid or the request for proposals - and look to the contract for each procurement action. Understand the effect of the relatively few clauses in the solicitation and in the contract. If a firm does not have the ASPR or FPR, those clauses incorporated by reference may be reviewed or copied at the procurement office.

4. The relatively inexperienced firm is cautioned not to apply uninformed interpretations to a solicitation or contract clause. The effect of noncompliance or self-modification of certain clauses or the use of informal agreements with someone other than the authorized contracting officer can financially break a firm.

The majority of the clauses which will be contained in the General Provisions of a procurement solicitation and in the contract which may be awarded are mandatory in Federal contracts (some are mandatory

in certain subcontracts) - any attempt to have them modified or deleted generally will be useless. Deletion or modification of certain clauses will render bids and proposals nonresponsive and a firm will not be in line for an award which otherwise might have been made from a successful bid.

5. Procurement principles in Government contracting have always been the same as in any effective commercial market place. Competition is preferred; fixed price contracts are preferred; award should be made on price (and other total cost factors which are specified), quality (as specified), and timely delivery; excess profits are to be avoided - the price should be fair and reasonable.

Present day procurement problems are numerous and complex for the Government (and for the contractors) but the principles of good procurement in 1975 are essentially the same as the principles demanded by the Commissary General of the Revolutionary Army for this emerging Nation in 1775.

B. FEDERAL PROCUREMENT POLICY

1. The two basic procurement policies and regulations which are used for the predominant number and amount of procurements are the Armed Services Procurement Regulation and the Federal Procurement Regulations (FPR). Another basic regulation frequently used is the NASA Procurement Regulation (implementing the FPR); however the NASA PR closely follows the coverage and the sense of ASPR.

2. The FPR is not as inclusive or far reaching as the ASPR. They were very similar when they began about twenty five years ago, but the ASPR since 1950 has had many additions to it which were not incorporated into the FPR.

In 1971 and 1972, the Commission on Government Procurement studied the advantages and disadvantages of a single Federal procurement regulation to avoid the complexities and confusion of two separate regulations with extensive, sometimes inconsistent implementation by certain new civilian agencies. As of this writing, the dual regulation issue is still unresolved, but the new Office of Federal Procurement Policy in the Office of Management and Budget (OMB) will work on the Commission's recommendation to the Congress concerning consolidation of the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949, thus providing a common statutory basis for procurement policies and procedures applicable to all Executive agencies.

Certain contractors and subcontractors ordinarily do business in the commercial world under the Uniform Commercial Code. The common law affords certain nonjudicial remedies to the prime contractors and subcontractors. The Uniform Commercial Code is considered as a guide to Government contracts when no other Federal precedent is

applicable; however, it is said that Government contract clauses strip the contractor of nonjudicial remedies under the Disputes clause of the contracts and also give nonjudicial remedies to the Government under the Inspection and Default clauses of the contracts. It is important for the firm serving as a subcontractor to remember that the subcontractor does not have the right of appeal directly to the Government contracting officer and to the Government Boards of Contract Appeals - the Government does not have privity of contract with the third party, the subcontractor, and contractual disputes between the prime and subcontractor must be resolved by the two parties.

The Uniform Commercial Code, to a large extent, covers the law where two firms have failed to specify certain matters in a contract. When the prime contractor is a relatively new firm or when both the prime and the subcontractor are inexperienced, there may be examples where the experiences under the Uniform Commercial Code are applied incorrectly as a basis for business dealings - especially in the areas of bids and proposals, acceptances of the contract, or changes to the contract. In Government contracting, most of the exclusions and exceptions covered by the Uniform Code are made explicit by quote or by reference in the solicitation and in the contract itself.

3. Major differences between the ASPR and the FPR are found in the coverage for procurement of major systems and Research and Development. The new contractor or the relatively inexperienced contractor providing supplies and services under a fixed price contract and competitively will find very few differences between the two regulations as they apply to most fixed price, competitive contracts. Each contractor, however, should be familiar with the general provisions and any supplementary contract provisions which may be attached to the invitation for bids or contract forms or incorporated by reference.

4. Subjects covered in the general provisions of supply contracts include: variations in quantity, inspection requirements, payments, assignment of claims, default, disputes, patents, Buy American Act, Walsh-Healey Public Contracts Act, contingent fees, and other subjects having a significant bearing on supplier performance. Provisions of general importance regarding bidding rules are included on Standard Form 33A in solicitations. Standard Form 32 contains the general provisions covering contracts for supplies and services, and examples of clauses are referenced in Chapter IV of this Guide in the section dealing with "How to Prepare a Bid."

Many of the referenced clauses in the general provisions are of major importance during the performance period, after award, and the Disputes clause and the Default clause will be discussed further in the Chapter dealing with Contract Administration.

5. The FPR contains 19 Parts as compared with the 26 Sections of ASPR. Probably the most often used coverages are found in Section II of the ASPR covering Procurement By Formal Advertising, Section III of ASPR covering Procurement By Negotiation, Section VII covering Clauses, and Section XV covering Contract Cost Principles; the Definition of Terms is found in Section I, Part 2 of ASPR; the DOD policy statement covering Minority Business Enterprises is found in ASPR Section I, Part 3 (ASPR 1-332); ASPR Section I, Part 7 provides coverage on Small Business Concerns (size standards, set-asides, contracting with the SBA under Section 8(a), and Certificates of Competency); ASPR 1-903 sets forth minimum standards for responsible prospective contractors and ASPR 1-905.4 covers Pre-Award Surveys of a prospective contractor's capability to perform; ASPR Section III, Part 4 covers Types of Contracts; and ASPR Section III, Part 8 covers Price Negotiation Policies and Techniques, and ASPR 3-807.2, -.3, -4 cover the requirement for price and cost analysis, cost or pricing data, and the certificate of current cost or pricing to be provided by the contractor under certain circumstances. The order of coverage of various subjects in the FPR generally follows the order of coverage in the ASPR.

C. FORMAL ADVERTISING AND NEGOTIATION

1. The concept of open competition is well known when formal advertising is performed; what is not well known or well understood is that price and technical competition are also found in negotiated contracts. Effective price competition occurs in both formally advertised and negotiated procurement.

2. The conditions under which formal advertising are appropriate and required include the following:

- There is adequate time to carry out the formal advertising procedures.

- There is the probability that two or more responsible firms will bid on the requirements, and actively compete to assure adequate competition.

- The specifications are sufficiently precise in order that firms may bid and the bids can be evaluated on an equal basis.

- Award can be made to the low responsive, responsible bidder without any negotiations, or discussions of either price or other terms of the contract.

3. The conditions under which negotiations are appropriate are those conditions and exceptions where formal advertising is not appropriate.

The following is a listing of the exceptions to U.S.C. (U.S. Code) 2304 which permit negotiation for DOD contracts when formal advertising

is not feasible or practicable. The exceptions to 41 U.S.C. 254 permitting negotiation of civilian agency procurements are similar but exception numbers (14) and (16) are not applicable:

- (1) National Emergency
- (2) Public Exigency (the urgent requirement will not permit delay incident to advertising).
- (3) Purchases not in excess of \$10,000.
- (4) Personal or Professional Services (must be of a technical nature).
- (5) Services of Educational Institutions.
- (6) Purchases Outside of United States.
- (7) Medicines or Medical Supplies (applies only to purchase of supplies peculiar to the field of medicine).
- (8) Property Purchased for Resale.
- (9) Perishable or Nonperishable Subsistence Supplies.
- (10) Impracticable to Obtain Competition (restricted to examples such as sole source of supply and inability to draft specifications).
- (11) Experimental, Developmental, or Research Work.
- (12) Classified Purchases (should not be used when negotiation may be authorized under any other exception).
- (13) Technical Equipment Requiring Standardization of Parts (interchangeability of parts are necessary and in the public interest).
- (14) Technical Equipment Requiring Substantial Initial Investment (where formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the delivery).
- (15) Negotiation after Advertisement (after a determination that bid prices received are unreasonable, or were not independently reached in open competition).

(16) National Defense or Industrial Mobilization (when it is determined to be in the interest of the Nation in having available facilities and capabilities established or maintained -- each military Department is required to twice yearly furnish the Congress with the identity of each contractor and the nature and amounts of such contracts negotiated under this exception).

(17) Otherwise Authorized by Law (is used to avoid unintended conflict between the two major procurement statutes and other statutes authorizing negotiation for a particular procurement).

4. One of the principal differences between the request for proposals (RFP) for negotiated contracts and the invitation for bids (IFB) for formally advertised contracts is the type of contract which is awarded under each. Negotiated procurements may result in a Firm Fixed Price contract or any of the incentive type contracts or other cost reimbursement type contracts such as Cost Plus Fixed Fee (CPFF). Formally advertised procurements result in a Fixed Price contract.

5. Advertised bidding consists of a rigid set of formalized steps:

- The procurement starts with the issuance of an IFB solicitation which contains specifications describing the actual minimum needs of the Government.

- Sealed offers are received by a specified time.

- Bids are publicly opened at a specified time and bids are generally determined at this time to be responsive or nonresponsive.

- Award of a contract is made to the lowest bidder determined to be a responsible bidder, whose bid conforms in all material respects to the requirements of the solicitation, another form of responsiveness.

Negotiation procedures are not rigid, but certain procedures are required, and negotiation is required to be competitive to the extent practical:

- The procurement starts with the issuance of an RFP (which in certain Departments may have been preceded by a Request for Quotations, RFQ).

- The RFP, like the IFB, will set forth all significant matters which affect the opportunity of the offerors to compete on an equal basis; cost will always be considered but does not necessarily rank high or highest in the special evaluation factors.

- Proposals are received by a specified time.

- Proposals are not publicly opened.

- Proposals are evaluated in accordance with the evaluation criteria in the solicitation in order to determine responsiveness and acceptability.

-Cost and technical and other factors are judged and compared with preestablished weightings to determine the offerors considered to be in a competitive range where discussions may lead to consideration for award.

-Proposals need not be negotiated if the RFP provided that award could be made without further discussion and certain conditions are present.

-Negotiation (discussion) generally implies a series of offers and counteroffers until a mutually satisfactory agreement is concluded, but one discussion session may be sufficient.

-Negotiations may be oral or written.

-All responsible firms determined to be in a competitive range will be advised of a common cut-off date and time when best and final offers will be accepted.

6. Generally, the newer minority-owned firms will not be involved in negotiated procurements as much as advertised bidding procedures. The negotiations by a minority-owned firm under the Section 8(a) contracting procedures may be less formalized because the firm will be negotiating as a subcontractor with the prime contractor, the Small Business Administration.

At the same time, the minority-owned firm should seek out all available information from the activity's Small Business Specialists concerning the negotiation procedures involved when responses to an RFP are planned. It is important to note that all of the negotiation procedures and regulations which direct the practices are not contained in full in the ASPR or the FPR.

Negotiation procedures and practices have evolved from the regulations, from Public Law, and from a series of Comptroller General (General Accounting Office) decisions. An affirmative requirement to conduct negotiations (discussions) with all offerors in a competitive range was established with the enactment of Public Law 87-653 on September 10, 1962. This Public Law also required offerors in certain cases to disclose the basis for all pricing and this requirement for disclosure and submission of cost or pricing data will be discussed in Chapter V of the Guide.

The requirement to conduct negotiations with offerors in P.L. 87-653 is now found as subsection (g) to 10 U.S.C. 2304. Although the law originally applied to DOD procurements, the substantive provisions have been adopted in the FPR for civilian agency negotiations - see FPR 1-3.805.1 and also ASPR 3-805.1. For the student of negotiation and importantly for the personnel of a firm needing to know the basis for negotiation practices, refer to the following principal General Accounting Office decisions:

- 45 Comp. Gen. 417 (1966)
- 45 Comp. Gen. 749 (1966)
- 47 Comp. Gen. 29 (1967)
- 48 Comp. Gen. 449 (1968)
- 48 Comp. Gen. 536 (1969)
- 48 Comp. Gen. 583 (1969)
- 49 Comp. Gen. 156 (1969)

D. SOCIO-ECONOMIC POLICIES

1. It is probable that the most comprehensive and complex socio-economic policy in Government procurement is that policy favoring small business. In view of the large amount of Federal contracting and the multiplying effect of that contracting through services and supplies for employees of primes and subs, there is a big effect on the national economy.

It has been determined by the Congress and the Executive Department to be in the Nation's interest to use the Federal procurement programs to support our socio-economic policies. Most people, however, are unaware of the large number of programs, policies, and objectives which are supported to a large degree by Federal contracting. A major step in assuring that objectives are fostered is the inclusion of certain clauses in Government contracts which require the contractors and certain subcontractors to do certain things or not to do certain things.

2. There are valid arguments or at least important questions concerning the attempt to foster or enforce socio-economic policies at the expense of the procurement process.

Businessmen at all levels complain about Government "red tape" in contracting and the growth of clauses in contracts. Several of the clauses may require record-keeping or reports during administration or clearances before contract awards - naturally the cost of supporting the programs through contracting are borne by the contract price, eventually impacting on the businessmen and their employees, the taxpayers. At the same time the Federal Government has made a conscious decision to utilize the procurement process as one of the vehicles in its efforts to advance social and economic improvements in several areas at several levels. One of the Government sponsored small business training program manuals has included the following statement:

"The considerations include the concept that the Nation's defense is bound up with the Nation's welfare. Economic instability, a limited competitive and industrial base, and social unrest can threaten and undermine the security of the Nation and reduce its military capability.

"There is a realization that while some socio-economic programs do not appear to be cost-effective from a particular

agency's perspective, they often are quite cost-effective from an overall social cost standpoint. The lowest cost procurement to an agency will not necessarily result in the lowest cost procurement to society as a whole."

3. The Report of the Commission on Government Procurement, December 31, 1972, listed about thirty-nine social and economic programs implemented through the procurement process, and the Report summarized the cost and time problems associated with the most significant programs. The list included the following:

- Buy American Act
- Preference for United States Manufacturers
- Small Business Act
 - including its Section 8(a) authority
- Service Contract Act
- Employment Openings for Veterans
- Blind-Made Products
- Labor Surplus Area Concerns
- Vietnam Veterans Readjustment Act

The implementation of the majority of the social and economic programs has resulted in the issuance of standard contract clauses, some of which also flow-down to the subcontracts. The history of attempts to bring about social changes through the procurement process goes back at least to the enactment of the Eight Hour laws when the eight-hour day was first extended to workers employed by Federal project contractors in 1892.

4. More than one socio-economic program operate along with the procedures and under the general practices of the Departments' Small Business Programs.

For more than 30 years, the Federal Government has recognized that its procurement program needs the assistance of small business - likewise, small business needs assistance from Government to assure that the huge, constantly changing, and often confusing procurement process provides opportunities for small businesses to compete and receive a fair proportion of the procurement budget.

The Small Business Administration was established first in 1953 and the original Small Business Act was enacted in 1953. Since that time, the DOD has made small business awards amounting to more than \$100 billion or about 18 percent of the dollar amount of awards to all business firms for work in the United States.

a. Small businesses receive several special privileges which are made available to them to assure small business a fair share of Government procurement. Among these small business considerations are Set-Asides, Certificates of Competency, and favorable Progress Payments.

(1) The Set-Aside program provides that appropriate procurements shall be set aside for the exclusive competitive participation of small business concerns in the interest of assuring a fair proportion of awards for small business. Total set-asides may be appropriate if the contracting officer and small business specialist determine that there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at a reasonable price. Total set-asides are not to be made unless such a reasonable expectation exists. Contracting officers, small business specialists, and SBA Procurement Center Representatives also seek partial set-asides when appropriate; these are set-asides on portions of proposed procurements. The partial set-asides permit small firms to participate on a competitive bid basis in procurements which would be too large for the individual small business or on procurements where part of the requirement is reserved for planned emergency producers and necessary for maintaining a mobilized productive capacity.

Determinations to make set-asides are unilateral or joint. A unilateral determination is one which is made by the contracting officer normally upon initiation of the set-aside by the small business specialist. A joint set-aside is one which is made jointly by an SBA representative and the contracting officer. Usually, unilateral determinations are used as a basis for set-asides, but SBA does review the set-aside program to assure that it is effective.

In addition to set-asides of individual procurements, procurement offices often set aside classes of current and future procurements of selected items or services for exclusive participation by small business.

Certain procurements where two or more small businesses are expected to compete effectively may not be set aside when it is determined to be in the best interest of the Government not to restrict sources. It may be especially important in certain R&D procurements to seek a wide spectrum of approaches and the RFP list may not be restricted to small businesses in these cases.

In the procurement of certain items, the objectives of both the Small Business Program and the Labor Surplus Area program are attained in a single procurement exclusively set aside for small business and a portion further set aside for awards to small business concerns which are also Labor Surplus Area concerns. Certain procurements may be restricted solely to Labor Surplus Area concerns under partial set-aside procedures, but preference for awards to Labor Surplus

Area concerns will not extend to approval of payment for any price differential for the purpose of carrying out the policy of assistance.

(2) Certificates of Competency are sometimes issued by the Small Business Administration certifying to the competency of a small business firm as to its capacity and credit. "Capacity" means the overall ability of a bidder to meet quality, quantity, and time requirements for a proposed contract and includes ability to perform, organization, experience, technical skills, and equipment and facilities or the ability to obtain them. Certificates of Competency (COC) are not issued for matters concerning the responsiveness of a bidder but only in certain matters of responsibility.

In procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable.

In DOD procurements, the COC procedure is requested usually after a low responsive bidder has received a "negative" capability report following a preaward survey by the Defense Contract Administration Services office. The SBA does not necessarily disagree with the preaward survey findings and may not issue a COC; however, after the SBA has studied the firm's financial conditions and production capabilities to meet the contract requirements, the SBA may determine the firm is competent to perform and meet schedule in accordance with requirements. The contracting officer, by law, must accept SBA's findings as conclusive as far as financial and production requirements of the particular contract are concerned.

Certificates of Competency are issued by SBA if:

- The small firm in question has submitted the lowest responsive bid on an advertised or a negotiated purchase.
- The Government official responsible for making the purchase does not believe the bidder is able to perform the particular contract, either for financial or productive reasons, or both.

-A survey by SBA's financial and production specialists has convinced the agency that the firm is capable of performing the contract satisfactorily.

When a contract has been awarded as the result of a Certificate of Competency, the SBA follows the progress of the contract until it is completed. If the contractor has difficulty meeting production schedules because of technical or other problems, SBA offers assistance in solving them. Although action in this procedure originates when the contracting officer rejects a small firm's bid, the application must be submitted by the small business bidder after he is notified by SBA that the government procuring office proposes to reject his bid.

(3) Progress payments for small businesses are more favorable than progress payments for large business. Under certain conditions progress payments for small business may be up to 85 percent of the amount of the contractor's total costs incurred under the contract while progress payments for large businesses are limited to 80 percent.

The need for progress payments will not be considered as a handicap or adverse factor in the award of contracts, but the offer of progress payments must be in the solicitation and available to all bidders on an equal basis. Also, the contractor's accounting system and controls must be determined by the Government to be adequate for segregation and accumulation of contract costs. It is important to remember that bids conditioned on the need for progress payments when the IFB does not offer progress payments will be termed nonresponsive.

The contracting officer may reduce or suspend progress payments or liquidate them at a higher rate whenever he finds upon substantial evidence that the contractor is failing to make progress or is in such unsatisfactory financial condition as to endanger performance and satisfactory completion of the contract, or is delinquent in payment of costs of performance of the contract (labor and suppliers).

Minority-owned small business firms serving as subcontractors to prime contractors under Government contracts may be eligible also for progress payments at the same favorable rate of 85 percent when there is expected to be a long lead time between the beginning of work and the first delivery. More favorable consideration also is given to small business in subcontract payments because the long lead time is defined as four months for small business and six months for large business.

The need for progress payments may arise after contract award and such payments may be made available based on certain considerations passing to the Government. Each such case is dealt with and decided on its own merits after changed financing circumstances arise after award, but usually monetary or other good consideration is offered, and negotiated as fair and reasonable and in the best interest of the Government by the contracting officer.

While the Government as well as industry expects the supplier to finance its own contracts, the financing regulations are intended to facilitate and accelerate the making of progress payments in appropriate cases to qualified contractors who are deemed competent and capable of satisfactory performance. Minority-owned firms performing under Department of Defense contracts should understand the opportunities, the limitations, and the requirements for financing assistance as described in the ASPR, Appendix E, Defense Contract Financing Regulations. The regulations in Appendix E to the ASPR cover Government guaranteed loans and advance payments as well as progress payments.

Progress payments are to be regarded as a useful working tool that may be used to the benefit of the Government, as well as the contractor. The system of financing makes possible long lead time and volume production that could not be accomplished otherwise; however, contract financing is designed to supplement other funds available to the contractors from their own resources or sources - it is not a socio-economic program designed to reduce interest expense and increase profit.

b. It is the policy of the Government that Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts. The policy extends to negotiated contracts as well as formally advertised contracts - the ASPR (ASPR 3-104) states, "when negotiation is conducted, consideration shall be given to the size and minority status of the business concerns..."

The definition of a Minority Business Enterprise for contracting purposes is contained in the contract clause of ASPR (ASPR 7-104.36) as follows:

"...the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation."

In prime contracts which may exceed \$500,000 and which offer substantial subcontracting opportunities, the following clause is included:

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM
(1971 NOV)

(a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause, entitled, "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will administer the Contractor's "Minority Business Enterprises Program."

(2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.

(3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

(5) Include the "Utilization of Minority Business Enterprises" clause in subcontracts which offer substantial minority business enterprise subcontracting opportunities.

(6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.

(7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any sub-contract hereunder which may exceed \$500,000 provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

It has been found that the major stumbling block to increasing participation of minority-owned firms in Government procurement has been the problem of identifying capable minority-owned sources, especially in R&D procurements. Also, for one reason or another, certain minority-owned firms have been reluctant to leave their total participation in the commercial sector, or have been reluctant to partially leave their major role as a subcontractor and supplement that role with prime contract responsibilities. Many small firms as well as some large businesses prefer the role of subcontractor and supplier to major prime contractors. Additionally, countless numbers of minority-owned firms have been long time suppliers of the Government or its prime contractors without disclosing the basis of ownership, and identification of minority ownership has been a fairly recent matter of record-keeping by certain procurement offices.

The Minority Business Enterprises policy statement in ASPR is quoted as follows:

ASPR 1-332

MINORITY BUSINESS ENTERPRISES.

1-332.1 General.

(a) In connection with Executive Order 11625, October 13, 1971 (36 F.R. 199, October 14, 1971), it has been determined that the national interest requires increased involvement of minority business enterprises in Federal procurement programs. Particular emphasis should be placed on utilizing minority enterprises for procurement involving small purchases, construction, and service contracts. Liaison should be maintained with Governmental and private sources maintaining lists of minority enterprises to insure that potential minority sources of supplies and services are listed on appropriate bidders lists.

(b) The implementation of this policy involves other types of assistance such as contracting with the Small Business Administration under Section 8(a) of the Small Business Act (see 1-705.5). Additionally, to further the opportunities of minority business enterprises to participate in the performance of Government contracts, maximum practicable opportunity should be provided for these firms to participate as subcontractors and suppliers to prime contractors and subcontractors under Government contracts.

(c) Accordingly, effort should be put forth to provide minority business enterprises counseling services with respect to procurement policy and procedures and information covering DOD business opportunities, and to have the names of such firms included on source lists at the various purchasing offices. Also, the Minority Business Subcontracting Program (1-332.2) shall be effectively implemented.

1-332.2 Minority Business Enterprises Subcontracting Program. The Government's minority business enterprises subcontracting program requires Government contractors to assume affirmative obligations with respect to subcontracting with minority business enterprises. These obligations are in addition to those required under the small business subcontracting program (1-707) and under the labor surplus area subcontracting program (1-805). In contracts which range from \$5,000 to \$500,000, the contractor undertakes the accomplishment of a maximum amount of subcontracting with minority business enterprises, consistent with efficient performance of the contract. This is in the clause in 7-104.36(a). For contracts which may exceed \$500,000, the clause in 7-104.36(b) requires that the contractor undertake a number of specific responsibilities designed to assure that minority business enterprises are given all possible consideration in the placement of subcontracts and to impose similar responsibilities on major subcontractors.

The President and the Secretaries of the Executive Departments and procurement officials have periodically updated earlier Executive Orders dealing with encouragement for the need of increased involvement of minority-owned businesses in Government procurement programs. Involvement, however, is a two-way street and minority-owned firms should make a determined effort to do an effective marketing job. Evaluate your capabilities with a reasonable, critical view, and get on appropriate bidders lists. Help the Government Small Business Specialists to help you. Remember that there are many, many procurements where the buyer needs you just as much or more than you may need the buyer - there are many examples of items for which the buyer has received limited competition, maybe no more than two bids, or one, or none. Procurement is constantly in movement, changing. Procurement is not scientific and we cannot look for regularities - a customer today may not be a customer next year because of program changes or funding restrictions, and an activity which does not maintain a bidders list for certain commodities or services today may be a potential customer next year when repetitive needs will be initiated.

E. THE SECTION 8(A) PROGRAM

1. The Minority Business Enterprises program in Government procurement is not the Section 8(a) procurement procedure; however, contracting with the Small Business Administration by Government Departments under Section 8(a) of the Small Business Act is one of the methods employed to further the involvement of minority-owned businesses.

The Section 8(a) program deals with disadvantaged persons (firms) as subcontractors and not necessarily with minority-owned firms.

Section 8(a) of the Small Business Act empowers the SBA "to enter into contracts with the United States Government and any Department, agency, or officer thereof having procurement powers...to furnish articles, equipment, supplies or materials to the Government..." By subcontracting the performance of such contracts to the disadvantaged small business firm, SBA through its Office of Business Development aids the weak existing company as well as the newly established firm to develop into a healthy viable business. Contracts with a value of \$576 million were awarded under the 8(a) program during the period from its inception in Fiscal year 1968 to January 4, 1974. It should be noted that the benefits of the 8(a) program are available to all disadvantaged persons who meet the established criteria of being socially or economically disadvantaged or live in a depressed area. Most of the assistance under this program, both in number of cases and dollar volume, has been furnished to members of minority groups since they were most generally in need of assistance in the period since the active use of the program.

During the first six and one half years of activity under the 8(a) program, 34 Government Departments and agencies awarded 5,536 contracts, valued at \$576,589,399. In that period 2,517 of the contracts valued at \$183.2 million were completed. Also in that period, DOD awarded about 28 percent of the 8(a) contracts but the value of DOD awards was slightly more than 50 percent of the total; General Services Administration was the largest single user of 8(a) contracts in the group of civilian Departments and agencies, issuing nearly 1400 contracts valued at nearly \$110 million.

SBA reported in October 1973 that in the prior two years, a total of 138 Section 8(a) subcontractors had failed, but that was out of a total of well over 2,000 companies in the program. It also was reported during the past year that there have been 100 8(a) contracts terminated, amounting to about \$17.2 million. Reported delinquencies in a large number of contracts have been found generally in the small value contracts.

2. There appears to be a great amount of misinformation about the Section 8(a) program, and many contractors state that they have no information about it.

a. Section 8(a) of the Small Business Act is relatively simple. It grants the Small Business Administration authority to make contracts with the U. S. Government agencies and to let subcontracts for performance of such contracts. Section 8(a) is quoted, as follows:

Small Business Act of 1958, As Amended

"Sec. 8. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary--

(1) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, or materials to the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer; and

(2) to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts."

b. The term Minority Business Enterprise is not mentioned in Section 8(a), and there is no reference to Socially or Economically Disadvantaged Persons in Section 8(a). Regulations which implement Section 8(a) by SBA, however, do mention its authority to assist small business concerns owned and controlled by socially or economically disadvantaged persons. Also, Executive Order 11625, dated October 13, 1971, defined a minority business enterprise as "a business enterprise that is owned by one or more socially or economically disadvantaged persons"; the definition went on to say, "such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other causes..."

The implementing regulations are quoted as follows:

SBA Rules and Regulations
Amendment 5, effective May 25, 1973

Part 124.8-1 The 8(A) Program.

(a) General.--These regulations implement section 8(a) of the Small Business Act (15 U.S.C. 637(a)) which authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and

development) with other Government departments and agencies and negotiate subcontracts for the performance thereof.

(b) Purpose.--It is the policy of SBA to use such authority to assist small business concerns owned and controlled by socially or economically disadvantaged persons to achieve a competitive position in the market place.

(c) Eligibility.--(1) Social or economic disadvantage.--An applicant concern must be owned and controlled by one or more persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. Such disadvantage may arise from cultural, social, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to, black Americans, American Indians, Spanish-Americans, oriental Americans, Eskimos, and Aleuts. Vietnam-era service in the Armed Forces may be a contributing factor in establishing social or economic disadvantage.

(2) Ownership and control.--Disadvantaged persons must presently own and control the concern except where a divestiture agreement or management contract, approved by the Associate Administrator for Procurement and Management Assistance, temporarily vests ownership or control in non-disadvantaged persons.

(i) Proprietorships.--An applicant concern may be a proprietorship.

(ii).--The ownership of at least a 50-percent interest in the partnership by disadvantaged persons will create a rebuttable presumption of ownership and control.

(iii) Corporations.--The ownership of at least 51 percent of each class of voting stock by disadvantaged persons will create a rebuttable presumption of ownership and control.

(iv) Divestiture agreements.--If an applicant concern is not presently owned and/or controlled by disadvantaged persons, the persons exercising such ownership and/or control must execute a divestiture agreement which will provide for ownership and control vesting in disadvantaged persons in accordance with the foregoing prescribed criteria within a reasonable period of time. All divestiture agreements must be approved by the Associate Administrator for Procurement and Management Assistance.

(v) Management contracts.--All management contracts entered into by section 8(a) concerns must be approved by the Associate Administrator for Procurement and Management Assistance.

Part 124.8-2 Procedures.

(a) Submission of business plans.--Applicants must submit a business plan, including complete information regarding the concern's qualifications, which will demonstrate that section 8(a) assistance will foster its participation in the economy as a self-sustaining profit-oriented small business. In no event may the acceptance or approval of a business plan by SBA be construed as a commitment by SBA to award a single contract, a continuing series of contracts or provide any other assistance, contractual or otherwise.

(b) Selection of potential contracts.--SBA will, in consultation and cooperation with other Government departments and agencies, select proposed procurements suitable for performance by section 8(a) concerns. In making these selections, among the factors given consideration will be the percentage of all similar contracts awarded under the section 8(a) program over a relevant period of time, issuance of prior public solicitation of the procurement under a small business set-aside, the probability that an eligible concern could obtain a competitive award of the contract, and the extent to which other small concerns have historically been dependent upon the contract in question for a significant percentage of their sales.

(c) Non-disadvantaged participants in a contract.--To insure that the purposes of the section 8(a) program are being accomplished, applicants will disclose the extent to which non-disadvantaged persons or firms will participate in the performance of proposed section 8(a) contracts. Section 8(a) contractors may not subcontract any portion of a section 8(a) contract without the written consent of the SBA contracting officer. Joint venture agreements must be approved by the SBA Regional Director.

(d) Negotiations of section 8(a) subcontracts.--Section 8(a) subcontracts shall be negotiated with approved section 8(a) companies on a limited competitive basis to the extent feasible and practicable. Price will not be a factor in such competition. It is recognized that in some cases competition will be neither feasible nor practicable due to limited availability of qualified concerns, geographic considerations, or other factors. Section 8(a) subcontracts shall be awarded at prices which are fair and reasonable to the Government and to the subcontractor.

(e) Program completion and termination.--A section 8(a) concern which has substantially achieved the objective of its business plan will be notified that its participation in the program is completed. The judgment as to the completion of program preparation will be made in the light of the purposes of the program.

If the objectives and goals set forth in the business plan

are not being met, the concern shall be informed what corrective measures are necessary. In cases where it is determined, in the judgment of SBA, that continued participation in the section 8(a) program will not further the program objectives, the concern will be notified that its participation in the program is terminated. Reasons which would indicate the necessity for program termination prior to completion of the business plan termination date are, among others: The unavailability of appropriate section 8(a) contracting support; the inability of the section 8(a) concern to develop suitable commercial or competitive markets; inadequate management performance; and evidence of continued inadequate technical performance.

The effect of Amendment 5 quoted above was of help to SBA, and Government Departments and agencies, in improving very necessary administrative steps and still allow the 8(a) program to function and move along smoothly.

3. Issues of legality and constitutionality of the 8(a) program surfaced from time to time until February 19, 1974, when by inaction, the U.S. Supreme Court refused to consider earlier courts' rulings that the 8(a) program was proper.

Among the contested 8(a) awards was the Baillie case which finally moved on to the Supreme Court after first receiving a negative ruling in a District Court and then an affirmative ruling in the Court of Appeals (Ray Baillie Trash Hauling, Inc., et al. v. Kleppe, CA5, 1/5/73).

The story of the Baillie case can be told something along the following lines:

A contract for trash collection from Homestead Air Force Base in Florida had previously been a small business set-aside and awarded competitively for less than \$50,000 each year. All three plaintiffs in the Baillie case were white-owned small businesses, and two of them had bid successfully for the contract in 1968 and 1969. In 1970, the Air Force awarded the contract to SBA for a two-year period, and the SBA awarded the first year non-competitively, under its 8(a) program, to a black-owned small business at subcontract price of \$65,000.

Upon learning that SBA intended to extend this subcontract for the 1971 services, the plaintiffs demanded an opportunity to compete. After SBA rejected this demand and executed a second year's subcontract with the minority firm, plaintiffs filed suit for injunctive relief. In October 1971, the U.S. District Court

for the Southern District of Florida entered a judgment declaring that the subcontracts awarded to the minority firm were "unauthorized by law and illegal," and ruling that the trash collection services should be contracted for "on the basis of the maximum competitive bidding practicable among the plaintiffs and other similarly situated small business concerns." An appeal was taken by the Government.

The United States Court of Appeals for the Fifth Circuit reversed the earlier ruling of the District Court in January 1973. First, the Appellate Court said in its opinion, it had to decide whether the case was moot. The minority firm did not perform satisfactorily and its subcontract was terminated by the Air Force shortly before the District Court issued its judgment. The Air Force then negotiated a contract with one of the plaintiffs for the remainder of the year. The case was not moot, the court ruled, if there was a reasonable expectation that the act complained of would be repeated, and the SBA's intention to make future awards of the Homestead contract under its 8(a) program showed that a real controversy still existed. The Court disagreed with the District Court's ruling that SBA's section 8(a) program was statutorily unauthorized, that SBA's powers under section 8(a) were limited to periods of emergency, and that SBA was bound by other statutes requiring Government procurement contracts to be awarded competitively.

"The declared policy of the Small Business Act," the Court said, "is to aid, counsel, assist, and protect the interests of small business concerns and to insure that a fair proportion of Government contracts or subcontracts be placed with small business enterprises. Congress gave SBA broad powers to accomplish this goal. The SBA is authorized by section 8(a) to enter into procurement contracts with other Federal agencies and to arrange for the performance of those contracts by subcontracting with small business concerns or others. The fact that the 8(a) program, as administered by SBA, is not specifically mentioned in the statute, does not mean it is unauthorized. The complex and volative nature of problems, including allocation of Government procurement contracts, often causes Congress to cast its statutory provisions in general terms, leaving to the agency the task of spelling out the specific regulations and problems. The discretion as to which firms shall receive subcontracts and the decision as to what regulations shall govern procurement is left to the SBA. The SBA has responded by adopting a program which reflects its judgment of priorities in light of current facts. It is not the duty of the courts to evaluate the arguments regarding allocation of Government procurement contracts or to consider the wisdom of the present programs."

Its task, the Court noted, was limited to determining whether the SBA had abused its discretion or exceeded its statutory authority in adopting the section 8(a) program, the test being whether the program was rationally related to the attainment of the statutory goal. There was ample indication, the Court noted, that minority-owned small business firms had received a disproportionately small share of Federal procurement contracts, and it was reasonable for SBA to make a special effort to alleviate the imbalance.

The Court also said, "The plaintiffs cannot complain because a specific type of small business concern is the primary beneficiary of the present program. It is well settled that an agency need not strike at all evils at the same time, but may reform one step at a time, addressing itself to the phase of the problem which seems most acute."

Although the Court said that the Small Business Act alone provided sufficient authority for SBA's 8(a) program, there was further support in the 1967 amendment to the Economic Opportunity Act, particularly in its direction to SBA that small business concerns owned by low-income individuals be given special attention, and in its instruction that the Administrator of SBA take steps so that contracts and subcontracts made by the Federal Government are placed in such a way as to further the purposes of the Act.

Competitive bidding is not required in the award of subcontracts under the 8(a) program, the court ruled. The competitive bidding statutes themselves recognize that competition may be dispensed with, the court said, when other statutes so provide, or when the purposes of the relevant program make it impractical to secure competition. Both exceptions are applicable here.

The Court said, "Section 8(a) clearly constitutes specific statutory authority to dispense with competition, by empowering SBA to award subcontracts by negotiation or any other methods. Competition is impractical in the present case. The Small Business Act is based on the premise that small business concerns are unable to compete effectively in the market place and therefore cannot secure Government procurement contracts through competitive bidding. By increasing their participation in Government procurement, however, these firms can eventually become self-sufficient, viable businesses capable of competing effectively in the market place. Private negotiation of subcontracts is the best means of accomplishing this goal. To

require competitive bidding would be contrary to the basic rationale of the Act."

In discussing the District Court's earlier decision that the 8(a) program was unconstitutional because the primary criterion for eligibility under the 8(a) program was race, color, or ethnic origin, and that plaintiffs had been excluded from consideration for the awards because of their race, the court noted that the SBA had established "racially-neutral" criteria governing eligibility. The fact that most subcontracts under the program are awarded to non-whites did not establish a prima facie case of racial discrimination. While a racial distribution significantly disproportionate to the racial composition of the community at large may be sufficient in some contexts, such as jury selection, to establish a prima facie case of discrimination, this is not the case when economic and social programs of limited eligibility are involved. The plaintiffs had failed to show, the court held, that the number of contracts awarded to whites under the 8(a) program was significantly disproportionate to the number of white applicants. There was no showing that a small business concern owned by socially or economically disadvantaged whites had ever been refused participation in the program.

The court noted that the 8(a) program may produce some inequities among small business concerns as a class, but in the area of socioeconomic welfare legislation, the Government's action must be sustained if it is rationally related to a proper Government purpose. "Assisting small business concerns owned by socially or economically disadvantaged persons certainly qualifies as a proper government purpose, and the SBA's section 8(a) program does not deny equal protection under the Fifth Amendment," the court concluded.

A review of the U.S. Court of Appeals decision was denied by the U. S. Supreme Court on February 19, 1974, thereby effectively upholding the basis of the Section 8(a) program and its procedures, and closing the Baillie Case in favor of the SBA.

4. It is seriously doubtful if prejudice or discrimination actually resulted in the exclusion of any minority owned firm from a source list during the last few years. At the same time, it is realized that competitive or unrecognized biases do exist. A USC fraternity alumnus may favor another USC-grad salesman over a UCLA-grad salesman (other things being relatively equal), and it has often been charged that California businesses get too large a share in comparison with our Eastern competitors. The deeper issue than college competitions or geographic competitions, however, has been faced squarely and openly.

It is recognized that sectors of the community, individuals, or groups of individuals may have biases or prejudices against certain persons, places, things, procedures, or races which are different from the usual experiences or exposures of the community, individuals, or groups.

A National Program has been created to solve problems arising from such biases by creating conditions in the Federal and private market which will allow significant minority business success and profits. There has been a severe shortage of potential minority entrepreneurs with general business skills as a result of the minorities' historic exclusion from various sectors of our economy. The shortage has been alleviated by a certain degree by increased use of the Section 8(a) contracting program. In addition to the shortage of business skills, the U.S. Department of Commerce has recently commented on a related problem as follows:

"A related problem is the presence of commonly held assumptions and beliefs within the entire community concerning the business capabilities of minority people. These negative assumptions and false beliefs should be vigorously challenged where they exist."

Throughout the Federal Government there were in 1973 more than 85 programs oriented to increasing minority business enterprises and assisting them to be viable members of the industrial community in America. The 8(a) program is only one of many social improvement programs. Naturally, the relative importance of each socio-economic program varies with the individual, group, geographic area, or industry-segment which attempts to rank importance. Also, as a natural example, the Clean Air Act is important to all of us, although it too will be expensive in the short-run -- but it is not as important today to someone living in an isolated area in Colorado as it is to those who live in the Los Angeles-San Diego area.

In the long-run, the Minority Business Program is important to everyone -- in the short-run, it is important to every socially and economically disadvantaged person.

A little-publicized part of the assistance program is that assistance is required for socially and economically disadvantaged persons, and direct reference to minorities may be misleading. A minority in one area or one time may be a majority in another area or time. In 1967, the Executive Orders for assistance to socially and economically disadvantaged persons were also directed toward hard-core unemployment in the Appalachian Mountain area. The Section 8(a) program has also been applied to Vietnam-Era Veterans under certain conditions since August 1972; for example, consider the hypothetical case of a young man -- 19 or 20 years of age, who has been working in his father's construction business. He enlists in the Army for three years to take care of his military obligation, and while he is in the Army, his father's health fails. Because his son is in the Army and not available to look after their interests, the business fails. In this case, this could be one of the factors, among others, which could justify a determination of economic disadvantage. The GSA Business Service Center in Los Angeles also

has recently assisted the "hard-of-hearing" owners and employees of a precision machine and assembly plant in marketing through the Section 8(a) program based on the participants being both socially and economically disadvantaged.

5. The Section 8(a) program as it is currently implemented will probably undergo many changes as conditions change or as other programs with the same general objectives may be implemented. It does not stand alone as "the" socio-economic program to assist minority-owned firms to enter the Government marketplace. There are many success stories under the 8(a) program to give encouragement to others entering the program either as a buyer or as a contractor. A total of 29 Section 8(a) firms were graduated from the program during the period 1968 through September 1973; the graduated firms were in good shape and in a condition where they could make it in the commercial world solely on a bid basis. At the same time, there are many, many minority-owned firms operating effectively, solely under the support of the Small Business Program, without seeking assistance under the 8(a) program.

The minority contractor wishing to be an 8(a) contractor should also consider the broad spectrum of management assistance programs that are available and which, because of product or service line or other restrictions, may be more appropriate. The Office of Minority Business Enterprise (OMBE) and the Small Business Administration have several programs supporting minority enterprise development. The minority-owned firms should help these programs to help them. Success will be largely fostered by self-reliance, not dependence, but assistance is always available, and may be effective if sought in a timely manner. Remember, help the program to help you.

CHAPTER III

BIDS AND PROPOSALS

A. INVITATIONS FOR BIDS

1. The Invitation for Bids (IFB) describes the terms under which the Government will contract, and invites suppliers to submit bids for the required supplies or services in accordance with those conditions. The Federal Procurement Regulations (FPR 1-2.101) defines an IFB as "the complete assembly of related documents, whether attached or incorporated by reference, furnished prospective bidders for purpose of bidding."

The material contained in this Chapter covering IFB and RFP procedures is intended for procurement training purposes and is supplemented by information in Chapter II covering Formal Advertising and Negotiation and information in Chapter IV dealing with How To Prepare A Bid. The information in all cases should be considered as a general guide only and not as all inclusive.

a. The IFB permits the solicitation package to be used as part of the award, the contract. The competitive bid procedure using the IFB has been called a "one shot" competitive process. It is designed to afford all bidders an equal opportunity to compete for Government business on a common basis.

b. The IFB and applicable specifications will define clearly the actual minimum needs of the Government and the basis upon which the offers will be evaluated (if other than price alone). Bidding by offering other than the minimum specifications may be cause for the bid to be rejected and termed nonresponsive.

There may be cases where the Government cannot draft a set of fully adequate purchase specifications and a brand name or equal description is used. This procedure is permissible if the specification requirement lists the salient characteristics and functional or physical features of a particular brand name product which are essential to the requirements.

The clause 7-2003.10 used in the solicitation for brand name or equal products will provide certain cautions to bidders: the evaluation and the determination of equality will be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity; the purchasing activity is not responsible for locating or securing any information which is not identified or reasonably available. The bidder should furnish all descriptive material necessary to establish exactly what the bidder proposes and to clearly establish that the proposed

equal item meets the special characteristics called for. All modifications to a product to meet the required characteristics must be clearly shown. Modifications after bid opening are not permitted. The IFB may in certain cases require the submission of bid samples in the case of bidders offering "or equal products."

c. Specifications in an IFB may require that Qualified Products be provided. Most often, the procurement lead time available will not permit prospective contractors to have sufficient time to qualify a product and still comply with the requirement to submit bids by the established date. In fact, the time required is one of several conditions which make a qualified product listing necessary. A qualification requirement may be included in a specification when one or more of the following conditions exist:

- The time required to conduct one or more of the examinations and tests to determine compliance with all the technical requirements of the specification will exceed 30 days (720 hours).
- Quality conformance inspection would require special equipment not commonly available.
- It covers life survival or emergency life saving equipment.

Qualified products may be required also in an RFP, and qualified products listed (QPL) items may be required as components in certain assemblies and subassemblies.

Qualification is the entire process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then identified on a list of qualified products. Qualification is performed in advance and independent of any specific procurement action. A Qualified Products List (QPL) identifies the specification, manufacturer or distributor, item by part or model number or trade name, place of manufacture, and the test report involved. Suppliers whose products have successfully passed qualification and who furnish evidence thereof are eligible for award although not yet included on the QPL. Chapter IV of the Defense Standardization Manual 4120.3-M (formerly M200) is the basic instruction concerning qualified products and qualification procedures. Specifications which require a QPL are identified in the Department of Defense Index of Specifications and Standards. Copies of the Index and the Manual 4120.3-M may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Qualified products lists are intended for the use of the Government and its contractors, subcontractors, prospective bidders, and suppliers. Lists may be obtained by prospective bidders or suppliers who require these lists in furnishing supplies or services to the Government or its contractors. Lists are also available to the public upon request. A Federal or military specification is the only medium for establishing a requirement for qualification.

Only bids or proposals offering QPL items qualified at the time set for opening of bids or awards of negotiated contracts are considered in making awards. Government contracting officers cannot waive the requirement for a product qualification; only the activity that prepared the specification can consider the waiver of the requirement. Any questions concerning qualified products may be directed to the contracting officer or the contracting activity for forwarding to the specification requiring activity.

Qualified Products Lists are kept open for inclusion of products from additional suppliers, but solicitations are not delayed while waiting for additional qualifiers.

The Index of Federal Specifications and Standards and the Department of Defense Index of Specifications and Standards indicate those items that are QPLs.

Minority-owned small businesses may contact SBA field offices and request a free management assistance publication, Management Aids Number 42, entitled "Getting Your Product on a Qualified Products List."

2. It was stated earlier that the IFB procedure is rigid - it must be rigid to maintain the integrity and the simplicity of the formal advertising concept. It is fundamental to the concept that the bidders bear the full responsibility for submitting bids in an acceptable manner in the first place. Material modification of a bid after opening is forbidden in order to maintain the integrity of the competitive advertising concept and in order to be fair to all bidders.

The Comptroller General has ruled that a bid once determined nonresponsive may not be made responsive after opening, notwithstanding the reason for the failure to conform to the IFB requirements.

Responsiveness means conforming to the invitation to bid. The Comptroller General has consistently construed that definition to require rejection of a bid as nonresponsive when the bid does not

conform to a material provision of the IFB, as otherwise bidders will not be competing on an equal basis or having their bids evaluated on the same basis; however, a deviation which is a matter of form or is immaterial and has no effect on quantity, quality or delivery, or a merely trivial effect on price may be waived as a minor informality or irregularity if it does not prejudice or affect the relative standing of the bidders.

If bidders submit bid samples and descriptive literature with their bids when these materials are not provided for in the IFB and they materially deviate from the IFB, then the bid submitted is conditional and may not be accepted - it is nonresponsive. Likewise, failure to submit samples when requested means the bid is nonresponsive.

If bidders state that price is contingent on a mill price at time of shipment, or that the items or supplies are subject to prior sales, the bid is nonresponsive.

If bidders request progress payments, Government furnished material or facilities when not provided in the IFB, the bids are nonresponsive.

In order to be responsive, bids must state a definite time of delivery or conform to delivery specifications. If the solicitation provides for a mandatory not-to-exceed delivery schedule and also specifies a shorter, alternate date for desired delivery, any offer of a date beyond the mandatory date will be declared nonresponsive.

Be responsive in the first place - responsiveness is determined as of the time of bid opening, and responsibility of the bidder is determined as of the time of the award.

3. Under IFB procedures, award of the contract is made, after the bids have been reviewed, to the lowest responsible bidder. There is no discussion involved (except perhaps for the correction of minor clerical errors). Award is made simply by notifying the successful bidder and completing the Solicitation, Offer, and Award document, Standard Form 33 (used by the bidder to make an offer) by signature of the contracting officer and fill-in of other administrative data on the cover page of the document. The terms and conditions of the IFB become the terms and conditions of the contract.

Unsuccessful bidders in formally advertised procurements also are notified of the award, the name of the contractor, and the amount.

The award resulting from the IFB will be a fixed price contract.

B. REQUESTS FOR PROPOSALS

1. The Request for Proposals (RFP) also describes the terms under which proposals will be accepted, similar in form to the IFB, but the

terms under which the Government will contract may subsequently be modified or changed during negotiations within any limits prescribed in the RFP.

The principal variances between formal advertising and the RFP were discussed earlier in Chapter II, Section C.

The RFP sets forth all significant factors which affect your opportunities to compete on an equal basis, but competition may extend beyond your initial proposal in what could almost be called a "bargaining process", but "auction techniques" to make an award to the lowest offeror are not employed. Negotiation, however, in the RFP process has restored the element of bargaining that was not found in the IFB. In most cases, this is for the advantages of the Government and the contractors. The negotiations (discussions) resolve problems prior to award and ensure that there is complete agreement on technical requirements, price, type of contract, and a large number of other contract details. This is generally the way that industry buys (except for certain construction contracts) - formal advertising is seldom, seldom used in industry, even for subcontracts and purchase orders under Government prime contracts.

The majority of DOD procurement dollars but the minority of the number of DOD awards are made following the RFP process. In the 20 year period between 1950 and 1970, about 85 percent of the military procurement dollars and about 66 percent of the civilian agencies procurement funds were expended by using the RFP process.

Whereas the IFB process was rigid, the RFP process is flexible, but flexible only within many specified limitations.

There are probably more "cautions" directed to the Government contracting officer about negotiations (discussions) than directed to the contractor. The contracting officer must determine the contractors with which he will conduct discussions, when to discuss, what to discuss, and how to end discussions by requesting best and final offers.

It is important for the contractor to understand that the RFP will (probably) warn offerors that award may be made without discussion of proposals - and in military procurement, the effect of late proposals is the same as under the IFB.

2. The solicitation known as the Request for Quotations (RFQ) will provide for discussion, and award will not be made until a firm offer is requested and submitted. The RFQ is used generally to secure price and technical information for research and development or complex technical procurements. The RFQ can almost be called a form of two-step RFP. The RFQ does not necessarily develop a response that is a firm offer, but the response is a basis for

opening negotiations. The RFQ form (Standard Form 18) states that it is a request for information and that any quotations submitted are not "offers."

It is the policy of certain Departments (the Navy, for example) to use the RFP form in preference to the RFQ form because the extra step is needed and adds to procurement lead time. At the same time, certain procurement offices may have a considerable number of procurement actions where major revisions or amendments to the solicitation are contemplated as a result of evaluation of technical quotations. The relatively inexperienced contractor is cautioned to not be confused by the conversion step required for quotations to be changed to offers - most importantly, the contractors are cautioned not to confuse the two processes because the RFP may develop the best and final offer in the initial proposal.

3. It is especially true in preparing your proposal that you need to understand the special evaluation factors and build your proposal around the relative importance of the factors or the proposal may not be considered to be within a competitive range for further negotiation. The weightings assigned to the factors for evaluation will not be disclosed but the offeror will be advised of the relative importance of technical, management, other factors, and price.

4. In the RFP process, responsiveness per se is not relevant. The evaluation factors to determine eligibility of contractors for further discussions or award are in fact elements of responsiveness. Proposed offers of technical approach, desired quality, qualifications of the required personnel, organization alignment of technical and business management, delivery, and cost or price are factors for evaluation which will differentiate between one acceptable proposal and another.

Discussions will be held with the offerors submitting acceptable proposals and with those where the proposal may be made acceptable by meaningful discussion, unless the highest ranking acceptable proposal is so superior as to preclude meaningful negotiation with other offerors.

It is the offeror's responsibility to determine what changes may be needed to make his deficient proposal acceptable if discussions disclose questions of acceptability. The Government negotiating team will limit its discussion to pointing out to the contractor areas where the proposal fails to meet the specification. The negotiating team will not recommend or suggest the changes necessary to overcome the deficient area or areas; to do so might be held to be "transfusion" of ideas from one competing contractor to another.

There are many restrictions on what information the contracting officer or negotiating team may reveal to competing contractors in the competitive range during any negotiations. No information contained in any other proposal nor information regarding the number or identity of other offerors in the competitive range can be disclosed. Also,

information concerning the price relationship with others will not be disclosed, although an offeror may be advised that the Government considers his price too high, or additional support for certain elements of cost may be requested. Contracting officers are not permitted to furnish information to a potential supplier which may afford that supplier an advantage over others.

5. Minority-owned firms and other small businesses are reminded that your proposals in response to an RFP should not include elaborate brochuremanship, but should comply strictly with the instructions of the RFP. If the RFP requests resumes of technical personnel to be used, by all means provide the individual resumes so that experience and degrees of expertise can be evaluated. Study the entire RFP package - certain areas of the RFP may request information which actually deals with responsibility of the contractor rather than responsiveness. The mandatory element of experience in certain programs and the mandatory element of a certain number of years of technical experience are "go - no go" elements of responsibility in certain RFPs.

Small firms should make a critical review of their qualifications before going through what may be a fairly expensive process of responding to an RFP - remember that the firm's qualifications and responsiveness to elements of the RFP (the factors for evaluation) will be reviewed critically in determining those firms which are in the competitive range. Tailor your proposal to each element called out as factors for evaluation in the RFP - your offer must be more than a mere expression of desire or hope based on uncertain or ambiguous conditions and without a basis for support of cost elements.

These cautions are not intended to convey the impression of impossibility for the relatively new firm to be able to compete. The complexity of RFPs covers a broad spectrum, and many small firms prefer to compete through the RFP process.

6. Firms which respond to RFP's are reminded that there are procedures for letting an unsuccessful offeror know why he lost a competition. This procedure assists the contractor to be able to compete better in future procurements. It assists both the Government and the contractor because it may broaden the competitive industrial base in a particular area and add to the number of strong firms.

Following the notice of award or notice that a proposal is not in the competitive range, an unsuccessful offeror may request the contracting officer to provide a debriefing. There are no statutory requirements or uniform practices for informing losers why their proposals were not considered advantageous to the Government; however, ASPR 3-508.4 does provide that when an award is made on some basis

other than price, unsuccessful offerors shall be debriefed upon their written request. The debriefing will point out areas where the technical or management proposals were weak or deficient, but the debriefing will not make a point-by-point comparison with other proposals and will not provide the relative merits or technical standings or evaluation scoring of competitors' proposals. At the same time, most unsuccessful offerors have a significant interest in learning about particular deficiencies or weaknesses if these were not apparent in the discussion session. The debriefing can provide the basis upon which offerors may improve future proposals.

7. Early notice of potential release of certain RFPs for studies or research and development may be found in the Research and Development Sources Sought column in the Commerce Business Daily. These early announcements precede the issuance of certain RFPs. Firms responding to these advance notices should carefully review the statement of qualifications required and respond accordingly. Firms having the capabilities described should submit complete information to the purchase office listed, giving the number and individual qualifications of technical personnel required, description of facilities, an outline of previous experience connected with the technical area or project, and a statement of the level of security clearance granted. Firms should not take it for granted that a particular procurement office knows its qualifications because of prior contracts but should respond with the information requested in the introduction to the R&D Sources Sought column and any special requests for information contained in the synopsis. Respondents will not be notified of the results of the evaluation of the information submitted, but sources deemed fully qualified will be considered when RFPs are issued.

C. SMALL PURCHASES

1. Many firms do nothing but make money on a large number of small sales and are largely unaware of the major IFB procurements and especially unaware of the RFP procurements.

The Government has authorized simplified procedures for the procurement of small purchases. On July 25, 1974, the President signed into law a Bill (P.L. 93-356) which authorized the revision of regulations to permit negotiation under small purchase procedures of requirements up to \$10,000. Prior to that date, the limit of \$2,500 for simplified procedures had been in effect since 1958.

The change in the small purchase procedures dollar limitation from \$2,500 to \$10,000 had been one of the major recommendations of the Commission on Government Procurement in December 1972. Under the ASPR and FPR procedures, procurements in excess of \$2,500 prior to July 25, 1974 had to be made pursuant to the time-consuming statutory rules for

formal advertising or negotiation. Now, procurements of less than \$10,000 each include the use of competitive techniques but need not be encumbered by either the sealed-bid requirements or the administrative burdens on both sides associated with negotiated procurements. Data for fiscal year 1972 indicated that DOD alone issued 795,917 formally advertised procurements under \$10,000 but this represented only 7/10 of 1 percent of the total value of all DOD procurements - thus it is easy to see that the extension of simplified procedures will save money for both small businesses and the Government in administrative cost.

The magnitude of the number of small purchases below \$10,000 staggers the imagination as a market for small minority-owned businesses. More than 98 percent of DOD purchases were below \$10,000 in 1972. Several restrictions previously applying to purchases above \$2,500, however, have been retained - the set-aside procedures, for example, still apply at the \$2,500 level, but implementation of the increase in the dollar limitation to \$10,000 should prove to be of great benefit to small minority-owned firms.

2. Small business firms should be acquainted with the regulations and instructions to Government buyers which are contained in Section III, Part 6 of the ASPR for DOD procurements which are used by most of the military camps, posts, and stations, and the small purchase divisions of larger procurement offices. The regulations in ASPR 3-600 cover Purchases Not in Excess of \$250, Purchases in Excess of \$250, Blanket Purchase Agreements (BPA), Fast Payment Procedures, Purchase Orders, and Use of the DD Form 1155 as a purchase order, contractor's acceptance document, and as a delivery order and public voucher. Blanket Purchase Agreements are also prepared and issued on DD Form 1155, known as the Order for Supplies or Services/ Request for Quotations.

3. A Blanket Purchase Agreement (BPA) is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Its use eliminates the need for issuing individual documents, other than the DD 1155 forms. Thus, suppliers of repetitive needs below \$10,000 each are not burdened with the administrative costs and time associated with the IFB and the RFP forms and procedures.

To the extent practicable, BPAs for items of the same type are placed concurrently, annually, with more than one supplier, and all competitive sources are given an equal opportunity to furnish supplies or services under such agreements. BPAs may be limited to specific items or commodity groups or the scope of the agreement may encompass all items that the supplier is in a position to furnish and which are purchased generally by a specific activity.

Call orders against a BPA generally are made orally, except that informal correspondence is used when ordering against agreements outside the local trade area.

Calls not in excess of \$250 each are rotated or equitably distributed among all firms with a BPA. The pricing of offerors with BPAs is checked and solicitations above \$250 each are made from a reasonable number of holders of BPAs to assure competition, price and other factors considered, including the administrative cost of the purchase. Solicitations are generally limited to not over 3 suppliers and, to the maximum extent possible, are restricted to the local trade area of the purchasing or receiving activity if fair and reasonable prices can be obtained. Calls above \$250 are also rotated.

4. Purchase orders are issued on a fixed-price basis but include any trade discounts and prompt payment discounts. Inspection and acceptance of supplies ordered under purchase orders generally is at destination. Delivery is F.O.B. destination for supplies to be delivered within the United States, except Alaska and Hawaii.

5. The multiple use, one form document, DD Form 1155, shown as Figure 1 and the General Provisions on the reverse side of the form, shown as Figure 2 are reproduced on the next two pages.

FIGURE 1

| | | | | | | | | | | |
|---|-----------------------------------|---|----------------------|---|--|----------------------------------|---|--|------------|--------|
| <input type="checkbox"/> CHECKED BOX APPLIES | | <input type="checkbox"/> ORDER FOR SUPPLIES OR SERVICES | | | <input type="checkbox"/> REQUEST FOR QUOTATIONS NO. RETURN COPY(IES) OF THIS QUOTE BY <i>(THIS IS NOT AN ORDER. See DD Form 1155r)</i> | | | PAGE 1 OF | | |
| 1. CONTRACT/PURCH ORDER NO. | | 2. DELIVERY ORDER NO. | | 3. DATE OF ORDER | | 4. REQUISITION/PURCH REQUEST NO. | | | | |
| 6. ISSUED BY: CODE | | | | 7. ADMINISTERED BY: (If other than 6) CODE | | | 8. DELIVERY FOB <input type="checkbox"/> DESTINATION <input type="checkbox"/> OTHER <i>(See Schedule if other)</i> | | | |
| 9. CONTRACTOR/QUOTER CODE | | | | FACILITY CODE | | 10. DELIVER TO FOB POINT BY: | | 11. CHECK IF SMALL BUSINESS <input type="checkbox"/> | | |
| NAME AND ADDRESS | | | | | | 12. DISCOUNT TERMS | | | | |
| | | | | | | 13. MAIL INVOICES TO: | | | | |
| 14. SHIP TO: CODE | | | | 15. PAYMENT WILL BE MADE @/BY CODE | | | | MAKE ALL PACKAGES AND PAPERS WITH CONTRACT OR ORDER NUMBER | | |
| 16. TYPE OF ORDER DELIVERY PURCHASE | | This delivery order is subject to instructions contained on this side of form only and is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract. Reference your _____, furnish the following on terms specified herein, including; for U. S. purchases, General Provisions of Purchase Order on DD Form 1155r (Except CLAUSE NO. 18 APPLIES ONLY IF THIS BOX <input type="checkbox"/> IS CHECKED, and NO. 16 IF THIS BOX <input type="checkbox"/> IS CHECKED); special provisions _____; and delivery as indicated. This purchase is negotiated under authority of 10 USC 2304(a)(3) or as specified in the schedule if within the U. S., its possessions or Puerto Rico; if otherwise, under 2304(a)(6). <input type="checkbox"/> If checked, Additional General Provisions apply; Supplier shall sign "Acceptance" on DD Form 1155r and return <i>coplm.</i> | | | | | | | | |
| 17. ACCOUNTING AND APPROPRIATION DATA - ACCOUNTING CLASSIFICATION (REV. 7-65) | | | | | | | | | | |
| ITEM NO. | APPROPRIATION SYMBOL AND SUBHEAD | OBJECT CLASS | BUREAU CONT. NO. | SUB-ALLOT. | AUTH'N ACCT'S ACT'Y | TRANS. TYPE | PROPERTY ACCT'S ACT'Y | COUN-TRY | COST CODE | AMOUNT |
| | | | | | | | | | | |
| 18. ITEM NO | 19. SCHEDULE OF SUPPLIES/SERVICES | | | | | 20. QUANTITY ORDERED/ACCEPTED | 21. UNIT | 22. UNIT PRICE | 23. AMOUNT | |
| | EXAMPLE | | | | | | | | | |
| * If quantity accepted by the Government is same as quantity ordered, indicate by <input checked="" type="checkbox"/> mark. If different, enter actual quantity accepted below quantity ordered and encircle. | | | | 24. UNITED STATES OF AMERICA BY: _____ | | | | 25. TOTAL | | |
| 26. QUANTITY IN COLUMN 20 HAS BEEN: <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED | | | | 27. SHIP. NO. <input type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL | | 28. D.O. VOUCHER NO. | | 29. DIFFERENCES | | |
| Date _____ <i>(Signature of authorized Government representative)</i> | | | | 31. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL | | 32. PAID BY | | 33. AMOUNT VERIFIED CORRECT FOR | | |
| 36. I CERTIFY that this account is correct and proper for payment <i>(Signature and title of Certifying Officer)</i> | | | | 34. CHECK NUMBER | | 35. BILL OF LADING NO. | | | | |
| 37. RECEIVED AT | 38. RECEIVED BY | 39. DATE RECEIVED | 40. TOTAL CONTAINERS | 41. S/R ACCOUNT NUMBER | 42. S/R VOUCHER NO. | | | | | |

FIGURE 2

THIS PARAGRAPH APPLIES ONLY TO QUOTATIONS SUBMITTED.

Supplies are of domestic origin unless otherwise indicated by quotes. The Government reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the Government. This is a request for information and quotations furnished are not offers. When quoting, complete blocks 11, 12, 22, 23, 25. If you are unable to quote, please advise. This request does not commit the Government to pay any cost incurred in preparation or the submission of this quotation or to procure or contract for supplies or services.

GENERAL PROVISIONS

1. INSPECTION AND ACCEPTANCE - Inspections and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the United States Government. Notwithstanding the requirements for any Government inspection and test contained in specifications applicable to this contract except where specialized inspections or tests are specified for performance solely by the Government, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications and contract requirements listed herein, including if applicable the technical requirements for the manufacturer's part numbers specified herein.

2. VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. PAYMENTS - Invoices shall be submitted in quadruplicate (one copy shall be marked "Original") unless otherwise specified, and shall contain the following information: Contract or Order number, item number, contract description of supplies or services, sizes, quantities, unit prices and extended totals. Bill of lading number and weight of shipment will be shown for shipments on Government Bills of Lading. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants.

4. DISCOUNTS - In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at the point of origin, or from date of delivery at destination on port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of making of the Government check.

5. DISPUTES - (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision. (b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in (a) above, provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

6. FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C. 101) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in application acts on the procurement of foreign supplies.

7. CONVICT LABOR - The Contractor agrees not to employ for work under this contract any person employing sentence of imprisonment at hard labor.

8. OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. GOVERNMENT AGAINST CONFIDENTIAL FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10. GRATUITIES - (a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract, provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court. (b) In the event that contract is terminated as provided in paragraph (a) hereof the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee. (c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

11. RENEGOTIATION - This contract, and any subcontract hereunder, is subject to the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.) and shall be deemed to contain all the provisions required by Section 104 thereof, and is subject to any subsequent act of Congress providing for the renegotiation of contracts.

12. CONDITION FOR ASSIGNMENT - This Purchase Order may not be assigned pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 151), unless or until the supplier has been requested and has accepted this order by executing the Acceptance hereon.

13. COMMERCIAL WARRANTY - The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranty the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

14. PRIORITIES, ALLOCATIONS AND ALLOTMENTS DEFENSE MATERIALS SYSTEM - When the amount of the order is \$500 or more the Contractor shall follow the provisions of DMB Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

15. FAST PAYMENT PROCEDURE -

(a) General. This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) Responsibility for Supplies. Title to the supplies shall rest in the Government upon delivery to a post office or common carrier for shipment to the specified destination. If shipment is by means other than post office or common carrier, title to the supplies shall rest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provisions of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, provided instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government.

(c) Preparation of Invoice. (1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. In shipments by either post office or common carrier, the Contractor shall either (A) cite on his invoice the date of shipment, name and address of carrier, bill of lading number or other shipment document number, or (B) attach copies of such documents to his invoice as evidence of shipment. In addition the invoice shall be prominently marked "Fast Pay." In case of delivery by other than post office or common carrier, a receipted copy of the Contractor's delivery document shall be attached to the invoice as evidence of delivery. (2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three years and to furnish such bills to the Government when requested for audit purposes.

(d) Certification of Invoice. The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the contracting officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

OUTER SHIPPING CONTAINERS SHALL BE MARKED "FAST PAY"

16. (This clause applies if this contract is for services and is not exempted by applicable regulations of the Department of Labor.)

SERVICE CONTRACT ACT OF 1938 - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of \$1,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (\$1.60 per hour). However, in cases where section 6(a)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. All regulations and interpretations of the Service Contract Act of 1938 specified in 29 CFR Part 4 are hereby incorporated by reference in this contract.

ADDITIONAL GENERAL PROVISIONS

17. CHANGES - The Contracting Officer may at any time, by a written order, and without notice to the architect, make changes, within the general scope of this contract, in (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made by written modification of this contract. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change provided that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim if asserted prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

18. TERMINATION FOR DEFAULT - The Contracting Officer, by written notice, may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages, including the excess cost of procuring similar supplies or services, provided that, if (i) it is determined for any reason that the Contractor was not in default or (ii) the Contractor's failure to perform is without his and his subcontractor's control, fault or negligence, the termination shall be deemed to be a termination for convenience under paragraph 19. As used in this provision the term "subcontractor" and "subcontractors" means subcontractors at any tier.

19. TERMINATION FOR CONVENIENCE - The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Section VII of the Armed Services Procurement Regulation, in effect on this contract's date. To the extent that this contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

20. ASSIGNMENT OF CLAIMS - Claims for monies due or to become due under this contract shall be assigned only pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 151). However, payments to an assignee of monies under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off. (See Clause 12.)

ACCEPTANCE

The Contractor hereby accepts the offer represented by this numbered purchase order as it may previously have been or is now modified, subject to all of the terms and conditions set forth, and agrees to perform the same.

| | | |
|--------------------|----------------------|-------------|
| NAME OF CONTRACTOR | SIGNATURE | |
| | TYPED NAME AND TITLE | DATE SIGNED |

DD FORM 1155

EXAMPLE

CHAPTER IV

HOW TO PREPARE A BID

A. BID OPPORTUNITY INFORMATION

1. Before a minority-owned firm can make a bid, the firm must have information that there has been issued an invitation for bids and the firm must have copies of the IFB.

Of course, getting on appropriate bidders lists is one of the first steps necessary to secure bid opportunity information. Standard Form 129, Bidder's Mailing List Application, shown as Figure 3, and the reverse side of the form, providing information and instructions for completion of the form, shown as Figure 4 are reproduced on the next pages.

2. It was mentioned earlier that minority-owned small business firms do not need agents or intermediaries for the purpose of getting on bid lists or for the purpose of doing business with the Government. In fact, when agents are used, the agency connection must be disclosed. Bidder's Mailing List Applications should be submitted by the firm wishing to do business with the Government offices which buy the particular supplies or services offered.

3. The policies and procedures applicable to solicitations and bidders' lists are described below. Also, some of the various reasons for restricting applications to the principals are explained.

- a. The Bidder's Mailing List Application, Standard Form 129, in accordance with information and instructions on the form, "shall be submitted and signed by the principal as distinguished from an agent, however constituted."
- b. ASPR 2-205.1(c) states, "Bidder's Mailing List Application (Standard Form 129) shall be used for obtaining information needed in the establishment and maintenance of bidder's mailing lists."
- c. ASPR 16-810.2 states, "The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier."

FIGURE 3
Standard Form 129: Bidder's Mailing List Application

| | | | | |
|--|------------|---|---|---|
| STANDARD FORM 129 JANUARY 1966 EDITION FPR (41 CFR) 1-16.802 | | BIDDER'S MAILING LIST APPLICATION | | INITIAL APPLICATION |
| | | | | REVISION |
| Fill in all spaces. Insert "NA" in blocks not applicable. Type or print all entries. See reverse for instructions. | | | | |
| TO (Enter name and address of Federal agency to which form is submitted. Include ZIP code) | | | | DATE |
| 1. APPLICANT'S NAME AND ADDRESS (Include county and ZIP code) | | 2. ADDRESS (Include county and ZIP code) TO WHICH SOLICITATIONS ARE TO BE MAILED (If different from item 1) | | |
| 3. TYPE OF ORGANIZATION (Check one) | | | | 4. HOW LONG IN PRESENT BUSINESS |
| INDIVIDUAL | | PARTNERSHIP | | |
| CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF | | | | |
| 5. NAMES OF OFFICERS, OWNERS, OR PARTNERS | | | | |
| PRESIDENT | | VICE PRESIDENT | | SECRETARY |
| TREASURER | | OWNERS OR PARTNERS | | |
| 6. AFFILIATES OF APPLICANT (Names, locations, and nature of affiliation. See definition on reverse) | | | | |
| 7. PERSONS AUTHORIZED TO SIGN BIDS, OFFERS, AND CONTRACTS IN YOUR NAME (Indicate if agent) | | | | |
| NAME | | OFFICIAL CAPACITY | | TEL. NO. (Incl. area code) |
| | | | | |
| | | | | |
| 8. IDENTIFY EQUIPMENT, SUPPLIES, MATERIALS, AND/OR SERVICES ON WHICH YOU DESIRE TO BID (See attached Federal agency's supplemental listing and instructions, if any) | | | | |
| 9. TYPE OF BUSINESS (See definitions on reverse) | | | | |
| MANUFACTURER OR PRODUCER | | REGULAR DEALER (Type 1) | | REGULAR DEALER (Type 2) |
| SERVICE ESTABLISHMENT | | CONSTRUCTION CONCERN | | RESEARCH AND DEVELOPMENT FIRM |
| <input type="checkbox"/> SURPLUS DEALER (Check this box if you are also a dealer in surplus goods) | | | | |
| 10. SIZE OF BUSINESS (See definitions on reverse) | | | | |
| SMALL BUSINESS CONCERN * | | OTHER THAN SMALL BUSINESS CONCERN | | |
| * If you are a small business concern, fill in (a) and (b): | | (a) AVERAGE NUMBER OF EMPLOYEES (Including affiliates) FOR FOUR PRECEDING CALENDAR QUARTERS | | (b) AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS |
| 11. FLOOR SPACE (Square feet) | | 12. NET WORTH | | |
| MANUFACTURING | | WAREHOUSE | | DATE |
| | | | | AMOUNT |
| 13. SECURITY CLEARANCE (If applicable, check highest clearance authorized) | | | | |
| FOR | TOP SECRET | SECRET | CONFIDENTIAL | NAMES OF AGENCIES WHICH GRANTED SECURITY CLEARANCES (Include dates) |
| KEY PERSONNEL | | | | |
| PLANT ONLY | | | | |
| THIS SPACE FOR USE BY THE GOVERNMENT | | | 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 BIDDING FOR FURNISHING MATERIALS, SUPPLIES OR SERVICES TO THE GOVERNMENT OR ANY AGENCY THEREOF. | |
| | | | SIGNATURE | |
| | | | NAME AND TITLE OF PERSON AUTHORIZED TO SIGN (Type or print) | |

FIGURE 4

Standard Form 129: Bidder's Mailing List Application

INFORMATION AND 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 Bidder's Mailing List Application, together with such other lists as may be attached to the 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 8 the equipment, supplies, and/or services on which you desire to bid. *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, a supplier's 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 Invitations for Bids will be understood by the agency to indicate lack of interest and concurrence in the removal of the supplier's name from the purchasing activity's bidder's mailing list for the items concerned.

TYPE OF BUSINESS DEFINITIONS

(See Item No. 9)

- A. **MANUFACTURER OR PRODUCER** means a person (or concern) owning, operating, or maintaining a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those listed in Item No. 8, or in the Federal Agency's supplemental Commodity List, if attached.
- B. **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 No. 8 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.
- C. **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*). "REGULAR DEALER" means a person (or concern) satisfying the requirements of the regulations (Code of Federal Regulations, Title 41, 50-201.101(b)) 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).
- D. **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, re-decorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as part of the services performed.
- E. **CONSTRUCTION CONCERN** means a concern (or person) engaged in construction, alteration or repair (including dredging, excavating, and painting) of buildings, structures or other real property.

DEFINITIONS RELATING TO SIZE OF BUSINESS

- 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 bidding on 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 Nos. 6 and 10.)
- C. **NUMBER OF EMPLOYEES.** 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 any other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month. (See Item No. 10.)

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.

- d. DOD procurement activities also use DD Form 558-1 as a supplement for additional information where required to support Form 129, and use in accordance with ASPR Supplement No. 4, DD Form 1630 in connection with SF 129 for submission of applications to be placed on Research and Development bidder's mailing lists.
- e. Invitations for bids shall be mailed (or delivered) in accordance with ASPR 2-203.1 to prospective bidders. This regulation and the regulation, ASPR 2-204, stating each purchasing activity is the office of permanent record for every invitation for bids issued and distributed is in conflict with any practice permitting bids to be issued to any association which might in turn distribute the bids to unknown potential suppliers. ASPR 2-204 states, "The file of the invitation for bids should show the distribution which was made and the date thereof."
- f. Any practice permitting issuance of invitations for bids to any association for further distribution to potential suppliers could not guard against further release of the solicitation to ineligible concerns, and the associations are prohibited from receiving periodic lists of such concerns. Only authorized control of bidder's mailing lists by the purchasing activity can assure monitoring of eligibility. ASPR 2-205.2(b) states, "The names of concerns which have been (i) debarred from entering into Government contracts or (ii) otherwise determined to be ineligible to receive an award of a Government contract, because of suspension or other disqualifications, shall be removed from the bidder's mailing lists to the extent required by such debarment or other determination of ineligibility."
- g. The substance of the policies previously mentioned also apply to the Federal civilian agencies in conformance with the Federal Procurement Regulations (FPR). "Federal Procurement Regulations," as stated in FPR 1-1.004, "apply to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949, as amended, or in other law." For example, ASPR 2-205.1 covers the establishment of bidder's mailing lists and the substance of that regulation is contained in FPR 1-205-1.
- h. For certain classes of procurements, excessively long bidder's mailing lists are rotated and the number of firms to be solicited are reduced below the potential that is available in accordance with ASPR 2-205.4(b) and FPR 1-2.205-4(b). All interested bidders do not receive

notices of certain bid opportunities and may not receive a bid set upon request when the available, reasonable supply is exhausted. The number of solicitations to be duplicated also is determined by class of item or service, or on a case-by-case basis in keeping with consideration of the type and size of the procurement involved, administrative cost, and potential benefits from maximum competition vs. adequate, effective competition.

- i. Bidders mailing lists are not maintained for all classes of procurement actions because certain procurements are obtained within the local trade area or the procurements are nonrecurring. For that reason, everyone visiting a procurement office does not have a Form 129 automatically accepted and the firms' representatives are counselled to get on appropriate bidders lists of specified activities which may have recurring requirements.

3. Assuming that a firm has performed its marketing duties and knows its potential customer and needs, the firm may not automatically receive a solicitation by being on the bidder's list. When there are excessively long bidder's mailing lists, the bid list may be rotated and the firm may not be assured definitely that your firm will be solicited. This latter fact is another good reason for continuing study of the Commerce Business Daily synopsis announcements. Naturally, the Government makes every effort to solicit everyone within a reasonable limitation, but the judgment of the reasonableness of the limitation is based on the desire to solicit a competitive number of proposals or bids depending upon several circumstances -- including the estimated monetary value, the urgency of time, the expense of the procurement process, and the overriding wish to maintain a strong, broad competitive base. Remember, however, that everyone on excessively long bidders lists are not solicited.

Again making an assumption that a firm has received an invitation to bid (IFB) either through selection from a bidder's list or through a request after reading about the procurement in the Commerce Business Daily, the next and most important step is making the bid. It is here that the ABC's of bidding apply:

Accuracy
Balance
Competitiveness

Accuracy is as important to the businessman as the seller as it is to the Government as the buyer in the bidding and contract award process. An error in bidding may cause the firm to have to perform in accordance with a mistake and absorb a substantial loss. In

another case, failure to be accurate may cause a bid to be rejected or declared nonresponsive in an area where a firm could otherwise have performed successfully and earned a profit.

Balance in judgment concerning whether to bid or not to bid must be applied. Small business firms should take a realistic approach regarding capabilities to perform and produce a given item or service within the required time schedule. Use balance in weighing capabilities to satisfy specification requirements, especially if the bid covers the production of an entirely new product. Do not overestimate the capabilities of facilities and personnel. Remember that before additional awards are made, previous performance records will be reviewed by contracting officers covering rejections, late deliveries, or other failures of performance. Small business firms should also balance ability to finance current business with the added cash flow requirements of the new business for which bids are being prepared.

Competitiveness is at the heart of the formal advertising process. The invitation to bid has been designed to give all bidders an equal opportunity to bid on a common basis, in the same manner, at the same time, and on the same item of supply or service, with bids evaluated on the same predetermined basis. It is important of course, with all other factors considered, that a firm be the low responsible bidder in order to receive the award---but it is only necessary to be competitive. A firm may be one cent or one dollar below the competition--it does not need to be 25 percent or 30 percent below the competition. Also, in a period of escalation in many labor and material markets, be careful that the unit price reflects the probable costs at the time of offered performance. At the same time, price should reflect any production experience factors, considering the relationship of the experience of the firm and the experience of known competitors, as well as the potential for reduction of material cost due to any increased quantities which may be involved in the procurement. Competition is the name of the game in the bidding process, but a firm is not expected to lose money in the game. Bid a fair and reasonable, competitive price.

B. PREPARING THE BID

1. This training manual contains Exhibit 5, on pages 66 through 88 representing an example of an IFB. The several pages of an actual IFB have been copied (and reduced in size in certain cases) to serve as a workshop exhibit in telling a minority-owned small business firm how to prepare a bid. The solicitation example covers the procurement of four Fluid Dispensing Units. For information purposes, this example was estimated to cost in excess of \$10,000 and less than \$20,000 total.

2. For training purposes, look at Exhibit 5, immediately following Chapter IV, Paragraph B. The Exhibit is an advertised IFB, Solicitation Number N00123-75-B-0055, which was issued by the Navy in 1974. Note that the cover page (reduced in size) shows that the procurement is a 100% Set-Aside for Small Business. The cover page also states that Section C of the solicitation provides the details of the set-aside. Paragraph C-24 in the solicitation notifies the prospective bidder that the item being purchased has a Standard Industrial Classification number 3561, covering pumps and pumping equipment, and a

business firm providing items in this classification must not have more than 500 employees in order to meet the small business size standard.

Bidders should recognize that firms bidding on certain categories of items may have more than 500 employees and still be small business. Firms manufacturing radio & television communication equipment for guidance and control or antennas, and fire control apparatus, navigational equipment, laser systems, and radar may have up to 750 employees and be classified as small business. The rule of thumb that a business must have less than 500 employees to qualify as small business does not apply to several categories--for example, producers of warheads, arming and fusing devices, and torpedo parts may have not more than 1500 employees and meet the small business size standard; also, manufacturers of computers and systems, computer equipment and components, and peripheral equipment may be classified as small with up to 1000 employees. There are more than 50 industries or broad classes of products in which the manufacturers may have up to 1,000 and in some cases up to 1500 employees and be classified as small business. Be sure that you understand the correct classification because it may be important to you in eligibility to bid on a set-aside and it may result in progress payment advantages (if progress payments are permitted) as a contract financing aid for small businesses.

a. Now, please turn to page 1 of the solicitation, behind the cover page of the Exhibit. This is the Standard Form 33--the solicitation, offer, and award form. This all-inclusive form is the Government's invitation to bid. It will be used for the offer, and it will next be used for the award. The 21 pages include the terms and conditions of the invitation--back in Part III, Section L incorporates the general contract provisions, the clauses and the Armed Services Procurement Regulation (ASPR) references.

b. Note the second block on the second line of page 1. This block identifies the solicitation as N00123-75-B-0055--this number will eventually be the contract number. The first part of the number identifies the activity, N for Navy, and 00123 means the Naval Regional Procurement Office, Long Beach (F04701 would identify the Air Force Space and Missile Systems Office in El Segundo, or M67399 would identify the Marine Corps Base, Twentynine Palms, California). There are two squares below the number which identify the type of solicitation--75-B-0055 is an Advertised (IFB) and that square has been checked by the buyer. Items 7 and 8 refer to address for delivery of bid.

c. Item 9, Time, on page 1 is all-important. It states that this solicitation closed at 10:00 a.m. on 20 August 1974, when offers

would be publicly opened. It also refers you to paragraph 8 regarding late offers, and the note on page 7 states that paragraph 8 has been deleted, and page 8 provides the alterations to the late Bids, Modifications of Bids or withdrawal of Bids clause. The clause is relatively free of bureaucratic gobbledegook or governmentese language and tells you to have your bid in on time or have a receipt for registered or certified mail dated at least 5 calendar days prior to the bid opening. The cover page had previously cautioned the bidder to allow sufficient time to obtain a pass through Gate 1 of Terminal Island in order to hand deliver offers.

Next look at the Table of Contents on the first page of the Form 33 and the sections checked, and review the solicitation package to assure that a complete package has been received.

Item 16 is important. The discount may end up being an important part of the pricing consideration. Also note the Discount Limitation clause 9, on page 3. In this case, when the discount exceeds 2%, the entire discount is treated as a trade discount and not as a discount for prompt payment.

It was stated earlier that Item 9 was all-important, but that is not quite true (because your pricing and delivery also are all-important); however, Item 19 too is all-important--Items 17, 18, 19 and 20 cover the firm's name and address and the signature block. Not only the newer firms, but old, experienced firms still fail to sign the offer all too often--and of course it is not an offer unless it is signed.

Items 21 through 30 on page 1 will be completed at the time of the award by the Government.

d. Now, please turn to page 2 which covers the Representations, Certifications, and Acknowledgments. In preparing a bid, complete all items, 1 through 9 on this page; at the bottom of the page, complete the acknowledgment of receipt of any amendments to the solicitation. The instructions or explanation for checking the appropriate squares or completing the information blanks are self-explanatory for Items 1 through 9.

Item 2 is the representation that the bidder is either a regular dealer or a manufacturer of the supplies offered. In accordance with the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), all contracts (with certain exceptions, such as for generally available commercial items) exceeding \$10,000 will be awarded only to manufacturers or regular dealer. A firm may sell, bid, and contract through an agent if the agency is disclosed and the agent acts in the name of the principal. The certification as a Regular Dealer or Manufacturer is associated with Item 3, Contingent Fee.

The Contingent Fee statement certifies that no one other than a regular employee or agent regularly maintained by the contractor for the purpose of securing business has participated in the marketing and bidding process for this award. In other words, the old time "percentage man" or "broker" has been eliminated in Government contracting. The "cost plus man" is gone. Breach of this warranty may cause the contract price to be reduced by the amount of such commission, percentage, or contingent fee.

Item 4 covering Type of Business Organization is a straightforward representation that the firm is either an individual (sole ownership), or a partnership, or a corporation incorporated in a certain State (be sure and identify the State) or the firm is a nonprofit organization (this is not a joke referring to the fact that you haven't made a profit recently).

Item 5 is the representation concerning affiliation with another company, and requests the name of the parent company. This affiliation may affect the small business size status. It is important to note that certain affiliations may not involve actual control by another or the opportunity for control. The subject of affiliation is covered also in Paragraph B-10.

Items 6, 7, and 9 are three important socio-economic representations and certifications determined by the Congress and the Administration to be in the best interests of the Nation. Items 6 and 7 have areas to be checked and completed. Item 9 is certified by the Contractor simply by submission of the bid, but the bidder agrees, if award is made, to obtain certifications from subcontractors when the subcontracts exceed \$10,000 each.

e. Paragraph B-11 requires the bidder to indicate the intended place of performance (the predominant amount of the performance--naturally, each of two or three subcontract locations need not be identified).

Paragraph B-12 requests an identification of a labor surplus area, if appropriate. This information may be used also as consideration in the case of a tie-bid or other bid evaluation.

Paragraph B-13 on page 5 requires a certification concerning the bidder's Affirmative Action Program. This is another socio-economic consideration for offers exceeding \$50,000 each or when the bidder employs 50 or more employees.

The final certification in this section is in paragraph B-14, page 5, concerning Equal Employment Compliance. By submission of the bid, the offeror makes the certification, but the lines to be completed cover any exceptions which are to be noted.

The offeror also is requested to provide its manufacturer's code number & facility code number, if known. Contractors who have previously received awards of \$10,000 or more have been assigned code numbers which the Government buying office uses in reports of awards and in development or procurement statistics covering individual contractors and geographic locations. If numbers have been assigned previously, they will be available from DCAS. Divisions of a company do not receive a separate number, but subsidiaries of a company are listed separately. For example, the Pontiac Division of General Motors has the same number as General Motors, #382920, but Philco Ford as a subsidiary of Ford has the contractor Code #680880 while the Ford number is #353340. The facility number refers to the city and state; for example, the facility area of North Hollywood and California is 4690--05, and the area of San Diego is 6060--05, or Los Angeles is 3880--05.

f. The solicitation package includes Standard Form 33A covering the solicitation Instructions and Conditions and the 19 items of these standard conditions are supplemented by additional items through C-24 in Section C. Standard Form 33A provides certain definitions, cautions, explanations, and instructions. A bidder should know these conditions as well as he knows his own name, and a bidder should understand the instructions and conditions. If there is a lack of understanding, the new small businessman should contact the buyer or negotiator or contracting officer. In this case, solicitation N00123-B-0055, the name of the buyer and the telephone number is listed at the bottom of the cover page, and page 1 states, "For Information call"...the buyer at the telephone number shown in Item 9; or a firm may call the Small Business Specialist for counseling. If there is a question or problem, however, that is related solely to the procurement, a firm should contact the contracting officer or negotiator named in Item 9 on the first page of the solicitation.

g. Next, please turn to Section L on pages 18 through 20 of the solicitation. Most of the General Provisions contained on these pages are mandatory and any attempt to have them modified or deleted generally will be useless. The businessman is advised to know and understand these referenced clauses as they may be applied during administration of the contract. Certain of these clauses must also flow down to subcontractors. Of course, all of the clauses are important, but the significant clauses may include those dealing with Default, Changes, Disputes, Government Delay of Work, Material Inspection and Receiving Report, Assignment of Claims, Variation in Quantity, and Termination. Be sure that you have reviewed the complete text of these clauses, and any recent changes to the clauses as the changes are noted.

h. Now that the conditions of the solicitation have been reviewed and the provisions of the award are understood if you are the successful bidder, it is time to look at page 12 covering the bid subject. Section E requests an offer for 4 units each of Item 0001 and Data (in accordance with DD Form 1423, attached to the solicitation as Exhibit A). The data requested in this case is not to be priced separately but is to be included in the unit price and the total amount of Item 0001. Section F, immediately following Section E, provides a description and specifications of the fluid dispensing units which will be ordered. Together, Sections E & F are the scope of work of the contract when added to the delivery schedule of Section H. Notice in H that the solicitation provides a mandatory not-to-exceed delivery schedule of 90 days and a desired delivery schedule of 30 days. The bidder is instructed that the firm may offer an alternate time for delivery within the maximum schedule, but any bid offering a delivery date beyond the maximum schedule will be declared nonresponsive. Also, any bid contingent upon delivery of material from a mill or subcontractor will be cause for rejection of the bid, and if the contractor does not offer an alternate date between 30 and 90 days, then the desired date of 30 days will apply.

i. Note also that this solicitation does not offer any opportunity for escalation of material; there is really no need for any escalation in this short turn-around time of 30 to 90 days; however, look for the escalation provisions which may be included in other solicitations and the limits of escalation that may be contained in other procurements with performance extending to 180 or 360 days or more. Also look for progress payment provisions that may be contained in solicitations and included in award with extended delivery dates.

j. It is wise from a pricing standpoint to recognize that Section F, on page 13, describes the minimum essential requirements of the fluid dispensing units. Section D, in the Evaluation and Award Factors, has stated that other factors are not applicable. Thus, award will be made to the lowest responsible offeror meeting these minimum requirements. Providing an offer for fluid dispensing units which will handle a 110 gallon drum with a 40 mph towing capability will not receive extra consideration. It has been said before, don't offer the Government under IFB a luxury car priced at a medium-priced car when the Government has ordered a small car with specific minimum requirements.

k. In a summary review of the Solicitation in Exhibit 5, if you have questions concerning anything other than the pricing of the bid and the delivery date, look first to the IFB package; it is the complete assembly of related documents (whether attached or incorporated by reference) which had been furnished to all prospective bidders. The standard forms and instructions generally

stand alone and they cover most bidding questions. At the same time, be sure that you are aware of any updates or changes to the referenced clauses in the General Provisions.

3. Do not make mistakes in bid preparation.

Mistakes in bid preparation may result in rejection of the bid as being nonresponsive, or there may be costly administrative delays. To avoid mistakes, follow the lead of the pilots--use a check-sheet, and question all actions against the requirements:

- Has each question been answered?
- Has all requested information been provided?
- Has someone in the firm checked specifications incorporated by reference?
- Has unit price for each item been checked by a responsible estimator? Does the unit price reflect increased costs of labor and materials and probable costs at time of requirement? Does unit price reflect possible decreased cost of labor due to effect of learning curve and possible decreased cost of material due to quantity buys? Is the price competitive and realistic?
- Has delivery requirement or delivery offer been checked against raw material delivery milestones and test milestones? Can the firm deliver on time?
- Has the entire bid been proofread for typing errors or mathematical extension errors?
- Is there final agreement within the firm that the requirements and specifications are fully understood? Can the firm deliver?
- Has the bid been signed? Was it signed by an authorized official or agent of the contractor?
- Does the bid reflect and acknowledge all amendments which may have been made to the IFB?
- Will the bid be mailed in time for receipt prior to opening and will any necessary postal receipts for mailing be obtained?
- Is the sealed offer addressed correctly and identified correctly?

When a mistake in bid has been alleged prior to award, the bid may be withdrawn if the bidder presents evidence to reasonably support the allegation of error; however, to correct a mistake, a higher burden of proof is placed upon the bidder and the mistake must not relate to the responsiveness of the bid. Further, if the correction will displace another bidder, the evidence must be found in the invitation and bid documents, not by the aid of extrinsic evidence supplied by the bidder.

After award, the right of the Government to receive performance in strict accordance with the contract terms may not be waived in the absence of adequate consideration even though equities, such as mistakes, exist in favor of the contractor. The procuring agencies have been delegated relatively limited authority for correction of mistakes after award.

Obvious, minor mistakes may be corrected to make the bid responsive. Instances of obvious errors have included misplaced decimal points, transposed figures, and price quotation where the delivered price at destination was less than the factory price. When errors are found which bear on the possible award, it is the usual policy for the contracting officer to request verification of the bid; however, some obvious errors may not in practice be obvious and it is much better to proofread and verify the complete accuracy of the bid before mailing.

In summary, the bidding procedure is designed to give everyone an equal opportunity to compete. Material modification of bids after opening is forbidden in order to preserve the integrity of the bidding system. Under certain conditions, a bid may be withdrawn prior to award if an alleged error is reasonably supported, but after award, the contract, as executed, generally represents the understanding of the bidder and the Government.

4. It has been held consistently that the invitation for bids does not impart any obligation to accept any of the bids received and all bids may be rejected when it is determined to be in the Government's interest. Naturally, to avoid the prejudice to bidders of having prices disclosed in bid openings and then having all bids rejected, the procedure for rejection after opening is exercised only for compelling and cogent reasons. IFB's are not issued unless there is an intent to make an award to the responsive, responsible, low bidder, price and other factors considered.

5. The bidding process is not as complex as some of the circumstances might indicate. When compared with the massiveness of the Federal procurement program, the bidding procedure is relatively simple.

FIGURE 5

| | | | |
|---|--|---|------------------|
| PART 1 - GENERAL INSTRUCTIONS INFORMATION TO OFFERORS SECTION A - COVER SHEET | | SOLICITATION NO. NO0123- 75-B-0055 <input checked="" type="checkbox"/> ADVERTISED (IFB) <input type="checkbox"/> NEGOTIATED (RFP) | |
| ISSUING OFFICE (Complete mailing address including Zip Code) NAVAL REGIONAL PROCUREMENT OFFICE LONG BEACH, CALIFORNIA 90801 | | | |
| ITEM(S) TO BE PURCHASED (Brief description) Fluid Dispensing Units | | | |
| THIS PROCUREMENT IS: | | | |
| <input type="checkbox"/> UNRESTRICTED | | | |
| <input checked="" type="checkbox"/> SET-ASIDE. (THIS IS A 100% SET-ASIDE FOR <input checked="" type="checkbox"/> SMALL BUSINESS OR <input type="checkbox"/> LABOR SURPLUS AREA CONCERNS.) (SEE SECTION C OF THE TABLE OF CONTENTS IN THIS SOLICITATION FOR DETAILS OF THE SET-ASIDE.) | | | |
| <input type="checkbox"/> OTHERWISE RESTRICTED TO | | | |
| NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Non-Segregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause. OFFEROR "FILL-INS". Offeror "fill-ins" are provided on the face and reverse of Standard Form 33 or other solicitation document and Section B of Table of Contents in this solicitation and should be examined for applicability. CAUTION - LATE OFFERS - SEE BELOW OFFERS. The envelope used in submitting your offer must be plainly marked with the Solicitation Number, as shown above, and the time, zone and date set forth in the solicitation document (Block 9 of Standard Form 33). NO OFFER. If NO OFFER is to be submitted, detach this sheet from the solicitation, complete the information requested on reverse, fold, staple, affix postage, and mail. NO ENVELOPE IS NECESSARY. NOTE - Offers must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements is prescribed in 18 U.S.C. 1001. | | | |
| FOR INFORMATION ON THIS PROCUREMENT WRITE OR CALL (Not applicable if Standard Form 33 is attached) | | | |
| ADDITIONAL INFORMATION This Office is physically located in Building 53, Terminal Island, California. Entry to this Office must be through the Pass Office, Gate No. 1. Offeror's are cautioned to allow sufficient time to obtain a pass in order to hand deliver offers. <p style="text-align: center;"><u>E X A M P L E</u></p> <p style="text-align: center;">HOW TO PREPARE A BID</p> <p style="text-align: center;">EXHIBIT 5-1</p> | | | |
| CDG-31:cd Sched: 0055 | | | |
| NAME AND ADDRESS Naval Regional Procurement Office Long Beach, CA. 90801 CDG-31 Mrs. Carol Finn | | TELEPHONE (Area Code, No. & Ext.) (213) 547-7492 | NO COLLECT CALLS |

NO OFFER SUBMITTED FOR REASONS CHECKED

| | |
|-----------------------------------|---|
| CANNOT COMPLY WITH SPECIFICATIONS | CANNOT MEET DELIVERY REQUIREMENT |
| UNABLE TO IDENTIFY THE ITEM(S) | DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED |

OTHER (Specify)

| | |
|-------|--|
| WE DO | WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEM(S) INVOLVED. |
|-------|--|

| | |
|---|--|
| NAME AND ADDRESS OF FIRM (Include Zip Code) | SIGNATURE |
| | TYPE OR PRINT NAME AND TITLE OF SIGNER |

SPECIAL NOTE TO CONTRACTORS:

If your company is FORWARDING this solicitation to another Division or Company, indicate name and address below. This will insure that future amendments to this solicitation, if any, will be directed to the correct addressee.

FROM:

EXHIBIT 5-2

AFFIX
STAMP
HERE

TO: NAVAL REGIONAL PROCUREMENT OFFICE

LONG BEACH, CALIFORNIA 90801

SOLICITATION NO. N00123

CLOSING TIME, ZONE AND DATE _____

SECTION B - CONTRACT FORM & REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFEROR

| | | | | |
|---|--|--|---|----------|
| STANDARD FORM 33, NOV. 1969 GENERAL SERVICES ADMINISTRATION FED. PROC. REG. (41 CFR) 1-16.101 | SOLICITATION, OFFER, AND AWARD MAT A | 3. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1. RATING: DO-A-8C | 4. PAGE 1 | OF 17 |
| 1. CONTRACT (Proc. Inst. Ident.) NO. | 2. SOLICITATION NO. NOO123- 75-B-0055 <input checked="" type="checkbox"/> ADVERTISED (IFB) <input type="checkbox"/> NEGOTIATED (RFP) | 5. DATE ISSUED 17 JUL 74 | 6. REQUISITION/PURCHASE REQUEST NO. NOO246-74-PROO2264 (25 JUN 74) | |
| 7. ISSUED BY NAVAL REGIONAL PROCUREMENT OFFICE LONG BEACH, CALIFORNIA 90801 | | CODE N00123 | 8. ADDRESS OFFER TO (If other than Block 7) | |

SOLICITATION

9. Sealed offers in original and 1 copies for furnishing the supplies or services described in the Schedule will be received at the place specified in block 8. OR IF HAND-CARRIED, IN THE DEPOSITORY LOCATED IN the Second Floor, Building 53, Terminal Is. until 10:00 A.M., 20 August 1974. If this is an advertised solicitation, offers will be publicly opened at that time. CAUTION—LATE OFFERS. See par. 8 of Solicitation Instructions and Conditions.
(Time, Zone, and Date)

All offers are subject to the following:
 1. The attached Solicitation Instructions and Conditions, SF 33-A.
 2. The General Provisions, SF 32 _____ edition, which is attached or incorporated herein by reference.
 3. The Schedule included below and/or attached hereto.
 4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in the Schedule.)

FOR INFORMATION CALL (Name and Telephone No.) (No collect calls.): CDG-31 MRS. CAROL FINN Tel. (213) 547-7492

TABLE OF CONTENTS

The Following Checked Sections Are Contained in the Contract

| (X) | SEC | Pg. | (X) | SEC | Pg. | |
|-----|-----|---|-----|-----|---|----|
| | | | | G | Preservation/Packing/Packaging | 14 |
| | A | Cover Sheet | | H | Deliveries or Performance | 14 |
| | B | Contract Form and Representations, Certifications & Other Statements of Offeror | 1 | I | Inspection & Acceptance | 16 |
| | C | Instructions, Conditions, & Notices to Offerors | 10 | J | Special Provisions | 17 |
| | D | Evaluation & Award Factors | 12 | K | Contract Administration Data | 18 |
| | | PART II - THE SCHEDULE | | | PART III - GENERAL PROVISIONS | |
| | E | Supplies Services & Prices | 12 | L | General Provisions | 18 |
| | F | Description Specifications | 12 | | PART IV - LIST OF DOCUMENTS & ATTACHMENTS | |
| | | | | M | List of Documents & Attachments | 20 |

OFFER (NOTE: Reverse Must Also Be Fully Completed By Offeror)

In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

16. DISCOUNT FOR PROMPT PAYMENT (See Par. 9 on SF 33-A)
 _____ % 10 CALENDAR DAYS; _____ % 20 CALENDAR DAYS; _____ % 30 CALENDAR DAYS; _____ % _____ CALENDAR DAYS.

17. OFFEROR NAME & ADDRESS
 CODE _____ FACILITY CODE _____
 (Street, city, county, state, & ZIP Code)
 Area Code and Telephone No.: _____
 Check If Remittance Address Is Different From Above - Enter Such Address In Schedule.

18. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)

19. SIGNATURE
SAMPLE

20. OFFER DATE

AWARD (To Be Completed By Government)

| | | | |
|---|------------|---|---|
| 21. ACCEPTED AS TO ITEMS NUMBERED | 22. AMOUNT | 23. ACCOUNTING AND APPROPRIATION DATA | |
| 24. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK _____ | | 25. NEGOTIATED PURSUANT TO | <input type="checkbox"/> 10 U.S.C. 23D4(a)() <input type="checkbox"/> 41 U.S.C. 252(c)() |
| 26. ADMINISTERED BY (If other than block 7) | CODE _____ | 27. PAYMENT WILL BE MADE BY CODE _____ | |
| 28. NAME OF CONTRACTING OFFICER (Type or Print) | | 29. UNITED STATES OF AMERICA BY: _____ (Signature of Contracting Officer) | 30. AWARD DATE |

REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The Offeror represents and certifies as part of his offer that: (Check or complete all applicable boxes or blocks.)

1. SMALL BUSINESS (See par. 14 on SF 33-A.)

He is, is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder will, will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. REGULAR DEALER—MANUFACTURER (Applicable only to supply contracts exceeding \$10,000.)

He is a regular dealer in, manufacturer of, the supplies offered.

3. CONTINGENT FEE (See par. 15 on SF 33-A.)

(a) He has, has not, employed or retained any company or person (other than a full-time, bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) he has, has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1-1.5.)

4. TYPE OF BUSINESS ORGANIZATION

He operates as an individual, a partnership, a nonprofit organization, a corporation, incorporated under the laws of the State of _____

5. AFFILIATION AND IDENTIFYING DATA (Applicable only to advertised solicitations.)

Each offeror shall complete (a) and (b) if applicable, and (c) below:

(a) He is, is not, owned or controlled by a parent company. (See par. 16 on SF 33-A.)

(b) If the offeror is owned or controlled by a parent company, he shall enter in the blocks below the name and main office address of the parent company:

Name of Parent company and main office address _____
(include ZIP Code) _____

(c) Employer's identification number (See par. 17 on SF 33-A.) _____
(Offeror's E.I. No.) _____ (Parent Company's E.I. No.) _____

6. EQUAL OPPORTUNITY

He has, has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114; that he has, has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

7. BUY AMERICAN CERTIFICATE

The offeror hereby certifies that each end product, except the end products listed below, is a domestic source end product (as defined in the clause entitled "Buy American Act"); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

| EXCLUDED END PRODUCTS | COUNTRY OF ORIGIN |
|-----------------------|-------------------|
| | |

8. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (See par. 18 on SF 33-A.)

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

(1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above; or

(2) (i) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above.

9. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

| ACKNOWLEDGMENT OF AMENDMENTS | AMENDMENT NO. | DATE | AMENDMENT NO. | DATE |
|--|---------------|------|---------------|------|
| The offeror acknowledges receipt of amendments to the Solicitation for Offers and related documents numbered and dated as follows: | | | | |

NOTE.—Offers must set forth full, accurate, and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(Bid)

N00123-75-B-0055
Page 3 of 21

B-9. DISCOUNT LIMITATION

It is understood and agreed that, for the purpose of payments under this contract, an offer of prompt discount in excess of two per cent (2%), shall be considered as a trade or special discount which shall be available to the Government as a reduction from the prices quoted, without regard to whether invoices are actually paid within the designated discount period. Offerors who desire to do so may quote customary terms of discount (not in excess of two per cent (2%)), for prompt payment in addition to any trade or special discount available to the Government, provided such trade or special discounts are stated separately herein. Unless such trade or special discounts are stated separately the offeror agrees that, when the discount offered exceeds two per cent (2%), the entire discount will be considered as a trade or special discount and will not be treated as a discount for prompt payment.

Trade or Special Discount offered, if any: _____%

B-10. AFFILIATED BIDDERS (1961 JAN)

(a) 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.

(b) Each bidder shall submit with his bid an affidavit containing information as follows: _____

- (i) whether the bidder has any affiliates;
- (ii) the names and addresses of all affiliates of the bidder; and
- (iii) the names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

Failure to furnish such an affidavit may result in rejection of the bid.

B-11. PLACE OF PERFORMANCE

The bidder/offeror shall indicate below the intended place of performance, including the street address, and the names and addresses of owner or operator of producing

(Bid)

N00123-75-B-0055
Page 4 of 21

facilities, if other than the offeror, when it is reasonable anticipated that such facilities will be used in the performance of the contract;

(Place of performance)

(Street Address)

(Name of owner or operator of producing facilities)

(Street Address)

B-12. LABOR SURPLUS AREA (ASPR 2-201(a) Sec. B. (iii)
(1970 Sep)

This procurement is not set aside for labor surplus area concerns. However, the bidder's status as such a concern may affect entitlement to award in case of tie bids or bid evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the bidder must:

(i) furnish with his bid evidence that he or his first-tier subcontractor is a certified-eligible concern with a first preference in accordance with 29 CFR 8.7(b) and 8.9(c) or a certified-eligible concern with a second preference in accordance with 29 CFR 8.7(c) and 8.9(d), and identify below the address at which the costs he will incur on account of manufacturing or production (by himself if a certified concern or by certified concerns acting as first tier subcontractors) amount to more than 25% of the contract price, or

(ii) identify below the persistent or substantial labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than 50% of the contract price. (If the bidder proposes to qualify as a persistent or substantial labor surplus area concern not located in a labor surplus area,

(Bid)

N00123-75-B-0055

Page 5 of 21

evidence of such certification must be furnished.)

Failure to furnish evidence of certification by the Secretary of Labor if applicable, and to identify the locations as specified above will preclude consideration of the bidder as a labor surplus concern. Bidder agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails.

B-13. AFFIRMATIVE ACTION PROGRAM (1970 AUG)

(the following certification shall be completed by each offeror whose offer is \$50,000 or more and who has 50 employees or more)

The offeror certifies that he has, has not, developed and maintained at each of his establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

B-14. CERTIFICATION OF EQUAL EMPLOYMENT COMPLIANCE
(1970 AUG)

By submission of this offer, the offeror certifies that, except as noted below, up to date of this offer no advice, information or notice has been received by the offeror from any Federal Government agency or representative thereof that the offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order No. 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and specifically as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further certified and agreed that should there be any change in the status of circumstances certified to above between this date and the date of expiration of this offer or any extension thereof, the Government Contracting Officer cognizant of

(Bid)

N00123-75-B-0055

Page 6 of 21

this procurement will be notified forthwith.

B-15. STABILIZATION OF PRICES, RENTS, WAGES, AND SALARIES
(1972 AUG)

(a) By Executive Order 11640, dated January 26, 1972, the President further implemented his stabilization program and confirmed and ratified all orders, regulations, circulars, or other directives issued and all other actions taken pursuant to Executive Order No. 11615, as amended and Executive Order No. 11627, as amended. The Contractor represents that to the best of his knowledge and belief he is in complete compliance with Executive Order 11640, as amended, if applicable. Further, the Contractor warrants that insofar as Executive Order 11640, as amended, is applicable, the amounts invoiced under this contract will not exceed the lower of (1) the contract price, or (2) the maximum levels established in accordance with the order.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in all subcontracts for supplies or services issued under this contract.

B-16. LISTING OF EMPLOYMENT OPENINGS FOR VETERANS
(1971 NOV)

Offerors should note that this solicitation includes a provision which will be included in the contract requiring the listing of employment openings with the local office of the State employment service system if the award is for \$10,000 or more and involves 400 or more man-days of employment.

MANUFACTURER'S CODE NUMBER:

PLEASE PROVIDE YOUR MANUFACTURER'S CODE NUMBER, AS LISTED IN FEDERAL SUPPLY CODE FOR MANUFACTURERS OR NON-MANUFACTURERS IN THE SPACE PROVIDED BELOW. THIS INFORMATION WILL ENABLE US TO EXPEDITE THE PROCESSING OF THIS SOLICITATION.
(Codes, if unknown, may be obtained from your local Defense Contract Administration Services Region.)

(Bid)

N00123-75-B-0055

Page 7 of 21

MANUFACTURER'S CODE NO: _____

FACILITY CODE NO: _____

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (1972 JUL)

(a) Restriction. Offers under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) Definition. A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: Provided, that this additional requirement does not apply in connection with construction or service contracts.

"In connection with the foregoing clause the size standard criteria set forth in Section C of this solicitation apply."

ALTERATIONS AND ADDITIONS TO
SOLICITATION INSTRUCTIONS AND CONDITIONS (Std. Form 33A)

This replaces paragraphs 7 and 8 of SF 33A

LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS
(1973 JUL)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt

(Bid)

N00123-75-B-0055

Page 8 of 21

will not be considered unless it is received before award is made and either:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence to establish:

(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U. S. Postal Service postmark on the wrapper or on the original receipt from the U. S. Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late.

"(The term 'postmark' means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U. S. Postal Service.)"

(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

Clause 9. DISCOUNTS

Delete subparagraph (b) and in lieu thereof insert the following:

(Bid)

N00123-75-B-0055
Page 9 of 21

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at the point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

C-20. NOTE: FOR NAVY ADMINISTRATIVE USE ONLY: THE STATUS CONTROL ACTIVITY IS:

Naval Air Station, North Island, San Diego, CA 92135

C-21. DX/DO RATING

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a / /DX rating; /XX/ DO A-8C rating; / / DMS allotment number in accordance with the provisions of BDSA Regulation2 and/or DMS Regulation 1. (1969 OCT).

C-22. NAVY PRIORITY: 09 .

C-23. BIDS--ACCEPTANCE PERIOD (1960 APR)

Bids offering less than 30 days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

C-24. For the purpose of certifying business size (Par. 1 of SF 33) for this procurement, and supplementing Par. 14 of SF 33A, it has been determined in accordance with ASPR 1-703(c) that the following is appropriate:

STANDARD INDUSTRIAL CLASSIFICATION # 3561

SMALL BUSINESS SIZE STANDARD - NOT MORE THAN 500 employees

SOLICITATION INSTRUCTIONS AND CONDITIONS

(Para 7 deleted. See alteration to SF 33A)

1. DEFINITIONS.

As used herein:

(a) The term "solicitation" means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.

(b) The term "offer" means bid where the procurement is advertised, and proposal where the procurement is negotiated.

(c) For purposes of this solicitation and Block 2 of Standard Form 33, the term "advertised" includes Small Business Restricted Advertising and other types of restricted advertising.

2. PREPARATION OF OFFERS.

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.

(c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

(g) Code boxes are for Government use only.

3. EXPLANATION TO OFFERORS. Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished to all prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

4. ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS. Receipt of an amendment to a solicitation by an offeror must be acknowledged (a) by signing and returning the amendment, (b) on the reverse of Standard Form 33, or (c) by letter or telegram. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

5. SUBMISSION OF OFFERS.

(a) Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by telegraphic notice, provided such notice is received prior to the hour and date specified for receipt. (However, see par. 8.)

(c) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at offeror's request and expense, unless otherwise specified by the solicitation.

6. FAILURE TO SUBMIT OFFER. If no offer is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard should be sent to the issuing office advising whether future solicitations for the type of supplies or services covered by this solicitation are desired. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

7. MODIFICATION OR WITHDRAWAL OF OFFERS.

(a) If this solicitation is advertised, offers may be modified or withdrawn by written or telegraphic notice received prior to the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers. (However, see par. 8.)

(b) If this solicitation is negotiated, offers may be modified (subject to par. 8, when applicable) or withdrawn by written or telegraphic notice received at any time prior to award. Offers may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the offer prior to award.

(Para 8 deleted. See alteration to SF 33A)

8. LATE OFFERS AND MODIFICATIONS OR WITHDRAWALS. (This paragraph applies to all advertised solicitations. In the case of Department of Defense negotiated solicitations, it shall also apply to late offers and modifications (other than the normal revisions of offers by selected offerors during the usual conduct of negotiations with such offerors) but not to withdrawals of offers. Unless otherwise provided, this paragraph does not apply to negotiated solicitations issued by civilian agencies.)

(a) Offers and modifications of offers (or withdrawals thereof, if this solicitation is advertised) received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless: (1) they are received before award is made; and either (2) they are sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the Government that the late receipt was due solely to delay in the mails for which the offeror was not responsible; or (3) if submitted by mail (or by telegram if authorized) it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; provided, that timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification of an offer which makes the terms of an otherwise successful offer more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Offerors using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late offer was timely mailed.

(c) The time of mailing of late offers submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the offeror furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the offeror which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the offer shall not be considered.

9. DISCOUNTS. (a) Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(Para (b) deleted. See alteration SF 33A)

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and

acceptance are at either of those points, or from the date correct invoice or voucher is received in the office specified by the Government, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

10. AWARD OF CONTRACT. (a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. **UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER.**

(d) A written award (or Acceptance of Offer) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

The following paragraphs (e) through (h) apply only to negotiated solicitations:

(e) The Government may accept within the time specified therein, any offer (or part thereof, as provided in (c) above), whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Government prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.

(f) The right is reserved to accept other than the lowest offer and to reject any or all offers.

(g) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.

(h) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

11. GOVERNMENT-FURNISHED PROPERTY. No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the solicitation.

12. LABOR INFORMATION. General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contract Work Hours Standards Act (40 U.S.C. 327-330), and the Service Contract Act of 1965 (41 U.S.C. 351-357) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Requests for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

13. SELLER'S INVOICES. Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and

extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

14. 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 submitting offers on 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.)

15. CONTINGENT FEE. If the offeror, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, in duplicate, a complete Standard Form 119, Contractor's Statement of Contingent or Other Fees. If offeror has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his offer with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this offer.

16. PARENT COMPANY. A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

17. EMPLOYER'S IDENTIFICATION NUMBER. (Applicable only to advertised solicitations.) The offeror shall insert in the applicable space on the offer form, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if he has a parent company, the Employer's Identification Number of his parent company.

18. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION. (a) This certification on the offer form is not applicable to a foreign offeror submitting an offer for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(b) An offer will not be considered for award where (a)(1), (a)(3), or (b) of the certification has been deleted or modified. Where (a)(2) of the certification has been deleted or modified, the offer will not be considered for award unless the offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

19. ORDER OF PRECEDENCE. In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) Solicitation Instructions and Conditions; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the specifications.

(Bid)

N00123-75-B-0055

Page 12 of 21

MANAGEMENT CONTROL SYSTEMS SUMMARY LIST (1969 OCT)

Note the attachment to this solicitation of DD Form 1660, Management Control Systems Summary List, and the contract clause entitled "Management Control Systems Requirements."

PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of \$1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of \$1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

SECTION D - EVALUATION & AWARD FACTORS: Not Applicable.

PART II - THE SCHEDULE

SECTION E - SUPPLIES/SERVICES & PRICES

| <u>ITEM NO.</u> | <u>DESCRIPTION</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>PRICE</u> | <u>AMOUNT</u> |
|-----------------|--|-----------------|-------------|--------------|---------------|
| 0001 | Fluid Dispensing Units | 4 | ea. | \$ _____ | \$ _____ |
| 0002 | Data in accordance with DD Form 1423, Exhibit A. (1 lot @ \$ _____) | 1 | lot | *NSP | *NSP |

*NSP - Not Separately Priced. Include in price of Item 0001.

FOR NAVY USE ONLY: ACR: sl applies.

SECTION F - DESCRIPTION/SPECIFICATIONS

1. SCOPE - This purchase description covers the minimum requirements for the design and manufacture of a Fluid Servicing Unit.

(Bid)

N00123-75-B-0055

Page 13 of 21

2. FUNCTION - The equipment specified herein will be used to transfer fluid from its original container to the system it is intended to serve without degrading the quality of fluid.

3. MINIMUM ESSENTIAL REQUIREMENTS

3.1 Construction - The fluid servicing unit shall withstand the strains, jars, vibrations and other conditions incident to shipping and service.

3.2 Maintainability - The fluid servicing unit shall be designed and constructed to provide the minimum number of parts consistent with the reliability and performance specified herein. Parts and components shall be located or positioned for rapid and simple inspection, maintenance and service. Components shall be located or positioned to permit maintenance with general purpose tools and equipment normally available.

3.3 General Description - The fluid servicing unit shall be a manually operated towable, 55 gallon drum handling and fluid dispensing unit. It shall be designed to straddle a 55 gallon fluid drum, grip, lift and rotate the drum to horizontal position for high speed 20 MPH towing or to the inverted position for low speed 10 MPH towing and dispensing fluid. Positive locks shall be provided to lock the drum in the vertical or horizontal position during storage or use.

3.3.1 Fluid Connections - A swivel fitting with supply and vent hoses attached shall be provided for installation into the drum threaded receptacle. A check valve, two (2) filters and a dehydration chamber shall be provided to clean and control vent air into the inverted drum when fluid is being pumped.

3.4 Construction - The frame of the unit shall be of welded construction of sufficient strength to lift and transport a 55 gallon drum of fluid. The main wheels shall be mounted to the frame. A front wheel assembly shall be mounted on a swivel fork with a towbar attached.

3.5.1 Drum Lifting System - The drum lifting system shall consist of a hand operated pump, two (2) single acting tandem actuators and associated valves and

(Bid)

N00123-75-B-0055

Page 14 of 21

plumbing. The drum lifting system shall be a self-contained type with its own fluid supply and reservoir.

3.5 Fluid Dispensing System - The fluid dispensing system shall consist of the pump, filters, delivery hose and necessary valves and plumbing.

3.5.1 Pump - A pneumatic pump shall be furnished.

3.5.2 Filters - One three (3) micron absolute throw-away type filter shall be installed on the suction side of the pump. One three (3) micron absolute throw-away type filter shall be installed on the pressure side of the pump.

4. Material - See NWC specification DE-5678-00F for types of fluids to be handled, environmental conditions for use, and for permissible materials and finishes which may be utilized in construction.

SECTION G - PRESERVATION/PACKING/PACKAGING

PREPARATION FOR DELIVERY:

The material described herein is for domestic use and shall be packed to provide physical and mechanical protection during shipment to the first receiving activity. Containers and methods of internal blocking, bracing, and cushioning shall conform to the Uniform Freight Classification Rules and Regulations and/or National Motor Freight Classification or other carrier regulations as applicable to the mode of transportation and to permit acceptance by the carrier at the lowest rate.

NOTE: Shredded paper shall not be used as packing material.

SHIP TO/MARK FOR:

Receiving Officer
Naval Air Station
North Island
San Diego, CA., 92135
ACR:S1

SECTION H - DELIVERY OR PERFORMANCE

(Bid)

N00123-75-B-0055

Page 15 of 21

TIME OF DELIVERY

The Government DESIRES that delivery be made in the quantities and within the number of days after date of contract stated below:

| ITEM | QUANTITY | DELIVERY DESIRED (No. of days after effective date of contract) |
|------|----------|--|
| 0001 | 4 ea. | 30 days |

If the bidder is unable to meet the desired delivery schedule, it may, without prejudice in the evaluation of its bid, offer an alternate time for delivery for each item bid in the space provided below, entitled "Bidder's Proposed Delivery Schedule," provided that any bid offering delivery beyond the maximum acceptable time set forth below shall be considered nonresponsive to the Invitation and will be rejected.

Maximum Acceptable Delivery Schedule

| Item | Quantity | Delivery Required (No. of days after effective date of contract) |
|------|----------|---|
| 0001 | 4 ea. | 90 days |

Any bid offering an indefinite time for delivery or offering delivery contingent upon the availability or receipt of material shall be rejected. Unless the bidder offers a different delivery schedule, the Government's DESIRED delivery schedule stated above will apply.

Bidder's Proposed Delivery Schedule

The articles to be furnished shall be delivered in the quantities and within the number of days after date of contract stated below:

| Item | Quantity | Delivery Date (No. of days after effective date of contract) |
|------|----------|---|
|------|----------|---|

(Bid)

N00123-75-B-0055

Page 16 of 21

Attention is directed to paragraph 10(d) of the Solicitation Instructions, and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected.
(AUG 67)

PLACE OF DELIVERY: DESTINATION

(a) The articles to be furnished hereunder shall be delivered all transportation charges paid by the supplier to DESTINATION. To insure delivery at destination free of expense to the Government, the Contractor will annotate bills of lading "Delivery when shipments are within the purview of delivery provisions of carriers' tariff." When carriers assess an additional charge for this service, these charges shall be prepaid by the Contractor. When delivery service is not available under the provisions of carriers' tariffs, delivery of less than load quantities at destination carrier's freight terminal will suffice.

(b) Bids submitted on a basis other than f.o.b. destination will be rejected as nonresponsive.

SECTION I - INSPECTION AND ACCEPTANCE

INSPECTION AND ACCEPTANCE INFORMATION TO BE FURNISHED BY OFFEROR

(a) Inspection and acceptance of the supplies or services to be furnished hereunder shall be made at destination by the receiving activity.

(b) The offeror shall furnish the following information:

(Bid)

N00123-75-B-0055

Page 17 of 21

/(1) Are the supplies to be furnished from stock? _____
From Government surplus material? _____

(2) Labor surplus area concern: Yes _____ No _____

(c) Address and from whom material will be shipped to
destination as indicated herein _____

(d) Offeror should indicate in the proposal the address to
which payment should be mailed, if such address is dif-
ferent from that shown for the offeror:

SECTION J - SPECIAL PROVISIONS

NOTICE OF CONSTRUCTIVE CHANGES

No order, statement or direction of the contracting officer, the authorized representative of the contracting officer whether or not acting within the limits of his authority, or any other representative of the Government, shall constitute a change under the "Changes" clause of this contract or entitle the contractor to an equitable adjustment of the contract price or delivery schedule, unless such change is issued in writing and signed by the contracting officer. No representative of the contracting officer (either PCO or ACO) shall be authorized to issue a written change order under the "Changes" clause of this contract. The contractor shall be under no obligation to comply with any orders or directions not issued in writing and signed by the contracting officer.

SECURITY WARNING

This contract, or job orders hereunder, may contain, or in the performance thereof may involve access to, information affecting the national defense of the United States within the meaning of the Espionage Laws, Title 18 U.S.C., Sections 793 and 794. The transmission or the revelation of the classified contents, or of the classified matter to which access may be had, in any manner to an unau-thorized person is prohibited by law.

(Bid)

N00123-75-B-0055

Page 18 of 21

NOTICE OF PROGRAM FURTHER PROVIDING FOR THE STABILIZATION OF THE ECONOMY

Offerors are advised that prices are expected to be in compliance with the General Price Standard of the Cost of Living Council as set forth in Section 130.13 of Title 6, Code of Federal Regulations.

EQUAL OPPORTUNITY PRE-AWARD CLEARANCE OF SUBCONTRACTS (1971 OCT)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1,000,000.00 or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

SECTION K - CONTRACT ADMINISTRATION DATA

ACCOUNTING AND APPROPRIATION DATA

S1: 1741586.4704 000 14236 0000246 2D 065888
0631064BH226

PART III

SECTION L - GENERAL PROVISIONS

The following clauses are hereby incorporated in this contract by reference with the same force and effect as if set forth herein in full. All references are to the edition of ASPR of 1 July 1974.

NOTE: The complete text of any clause below may be obtained upon request to the office issuing this solicitation, Attention: Code AD, telephone (213) 547-6263. Each such request should provide the complete ASPR reference as shown below to ensure timely compliance with the request.

| <u>TITLE AND DATE</u> | <u>ASPR (DPC) REFERENCE</u> |
|---------------------------------|-----------------------------|
| Definitions (1962 FEB) | 7-103.1 |
| Assignment of Claims (1962 FEB) | 7-103.8 |
| Disputes (1958 JAN) | 7-103.12(a) |

| | |
|---|-------------|
| Contract Work Hours and Safety Standards Act - Overtime Compensation (1971 NOV) | 7-103.16 |
| Walsh-Healey Public Contracts Act (1958 JAN) | 7-103.17 |
| Equal Opportunity (1972 AUG) | 7-103.18(a) |
| Officials Not To Benefit (1949 JUL) | 7-103.19 |
| Covenant Against Contingent Fees (1958 JAN) | 7-103.20 |
| Authorization and Consent (1964 MAR) | 7-103.22 |
| Listing of Employment Openings (1973 SEP) | 7-103.27 |
| Buy American Act (1964 MAY) | 7-104.3 |
| Examination of Records by Comptroller General (1971 MAR) | 7-104.15 |
| Gratuities (1952 MAR) | 7-104.16 |
| Convict Labor (1974 APR) | 7-104.17 |
| Priorities, Allocations, and Allotments (1974 APR) | 7-104.18 |
| Interest (1972 MAY) | 7-104.39 |
| New Material (1965 JAN) | 7-104.48 |
| Government Surplus (1965 JAN) | 7-104.49 |
| Payment of Interest on Contractor's Claims (1972 MAY) | 7-104.82 |
| Utilization of Small Business Concerns (1958 JAN) | 7-104.14(a) |
| Utilization of Labor Surplus Area Concerns (1970 JUN) | 7-104.20(a) |
| Utilization of Minority Business Enterprises (1971 NOV) | 7-104.36(a) |
| Renegotiation (1959 OCT) | 7-103.13(a) |
| Changes (1958 JAN) | 7-103.2 |
| Variation in Quantity (1949 JUL) | 7-103.4(a) |
| Inspection (1958 MAY) | 7-103.5(a) |
| Additional Bond Security (1949 JUL) | 7-103.9 |
| Discounts (1968 JUN) | 7-103.14 |
| Extras (1949 JUL) | 7-103.3 |
| Payments (1958 JAN) | 7-103.7 |
| Default (1969 AUG) | 7-103.11 |
| Pricing of Adjustments (1970 JUL) | 7-103.26 |
| Subcontracts (1972 APR) | 7-104.23 |
| Title and Risk of Loss (1968 JUN) | 7-103.6 |
| Government Delay of Work (1968 SEP) | 7-104.77(f) |

| | |
|--|---------------|
| Required Source for Jewel Bearings (1973 NOV)* | 7-104.37(115) |
| Required Source for Miniature and Instrument Ball Bearings (1971 JUL) | 7-104.38 |
| Required Sources for Precision Components for Mechanical Time Devices (1971 AUG) | 7-104.46 |
| Material Inspection and Receiving Report (1969 DEC) | 7-104.62 |
| Federal, State, and Local Taxes (1971 NOV) | 7-103.10(a) |
| Termination for Convenience of the Government (1973 ASPR) | 7-103.21(b) |
| Value Engineering Incentive (1971 MAY) | 1-1707.1(a) |
| paragraph (d) as at ASPR 1-1707.2(a), and the Government's share in paragraph (d) being 50%; the contractor's share in paragraph (f)(2) being 50% paragraph (d) of the clause being deemed modified pursuant to ASPR 1-1708(b) (Instant Contract Only sharing provision) | |
| Small Business Subcontracting Program (1965 JUN) | 7-104.14(b) |
| Labor Surplus Area Subcontracting Program (1970 JUN) | 7-104.20(b) |
| Minority Business Enterprises Subcontracting Program (1971 NOV) | 7-104.36(b) |
| Management Systems Requirements (1971 NOV) | 7-104.50 |
| Audit by Department of Defense (1971 APR) | 7-104.41 |
| Cost Accounting Standards (1974 JAN)* | 7-104.83(119) |
| F.O.B. Destination (1969 APR) | 7-104.71 |
| Diversion of Shipment Under F.O.B. Destination Contracts (1971 NOV) | 7-104.75 |

PART IV - LIST OF DOCUMENTS AND ATTACHMENTS

SECTION M - LIST OF DOCUMENTS AND ATTACHMENTS

Exhibit "A" - DD 1423, Contract Data Requirements List.

| ATCH NR _____ TO EXHIBIT _____ | | CONTRACT DATA REQUIREMENTS LIST '75 B0055 | | | | SYSTEM/ITEM _____ | |
|--|---|---|-----------------|----------------------------|---|--------------------------------------|---|
| TO CONTRACT/PR _____ | | CATEGORY <u>Technical Data</u> | | | | CONTRACTOR _____ | |
| 1. SEQUENCE NUMBER | 2. TITLE OR DESCRIPTION OF DATA | 6. TECHNICAL OFFICE | 10. FREQUENCY | 12. DATE OF 1ST SUBMISSION | 14. DISTRIBUTION AND ADDRESSEES <small>(Address - Regular Copies/Respo Copies)</small> | | |
| | 3. SUBTITLE <u>Fluid Servicing Unit</u> | | | | | | |
| 4. AUTHORITY <small>(Data Item Number)</small> | 5. CONTRACT REFERENCE | 7. OD250 REQ | 8. Rep CODE (A) | 9. INPUT TO IAC (K) | 11. AS OF DATE | 13. DATE OF SUBSEQUENT SUBM/EVENT ID | |
| 1. | 2. <u>Technical Data</u> | | | | <u>NARF NORIS</u> | <u>0-Time</u> | <u>See 16</u> |
| | | | | | | | <u>Naval Air Rework Facility</u> <u>Naval Air Station</u> <u>North Island</u> <u>San Diego, CA</u> |
| 16. REMARKS | | | | | 15. TOTAL | | |
| Three copies of all drawings, manuals and instructions required to install, operate, maintain, and repair the equipment shall be furnished with each unit. | | | | | | | |
| 16. REMARKS | | | | | 15. TOTAL | | |
| | | | | | | | |
| 16. REMARKS | | | | | 15. TOTAL | | |
| | | | | | | | |
| 16. REMARKS | | | | | 15. TOTAL | | |
| | | | | | | | |
| 16. REMARKS | | | | | 15. TOTAL | | |
| | | | | | | | |
| PREPARED BY _____ | | DATE _____ | | APPROVED BY _____ | | DATE <u>6/8/74</u> | |

| | |
|-------------------------------|-------------------------------------|
| 17. EVENT/CEI NUMBER | 23. CONTRACTOR FILE/DOCUMENT NUMBER |
| 18. 908 APPROVAL /FORM NUMBER | 24. ESTIMATED NUMBER OF PAGES |
| 19. 20. 21. | 25. PRICE GROUP |
| 22. RESERVED FOR APP | 26. ESTIMATED TOTAL PRICE |
| 17. | 23. |
| 18. | 24. |
| 19. 20. 21. | 25. |
| 22. | 26. |
| 17. | 23. |
| 18. | 24. |
| 19. 20. 21. | 25. |
| 22. | 26. |
| 17. | 23. |
| 18. | 24. |
| 19. 20. 21. | 25. |
| 22. | 26. |
| CONTRACT VALUE | |

88

Page 21 of 21

CHAPTER V

PRICING

A. COST PRINCIPLES

1. Cost principles are guides to action - guides which permit the exercise of judgement on a great many matters. The cost principles in ASPR XV and FPR 15 provide an orderly framework within which the judgements of allocation of costs, distribution, and evaluation of costs can be exercised. Broadly speaking, the principles in Sections XV of the regulations define "reasonableness" and "allocability" and describe the application of the principles to selected items of costs which are termed "allowable" or "unallowable".

2. The Sections of the ASPR and FPR dealing with cost principles will not be applied to the majority of awards - the Contract Cost Principles and Procedures are not applied to competitive contracts where award is based on price - the principles are applied to contracts negotiated on the basis of cost, when cost analysis is performed (ASPR 3-807.2), when there is a determination of reimbursable costs under cost type contracts, and for the negotiation of overhead rates.

3. In competitive contracts under IFB procedures, price is considered to be controlled by competition. The market place provides a discipline for the application of pricing principles, and costs may not be the controlling factor in establishing a competitive price.

The objectives of both the Government contracting officer and the business firm under RFP procedures should be to negotiate fair and reasonable prices after giving consideration to all relevant factors.

4. The cost principles in Section XV cover 48 selected cost subjects, their definition, and guidelines for allocation, and determinations of allowability or unallowability. The cost subjects include:

- Advertising Costs
- Bad Debts
- Bid and Proposal Costs
- Bonding Costs
- Salaries and Wages, Bonuses and Incentive Compensation
- Contingencies
- Contributions, Donations
- Depreciation
- Insurance

- Interest
- Maintenance and Repair Costs
- Rental and Leasing Costs
- Independent Research and Development Costs
- Selling Costs
- Taxes
- Trade and Professional Activity Costs
- Travel Costs

The cost principles are firm as applied to cost reimbursement type contracts. For example, the principle applied to interest is quoted as follows:

"15-205.17 Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, costs of financing and refinancing operations, legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable..."

5. The principles also serve as guidelines. One of the guidelines within which judgement must be applied is the application of the definition for direct costs and indirect costs. Although classifications of direct cost and groupings of indirect cost may be applied consistently within a particular contract, and among contracts within the same period of time, there is no consistent pattern among contractors. This inconsistency was one of the reasons for some Congressional demand for cost standards - another reason was the demand for disclosure of "standards" and practices used by individual contractors.

There are many more misunderstandings concerning the term "cost standards" or the term "uniform cost standards" than there are concerning cost principles. "Cost Accounting Standards" are issued by the Cost Accounting Standards Board pursuant to Public Law 91-379, dated August 15, 1970.

Most contractors are exempt from the standards, rules, and regulations of the Public Law and do not need to file the Disclosure Statement described in ASPR 3-1203 or be concerned with the contract clause referenced in ASPR 7-104.83. Contracts awarded pursuant to small business set-aside procedures or Section 8(a) awards do not have the clause applied. The subject of the Standards has been mentioned here only to acquaint the small minority-owned firm with the language and term.

6. It is important to understand that the cost principles, especially those dealing with unallowable costs or those used as guidelines in negotiating certain fixed price contracts, have not been developed without consideration of public policy. Thus, statutes and

actually public policy (public concern) are the basis for the explanation of the contract cost principles.

B. ESTIMATING

1. Estimating is equally important to develop a cost which will be competitive and at the same time reflect the costs to be incurred. Overestimating may result in failure to achieve the award - underestimating will result in either reduced profit or a loss. Also, in the contracting process in certain negotiated contracts, the estimate will be the baseline for audit and evaluation of the firm's proposal and the subsequent negotiation.

Theoretically, an estimate prepared by a contractor or by a Government estimator based on the same data should result in a cost figure within the same range. Also, the estimated cost of performance should be the same for any type of contract - only the price should vary because of contract type.

2. An estimate is a projection of costs to be incurred from the plateau of the most current cost experience or from a comparison with the closest similar experience.

The depth of estimating required will depend on the value and complexity of the proposed procurement. The basic steps required in performance of cost estimating are:

- Defining the estimating task and planning for the estimating procedures.
- Selecting the estimating structure for evaluating cost data (information).
- Collecting the necessary cost information and relating the data to technical and manufacturing requirements.
- Documenting the estimate, and then applying confidence factors to the result. Use judgement in choosing a confidence factor, but have an informed basis for the judgement.

In performing the estimating function, the application of precise procedures does not lessen the need for the use of good judgement.

3. Many techniques or tools are used to assist in the development of proposals. Some techniques are:

- Use of learning curves
- Use of cost indices
- Use of estimating relationships
- Statistical, industrial engineering, or economic techniques.

The accuracy, completeness, and credibility of the estimate depends in a large part upon the estimator being involved at the outset on any project and being informed of all pertinent changes.

The relationship of the schedule to the estimate is equally as important as any single factor. Major program milestones, manufacturing plans, production plans, and lead time for materials, subassemblies, and components must be identified and considered.

4. Learning curves are important in development of an estimate only if the base line can be estimated with any reasonable accuracy and if learning has previously been accomplished and if future learning will have an effect on productivity.

The use of learning curves assists in determining cost-quantity relationships. Learning curves are not a tool adaptable to all situations. The apparent benefits due to learning may be misleading and actually caused by extraneous influences. For example, bookkeeping adjustments rather than increased efficiency reflected in source data may suggest cost reductions or performance improvements that may not, in fact, have occurred.

For the beginner, the concept of improvement or learning means that in most production processes, the per-unit costs of production decline with experience. In other words, the fiftieth unit costs less than the tenth, and the hundredth costs less than the fiftieth, and learning continues to decrease labor time; however, the labor time begins to assume a flatter slope on the curve as the quantity increases. The concept was first widely applied to direct labor in the airframe industry, but has since been applied to most production processes.

It is common practice to refer to a learning curve as having a rate of improvement of 70 percent, or 80 percent, or 83 percent, or 90%. The rate is a curvilinear trend if plotted on arithmetic graph paper, but it is popularly depicted as a linear trend and generally plotted as a linear trend on logarithmic graph paper (log-log paper).

The learning curve theory is that the improvement rate is a constant percentage when measured over doubled quantities. For example, if on an 80 percent rate, unit 200 required 1000 hours, then on unit 400 there should be 800 hours, and unit 800 should require 80 percent of the 800 hours used for the 400th unit, or 640 hours, and so on.

Estimators in a firm of any size should recognize that the learning curve is only one tool in pricing. The estimator must learn to use the tool and respect its limitations - the learning curve can be misused and abused. To be completely qualified in its use, the estimator should know accounting methods and manufacturing processes and be acquainted with industrial engineering. There has been a considerable amount of

material written about the learning curve, and special training programs for its use are given quite frequently. Additional material is available to the small minority-owned firm concerning the learning curve (and other pricing techniques) in the Armed Services Procurement Regulation Manual for Contract Pricing (ASPM No. 1), issued February 14, 1969 by the Government Printing Office. A new, updated Pricing Manual is in process by DOD.

5. There are many estimating procedures within the three basic procedures of "rough order of magnitude estimating," "comparison estimating," and "detailed cost estimating." In the first method, standard costs are accumulated and burdens are applied. In the second method, known costs of like or similar parts and processes are adjusted as necessary for a new task. The third method requires a detailed analysis of all components, processes, assemblies and burdens, and also involves tests with applications of the two prior methods.

Larger firms and project estimators on major programs also use techniques known as parametric estimating, and estimating built upon a work breakdown structure (WBS). Both techniques are appropriate for major systems and are briefly mentioned here only to acquaint the newer firms with the terms and the language.

In parametric estimating, the first step is to identify those key parameters which contribute to the cost, and these parameters also contribute to the value of the overall mission accomplishment. Parametric estimating is the development of cost-performance relationships. It is an iterative process where key parameters are identified, ordered or ranked, and weighted in accordance with their contribution to total cost. Thus, speed, weight, attitude, thrust, payload, and range would be key parameters which could be costed and assigned a value to the program as compared with alternative or similar, known systems.

If work breakdown structures are used, the major element level of the WBS will be the minimum level of detail to which an estimate will be prepared for a conceptual study, and for ongoing systems, estimates are prepared to the level of contract end items or high dollar value items in a major subsystem. It is advantageous to use WBS for estimating because the reporting levels of the WBS after contract award will remain fixed and will represent the way cost accounts are aggregated and work packages are defined for planning and control of cost and schedule.

Although it is recognized that the structure level at which costs are estimated will vary with each major task, it is essential that all costs applicable to performance and support be included. These, if identified and limited, may be included as assumptions or contingencies, but all costs must be included for a completed estimate.

6. Detailed cost estimating is the safest method of estimating for the small minority-owned firm. This method permits the firm to study make-or-buy issues which may be important in order to be competitive in price or technical areas. Detailed estimating will cover requirements for material, components, subcontracts, labor, and additional capital items. The application of labor rates and overhead rates and General & Administrative expenses to the direct costs will produce the amount of cost for the items, leaving only the management decision for applying a profit rate and developing the price.

On most procurements, it should be relatively easy to price the bill of material; however, the factor for scrap or rework should be reviewed carefully in order to maintain a level of competitiveness. Also, the source and date of all quotations for material items should be carefully reviewed. It is as important for the firm's suppliers to be competitive as it is for the firm to be competitive.

In developing labor estimates, the number of hours should be based on proper planning. Even if the estimate is for a follow-on production run, the planning should be reviewed. It must be understood that there are various patterns in the incidence of use of various types of labor between the start of manufacturing and assembly for the production and the completion of the production runs. Production runs should be based on the most economical production quantities - some parts or subassemblies may be completed in one run. Also, labor estimates may be based on standards, or time and motion studies, or planned improvements over the actuals on prior production lots.

7. It is well to remember that an estimate should not be a guesstimate. A firm relying on guesstimates is more likely to be in the annual list of business failures reported than in the listing of contractors receiving excess profits.

C. GOVERNMENT COST OR PRICE ANALYSIS

1. In the estimating process for negotiated contracts which will be awarded on a basis other than price, the estimate will be summarized on a DD Form 633 for certain defense procurements exceeding \$100,000 and the estimate will be supported by cost or pricing data describing the basis for elements of cost. The DD 633 may be requested also in certain procurements below \$100,000 and requested for subcontracts.

The Contract Pricing Proposal, DD Form 633, is shown on the next page as Figure 6. Offerors are cautioned to understand and comply with the "instructions to offerors" on the reverse side of the actual form. As part of the information required by the form, the offeror must submit and clearly identify cost or pricing data (data which is verifiable and factual) used in preparing the estimate. By submission of the form, if selected for negotiation, the firm grants the Government the right to examine the books, records, documentation and other

FIGURE 6
DD FORM 633: Contract Pricing Proposal

| DEPARTMENT OF DEFENSE CONTRACT PRICING PROPOSAL | | Form Approved Budget Bureau No. 22-R100 | |
|---|---|--|--------------------------------|
| This form is for use when submission of cost or pricing data (see ASPR J-807.3) is required | | PAGE NO. | NO. OF PAGES |
| NAME OF OFFEROR | | SUPPLIES AND/OR SERVICES TO BE FURNISHED | |
| HOME OFFICE ADDRESS | | QUANTITY | TOTAL AMOUNT OF PROPOSAL \$ |
| DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED | | GOVERNMENT SOLICITATION NO. | |
| COST ELEMENTS | | PROPOSED CONTRACT ESTIMATE | |
| | | TOTAL COST ¹ | UNIT COST ² |
| 1. DIRECT MATERIAL ⁴ G. OTHER MATERIAL | a. PURCHASED PARTS ⁵ | | |
| | b. SUBCONTRACTED ITEMS ⁶ | | |
| | (1) RAW MATERIAL ⁷ | | |
| | (2) STANDARD COMMERCIAL ITEMS ⁸ | | |
| | (3) INTERDIVISIONAL TRANSFERS (at other than cost) ⁹ | | |
| 2. MATERIAL OVERHEAD ¹⁰ | | | |
| 3. INTERDIVISIONAL TRANSFERS AT COST ¹¹ | | | |
| 4. DIRECT ENGINEERING LABOR ¹² | | | |
| 5. ENGINEERING OVERHEAD ¹⁰ | | | |
| 6. DIRECT MANUFACTURING LABOR ¹³ | | | |
| 7. MANUFACTURING OVERHEAD ¹⁰ | | | |
| 8. OTHER COSTS ¹³ | | | |
| 9. SUBTOTALS | | | |
| 10. GENERAL AND ADMINISTRATIVE EXPENSES ¹⁰ | | | |
| 11. ROYALTIES ¹⁴ | | | |
| 12. FEDERAL EXCISE TAX ¹⁵ | | | |
| 13. SUBTOTALS | | | |
| 14. PROFIT OR FEE | | | |
| 15. TOTAL PRICE (Amount) | | | |
| I. HAVE THE DEPARTMENT OF DEFENSE, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, OR THE ATOMIC ENERGY COMMISSION PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER GOVERNMENT PRIME CONTRACT OR SUBCONTRACT WITHIN THE PAST TWELVE MONTHS? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, IDENTIFY BELOW | | | |
| NAME AND ADDRESS OF REVIEWING OFFICE | | TELEPHONE NUMBER | |
| II. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS PROPOSED CONTRACT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, IDENTIFY ON A SEPARATE PAGE. | | | |
| III. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, IDENTIFY. <input type="checkbox"/> ADVANCE PAYMENTS <input type="checkbox"/> PROGRESS PAYMENTS OR <input type="checkbox"/> GUARANTEED LOANS | | | |
| IV. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR SIMILAR ITEMS WITHIN THE PAST THREE YEARS? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, SHOW CUSTOMER(S) AND CONTRACT NUMBERS BELOW OR ON A SEPARATE PAGE. | | | |
| V. DOES THIS COST SUMMARY CONFORM WITH THE COST PRINCIPLES SET FORTH IN ASPR, SECTION XV (see 3-807.2(c)(2))? <input type="checkbox"/> YES <input type="checkbox"/> NO IF NO, EXPLAIN ON A SEPARATE PAGE | | | |
| This proposal is submitted for use in connection with and in response to _____ _____ * and reflects our best estimates as of this date, in accordance with the Instructions to Offerors and the Footnotes which follow: *DESCRIBE RFP, ETC. | | | |
| TYPED NAME AND TITLE | | SIGNATURE | |
| NAME OF FIRM | | DATE OF SUBMISSION | |

supporting data used in developing the estimate.

Prior to award of certain contracts exceeding \$100,000, and as soon as possible after agreement is reached, the firm must sign a "Certificate of Current Cost or Pricing Data". The certificate that the data (defined in ASPR 3-807.3(h)) are accurate, complete, and current will be reinforced by a contract clause (ASPR 3-807.5), Defective Cost or Pricing Data, stating that the Government is entitled to an adjustment of the negotiated price if the cost supporting data is not accurate and the latest reasonably available. The certificate is quoted as follows:

"CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in ASPR 3-807.3(h) submitted, either actually or by specific identification in writing (see ASPR 3-807.3(i)), to the Contracting Officer or his representative in support of are accurate, complete, and current as of (day)(month)(year)

Firm
Name
Title

Date of Execution "

The requirement for the supporting data, the certificate, and the rights when defective data has been submitted extends also to certain noncompetitive subcontracts of \$100,000 or more.

2. The requirement for the Government to conduct cost or price analysis is to assure that procurements without adequate price competition are determined to be fair and reasonable in price.

Some form of price or cost analysis is required in connection with every negotiated procurement action, and the analyses should be performed also for significant subcontract costs.

a. Price analysis is the process within the Government of examining and evaluating a prospective price without evaluation of separate cost elements. Price analysis may include the following:

- The comparison of the price quotations submitted;
- The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors

- as specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency; it must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered);
- The use of rough yardsticks (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;
 - The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities and similar indicia, together with discount or rebate arrangements; and
 - The comparison of proposed prices with estimates of cost independently developed by personnel within the purchasing activity.

b. Cost analysis is the review and evaluation of cost or pricing data and the analyses of the judgemental factors applied in projection of costs. Cost analysis also includes appropriate audit verification that the contractor's cost submissions are in accordance with the Section XV Contract Cost Principles previously described in Section A of this Chapter of the Manual.

Cost analysis will determine the effect on prices of such factors as:

- The necessity for certain costs,
- The reasonableness of amounts estimated for the necessary costs, allowances for contingencies,
- The basis used for allocation of overhead costs; and
- The appropriateness of allocations of particular overhead costs to the proposed contract.

Where data is available, evaluations include comparisons of an offeror's current proposal with the following:

- Actual costs previously incurred by the contractor or offeror;
- The last prior cost estimate for the same or similar item or a series of prior estimates;
- Current cost estimates from other possible sources;
- Prior estimates or historical costs of other contractors manufacturing the same or similar items.

3. Cost or Pricing Data is required by Public Law 87-653, commonly called the "Truth in Negotiations Act". It was directed

toward military procurements but has been applied to civilian agencies procurements by FPR 1-3.807. The implementation of the law in ASPR is found in ASPR 3-807.3, part of which is quoted as follows:

"3-807.3 Cost or Pricing Data.

(a) The contracting officer shall require the contractor to submit, either actually or by specific identification in writing, cost or pricing data in accordance with 16-206 and to certify, by use of the certificate set forth in 3-807.4, that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete, and current prior to:

(i) The award of any negotiated contract (other than a letter contract) expected to exceed \$100,000 in amount;

(ii) The pricing of any modification to any formally advertised or negotiated contract, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. (For example, the requirement applies to a \$30,000 modification resulting from a reduction of \$70,000 and an increase of \$40,000, or as another example, when the modification results in no change in contract price because there is an increase of \$200,000 and a reduction of \$200,000. However, this requirement shall not apply when unrelated and separately priced changes for which cost or pricing data would not be required are included in the same modification for administrative convenience.);

(iii) The award of any negotiated contract not expected to exceed \$100,000 in amount or any contract modification not expected to exceed \$100,000 in amount to any formally advertised or negotiated contract whether or not cost or pricing data was required in connection with the initial pricing of the contract, provided the contracting officer considers that the circumstances warrant such action in accordance with (f) and (g) below;

unless the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The requirements under (i) and (ii) above may be waived in exceptional cases where the Secretary (or, in the case of a contract with a foreign government or agency thereof, the Head of a Procuring Activity) authorizes such waiver and states in writing his reasons for such determination. Whenever a Certificate of Current Cost or Pricing Data is required, the applicable clause in 7-104.29 shall be included in the contract.

(b)(1) In addition, any contractor who is required to submit and certify cost or pricing data in accordance with (a) above shall be required with his own submission to submit, or procure the submission of, accurate, complete and current cost or pricing data, in accordance with 16-206, from his prospective subcontractors in support of each subcontract cost estimate included in the contractor's submission whenever the contracting officer considers such subcontractor data necessary for good pricing of the prime

contract, or, in any event, whenever such subcontractor cost estimate is either (i) \$1,000,000 or more, or (ii) both more than \$100,000 and more than 10 percent of the prime contractor's proposed contract price; unless the contractor in his submission demonstrates to the satisfaction of the contracting officer that a prospective subcontract will be based on adequate price competition, or that a prospective subcontract estimate is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, or a price set by law or regulation..."

4. Contracting officers are responsible for effective contracting, and responsible for the price negotiated for the Government. The Government contracting officer avails himself of all appropriate organizational tools such as the advice of specialists in finance, law, contract audit, packaging, engineering, traffic, and price analysis. The contracting officer does not transfer his responsibilities to members of the team - the suitability of the contract price to the Government always remains the responsibility of the contracting officer.

The Government contracting officer may perform his own price analysis on smaller, less complex procurements, and by coordination with audit and technical personnel may perform his own cost analysis on the smaller procurement actions. In other situations, a price analyst assigned in the contracting officer's activity or an analyst in a field contract administration activity may perform the price analysis.

5. Audit will participate in the cost analysis of procurement actions exceeding \$100,000 when the price is negotiated on the basis of cost or pricing data submitted by the contractor. ASPR 3-801.5 covers the requirement to secure supporting information when it is not readily available.

The contract auditor from the Defense Contract Audit Agency (DCAA) is an important member of the contracting officer's team. The auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs. The auditor reports any denial by the contractor of access to records or cost or pricing data which the auditor considers essential to the preparation of a satisfactory report. If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, he states this in the audit report and concurrently makes it known to the contractor so that the contractor may have the opportunity of presenting his views to the contracting officer. When the contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he assures that necessary corrective action is initiated prior to the award of the contract.

The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved. Only the auditor has general access to the books and financial records for this purpose. This does not preclude the contracting officer or his technical representative from requesting any data from, or reviewing records of, the contractor (such as lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities.

6. The role of the auditor is significant in the whole procurement process - not confined to cost analysis and final contract audits.

The largest single contract audit service is the Defense Contract Audit Agency (DCAA). It is separate from and organizationally independent of procurement and contract administration. Audit reports, however, by DCAA are for the most part advisory. The DCAA Manual states that "audit reports and other services...as such must be responsive to the needs of procurement."

The Defense Contract Audit Agency was established in July 1965. It performs contract audit for several civilian agencies on a cost reimbursement basis, but all Departments have certain types and certain depths of both internal audit and operational audit. The DCAA also provides certain assistance to the General Accounting Office audit divisions on certain procurement matters.

The audit function may be of considerable assistance to small firms as well as the contracting officer. An objective audit may save the small firm from a loss or failure by assuring that contractor costs proposed represent all costs required - the auditor's special audits in connection with certain pre-award surveys may be a major instrument in protecting both the interests of the contractor and the interests of the Government.

D. PROFIT

1. Profit has been overemphasized. Price has been underemphasized. Profit has not been defined clearly, yet over the years profit has received more attention than cost.

As to a definition of profit, your definition and the definition by another are probably quite different. By many, profit is defined as an advantage, financial or otherwise. The Tax Court in 1968 defined profit in part as a payment to the entrepreneur for the productive use of assets. This specifically referred to annual return on Government contracts, with strong consideration of return on investment.

What are the limits on profits? The profit barrier, based on a percentage of cost has been in a range between ten and fifteen percent. Public opinion has been the social mechanism which has maintained the profit boundary. When the profit boundary has been defined in terms of return on investment, public opinion plays a smaller role because of lack of public knowledge and understanding in this area. Retained profit margins on capital and net worth have been considered reasonable in a wide range between 30 to 65 percent, but a midpoint of 42 percent return cannot be picked automatically as reasonable or as a nominal barrier because the amounts and sources of all capital and net worth employed in particular periods must be considered on a case-by-case basis.

2. Historically, there have been no uniform Government-wide guidelines for establishing profit objectives. For many years the pricing policies of the Procurement Regulations have stated that it is the policy of the Government to use the profit motive to encourage economies and effectiveness. Policy statements have also declared that it is the policy of the Government to provide contractual opportunities for contractors to earn higher profits (with emphasis on the word "earn"). The Government's stated objective has been to insure that outstandingly effective and economical performance is met by higher profits. Profit policy is thus an integral part of the pricing and contract type policies. In DOD and now in a few of the emerging agencies, the profit policy is implemented, in the absence of competition, by the use of the weighted guidelines. NASA does not officially use the weighted guidelines in developing profit objectives.

3. In practice, the weighted guidelines method is a discipline to assure that individual factors are rewarded or penalized in a formula which recognizes the contractor's input to performance. Simply stated, the weighted guidelines are designed to reward contractors with higher profit opportunities when they take on more difficult tasks that require higher skills, when they provide significant subcontract assistance, when they accept higher risk contracts, and when they rely on their own facilities, and when they make special achievements and have a record of exceptional performance. In use of the technique, the contractors' direct and indirect expenses are weighted with varying ranges of profit objectives assigned to material costs (purchased parts, subcontracted items, and raw material), engineering labor, overhead, manufacturing labor and overhead, and G & A expenses. A weighting is also applied for the type of contract, the reasonableness of estimates, and the difficulty of the task, and plus and minus factors are assigned for performance history, source of resources, and an added profit factor to offset revised financing policies which may result in additional contractor investment.

The profit factors to be considered by the contracting officer in developing his profit negotiation objective and the range of weights assigned to the factors are shown in Figure 7 on the next page.

The weighted guidelines may appear at first to be an automatic formula method of arriving at a profit objective, but it is a discipline which requires the contracting officer to apply judgement to the contractor's input in every cost element. The small business firm is referred to ASPR 3-805.5 for a complete description of the instructions to contracting officers for assignment of weighted values to specific factors in the Weighted Guidelines method.

4. A rule of thumb that cost plus a ten percent profit equals the price is not necessarily a good rule. It was stated earlier that in the open market, estimated costs plus estimated profit are not the only pricing criteria. Also, profit may be considered but in some cases may not be negotiated as a separate element of the price - a technique known as negotiation on a total price basis. Naturally, the competitive market place determines the profit in IFB procurements, but profit will be considered in negotiated procurements.

5. Incentive contracts, which will be discussed in Chapter VI of this Manual, provide for a variable rate of profit or fee depending on the degree of the contractor's achievement of certain performance or cost goals. The terms fixed fees or minimum fees are used in connection with certain cost reimbursement type contracts, and the term profit is used in connection with fixed price type contracts.

E. RENEGOTIATION

1. The contract which the small minority-owned firm may receive from the Government will probably contain the Renegotiation clause or have the Renegotiation clause incorporated by reference. The ASPR clause for renegotiation is found in ASPR 7-103.13(a).

The Renegotiation Act subjects to renegotiation, the profits from certain sales to the Government of contracts having a direct and immediate relationship to national defense. Thus, DOD, NASA, certain GSA, FAA, and AEC contracts are subject to the Act.

Renegotiation originated in World War II. The present Act of 1951 as amended stems from the Renegotiation Act of 1942 and 1943, and it has received several temporary extensions to the present time (Latest extension expires 12/31/75 unless further extended). Several amendments have been made in Renegotiation, eliminating certain sales and raising the floor for the amount of sales which determines those contractors subject to the Act. Very small businesses will not do the volume of

FIGURE 7

WEIGHTED GUIDELINES FOR PROFIT

| Profit Factors | Weight Ranges |
|--|------------------|
| CONTRACTOR'S INPUT TO TOTAL PERFORMANCE | |
| Direct Materials | |
| Purchased Parts..... | 1 to 4% |
| Subcontracted Items. | 1 to 5% |
| Other Materials..... | 1 to 4% |
| Engineering Labor..... | 9 to 15% |
| Engineering Overhead..... | 6 to 9% |
| Manufacturing Labor..... | 5 to 9% |
| Manufacturing Overhead..... | 4 to 7% |
| General and Administrative Expenses..... | 6 to 8% |
| CONTRACTOR'S ASSUMPTION OF CONTRACT | |
| COST RISK..... | 0 to 7% |
| Type of Contract | |
| Reasonableness of Cost Estimate | |
| Difficulty of Contract Task | |
| RECORD OF CONTRACTOR'S PERFORMANCE..... | -2 to +2% |
| Small Business Participation | |
| Management | |
| Cost Efficiency | |
| Reliability of Cost Estimates | |
| Value Engineering Accomplishments | |
| Timely Deliveries | |
| Quality of Product | |
| Inventive and Developmental Contributions | |
| Labor Surplus Area Participation | |
| SELECTED FACTORS..... | -2 to +2 |
| Source of Resources | |
| Government or Contractor Source of | |
| Financial and Material Resources. | |
| Special Achievement | |
| Other | |
| SPECIAL PROFIT CONSIDERATION - See 3-808.6 | |

sales which would make their profits subject to Renegotiation; however, many larger "small business" firms are subject to Renegotiation.

The Act also applies to subcontracts which are not under prime contracts subject to exemption.

2. The general coverage of the Act applies to contractors with the previously named Departments having their fiscal year sales (receipts) in excess of the current statutory "floor" of \$1 million. The coverage provides for several exemptions, including: sale of office supplies (as distinguished from office furniture and equipment), certain building maintenance and repair, laundry and cleaning services, goods purchased for authorized resale (sales to military exchanges for example,) and the largest class of sales exempted by the Act is the sale of Standard Commercial Articles or Services (as defined by the Act).

3. Opponents of the renegotiation law have questioned the reason for its existence when other procurement regulations are intended to control excessive profits before-the-fact; however, the Renegotiation Board points to the impressive total of determinations of excessive profits amounting to more than \$1 billion since 1951. The Board recently reported that its 1974 excessive profits recovery was the best for any previous period since 1958 and amounted to more than \$70 million recovered in 1974. The FY 1958 figure was \$112.7 million.

The forum for the contractors to appeal renegotiation cases is now the U. S. Court of Claims - prior to the present appeal procedures, appeals were handled in the Tax Court.

The Act mentions certain favorable considerations for small businesses in determinations concerning excessive profits.

Renegotiation is after-the-fact, and does not consider the statutory limitations of 10 U.S.C. 2306(d) which apply to fixed fees under cost reimbursable contracts (15% on R&D and 10% on supply contracts). Renegotiation in addition to profit considered as a percentage of cost or sales also looks at profit as a return on investment and return on capital employed.

4. With all of the safeguards established through audit programs, prenegotiation and post-negotiation reviews and approvals, advanced analyses techniques, training in cost analysis, upgrading of organizations and personnel, and implementations of countless study recommendations, higher than reasonable profits are still found in individual contracts and still found plant-wide in certain contractor's shops.

There has been a conscious effort to avoid "painful" profits since the days of the Civil War when profiteering rates up to 300 percent were

realized. The behavioral influences on corporate and individual contracting practices generally operate within boundaries which define reasonable profits. Dr. David McClelland in 1961 in "The Achievement Motive" stated that public opinion admittedly and consciously plays a part in the social control of contract profits. He said that reliance on public opinion is our social mechanism which tends to supply and enforce market morality.

The Congressional actions which have continued and extended the Renegotiation Act have reflected public opinion concerning the need for protection from excessive profits. The Renegotiation Board in FY 1971 made 149 determinations of excessive profits totaling over \$65 million which was double the FY 70 figure (itself 50 percent higher than FY 69). It is important to note too that renegotiation losses reached \$700 million in FY 71 compared to \$461 million in FY 70. Of the loss total, 69 percent came from Firm Fixed Price contracts and 17 percent from Fixed Price Incentive contracts. Thus, there may be a clustering of profit objectives, but there is a wide range of realized profits.

As long as there are examples of excessive profits, there remains the absolute requirement to evaluate the factors which effect profits and affect objectives, and there remains the absolute need to guard against significant excessive profits, recognizing that certain excessive profits are not preplanned but may be "windfall profits" or unintentional in the same way that most losses are unintentional.

CHAPTER VI

TYPES OF CONTRACTS

A. NEED FOR DIFFERENT CONTRACT TYPES

1. Fixed price contracting is the preferred method of contracting, and fixed price is compatible with formal advertising and competitive procedures. Cost reimbursement type contracts are appropriate where a high degree of technical or cost uncertainty exists.

A contract type other than fixed price may be necessary because of the need for special terms and conditions, special clauses, or where an unusual degree of risk is shifted to the contractor and over which he has no control. A variety of contract types provides the flexibility needed to buy a large variety and volume of supplies and services.

The pricing manual, ASPM. No. 1, Chapter 2, states, "The best, most realistic and reasonable price in the world may turn sour if the contract type is wrong."

2. Effective pricing and sound procurement require discrimination in selecting and negotiating the right contract type. Firms know that the IFB will result in a fixed price contract. The RFP will specify, generally the preferred contract type, although the suggested type may be changed in fact-finding and negotiation.

The degree of detail in the specifications as well as the feasibility of measurement of performance are often requirements to be considered in the selection of contract type.

The "real world" complexity of the item to be procured, the stability of design, the time frame of different phases of the development and production, and the funding availability are additional considerations in selection of contract types.

3. The selection of contract type is not a substitute for sound cost estimating. A cost estimate for one type is an estimate for another contract type - the price varies because of additional considerations of known contingencies and unknown contingencies (sometimes they were called unk-unks). Risk and technical uncertainty and cost uncertainty all bear on selection of contract type.

4. The type of contract resulting from an RFP is a subject for negotiation unless a firm fixed price contract is specified as a condition of the RFP solicitation.

B. SPECTRUM OF CONTRACT TYPES

1. The small minority-owned firm generally will be dealing with firm fixed price (FFP) contracts, but there is a broad spectrum of contract types available. Figure 8 on the next page describes the contract types which are available and most often used.

a. The most commonly used type is the firm fixed price contract.

Fixed price types include Firm Fixed Price (FFP), Fixed Price with Economic Price Adjustment, Fixed Price Incentive (FPI), with firm target costs or with successive targets, Fixed Price Redetermination (FPR), and Firm Fixed Price Level of Effort contracts.

b. At the other end of the contract spectrum are the cost reimbursement type contracts. The most commonly used cost reimbursement type is the cost plus fixed fee contract.

The reimbursable types include Cost Plus Fixed Fee (CPFF), Cost Plus Award Fee (CPAF), Cost Plus Incentive Fee (CPIF), Cost contracts, and Cost Sharing contracts.

2. The respective contract types vary as to the degree and timing of responsibility assumed by the contractor, the degree of cost responsibility assumed by the contractor or the Government, and the risk to each. All responsibility for cost of performance is assumed by the contractor in the firm fixed price contract and cost responsibility is minimal or even nonexistent in the cost plus fixed fee contract.

Cost plus a percentage of cost prime contracts or subcontracts are not authorized.

C. ELEMENTS OF BASIC CONTRACT TYPES

1. The following elements appear in each of the basic contract types.

a. Firm Fixed Price
contains: Scope of Work/Schedule
 Terms and Conditions
 Price

b. Cost Plus Fixed Fee
contains: Scope of Work
 Schedule
 Terms and Conditions
 Estimated Cost
 Fixed Fee

FIGURE 8

RANGE OF CONTRACT TYPES, WITH THEIR THEORETICAL
ADVANTAGES AND DISADVANTAGES

| Contract type | Application | Advantages to contractor | Disadvantages to contractor |
|--|---|---|---|
| Firm-fixed price | <ul style="list-style-type: none"> -Where fair and reasonable price can be established at outset. -Where there are: reasonably definite design or performance specifications. | <ul style="list-style-type: none"> -Potential for higher profit -Minimum government control. -Less administrative costs | <ul style="list-style-type: none"> -Total assumption of financial and technical risks. -Requires vigilance to institute change claims. |
| Fixed-price with economic price adjustment | <ul style="list-style-type: none"> -Where market or labor conditions are unstable over extended production period. -Where contingencies must be identified and covered separately | <ul style="list-style-type: none"> -Spreads risk on certain specified direct costs. | <ul style="list-style-type: none"> -Contains absolute ceiling. -Escalation limited to industrywide contingencies |
| Fixed-price incentive | <ul style="list-style-type: none"> -Where cost uncertainties exist and there is possibility of cost reduction and performance improvements by giving contractor a positive profit incentive. | <ul style="list-style-type: none"> -Potential for higher profit for higher risk. -Rewards good management. | <ul style="list-style-type: none"> -Price ceiling. -Government verification of costs. -Complex negotiations. |
| Cost plus incentive-fee | <ul style="list-style-type: none"> -For development and test when formula can provide incentive for effective management. -Performance incentive may be used. | <ul style="list-style-type: none"> -Limited risk. -Possibility of increased fee. -Assures recovering costs. -Rewards good management. | <ul style="list-style-type: none"> -Absolute limit on fee. -Disallowance of certain normal business costs. -Government engagement. -Complexity of negotiations. |
| Cost plus fixed-fee | <ul style="list-style-type: none"> -Where performance is uncertain and accurate cost estimates are impossible. | <ul style="list-style-type: none"> -Low risk. -Risk of loss of government property transferred. | <ul style="list-style-type: none"> -Maximum controls. -Lower fees because of lower risks. |

c. Incentive Contracts

Fixed

Price Incentive

contains: Scope of Work
Schedule
Terms and Conditions
Special Clauses
Target Cost
Target Profit
Ceiling Price
Sharing Ratio (Formula for profit)

Cost Plus Incentive Fee

contains: Scope of Work
Schedule
Terms and Conditions
Special Clauses
Target Cost
Target Fee
Minimum Fee
Maximum Fee
Sharing Ratio (Formula for fee)

Cost Plus Award Fee

contains: Scope of Work
Schedule
Terms and Conditions
Estimated Cost
A Base Fee (a fixed amount which does not vary
with performance)
An Award Fee (determined after subjective
evaluation)
Award Fee Evaluation Criteria
Fee Payment Plan

2. The firm fixed price contract is particularly suitable in the purchase of standard or modified commercial items, or for items peculiar to Government requirements where firm specifications exist for which sound prices can be developed. The FFP contract is appropriate where performance has already been demonstrated and where technical and cost uncertainty is low. There is some uncertainty in the pricing of any contract, but in the FFP contract there is a reasonable basis for firm pricing.

The cost plus fixed fee contract is appropriate where a "level of effort" is required or where high technical or cost uncertainty exists. In a CPFF contract, the Government agrees to pay the contractor a fixed

amount of dollars above the cost as a fee (profit) for performance of the work or service. CPFF contracts may provide for a level of effort or require completion. In the latter case, the Government may choose to continue funding of costs, but the fee will not be increased and the contractor is obligated to continue until completion. The contractor must have an acceptable accounting system and practices under the CPFF contract.

The incentive type contracts include the formula types such as FPI and CPIF and the after-the-fact subjective evaluation type known as the CPAF. Incentive type contracts were designed to improve performance and control or reduce costs. Basically, the incentives are used to control cost growth, but the cost formula is sometimes used in conjunction with performance formulas. Incentive types are used in the larger, complex contracting situations and the newer small business firms generally will not be involved. The incentives all require a major amount of contract administration on the part of both the contractor and the Government.

The CPAF contract provides that the contractor's variable fee will be determined subjectively by designated Government personnel on the basis of periodic, after-the-fact evaluations of the contractor's performance. The award fee process is a unilateral determination made by the Government's Fee Determination Official for the contract. It has been suggested that the CPAF contract should not be used in cases less than one million dollars in estimated amount because of the administrative cost and time associated with the contract. The contract has been used by DOD and NASA since 1962 and recently used by certain civilian agencies including Housing, and Transportation.

For additional material concerning incentive contracts, the small business firm is referred to the DOD/NASA 1969 Incentive Contracting Guide and the NASA 1967 Cost Plus Award Fee Guide which were prepared by the writer of this Manual. Additional information concerning all contract types and agreements is contained in ASPR, Section III, Part 4 and in Chapter 2 of the Armed Services Procurement Regulation Manual for Contract Pricing, ASPM No. 1.

CHAPTER VII

CONTRACT ADMINISTRATION

A. CONTRACT ADMINISTRATION FUNCTIONS

1. After contract award, the contractor is responsible for complying with all requirements contained in the contract and in accordance with instructions and specifications in the contract or incorporated by reference.

The small minority contractor is cautioned not to act on any orders, statements or directions of any person not assigned as the authorized contracting officer or his authorized representative. The contracting officer authorized to issue a written change order under the changes clause of the contract will be named in the contract. The assigned contracting officer may be the Procuring Contracting Officer (PCO) or the Administrative Contracting Officer (ACO) acting within their authority for the functions assigned. Small business firms must recognize that the contractor does not have a contractual basis for an equitable adjustment of the contract price or delivery schedule unless a Contract Change has been issued in writing and signed by the authorized contracting officer.

2. The major contract administration functions in the majority of contracts will be Inspection and Acceptance by the Government. The contract will contain information informing the firm about the place for inspection and the place for acceptance, and the name of the activity or organizations performing these services.

3. The major administrative function to be performed by the contractor in most contracts will be to notify the contracting officer if the firm encounters difficulty in meeting performance requirements or if difficulty is anticipated in complying with the delivery schedule or date. Timely notification is important if trouble is anticipated because the contracting officer or his representative or the SBA may be able to provide guidance or management assistance to overcome the difficulty.

4. It is DOD policy (ASPR 1-802) to conduct a post award orientation conference for new contractors, if the contractor may not have a clear understanding of the scope of the contract or the technical requirements, or obligations. The relatively new minority-owned firm or an experienced firm dealing with a different procurement and administration office should request an orientation conference with the office responsible for Government contract administration if

there are any significant questions requiring clarification or resolution before production or performance begins.

It is essential that the contractor understand its obligations before performance is initiated - mistakes may be costly for both the firm and the Government which may be depending on a reasonably tight delivery schedule. Any of the following matters may be the subject for discussions immediately after award:

- Special contractual provisions
- Clarification of specifications and other work requirements
- Production planning
- Furnishing and control of Government property
- Billing and payment procedures
- Reporting requirements
- Processing of engineering changes and change orders
- Quality control and testing requirements
- Provisioning requirements
- Packaging and shipping
- Subcontract consent
- Prime contractor responsibility for subcontracts
- Allowability of cost determinations
- Value engineering
- Security requirements
- Progress target dates

5. If the small minority-owned firm is operating as a subcontractor under a Government prime contract, the prime contractor will be responsible for conducting any necessary post award orientation conferences if there are questions concerning obligations under the purchase order or subcontract. The small business firm must recognize that the Government does not have privity of contract between the Government and the subcontractor and will not give commitments or directions concerning the subcontract (except in the relatively few cases where the contract administration may have been assigned to the Government for certain functions, such as inspection).

B. PCO/ACO RESPONSIBILITIES

1. The Procuring Contracting Officer (PCO) is the contracting officer assigned responsibility for making the procurement. The Administrative Contracting Officer (ACO) is the contracting officer assigned responsibility for administering any resulting contract. The ACO may be working as a PCO in certain situations such as buying spare parts or the pricing of contract changes.

The contract will advise the firm of the activity and name of the person responsible for the administrative matters of the contract.

The small minority-owned firm is cautioned again to follow the instructions of the contract and cautioned not to rely on verbal instructions which may be provided by some person that appears to be operating within the scope of his authority;

Warning. No understanding or agreement, contract modification, change order or other matters deviating from the terms of the contract will be effective or binding upon the Government unless formalized by contractual documents executed by the Contracting Officer (either PCO or ACO).

2. Administration is performed differently by the various Departments and agencies. The PCO/ACO organizations and relationships are almost unique to DOD and NASA, and to a certain extent for AEC; however, some of the newer agencies are beginning to perform certain administrative functions through field offices. In most contracts, field contract administration will be assigned to an ACO in DOD, but for certain reasons (such as work performed on a military installation), the administration may be retained by the purchasing office.

3. There are about 69 normal administration functions, some of which may be appropriate for certain contracts and assigned for field administration. Some of these functions include the following, when appropriate or required by the contract:

- Negotiate provisional, interim, and final overhead rates.
- Determine the allowability of costs suspended or disapproved by audit when the contractor has appealed.
- Perform property administration for Government furnished property or equipment.
- Perform preaward surveys and conduct post award orientations.
- Assist in classification of waivers and deviations.
- Monitor Value Engineering programs.
- Evaluate and monitor contractor's reliability and maintainability programs.
- Perform procurement quality assurance.
- Make payments on assigned contracts.
- Provide advice on priorities and allocations responsibilities.
- Review and approve or disapprove contractor's requests for progress payments under the contract clause.
- Monitor contractor's financial condition and advise the procuring contracting officer when contract performance is jeopardized thereby.
- Assure contractor's compliance with small business, labor surplus area, and minority business enterprises mandatory subcontracting programs; conducting, on an as-required basis, small business and labor surplus area set-aside surveillance; and providing advice to small business, labor surplus area concerns, and minority business enterprises;

In DOD contracts, all of the applicable 69 administrative functions contained in ASPR 1-406 will automatically be performed for the PCO by the ACO in the assigned component responsible for administration.

C. DEFENSE CONTRACT ADMINISTRATION SERVICES

1. Management of contracts for the Army, Navy, Air Force, DSA the National Aeronautics and Space Administration, other Federal and State agencies, and, when authorized, for foreign governments, is one of the most important services provided by the Defense Supply Agency.

Defense Contract Administration Services (DCAS) was organized within DSA in 1965 to perform this function. Prior to that time each Military Service administered its own contracts.

Contract administration is a technical and administrative service in support of buying activities. It is performed at or near contractor plants to facilitate contract performance and to assure compliance with the terms and conditions of Government contracts.

Buying offices of the Military Departments are authorized to retain, in whole or in part, the administration of certain special categories of contracts which ordinarily involve no field administration, or which are of such an unusual nature as to require the attention of the buying office (architect-engineer contracts, stevedoring contracts, and contracts for installation of equipment at military facilities).

DCAS consists of a staff element at Headquarters, DSA, and 11 Regions nationwide. It is managed by military and civilian career personnel, including specialists in the fields of accounting, data and financial management, business law, business administration, contract management, property management, quality control, many phases of engineering, transportation, packaging, industrial labor relations, industrial security, and equal employment opportunity.

2. The huge scope of the DCAS administrative workload can be viewed in the context of number and value of contracts administered. At the end of Fiscal Year 1972, DCAS was administering about 166,400 contracts valued at over \$48 billion, and DCAS in that year inspected and released for shipment materiel valued at about \$15 billion.

3. It is NASA policy to make optimum use of the DCAS. Like the ASPR, Section XX covering Administrative Matters, the NASA PR Part 51 covers contract administration and management matters. DCAS provides substantial support of NASA's programs. In Fiscal Year, DCAS spent 687,000 manhours in the administration of NASA contracts - much of this support was in review of quality and reliability programs of contractors and major subcontractors for NASA.

D. INDUSTRIAL SECURITY

1. New firms must request the procurement activity to initiate a request to the Defense Supply Agency's Industrial Security Office to determine the eligibility of the firm's facility for a Department of Defense clearance before the firm can propose or receive an award involving material and information which is classified. The firm's facility must be capable of safeguarding classified information and certain key personnel must be eligible to be cleared for access to classified information.

DSA maintains the industrial security program of the Department of Defense to insure effective protection of classified information, including foreign classified information, in the hands of contractors. Security clearance of contractor personnel has been centralized in the Defense Industrial Security Clearance Office (DISCO) in Columbus, Ohio. On a nationally centralized basis, DISCO determines eligibility of contractor personnel for access to U. S. and foreign classified information; maintains records of these determinations and the legal documentation used to establish the eligibility of industrial plants and other facilities for handling of classified information; processes visit requests involving NATO and foreign classified information. Regional offices and District offices perform the inspection visits, and representatives of the District offices will answer any questions the new firm may have concerning the providing of information necessary for review and the processing of a security clearance.

Procedures required to safeguard classified defense information to which U. S. contractors, subcontractors, vendors, or suppliers will possess or have access to are set forth in the Department of Defense Industrial Security Regulation (DOD 5220.22-R), and its companion publication, the Department of Defense Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22-M).

2. Contractors will be able to respond to the majority of IFB's and RFP's without clearance, but security clearance will be required by certain solicitations before specifications or drawings may be released. In other cases, the solicitations may not be classified but the ability to secure clearance and the final security clearance of personnel may be required before award (certain guard service contracts, for example).

Security clearance should not be requested just because it might be something nice to possess. The clearance process is expensive for the Government, and it may entail certain expenses on the part of the contractor in order to have facilities adequate for safeguarding material and the retention of classified information. The contractor will be required to have Standard Practice Procedures developed for information for its employees in safeguarding

classified material and an operating system covering visitor control, emergency procedures, reports, documentation control, etc. The scope of the security clearance actions is also large - in 1971, DISCO completed 581,481 clearance actions and completed 632,743 in 1972. Thus, the "nice to have" feature should be reviewed and only necessary clearances should be requested.

E. TERMINATIONS AND DISPUTES

1. The best time to consider all aspects of contract administration is before the award and in fact, before a bid or proposal is submitted. The contractor should be certain of his ability to perform in accordance with the requirements of the basic specification and all referenced specifications and in accordance with the terms and conditions.

2. Although there is good performance, the contract may be terminated for the convenience of the Government; when performance is not satisfactory, the contract may be terminated because of the default of the contractor. These guidelines will summarize the highlights of regulations dealing with Termination for Convenience, Termination for Default, and Disputes procedures. The guidelines should not be considered as all inclusive and the contractors should avail themselves of all available information concerning decisions of the Courts and GAO relating to the subjects. If potential problems arise, contractors should discuss questions with the contracting officer - if suppliers employ legal counsel, the questions should be discussed with counsel. First, however, the potential contractor should understand the termination and the default clauses of the contract as referenced in the solicitations. ASPR, Section VIII provides Termination information.

a. The ASPR clause 7-103.21 provides that the contract may be terminated in whole or in part when the termination is determined to be in the best interest of the Government. The clause provides instructions for stopping work, terminating subcontracts and purchase orders, settling outstanding claims with the approval of the contracting officer, and submitting a termination claim with a reasonable allowance for profit on work done. If there is not agreement on the costs and profit determined by the contracting officer, the contractor has the right of appeal under the clause of the contract entitled "Disputes". The appeal procedure is not applicable if the claim is not submitted timely in accordance with paragraph (c) of the termination clause.

b. Terminations of any kind are disruptive for both the contractor and the Government; however, fair and reasonable recovery is available under terminations for convenience - but recovery under

terminations for default is not available, and extra costs may be charged by the Government under certain conditions.

It is part of the Government contracting officer's normal duties to maintain a constant review of the performance of suppliers with whom contracts are placed. When nonconformance with specifications or contract requirements is discovered, the contracting officer will attempt to work out an acceptable solution with the supplier. When this cannot be done, it is often necessary to terminate the supplier's right to deliver under the contract and obtain a different supplier. If the contract with the new supplier involves a higher cost, the original supplier can be held liable for the difference.

The Default clause in ASPR for fixed price supply contracts is quoted in part below. The small business firm should refer to the entire clause for conditions concerning additional liabilities or excusable causes and other terms and conditions. Excerpts of ASPR 7-103.11 are quoted as follows:

"7-103.11 Default.
DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- (i) if the Contractor fails to make delivery of the supplies or to perform the services within the time limit specified herein or any extension thereof; or
- (ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause..."

Most disputes concerning a contracting officer's actions are settled by agreement, without going through Disputes and Appeals procedures. Again, the contractor should be aware of the history of certain decisions concerning disputes by the various Boards of Contract Appeals, and the contractor should consult with his legal counsel, if one is available, concerning the appeals procedures following a Disputes determination. Small business firms must remember to file appeals in a timely manner - within thirty days.

The Disputes Clause in ASPR 7-103.12 is quoted as follows:

"DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law."

Businessmen should not feel that the Government's requirement for conformance to contract and specification provisions is unfair. Conformance is required in order to maintain the integrity of the contracting process, to be fair to all, and because public funds are involved (and because the Regulations have the force and effect of law). Small firms are cautioned that the disputes and appeals procedures may consume a considerable amount of time, because of the complexity of certain cases, and because of the back-log of cases.

Small firms are referred to Appendix A of the ASPR, pages A:1 through A:13 for additional information concerning the Armed Services Board of Contract Appeals and the Board's charter and procedures. Procedures for correspondence, pleadings, records, hearings, representation, decisions and motions and dismissals are similar for Boards for other Departments. Firms also are referred to ASPR 1-314, Disputes and Appeals, for additional information directed in the regulations to the contracting officer's procedures under the Disputes clause.

F. SPECIFICATIONS AND STANDARDS

1. A Federal Stock Number is a number which identifies a specific item stocked in the Federal Supply System. The Federal Catalog System established one name, one stock number, and description for each item of supply in the Federal Government. The GSA Stock Catalog lists the Federal Stock Numbers for the items in the GSA stock program.

Single copies of Federal Specifications and Standards referenced in invitations to bid may be obtained from any Regional GSA Business Service Center (except Region 3, headquartered in Washington, D.C.) without charge when required for bidding purposes. Region 3 requirements will be obtained from Special Programs Division, Specifications Activity, Building 197, Washington Navy Yard Annex, Washington, D.C. 20407 (phone 202/963-3177). If copies are required for other than bidding purposes, they must be purchased from the Special Programs Division.

The General Services Administration's "Guide to Federal Specifications and Standards" describes the various types of Government specifications, their purpose, methods of use and ordering procedures. Copies of this booklet are available without charge from GSA Business Service Centers.

To identify and keep informed about specifications, write to the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and ask for Index of Specifications and Standards and Department of Defense Index of Specifications and Standards. Both of these documents are available at current subscription rates.

The Index of Federal Specifications and Standards and the Department of Defense Index of Specifications and Standards indicate those items that are on qualified products lists (QPL's).

2. A Department of Defense Single Stock Point for specifications and standards (unclassified) has been established at:

Naval Publications and Forms Center
5801 Tabor Avenue
Philadelphia, PA. 19120

Specifications and standards are issued to private industry for bidding and contract performance purposes on an "as ordered basis" without charge by the Publications and Forms Center (although solicitations shall be accompanied with the applicable specifications and drawings or other pertinent documents which may incorporate certain standards and specifications by reference).

When specifications are needed, a request can be initiated by telephone, telegraph, mail in any form, or bearer. However, it is preferred that private industry use a simplified order form DD Form 1425, which includes a self-addressed label. Once a customer orders specifications and standards, he will automatically be provided by NPFC with sufficient blank forms to continually reorder in the preferred manner. All types of requests should be submitted in the following manner.

- Indicate complete mailing address (including zip code) and invitation-for-bid or contract number, where applicable.

- Indicate quantity of each document desired. Maximum issue: ten each (no exception).

- List each desired specification or standard by document symbol as recorded in the DODISS.

- List Federal Specifications in alphabetical order. List all others in numerical order. The following sequence of categories of material is preferred: Military Specifications, Military Standards, Federal Specifications & Standards, QPL's, etc.

- Limit the number of line items ordered on each request to five or less.

A sample DD Form 1425 is shown on page number 125 as Figure 9.

In emergency, telephone requests may be made as follows:

- To submit a request by telephone, call AREA CODE 215, 697-3321. (Naval Publications & Forms Center). For special inquiries, call (215) 697-2179.

- Duty Hours: 8 a.m. to 4:30 p.m. - Monday thru Friday (Philadelphia time).

- Off Duty telephone requests are serviced by automatic answering service seven days a week.

- Customer requests are generally filled within 16 working hours provided the material is on the shelf.

- Do not submit requests listing Federal stock numbers only. NPFC cannot cross-reference Federal stock numbers to applicable specification numbers. NPFC Philadelphia does not maintain a file of Invitations For Bid, Requests for Quotes, contracts etc., so each individual document must be listed by document number when requested from NPFC.

FIGURE 9

NAVAL PUBLICATIONS AND FORMS CENTER
 5801 TABOR AVENUE
 PHILADELPHIA, PA. 19120
 OFFICIAL BUSINESS
 PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
 DEPARTMENT OF DEFENSE
 DOD-316



REQUISITION NUMBER (For Local Convenience) _____

| | |
|---|---|
| Please self-address the above label. Forward this form to the address shown herein. A window envelope may be used. Your request submitted on this form will speed service. Reorder forms will be enclosed with each shipment. | |
| SPECIFICATIONS AND STANDARDS REQUISITION | WBS, RFQ OR RFP CLOSING DATE |
| Send _____ copies of the below listed documents which are listed in the DOD Index of Specifications and Standards. | |
| STANDARDIZATION DOCUMENT SYMBOL | TITLE (From DOD Index of Specifications and Standards) |
| | |
| SIGNATURE | DATE |

TO: COMMANDING OFFICER
 NAVAL PUBLICATIONS AND FORMS CENTER
 5801 TABOR AVENUE
 PHILADELPHIA, PA. 19120

D-14705

DD FORM 1425
 1 OCT 72

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.
 S/N 0102-014-1701

-Industry standards should be ordered from the preparing technical societies, not NPFC Philadelphia.

The Department of Defense Index of Specifications and Standards (DODISS) is prepared at NPFC and is published in three parts annually with bi-monthly supplements.

The three parts are the alphabetic listing (Part I), the numeric listing (Part II), and the Federal Supply Classification Listing of the following unclassified documents:

| | |
|--|--|
| Military Specifications | Military Standards |
| Federal Specifications | Federal Standards |
| Qualified Products Lists | Industry Documents |
| Military Handbooks | Air Force-Navy Aeronautical Standards |
| Air Force-Navy Aeronautical Design Standards | Air Force-Navy Aeronautical Specifications |
| U.S. Air Force Specifications | Other Departmental Documents |
| Air Force-Navy Aeronautical Bulletins | U.S. Air Force Specification Bulletins |

Parts I and II of the DODISS are available to private industry on request from the Superintendent of Documents, Government Printing Office, \$34.00 per year (\$8.50 additional for foreign mailing). The Federal Supply Classification Listing is available from the Superintendent of Documents at a subscription rate of \$14.00 per year (\$3.50 additional for foreign mailing). Both subscriptions include the basic index and the cumulative bi-monthly supplements for each part as they are published. Charges for the DODISS will be at current subscription rates. The rates quoted above were effective as of March 1974.

3. Standards reduce to a minimum the number of qualities, sizes, colors, varieties, and types of materials and commodities being procured. Adopted as standard are those items which provide the greatest utility and economy and which are best suited to satisfy the bulk of the Government's requirements, with due regard to commercial availability, adequate quality, and other related considerations. Other types of standards involve methods of testing certain products. Engineering standards deal with design, construction, use, maintenance, and related product characteristics.

When a standard is established, the specification used in procurement of the item involved is based on the types, colors, and sizes provided by the standard. Standards have been established for

several hundred items in common use in the Government, such as desks, file cabinets, and batteries. The GSA booklet, "Guide to Specifications and Standards of the Federal Government," describes all types of Government standards, their development and use, and the benefits provided to both industry and Government. This booklet also contains information about obtaining copies of standards. The Guide is available, without charge, from GSA Business Service Centers and field offices of the Department of Commerce and Small Business Administration.

G. CONSTRUCTION

1. Policies and procedures for the administration, as well as methods of procurement and contract types, of Construction and Architect-Engineer Contracts under DOD cognizance are contained in ASPR, Section XVIII.

2. In DOD, construction means construction, alteration or repair (including dredging, excavating, and painting) of buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft or other kinds of personal property.

Construction Activity means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

3. The technical provisions of construction specifications are in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. Materials, equipment, components, or systems are described, where possible, by reference to documents generally known to industry. The documents include Federal, military, or nationally-recognized industry, and technical society specifications and standards. The standards which best represent no more and no less than the Government's minimum needs are selected for incorporation by reference into the construction specifications.

4. In administering performance under construction contracts, small minority-owned firms should direct particular attention to different completion dates for separate parts or stages of the work when the contract provides for liquidated damages for delay for each separate part or stage of the work. The cautions directed to the small business man about the need for written changes authorization in supply

contracts, and R & D contracts also apply to construction contracts. The Disputes procedure is applicable also when there is a failure to agree as to an equitable adjustment for a change.

5. Policies and procedures and instructions relating to termination of military construction contracts either through default or convenience of the Government are contained in ASPR Section XVIII, Part 6.

The administration and enforcement procedures relating to Labor Standards laws are contained in ASPR Section XVIII, Part 7.

CHAPTER VIII

EXTRACONTRACTUAL INFLUENCES

A. ACHIEVEMENT MOTIVATION

1. A small minority-owned firm will probably have motivations which may effect cost management or technical and schedule performance without the motivations being attributed to any contract condition, the price, or the profit opportunity. It has been found that any firm will probably have motivations which are extracontractual influences affecting performance under a contract.

Extracontractual influences can increase costs as well as decrease costs and may operate in a countervailing manner with specific contract parameters.

Extracontractual influences generally are considered to be planned, predetermined influences not identified by specific policies of any contractor of functional organization.

2. As pointed out in earlier contracting guides (DOD and NASA Incentive Contracting Guide, October 1969 - Chapter X, Incentive Theory, and NASA Cost Plus Award Fee Contracting Guide, August 1967 - Appendix, a Study of Contractual Theory), organizations are complex social systems.

Organizations are composed of several smaller subsystems which in turn are influenced by environments of professional, functional, and individual systems. In short, organizations are made up of people, individuals. The achievement motives of people should be understood - understood by the people and by the people who do business with them. It must be recognized by all that certain individual motives may promote deep-seated inefficiencies.

3. It has been found in extensive studies that firms do not seek to "maximize" their profit but seek to "satisfy" their profit needs in an established, technically oriented environment. In a newly established environment, the need for profit is "survival". The next phase of motivation through profit is "growth". At the same time, the return of profit is not the primary motivator. As Dr. Raymond Hunt has said, profit is a means to an end.

Because profit appears as a means, not an end, it is first an "uncertainty" reducer and second, it provides a "sense of independence".

4. Extracontractual reward factors which serve to motivate achievement have been identified and include the following:

- a. Company growth
 - New fields of business
- b. Prestige (reputation and influence)
 - Better public image
 - Social approval
 - National-Goals achievements
- c. Opportunity for follow-on business
 - Transformation to new markets
- d. Utilization of available skills and capacity
 - Survival
- e. Expectations
 - Individual goals
- f. Mastery Motive
 - Competition
 - Sense of accomplishment

The factors noted above are not ranked, and a number of conditions may cause any ranking to change.

B. ENTREPRENEURIAL GOALS

1. Goals must be challenging, but realistic. Goals which serve as extracontractual influences are the goals of individuals, and the goals of certain individuals may be the overriding goals which affect contract performance by a firm.

a. The goals and influences have been extensively studied for many years. In 1963, Dr. David C. McClelland, then Chairman of the Department of Social Relations at Harvard University, gathered together a group of behavioral and management scientists in the Harvard - MIT community. The scientists wished to apply empirical research findings in the behavioral and management sciences to the problems of economic, organizational, social, and individual development. Since that time, the group has advised and aided 25 Federal and State Government agencies, other organizations, and the United Nations in many improvement projects concerned with the effect of behavior on socio-economic conditions. The background of Dr. McClelland's research and findings have been widely reported and included in some of his books such as *The Achievement Motive*, 1953, *Talent and Society*, 1958, *The Achieving Society*, 1961, and *Motivating Economic Achievement*, 1969.

McClelland found in one research and demonstration program that entrepreneurs which (i) set challenging and achievable goals, (ii) developed detailed plans for attainment, (iii) made greater use of available resources and assistance, and (iv) developed (improved) capabilities, showed the following results as compared with groups of matched control subjects:

- exhibited more active business behavior
- made more definite attempts to start new business ventures
- started such ventures
- worked longer hours
- made more investments in new, fixed productive capital items
- employed more workers
- had relatively larger percentage increases in the gross incomes of their firms.

The above noted achievements do not include references to profit. The list of achievements implies the effective reinvestment of profit, the means to an end. Profit or a substantial part was used to make more investments in new, fixed productive capital items in order to increase gross incomes.

b. A wealth of material concerning extracontractual influences came out of a research study, "Extracontractual Influences in Government Contracting", reported by Dr. Raymond G. Hunt of the Psychology Department of the State University of New York at Buffalo in March, 1971. The writer of this Manual served as project officer for NASA for the conduct of this comprehensive study of Government-contractor relationships and the role of the contract. In 1967, NASA awarded a grant (NGR 33-015-061) to the University - Dr. Hunt served as Principal Investigator, assisted by Dr. Franklyn Perry, Jr. and Dr. Ira Rubin and a study team of psychologists, sociologists, economists, and business administrators in the lengthy study of achievement goals by industry and individuals under Government contracts. The participants serving as research subjects in the project included 1,283 representatives (845 from industry and 438 from Government).

Hunt found that:

- there are misconceptions by Government people of the motivation of contractor organizations
- persons perform above average because of self-motivation and pride, not because of external reward (profit)
- firms seek Government business in order to gain a sense of independence (through increased business), but may lose operational autonomy and become over adapted to a particular clientele (thereby losing independence)
- individuals exhibited similar characteristics to those discovered about the companies

- individuals were frustrated by the bureaucracy
- management should be cognizant of realities and approach problem solving, goal setting, and policy formulation by being aware of extracontractual influences
- growth is first in importance when viewing the uses of profit.

The research by Hunt was conducted over a three year period in the military-industrial complex environment involved in research and development contracting - whether the findings would be determined generally beyond the companies dealing with research and development contracting cannot be said, but the individuals are a mobile group, and some of the individuals will be found today serving as owners and managers of small minority-owned firms. Thus, the motivations would be changed by any of a number of conditions, such as volume of business or the relative mix of customers between Government and industry.

2. Discussions of some of the issues and uncertainties concerning motivations and influences in contracting were provided in a series of published papers prepared by the writer of this Manual in seminar remarks at Notre Dame and Ohio State University in 1967 and 1968 concerning "Blending Motivational Theory with Contractual Disciplines" and the question "Why Does Johnny Run" (why does Johnny Businessman run?).

Some of the questions by Cravens were:

- Does Johnny run harder because the medal or the prize has never been in his possession? (The new, small minority-owned businessman may want to win because he has not won before).
- Will Johnny run effectively if the goal is clearly unattainable? Certainly Johnny will not really try for a large prize for a "three-minute " mile, but conversely, Johnny will not run well if he is alone and the prize is for achieving a "five-minute" mile; the goal must be realistic, and present a challenge. (The new small businessman must review his goals).
- Does Johnny run because he wants to win - or because he is afraid to lose? (Pride is a strong motivator and influence; it should not override realism).
- Does Johnny try harder when he is running in competition? (Competition may be with the individual's achievements of yesterday and not necessarily the achievements of another).
- Does Johnny try harder when he is behind? We've heard the advertising slogan about trying harder because we're only second (again, pride is a strong motivator, and the first prize is usually larger).

a. We have sophisticated techniques and procedures for training Johnny how to run on a cinder-track - we also have business assistance programs and procedures for training Johnny Businessman how to run on the

business-track. It was mentioned earlier that McClelland found better achievements when the entrepreneurs made greater use of available resources and assistance, and Hunt found that persons perform better because of self-motivation and pride, not because of external reward (profit).

b. Survival has always been the basic energizer but "wishing will not make it so". Several motives are interrelated in the attempt to survive in contracting, and emphasis must be directed toward the correct combination of motives. Survival alone will not be enough at some point, but continuing growth will then be necessary for survival, and a certain amount of risk-taking will be necessary for growth.

c. During growth periods, the question may be asked, "Is Johnny Businessman running away from something or is he running toward something?" - and is he running toward a defined, realistic goal? Johnny, the runner, cannot run effectively unless he knows the length of the race and his position in the length of the race, because he must pace himself with interim goals toward "the" goal. The effect of Johnny's behavior may affect also the cheers and support of those on the side-lines; frustration-produced behavior and boredom - produced behavior will produce negative effects. Thus, the pace and the goals must be realistic in order to maintain the achieving motive and its effect on assistance.

3. Many contributions have been made in helping us to understand more about the individual behavioral influences and the use of motivational resources in development of contract models by such researchers as Dr. Sterling Livingston and Dr. Fred Scherer as well as Hunt and McClelland. The results of some of their studies and applications have been translated into the basis for training programs sponsored by many agencies and organizations for assistance to minority-owned businesses.

Dr. McClelland's group has conducted nation-wide demonstration programs for entrepreneurial development for the Small Business Administration and has conducted trainer training for the Office of Minority Business Enterprise and its Business Development Organizations. The Department of Commerce also has sponsored extensive research into social and economic conditions for two geographic areas in order to form the basis for additional training in entrepreneurship.

Minority-owned small businesses should help the agencies to help them; build on the basis of the research and the results to date. Use help in solving business problems, but only within realistic goals supported by your sustained desire and hard work.

MINORITY BUSINESS TRAINING GUIDE
GOVERNMENT PROCUREMENT AND CONTRACTING

APPENDIX

DEFINITIONS

(i) Allocability of Cost:

Allocability means the assignment of cost only once and on only one basis to any contract or to any cost objective. Allocation of cost includes both direct assignment and the reassignment of a share from the indirect cost pool. A cost is allocable if it is assignable or chargeable to a particular cost objective, or is incurred specifically for a contract, or can be equitably distributed to contracts in reasonable proportion to benefits received.

(ii) Allowable Cost:

Contract costs which are reasonable and otherwise proper in accordance with the cost principles of ASPR XV or FPR Part 15.

(iii) Procurement Regulation - ASPR or FPR:

A compilation of Federal procurement statutes, orders, regulations, and departmental policies that forms the basis of all procurement rules and instructions.

(iv) Ceiling:

Normally a price ceiling. The definitive contract value beyond which no obligation will exist for payment to a contractor.

(v) Change Order:

Unilateral directive issued by the contracting officer, pursuant to the "Changes" clause of the contract.

(vi) Contract:

Contract means all types of agreements and orders for the procurement of supplies and services. It also includes supplemental agreements for new work, a bilateral action.

(vii) Contract Modification:

A modification is any written alteration in the specification, delivery point, rate of delivery, contract period, quantity, or other provisions of an existing contract. It includes bilateral actions such as supplemental agreements, and unilateral actions such as change orders, notices of terminations, and the exercise of an option.

(viii) Contracting Officer:

Contracting officer means any person, civilian or military, who either by virtue of his position or by appointment in accordance with departmental or agency procedures is currently a contracting officer with the authority to enter into and administer contracts, grants, and agreements. The term also includes the authorized representative of the contracting officer acting within the assigned, written limits of his authority. Contracting officers may be Procuring Contracting Officers (PCO), Administrative (ACO), or Terminations (TCO).

(ix) Cost Plus Award Fee Contract - CPAF:

A cost reimbursement type contract with a base fee, a variable fee for performance, and criteria for the subjective after-the-fact determination of the award fee.

(x) Cost Principles:

The cost principles dictate the basis for allowability, reasonableness, and the concepts of allocability of contractors' costs under cost reimbursement contracts and for the negotiation of fixed price contracts.

(xi) Cost Plus Incentive Fee - CPIF:

A cost reimbursement type incentive contract with provision for a fee that is adjusted by formula in accordance with the relationship which total allowable costs bear to target cost.

(xii) Estimated Cost:

The term traditionally used to define the contractually agreed cost point in a cost reimbursement contract. At the start of a contract, the term "estimated cost" may equate with "target cost" (as in an incentive contract); however, if cost additions are made or if cost overruns or cost growth are recognized and funded, estimated cost means the total of all contractually recognized costs, including contractual funding of undefinitized change orders.

(xiii) Estimate to Complete:

Estimated (projected) costs that will be incurred from an established date or performance point to complete a specified statement of work or task.

(xiv) Excusable Delay:

Delay caused by reasons beyond the control and without the fault or negligence of the contractor or subcontractor.

(xv) Fee:

Compensation paid a contractor under a cost reimbursement type contract. The law and regulations establish certain maximum fees according to contract type and nature of the work. Fee may mean a fixed fee or a variable fee. In the case of fees for nonprofit organizations, fees are development or general support allowances.

(xvi) Fixed Price Incentive - FPI:

A fixed price type contract with provision for adjustment for profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost

bears to total target cost. Incentive contracts also may contain adjustments for performance elements other than cost control.

(xvii) Fund Limitations:

That funding which relates to a line item or contract scope of work in an incrementally funded contract wherein the funding is set forth by appropriate contractual modifications.

(xviii) Make-or-Buy Program:

That part of a contractor's written plan which identifies the major subsystems, assemblies, and components to be developed, manufactured, or assembled in its own facilities, or to be purchased or subcontracted from outside sources.

(xix) Negotiation:

An exception to formal advertising for bids and a bargaining technique between buyer and seller. Negotiation is any method of procurement to reach an agreement by other means than formal advertising. Negotiation means "discussion" under RFP solicitation procedures.

(xx) Nonprofit:

Any corporation, foundation, trust, or educational institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(xxi) Independent Research and Development - IR&D:

Research not specifically identified with direct contract objectives nor accounted for as a direct cost, nor identified specifically with a particular contract requirement. The groupings of IR&D projects may benefit a department or agency but are required only to encourage advancements and improvements in new areas which offer significant scientific or technological promise. IR&D is sponsored by the contractor; however, reasonable allocations of IR&D expenses may be assigned along with appropriate burden expenses to one or more

cost objectives on an equitable, consistent basis of allocation at a prenegotiated rate.

(xxii) Price Analysis:

Process of examining and evaluating a prospective price without evaluation of the separate cost elements and proposed profit of the individual contractors; as opposed to cost analysis wherein separate cost elements are analyzed. Price analysis should be used to support or supplement cost analysis.

(xxiii) Privity:

Describes the relation of right and duty that exists between the parties to a contract. For example, there is no privity of contract between the subcontractor and the Government.

(xxiv) Solicitation:

A request by the Government for a priced offer to sell; may be by an Invitation for Bids (IFB) or a Request for Proposals (RFP).

(xxv) Subcontract:

Any agreement or purchase order for performance of work or supply of any item required for the performance of a higher tier subcontract or for a prime contract.

(xxvi) Supplemental Agreement:

An entirely new contract agreement negotiated by the parties and added as a supplement to an existing contract. It is principally used to effect modifications to the contract which cannot be made under the "Changes" clause and without the consent of the contractor.

(xxvii) Target Cost:

The cost initially negotiated for an incentive contract, and as adjusted in accordance with the contract. It has the single purpose of providing a special term which denotes the dol-

lar criterion to be used for determining the allowable cost effect on target fee or target profit.

(xxviii) Target Fee:

The fee in a CPIF contract which was originally negotiated for incentivized effort on the assumption that the contract effort would be performed and delivered as stipulated in the Schedule of the contract at a cost equal to the target cost. Target profit refers to FPI contracts.

(xxix) Technical Direction:

Project guidance within the general scope of the contract which does not cause a basis for increase in cost or price, or serve as a basis for schedule changes.

(xxx) Weighted Guidelines Method - WGL:

A technique to assure consideration of the relative value of appropriate profit factors and for use in the establishment of a profit objective.

