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CHAPTER 3

TASK ORDER AWARD

3.1 OVERVIEW

After the negotiations are completed and the Negotiation Memorandum is approved, a contract document is prepared and sent to the A/E consultant for signature. After the A/E firm signs and returns the document, the CO signs the contract and forwards copies to the A/E, Finance, the COTR and the Contracting Specialist for the project. This chapter provides examples of task order forms used to issue the contract and reiterates some of the roles and responsibilities of the COTR described in [Chapter 1](#).

3.2 TASK ORDER ISSUANCE

Upon completion of the PNM, Acquisitions creates the draft task order and obtains the required contractor's signature. Acquisitions initiates the review process. After the review is completed, Acquisitions creates the task order transmittal letter and the COTR appointment letters. The CO then signs the documents. Once signed, the documents are distributed as required. (See [Exhibit 3.2-A](#) and [Exhibit 3.2-B](#).)

If the A/E contractor is a large business, it will be provided with a Subcontracting Report document that reports the category of small business subcontractors that will be used for the task. (See [Exhibit 3.2-C](#).) Note that the subcontractor reporting is transitioning to the Electronic Subcontract Reporting System (E-SRS), and Acquisitions personnel will be coordinating this transition with contractors and COTRs as appropriate.

Acquisitions then provides the COTR, Finance and the A/E contractor with copies of the executed task order.

Exhibit 3.2-A CONTRACT TASK ORDER



WESTERN FEDERAL LANDS HIGHWAY DIVISION
610 EAST FIFTH STREET
VANCOUVER, WA 98661-3801

U.S. Department
of Transportation

**Federal Highway
Administration**

May xx, 200x

In Reply Refer to:

Mr. xxxxxxxxxxxxxx
Xxxxx Firm.
Address
City, State Zip code

xxxxxtolc

Dear Mr. xxxxx:

Task Order No. 0x-xxxxx
IDIQ Contract No. DTFH70-0x-D-000xx
Project Name

Enclosed is an electronic copy of Task Order No. 0x-xxxxx under your IDIQ Contract No. DTFH70-0x-D-000xx. This task order is for surveying and mapping services for the XXXXXXX Road project, per the enclosed Statement of Work (SOW).

The **Firm-Fixed Price** for this task order is \$XX,XXX.XX. Please review the task order document, and if acceptable, execute two (2) on behalf of XXXXX, Inc. and return them to this office. When endorsed by the Government, I will return to you a fully executed document.

The COTR for this task order is XXX, Surveys and Mapping Coordinator. Mr. XXX's phone number is (360) 619-XXXX.

Should you have any questions, please call me at (360) 619-XXXX, or e-mail <XXXXXX@wfl.fha.dot.gov>.

Sincerely yours,

/s/
XXXXX
A/E Contracts Coordinator

Enclosure:
SOW

cc w/enclosure:
XXXX (e-mail routing)

Exhibit 3.2-A CONTRACT TASK ORDER
(Continued)

TASK ORDER CONTRACT			
INDEFINITE DELIVERY, INDEFINITE QUANTITY (IDIQ)			
1. Task Order No. 0X-XXXXX		2. Requirements Contract No DTFH70-0X-D-000XX	
1a. Effective Date Same as date in Block 9b.		2a. Date of IDIQ July xx, 200x	
		2b. Expiration of IDIQ July xx, 200x	
3. Name of Architect-Engineer XXXXXXXX, Inc.		3a. Telephone (include Area Code) (XXX) XXXXXXXXXX	
3b. Address of Architect-Engineer (include ZIP Code)			
4. Department or Agency and Address (include ZIP Code) Federal Highway Administration Western Federal Lands Highway Division 610 East Fifth Street Vancouver, Washington 98661-3801			
5. Project Title Location			
6. Contract for (general description of services to be provided) Survey and Mapping services, per the attached Statement of Work. Completion date for all work under this contract is August xx, 200x.			
7. Accounting Data Project Number: <u>XX XX XX XXXX XXX</u> Task No. <u>XXX.XX.XXXX.XX</u> Firm Fixed Price of <u>\$XX,XXX.XX</u> (<u>XXXXX</u> thousand <u>XXX</u> hundred <u>XXX</u> & <u>XX</u> /100 dollars)			
8. Name and Title of Signer (Type or Print)		9 Name and Title of Contracting Officer (Type or Print)	
		XXXXXXXXXXXXXXXXX Contracting Officer	
8a. Contractor	8b. Date Signed	9a. United States of America	9b. Date Signed
(Authorized Signature)		(Signature of Contracting Officer)	

Exhibit 3.2-B TASK ORDER TRANSMITTAL LETTER



WESTERN FEDERAL LANDS HIGHWAY DIVISION
610 EAST FIFTH STREET
VANCOUVER, WA 98661-3801

U.S. Department
of Transportation

**Federal Highway
Administration**

April xx, 200x

In Reply Refer to:
xxxxxfl

Mr. XXXXXX XXXXXXXX, Vice President
XXXXXXXXXXXXXXXXXXXX.
XXXXXXXXXXXX Parkway
XXXXXXXXXX, OR xxxxxx

Dear Mr. XXXXXX:

Task Order No. 0x-xxxxx
IDIQ Contract DTFH70-0x-D-000xx
Project Name

Enclosed is your fully executed original of Task Order No. 0x-xxxxx under your IDIQ Contract No. DTFH70-0x-D-000xx. This task order is for a project field review and provide advice on the proper method of survey for the xxxxxxxx Road project, per the attached Statement of Work (SOW).

The **Firm-Fixed-Price** for the task order is \$xxx,xxx.xx. All work under this task order is to be completed by May xx, 200x.

The Contracting Officer's Technical Representative (COTR) is xxxxxxxxxx, A/E Project Manager. Mr. xxxxx's telephone number is (360) 619-xxxx. As the authority delegated to Mr. xxxxxx is limited, I am also enclosing a copy of his appointment as COTR and a Statement of Responsibilities for COTR's so you may be aware of those limitations.

Please note that we have enclosed a Subcontracting Report form with this task order, per IDIQ Contract Article III - C. Please complete the form and return to this office. If no Subconsultants are to be used on this task order, write "none" on the form and return it to this office.

Should you have any questions, please call me at (360) 619-xxxx, or e-mail <xxxxxxx@wfl.fha.dot.gov>.

Sincerely yours,

XXXXXXXXXXXX
A/E Contracts Coordinator

Enclosures: Task Order 0x-xxxxx and SOW
COTR Designation and Subcontracting Report

cc w/enclosure (Task Order and SOW only):
xxxxxxx - w/COTR appointment memorandum
xxxxxxx
xxxxxxx
Finance - w/copy of PR



Exhibit 3.2-C SUBCONTRACTING REPORT

Subcontracting Report

(To be provided to COTR within 7 calendar days of Task Order Award)

Task Order 0x-xxxx
IDIQ Contract DTFH70-0x-D-000xx
Project Name

In accordance with Contract Article III-C, subcontractor(s) on above Task Order include:

Subcontractor Name: _____

Contact Person: _____

Subcontractor Address: _____

Description of Work: _____

Dollar Value: \$ _____

Type of business: Large Business Small Business

Small Disadvantage Business (SDB) HubZone Small Business Woman-owned Business

Subcontractor Name: _____

Contact Person: _____

Subcontractor Address: _____

Description of Work: _____

Dollar Value: \$ _____

Type of business: Large Business Small Business

Small Disadvantage Business (SDB) HubZone Small Business Woman-owned Business

Subcontractor Name: _____

Contact Person: _____

Subcontractor Address: _____

Description of Work: _____

Dollar Value: \$ _____

Type of business: Large Business Small Business

Small Disadvantage Business (SDB) HubZone Small Business Woman-owned Business

3.3 COTR ROLES AND RESPONSIBILITIES

The COTR appointment letter will identify the authority the COTR has for the administration of the task order. The COTR should review this document and become familiar with what the COTR can and cannot do. (See [Exhibit 3.3-A.](#)) The COTR's authority is also provided to the contractor. A violation of assigned authority has the potential to create serious problems for all parties, and assigned authority must be adhered to during administration. If the COTR is unsure of an action/request being within his/her authority, the COTR should always request the assistance of Acquisitions. For detailed COTR information, including forms and templates, see [Section 1.7.](#)

COTR's are restricted in the type of communication they may engage in with consultants seeking work. See Guidance on Meeting with Consultants in [Exhibit 3.3-B.](#)

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES

STATEMENT OF RESPONSIBILITIES Contracting Officer's Technical Representative (COTR)

As a technical representative of the Contracting Officer (CO), the COTR is responsible for administration of the contract/task order and for assuring compliance by the contractor with the requirements of the contract/task order.

PROHIBITED ACTIONS

The COTR is not authorized to: enter into formal contracts/task orders and contract/task order modifications; make contractual commitments; terminate, partially or fully, for convenience or default; issue a Contracting Officer's Decision on a claim in accordance with the Contract Disputes Act; or otherwise bind, commit, or obligate the Government contractually. COTR's are strictly prohibited from making informal commitments such as the following:

- X Encouraging a contractor to incur costs prior to receiving a contract/task order or an executed contract/task order modification for additional work;
- X Encouraging, requesting, or requiring a contractor to make changes or take any action beyond the requirements of the contract/task order without an executed contract/task order modification;
- X Encouraging a contractor to incur costs under a cost reimbursable contract/task order in excess of those costs contractually allowable; and
- X Committing the Government to a course of action with regard to a potential contract/task order change, claim, or dispute.

COTR RESPONSIBILITIES (GENERAL)

The COTR=s responsibilities shall include the following:

- X Monitoring contractor performance (see Part I below).
- X Ensuring that the contractor receives all items required in the contract/task order to be furnished by the Government.
- X Approving replacement of key personnel in accordance with the contract/task order.
- X Understanding the FAR and TAR clauses that relate to your contract/task order.
- X Notifying the CO when you are unable to perform the functions of the COTR.
- § Providing recommendations to the CO for disposition of all property generated under the

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES
(Continued)

contract/task order.

- X Receiving all deliverables required by the contract/task order. These should be reviewed by you and a recommendation made to the CO to either approve or disapprove them. Note that the CO must sign any documents that approve or reject deliverables.
- X Initiating modifications for changes in time, money, or work (see part III below).
- X Processing invoices (see part II below).
- X Furnishing to the CO copies of trip reports, conference reports, and correspondence sent to the contractor (see part VI below).
- X Monitoring funding and costs (see part IV below).
- X Notifying the CO in writing upon satisfactory completion of the work under the contract/task order and make appropriate recommendations as to acceptance.

COTR RESPONSIBILITIES (SPECIFIC)

I. MONITORING CONTRACTOR PERFORMANCE

- A. Make sure contractor complies with technical aspects of the contract.
- B. Maintain close surveillance of contract progress and notify the CO promptly when technical difficulties arise which may impede satisfactory completion of the contract. Surveillance includes receiving and reviewing progress reports from the contractor (if required by the contract/task order) and conducting periodic reviews to determine compliance with contract/task order requirements.
- C. Hold any necessary discussions with the contractor to ensure that the work is being carried out in accordance with the contract/task order requirements. Assist the contractor in interpreting technical phases of the contract/task order, including applicable specifications, within the limitations of the COTR=s written authority. Differences of opinion shall be referred to the CO for resolution.
- D. Receive, review, and approve or disapprove contractor=s work plans and schedules in accordance with the terms of the contract/task order.

II. APPROVING INVOICES/PROGRESS PAYMENTS

- A. **Receipt** - Invoices should be marked with the date they are received in FHWA. The prompt payment clauses require the Government to make payment on firm-fixed-price invoices within 30 days. This time period is measured from the day the invoice is received at FHWA. If the receiving date is not noted on the

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES
(Continued)

invoice, then the 30-day time period begins on the date on the invoice. If there is a significant time difference between the date on the invoice and the date received, you should retain the postmarked envelope to show when it was mailed. After receipt you have seven days to review and either approve the invoice or notify the contractor of unacceptable work or improper invoice.

- B. Review** - Review each invoice to ensure that the charges are allocable, allowable, and reasonable. In other words, were the hours charged really spent on this project? Was the billed work part of the contract/task order? Does it seem like the right amount of time for what was accomplished? If you feel you need additional information to make this determination, you have the right to ask the contractor for it. You can also specify the format of the invoice as long as it complies with the appropriate FAR 52.232 clause and is reasonable. Note that only work authorized by the contract/task order or executed modifications can be claimed. If modifications are being processed for additional work that additional work cannot be invoiced until the modification is awarded.

1. Firm-fixed Price Contracts/Task Orders

For firm-fixed-price contracts/task orders, the invoices may be based on milestones in the contract/task order if cost was related to these milestones, or based on an estimate of the percentage of work completed. As COTR, you must agree with the basis used or only approve a lesser amount and state your basis.

2. Cost Reimbursement Contracts/Task Orders

For cost reimbursement contracts/task orders, the minimum requirement for data that a contractor supplies with an invoice, should be: (1) to have a breakdown of each person that worked on the contract/task order during the invoice period with his or her hours and salary rate; (2) a listing of travel expenditures detailed enough for comparison to Government rates; (3) the overhead rate used which should be verified as identical to the rate in the contract/task order; (4) other direct costs which are itemized; and (5) the amount of fixed-fee claimed which should be a prorated amount of the total fixed fee based on a ratio of the invoice costs to the total ceiling amount (excluding the fixed fee).

Although the Prime=s invoice may show subcontractors as a single line item, there should be an attachment from the subcontractor with the same type of breakdown. This data should be reviewed to make sure all time and costs are allocable, allowable, and reasonable.

Other things that can be done to ensure proper billing are: (1) visit the contractor=s office and talk to the people listed on the invoice to see if they have knowledge about the project to a degree that relates to the number of hours they have charged; and (2) ask for copies of actual payroll sheets and compare them to invoiced hours. The total amount invoiced to date must be monitored and compared to the work done. If the work will not be completed within the available funds, you must request a

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES
(Continued)

modification and explain why the cost is overrunning and if the fixed fee should be adjusted. This must be done in sufficient time to acquire additional funding and processing of the modification.

3. Time-and-Materials or Labor-Hour Contracts/Task Orders

For time-and-materials or labor-hour contracts/task orders you should be familiar with FAR clause 52.232-7 which requires the contractor to substantiate his vouchers with copies of payroll sheets and other documentation as you determine necessary. You should verify that the labor categories and rates and hours charged are correct. The last item must be verified by some formal process that you initiate. One option is to require the personnel to fill out weekly time sheets. You would initial the original and receive a copy which you would compare against the invoice.

- C. Retainage** - For firm-fixed-price type contracts/task orders, you may retain 10 percent of the payment if the contractor is not progressing satisfactorily (see applicable FAR 52.232 clause). If work covered by the invoice has not been done, do not approve for payment. You may retain the last 15 percent (but not more than \$100,000) of the fixed fee on Cost Reimbursement contracts/task orders (FAR clause 52.216-8). You must retain 5 percent (but no more than \$50,000) of the hourly rates due under time-and-materials or labor-hour contracts/task orders (FAR clause 52.232-7(a)(2)). Any planned retainage should be discussed with the CO before it is withheld.
- D. Approval** - After review, invoices should be marked **Approved for payment by COTR,** signed, and dated. You can only approve firm-fixed price, labor-hour, and time-and-materials contract/task order invoices. **On cost reimbursement type contracts/task orders the invoice should be marked Recommended for payment,** signed, dated, and sent to the CO for approval (TAM 1242.7004-1(5)).

If the amount approved is different from the invoiced amount, the difference must be discussed with the contractor and documented by writing a letter to the contractor or obtaining a revised invoice. The contractor must be informed of the difference prior to the invoice being sent to Finance for payment. When you are authorized to approve an invoice, send the original to Finance with a copy to the Contract/task order File.

- E. Final Invoices** - Final invoices must be approved by the CO after COTR review and recommendation for approval. Before, or coinciding with, submission of a final invoice, you must prepare a letter to the contractor requiring them to complete a final voucher, the *SF 1034, Public Voucher for Purchases and Services Other Than Personal*, and a release of claims. The signed final invoice and release should be forwarded to the CO for approval.

III. PREPARING BACK-UP FOR MODIFICATIONS

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES
(Continued)

If you should determine that a modification is necessary to do additional work within the limits of the Statement of Work, increase the ceiling amount of a cost reimbursement or labor-hour/time and materials contract/task order, or for any other allowable purpose you need to prepare the following:

- A. **An Independent Government Estimate (IGE)** of what you think the work will cost (prepared independently from item C below). The FAR says this estimate should be prepared as if the Government were bidding for the work and should be broken down by number of hours for each category of worker for each task.
- B. **A Procurement Request (PR)** to cover the IGE amount and attachments including: (1) the IGE; (2) a narrative of what part of the contract/task order or Statement of Work is being changed (and why it was not included in the original contract/task order); (3) a schedule to complete the new work (if contract/task order time extension is needed); and (4) an explanation of what precipitated the need for this change (justification).
- C. **A letter from the contractor** listing the work needed and proposing a price.

Your authority does not allow you to direct the contractor to do the work and then process a modification. You must get the modification awarded first. Any work the contractor performs prior to award is done at their risk of not getting reimbursed should the modification not be awarded.

Realize that modifications require time to process and allow for that time.

IV. MONITORING CONTRACT/TASK ORDER OBLIGATIONS AND FUNDS

As COTR you must know the payment features of the contract/task order. What is the ceiling or maximum amount that can be paid under the contract/task order? How much can be withheld to assure completion and performance of the contract/task order? What basis is used to approve invoices? You should keep a chart of all payments made in each category of the contract/task order and show how much is allowed for each category. You should also keep track of all modifications and their effect on the contract/task order dollar limitations. These tables have no specific format and generally need to be tailored to the specific contract/task order at hand.

For cost reimbursement contracts/task orders, FAR clause 52.232-20, Limitation of Cost, requires the contractor to notify the Government when 75 percent of the contract/task order ceiling amount has been expended. At that time, a review must be made to determine if the work can be completed within the authorized ceiling, or if additional funding is needed, or if the contract/task order should be terminated.

For cost reimbursement, time-and-materials, and labor-hour contracts/task orders you should maintain a feeling for how much of the work has been done versus the money that has been paid. This should be compared to the total work yet to be done and the ceiling contract/task order amount. This comparison is necessary to monitor the performance of the contract/task order, i.e., are the hours/costs completed to date in line with original estimate? If hours/costs are exceeding original estimates, is there justification for the

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES (Continued)

additional effort? If so, the final cost should be reevaluated and if an increase is necessary a modification should be requested. If there is no justification, you should notify the CO and schedule a meeting with the contractor to discuss progress of the contract/task order.

If your contract/task order has a small business subcontracting plan or, if during negotiations it was agreed that a certain amount of the work to be subcontracted to small, small disadvantaged, HUBZone small, or women-owned small businesses, you must ensure this is carried out. If the SF 294 and SF 295 are required, you should make sure the contractor submits them, review them to assure that the contractor is following the small business subcontracting plan, and then forward a copy to Headquarters (HFL-1), Director of Acquisition and Operations. The original should be sent to the CO.

V. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

It is very important to avoid improper business practices and personal conflicts of interest or even the appearance of them. (FAR) 48 CFR Part 3 and (TAR) 48 CFR Part 1203/TAM Chapter 1203, Improper Business Practices and Personal Conflict of Interest, provides guidance to avoid improper business practices, personal conflicts of interest and to deal with their apparent or actual occurrences. The Contracts Section provided copies of these Parts to all COTRs. Please be sure you are familiar with the content and should you have any questions about this matter, it is imperative that you contact the CO or WFLHD Legal Counsel at once.

VI. CONTRACT/TASK ORDER FILE CONTENT AND MAINTENANCE

The COTR=s file is of particular importance, for the documentation of your interaction with the contractor may be used in the event of litigation. In addition, an organized file facilitates an easy transition from one COTR to another if reassignment becomes necessary. The file should contain separate folders or tabbed sections and organized similar to the following:

- § File folder/tab 1 - The Contract Instrument (i.e., contract modification, task orders, delivery orders, and the contractor=s proposals applicable to these documents.
- § File folder/tab 2 - The COTR=s delegation memorandum, and all correspondence between the contractor and the contracting officer, filed in chronological order.
- § File folder/tab 3 - A copy of the contractor=s invoices/vouchers and any correspondence pertaining to the payments.
- § File folder/tab 4 - The COTR=s trip reports and written memoranda to th file on telephone conversations or other meetings with the contractor.
- § File folder/tab 5 - A copy of the contractor=s progress reports and other contact deliverables, and all correspondence pertaining to these documents.

The official contract/task order file shall be maintained **by the Acquisition Team, Negotiated procurement Section**. As COTR you must provide copies to the file of all invoices, progress reports, correspondence, and any other documentation related to the contract/task order operation and performance. Any duty you officially perform must be documented and the document sent to the official file.

Exhibit 3.3-A STATEMENT OF RESPONSIBILITIES
(Continued)

VII. EVALUATING CONTRACTOR PERFORMANCE

An evaluation form must accompany or precede the final invoice being sent to the CO for approval. For A/E work, form SF-1421 must be used. For other contracts/task orders, contact the Acquisition Team for the current evaluation form. The appropriate form should also be completed any time there is a new COTR. Interim performance evaluations may be made at the discretion of the COTR.

Exhibit 3.3-B GUIDANCE ON MEETING WITH CONSULTANTS

U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

WESTERN FEDERAL LANDS HIGHWAY DIVISION
610 EAST FIFTH STREET
VANCOUVER, WA 98661-3801

Subject: POLICY: Guidance on Meeting with Consultants on
Matters Other Than Specific Contract Issues

Date: July 9, 2003

From: /s/ Ronald W. Carmichael
Ronald W. Carmichael
Division Engineer

Reply to: HFL-17
File: 1

To: All Employees

With the increased funding proposed under SAFETEA, consultants and contractors are likely to make increasingly frequent stops in the office to learn what they can about changes in programs and future plans. Consultants and contractors are vital links in the ability of this office to fulfill its mission and deliver projects. Accordingly, where possible, we want to accommodate their interests and share the public information that may be available.

Nevertheless, as Federal employees we also have a duty to the public to share information in such a way that such sharing does not call into question the integrity of the procurement process or the ethical standards of the office. Certain information simply should not be released and certain actions must be avoided.

The attached Guidance on Meeting with Consultants on Matters Other than Specific Contract Issues is being distributed to provide a handy guide for use in such meetings. The 12 items listed cover a range of issues that may arise in such meetings. Please, take a few moments to become familiar with the Guidance prior to meeting with consultants and contractors.

One final item, it is good practice, always, to notify the Acquisitions Team prior to meeting with consultants and contractors. The Acquisition Team may be able to provide some helpful insight into the particular consultant/contractor. Further, someone from the Acquisition Team may want to attend the meeting.

Attachment

TJBinder:sko:PolicyOnMeetingWithConsultants.doc



Exhibit 3.3-B GUIDANCE ON MEETING WITH CONSULTANTS
(Continued)

**GUIDANCE ON MEETING WITH CONSULTANTS ON MATTERS OTHER
THAN SPECIFIC CONTRACT ISSUES**

PURPOSE:

There is an ongoing desire by some consultants or contractors to visit with office personnel both for public relations purposes and in an effort to focus efforts on obtaining business. Such meetings, while appropriate, must be guided by certain standards and rules:

POLICY:

1. Meeting Location. Don't meet in a place where a consultant/contractor can overhear other office conversation. Close the door to the meeting room or meet at a location where other agency conversations cannot be heard. Inadvertent disclosure of protected information can result from a lack of discretion in meeting locations.

2. Nondiscrimination – Be careful not to discriminate against individuals or companies in granting requested meetings. Such creates an appearance of improper influence adversely impacting one's ethical obligations as a Government employee.

3. Public information – Only publicly available information may be transmitted to the consultant/contractor. Public information is (a) information that would be available to anyone under FOIA, (b) information that has not been designated as confidential by an agency, (c) information relating to legislative or regulatory procedures that has been previously disclosed by the agency to the public, or (d) information that is authorized to be disclosed to the public.

Internal proposals that have not yet been adopted, funding levels that have not yet been set, the identification of potentially outsourced projects, long-range plans that are still internal government matters, matters relating to the relative qualifications of potential or actual contractors, the identification or acknowledgment of trade secret information, and the identification or acknowledgment of information relating to personal privacy, shall not be disclosed.

4. Generalities – Stick to generalities when conducting such conversations. Specifics should be avoided where possible. (Thus, one can discuss that generally the program looks like it may be growing. But one should not say that the program will grow by 20% over the next 3 years. Or one can say that it looks like we may have an increasing need for outside help. But one should not say that we will need outside help on the ABC project.) **The identification of any specific project as needing outside help should be avoided in all situations, as this would constitute advance notification prior to the official notification available to all potential offerors.**

5. Office Overview – You may discuss the work our office does generally and how we fit into the governmental structure, as well as specific projects we have done. You may disclose the names and titles of specific employees and their job duties and the names of contractors (where appropriate) who are presently working in or for the office. You may not disclose personal information about employees.

6. Current Practice – You may discuss current practices of the office, such as the extent of current outsourcing and the areas or projects being outsourced. You may not disclose any confidential trade secret information about the activities of a competitor or personal privacy information such as the fact that the office is seeking to replace an employee because that

Exhibit 3.3-B GUIDANCE ON MEETING WITH CONSULTANTS (Continued)

employee is about to go on extended leave.

7. Future needs – You may discuss in general terms expected program trends. You also may inform consultants/contractors where to look for information on upcoming solicitations. If a solicitation is on the street, that information can be disclosed. **If a solicitation has not yet been issued, neither the anticipated issuance nor the expected date of the solicitation should be disclosed.** You may inform the consultant/contractor of the procedures of how to submit proposals for future work, but providing tips on how to win the competition must be avoided.

8. Prevent information shopping. Find out if the consultant/contractor has met or will be meeting with other employees in the office. Consultants/contractors may want to information shop. Let the consultant know that if the company wants any more information, (s)he should contact you or someone else whom you designate. [Eastern had one former employee, now consultant, do this to the point that the consultant had to be excluded from consideration for a particular job because too much data had been gathered, giving the Company a benefit over other companies.]

9. Listening – You may listen actively as to any information the consultant/contractor wishes to share. This may include asking questions about the firm, the individual's background, interests, expertise, etc. You may accept any written information provided by the consultant/contractor about the firm.

10. Gifts – You may not solicit or accept a gift, including the gift of food, publications, or books, from the consultant/contractor. While there is an exception allowing you to accept an unsolicited gift if the fair market value of all gifts from the same entity does not exceed \$20 on any one occasion or \$50 per calendar year, the exception **does not apply** to cash, bonds, securities, or any gift given for the purpose of influencing you in the performance of your official duties. The exception allowing you to accept certain gifts is not a requirement that you accept them. You may always refuse. [For instance, if you attend a meeting put on by the consultant/contractor and refreshments are served, you are not required to partake of them.] A polite and insistent refusal to accept gifts from a consultant/contractor sends a strong message to the consultant/contractor of your ethical standards. If you pay fair market value for an item from a contractor, such is not treated as a gift.

11. Be prepared – Prepare yourself for how you will deflect questions and inquiries from areas you should not discuss. If the consultant/contractor continues to probe, simply say that you are not prepared to talk about that area but you would be happy to discuss . . .

12. Public Service – Remember that you are the public face of the Government. Always be courteous and professional, even if the consultant/contractor becomes “pushy” or you become uncomfortable. Politeness does not mean that you need to take abuse, but when needed, disengagement must always be managed professionally.