Procurement Countdown

Spring 1994, No. 103

Contractor Forum Opens Successful Communication

Improving communication between NASA and its contractors can sometimes be a daunting task. But when the Office of Procurement held its first Contractor Open Forum, it turned out to be a very positive experience for all involved.

The idea started several months ago as a way to get a better dialogue going between NASA's procurement personnel and industry. Deidre A. Lee, the Associate Administrator for Procurement, invited any interested firms to attend. More than 70 contractors came to the NASA auditorium on March 30, some from as far away as Seattle, Washington. Ms. Lee gave a presentation, about the changes happening in NASA procurement today and what can be expected in the future. She was accompanied by the Deputy Associate Administrator for Procurement, Tom Luedtke, and the Procurement Division Directors.

NPR

The first topic of the afternoon was the National Performance Review and NASA's part in it, including the Procurement Reinvention Laboratory. Ms. Lee then told the business representatives that in the future NASA would be looking more at Past Performance when awarding a contract. Another popular topic that lead to audience discussion was the NASA/ Industry Process Action Team. This team provides NASA with individual contractors' input about issues in NASA procurement.

Ms. Lee also spoke of new policies including the new Award Fee policy, the upcoming Contractor Liability policy, and the MidRange policy.

MidRange, which is currently being tested at Marshall Space Flight Center, creates a streamlined approach for procurements between $25,001 and $500,000. It has been so successful that NASA is planning to expand the test to the rest of the NASA centers.

The Forum was designed to increase communication. Audience questions and discussion were encouraged throughout the program. At the end of the session, the audience filled out a questionnaire. Of the respondents, more than 50 percent rated the Forum as an 8 or higher on a scale of 1 to 10. Ninety percent said a similar forum should be held again, 32 percent said it should be held at least on a yearly, if not quarterly basis. More than fifty percent of the respondents were from large businesses. Twenty-five percent identified themselves as from Small Disadvantaged Businesses.

Suggested changes included having the Center Procurement Officers at future forums, having a member of the NASA/ Industry PAT talk about industry's viewpoint of NASA procurement initiatives and reforms, and holding breakout sessions for discussions.

Future Initiatives

At the end of the presentation, Ms. Lee discussed several future initiatives. The first was NASA's need to communicate better, with industry, as well as internally. For the internal procurement process, this meant getting more clearly defined, timely requirements and getting better team work between the procurement and technical personnel through the entire procurement process. The second item was a discussion on streamlining the source selection process. The process takes too long and requires too much data. Ms. Lee said there should be a test of a streamlined version of the process developed in the upcoming months. The third item was cost realism. NASA is serious about getting realistic cost estimates from contractors. Ms. Lee stressed that NASA must expect realistic proposals and award contracts that can be performed more closely to the estimated cost. The fourth item was cost control. NASA's budget can no longer sustain ever-increasing costs. Cost

(continued on page 2)

Write to the Top

Q) In May 1993, you and I discussed the possibility of center-wide procurement personnel being able to cross train at NASA Headquarters for a period of 3 to 12 months. You indicated that you would prefer lower-grade procurement personnel (not all GS-12s or above) being afforded the opportunity to see how Washington, D.C., works with regard to NASA. You also stated that it would be nice if NASA procurement personnel could go up to Washington, D.C., for a day or so to sit in on Senate hearings involving NASA issues (this could be used as a reward to NASA employees in lieu of monetary compensation). I know money is extremely tight right now, but I feel the experience and knowledge gained from cross training at NASA Headquarters would benefit the agency as well as the employee. Could cross training at NASA Headquarters become a reality? If so, I would be a willing participant and would also be willing to assist you in implementing this type of training/reward system!

A) Cross training, planned on-the-job training and rotational assignments are still very real priorities for NASA's Procurement Professional Career Development Program (NPPCDP). Tight fiscal conditions prevented this portion of our career development program from being implemented during Fiscal Year 1994. However, on the positive side, I am very pleased to report that for the first time in NASA's history, this office was able to centrally plan and centrally fund a total of six core course offerings this year. To date, three of these courses have been provided, CON 101 - Contracting Fundamentals, CON 201 - Government Contract Law, and CON 104 - Principles of Contract Pricing. Four additional offerings covering Contract/Subcontract Management, the Procurement Managers Seminar, and Intermediate Pre-courses have been sponsored and paid for by NASA Headquarters. Cross training is on the agenda for the FY 95 career development program. As this issue of the *Procurement Countdown* goes to press, this office is preparing the FY 95 budget plan for next year's NPPCDP. Included in these numbers are funds that would be earmarked for cross training... from centers to HQ; from HQ to centers, and from center to center. I envision this program being available to junior, intermediate and senior procurement professionals within the agency. We will keep you posted on the results.

Deidre A. Lee
Associate Administrator
for Procurement

Questions for Write to the Top may be sent to Editor, *Procurement Countdown*, Code H, without identification. Or they may be sent to Smarucci@proc.hq.nasa.gov on e-mail. Questions may be edited for space and clarity before being printed.

Open Forum

(continued from page 1)

control is critical to NASA's future and it is here to stay.

Comments about the value of the meeting were very positive. The following are a few of the comments received after the forum: "The overview was excellent." "This session was very useful to help us understand the nature and environment of NASA work." "A good exposure to a 'from the top' perspective." "The coming attractions was the most beneficial." "It clarified NASA's intent to improve the procurement process." "Upcoming priorities info allows companies to evaluate practices and best respond to NASA's needs." "Procurement impacts us all--[the] forum was excellent. We appreciate you and the organization taking the time."

This meeting was held as an experiment, to open a dialogue, but also to see what might be the best way to foster communication. Judging by the meeting itself, and the responses to a questionnaire, it was a very good start in increasing communication with contractors. A date has not yet been decided upon for a future open forum, but with the success of this experiment, there will likely be more forums to come.

People on the Move

Headquarters Temporary Assignments: **Carl Silski,** a price analyst who was temporarily assigned to the Headquarters Acquisition Division (HW). Silski, from Lewis Research Center, was working on the Small Spacecraft Technology Initiative. He came in mid-April, was here for four weeks, and then returned for one week in early June.

Karen McDonald joined the Office of Procurement May 23. McDonald is the new special assistant to the Associate Administrator for Procurement, Deidre A. Lee. McDonald is on a six-month detail from Goddard Space Flight Center.

Upcoming Events

June 14	NASA/Industry Process Action Team; Washington
June 15	Management Education Program Presentation Deidre A. Lee; Wallops
June 19-24	Procurement Managers' Seminar; Wallops
June 29-30	Center Visit -- Deidre A. Lee with Dr. Kelman from OFPP; Marshall
July 10-15	Contract/Subcontract Mgmt. Seminar; Wallops
July 19-21	Small Disadvantaged Business (SDB) Training Program; Lewis
July 19-22	NCMA -- Deidre A. Lee; Los Angeles
July 25-29	Center Visit -- Deidre A. Lee; Ames
Sept 20-22	Small Disadvantaged Business (SDB) Training Program; Goddard
Sept 27-30	AIAA Meeting -- Deidre A. Lee; Huntsville
Nov 30-Dec 2	NCMA Meeting - Deidre A. Lee; Washington
Feb 15-17 '95	AAS Presentation -- Deidre A. Lee; Colorado

J.P. Harris III Retires

by Eugene E. DuCom, JSC

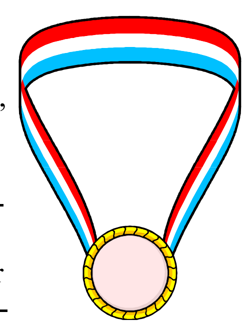
On January 3, 1994, James Patrick Harris III, J.P. to his friends and colleagues, retired after 38 1/2 years of Federal service. J.P. began his career at the U.S. Army Missile Command

in Huntsville, Ala., where he served 6 1/2 years. In 1962, J.P. moved to the then Manned Space Flight Center, Houston, Texas. The first of his many assignments in procurement was in the Plans and Systems Section, Procurement Operations Branch, now known as the Procurement Support Division. Over the years, J.P. progressed through the Procurement Organization to become the Deputy Director of Procurement. He held this position for the past 20 years. J.P. stated that one of the special times in his procurement experience was as a contracting officer helping to bring the Mission Control Center Operations on-line. His parting words of wisdom to the beginning contract specialists were, "Work hard and advancement will come."

[All of us at Headquarters and in procurement throughout the agency wish J.P. a long and fulfilling retirement. - ed.]

ARC Employee Receives an Exceptional Achievement Medal

On April 6, 1994, Cathy Etheredge, ARC, received a 1994 NASA Honor Award, the Exceptional Achievement Medal, in recognition of her outstanding accomplishments as the Source Evaluation Board (SEB) Coordinator. Ms. Etheredge, a procurement analyst, was recognized for her outstanding efforts to streamline the SEB process (significantly reducing procurement leadtime) without compromising the procurement process.



NASA's PMC Oversees Major Systems Development Programs

The Administrator established the Program Management Council (PMC) on June 15, 1993, as the chief governing body responsible for ensuring excellence in program management throughout NASA.

The PMC provides an agency-level forum for integrating program planning, approval, and oversight and for addressing policy issues in the agency program/project management function. Chaired by the Acting Deputy Administrator, it assures that the agency functions as an integrated system in planning, approving, and implementing its mission to meet its commitments within available resources and provides program/project management policy and process development, maintenance, and oversight.

Overseeing Program Development

The PMC was specifically intended to oversee development and implementation of a more uniform and structured approach to major system development programs. This includes programs with development costs in excess of $200 million, programs that require special management attention, and programs that are considered critical to fulfilling an agency mission. NASA's revised approach defines a standard five phase life cycle consisting of Phase A - Preliminary Analysis, Phase B - Definition, Phase C - Design, Phase D - Development, and Phase E - Operations. Phase A and Phase B, the project formulation phases of the life cycle, establish the mission need and provide a comprehensive definition of the project. Authority to progress to subsequent phases is based on the PMC's assessment, supported by a Non-Advocate Review, of the program's readiness. The program cost/schedule/technical parameters established during Phases A and B are formalized in a Program Commitment Agreement (PCA) signed at the beginning of Phase C by the Program Associate Administrator and the Administrator. Both the Program Associate Administrator and the Administrator are accountable for notifying each other in the event that any PCA commitment will be violated.

Monitoring Performance

During Phases C and D, the program's performance against those commitments are continuously monitored and annually validated. The Program Associate Administrator formally revalidates, and an independent review team formally assesses, the continued validity of the PCA commitments each year. This nominal approach to the formulation and implementation of major system development programs is addressed in NMI 7120.4, Management of Major System Programs and Projects, and NHB 7120.5, Management of Major System Programs and Projects Handbook, effective November 8, 1993. The NMI establishes management policies and responsibilities for major system programs and projects and the accompanying NHB provides the detailed policies and processes for implementing the NMI.

The Acting Deputy Administrator chairs the Program Management Council. The PMC charter identifies PMC members as all of the Program Associate Administrators, the Associate Administrator for Safety and Mission Assurance, the CFO/Comptroller, the General Counsel and the Associate Administrator for Procurement.

The PMC System

The PMC uses the following system of structured reviews to execute its responsibilities:

1) Preliminary Program/Project Approval Reviews. The PMC shall meet to review a candidate program/project's readiness to proceed to Phase B. The PMC shall determine that all Phase A requirements have been satisfactorily met and shall review the results of the Preliminary Non-Advocate Review and Independent Cost Estimate efforts. The PMC shall conclude with a readiness recommendation to the Administrator.

2) Program/Project Approval Reviews. The PMC shall determine a program/project's readiness to proceed to Phase C or C/D. The review will determine if all Phase B requirements have been satisfactorily met and assess the results of the Non-Advocate Review and corresponding Independent Cost Estimate efforts. The PMC will conclude its review with a readiness recommendation to the Administrator.

3) Major Technology and Advanced Development Reviews. The PMC will review, assess, and make recommendations regarding major technology and advanced development programs.

(continued on page 7)

Improving Property Management

by Larry Pendleton, Contract Management Division

Several events have combined recently to move the subject of contract property well up on the list of issues that receive NASA top management attention.

Many of you will have seen the GAO report on NASA Property, which was sent to Procurement Officers last October. If not, it is highly recommended reading for insights into some of NASA's problems with government property that is provided to contractors. This report, a Process Action Team effort, and some work last year by the Inspector General's office, have focused management attention on property issues. In particular, during a congressional hearing last fall, General Dailey acknowledged that problems exist and stated that NASA was committed to fixing them. For those of us on the "fixing" end of this commitment, a good place to start is by understanding what others, like GAO, perceive the problem to be.

$1.9 Billion

In a nutshell, NASA has been criticized for not conforming to policy in the FAR that states contractors are expected to provide all necessary facilities to perform government contracts. As of June 30, 1993, NASA contractors reported holding over $1.9 billion in NASA facilities. The inconsistency between what the FAR states and the actual situation is at the heart of the criticism.

Earlier GAO and IG reports found problems in the financial reporting of NASA property held by contractors. The PAT mentioned above also identified some loss of control over property when using the Installation Provided Government Property clause inappropriately. Another area of concern on the part of GAO was that some personnel did not appear to have a good grip on the basic regulatory policy concerning property, which suggests a shortfall in training.

Property Management Improvement Plan

As you might expect, such attention from GAO, the IG, Congress, and top management in the agency has had an effect on the workload of some Headquarters staff. The Contract Management Division in Code H and the Security, Logistics & Industrial Relations Division in Code J have put together a draft property management improvement plan aimed at these and related problems. The draft plan was sent on April 20 from General Dailey to Center Directors for comment. We are counting on a lot of helpful suggestions from all centers as we finalize the plan and begin implementation. The people working this issue are: Scott Thompson, Myra Strosnider and Larry Pendleton in Code HK; Jeff Sutton and Billie Wilchek in Code JL.

The way out of these problems involves greater attention to property aspects of our contracts, including vigorous contract and subcontract management; regulatory policy; closer working arrangements between procurement and property staff at all levels; increased training; and more careful review of the property commitments we make in our contracts.

Changes

Look for new emphasis on policy compliance in future Procurement Management Surveys, and for revisions and clarifications to Part 18-45 of the NASA FAR Supplement. The focus will be on the following policy themes:

1. No new facilities are to be provided to contractors unless the contracting situation clearly falls within an exception to this policy under the FAR;

2. Existing facilities should be carefully analyzed to determine whether it would be good business, and in NASA's best interest, to furnish them to a contractor. If it appears that furnishing existing facilities is justified, an appropriate FAR exception, or a deviation from the regulation is required. See PN 89-57 dated March 20, 1994. This PN adds a new policy exception which permits existing NASA facilities to be furnished to contractors, on the condition that the contractor replace them at the end of their useful life with contractor owned facilities.

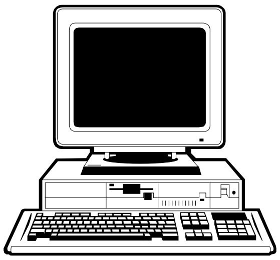
3. Carefully analyze these situations and document the reasoning in taking a particular action. Both the GAO review and NASA surveys have noted that file documentation was poor in this area. It is critical that COs explain the rationale behind their decisions rather than making summary statements like "...it has been determined that it is in

(continued on page 7)

The way out of these problems involves greater attention to property aspects of our contracts, including vigorous contract and subcontract management

SEWP Changes Add Up for Everyone

A 5-year contract for computers has proved itself so successful, not only to NASA, but to other federal agencies, that the General Services Administration has adjusted the contract's Delegation of Procurement Authority (DPA) giving better terms to everyone.



The Scientific and Engineering Workstation Procurement (SEWP) which provides UNIX-based workstations and support equipment to NASA centers is one of several dozen government-wide agency contracts. It gives other agencies a chance to purchase the equipment through the Goddard Space Flight Center contract. Until recently, the contract allowed up to 10 percent of the total value of the contract to other agencies.

The total contract was originally for $827 million. NASA had $752 million of the contract; other federal agencies were allowed up to $75 million. However, no single agency was allowed more than 2% of the total. The contract took effect February 19, 1993, and proved so successful that by January 1994, the 10 percent designated for non-NASA agencies had been used up -- with 4 more years to the contract. At that point, NASA went to GSA and asked to adjust the amount non-NASA agencies could use.

In March 1994, GSA granted that approval. Non-NASA agencies could use 20 percent of the total value of the contract. Even with this change no single agency is allowed more than 2% of the total. The total value of the contract has not changed, but the distribution has. NASA will now have $677 million (80 percent) and non-NASA agencies will have $150 million (20 percent). This will work out better for everyone. By shifting the amount available, non-NASA agencies will have a chance to take advantage of more UNIX-based workstations and support equipment. Because of budget cuts, NASA now envisions less agency use than originally expected. Since other agencies want to take additional advantage of the program, everyone wins.

New Policy on Undefinitized Contract Actions

On May 9 the new agency-wide policy on issuance of undefinitized contract actions (UCAs) became effective through publication in the Federal Register. If you have not already received one, a Procurement Notice detailing the provisions of the new policy should be on your desk shortly. The salient features are summarized below:

1. Issuance of UCAs shall be on an exception basis and the contract file documented with a government estimate and urgency justification.

2. UCAs over $1,000,000 (with a few exceptions) require Center Director approval and must be issued bilaterally with a ceiling price or "not to exceed" estimated cost figure.

3. Only the agency's minimum urgent requirements shall be contracted for while a cost proposal is prepared, analyzed and negotiated.

4. Contracting officers shall ensure that UCAs over $1,000,000 are separately accounted for by the contractor to the degree necessary to provide visibility into actual costs incurred pending definitization.

5. NASA's goal for definitization of any UCA issued is 180 days.

Most of these requirements have been in effect at Marshall, Johnson, Stennis, and Kennedy since Oct. 1, 1993, at the joint direction of the Headquarters Office of Space Flight and Office of Procurement. Since Oct. 1, these centers have collectively reduced the value of outstanding UCAs by 45%. With the policy effective agency-wide we anticipate further substantial reductions in both the number and value of newly issued UCAs.

Headquarters On Line with New E-Mail System

Recently, the Office of Procurement started using Microsoft Mail as its electronic mail system. With this new software, virtually everyone in Code H is now accessible through Internet. To send e-mail to people in Code H, use their network user names followed by "@proc.hq.nasa.gov" without the quotes. The user name is the first letter of someone's first name followed by up to seven letters of the person's last name. For example, if you wanted to send e-mail to John Michaelson you would send it to: "Jmichael@proc.hq.nasa.gov" (once again, without the quotes). We do advise that you call the person you are writing to the first time you send them anything and let them know it is on its way.

Program Management Council

(continued from page 4)

Emphasis will be given to commercial benefits after considering future mission need, potential for multi-mission use, potential return on investment (in terms of both cost and performance) for both agency and commercial use, readiness to begin the proposed phase of R&T development, and the realism of the funding profile.

4) PCA Validation Reviews. During Phases C and D, the PMC shall annually review a written validation prepared by the cognizant Program Associate Administrator concerning program/project conformance to the current Program Commitment Agreement. The PMC will also consider the results of an independent review of the PCA validation to ensure adherence to the program/project commitments.

5) Quarterly Status Reviews. The PMC will meet quarterly to review program/project status. These reviews focus on performance, cost, and schedule, as measured against the program's baseline plan. In addition, emergent issues and concerns are highlighted. The QSR's overall objective is to determine if the program is 'on track' or if it is heading for trouble. The QSR also includes the results of any independent mission reviews requested by the PMC. Mission reviews, conducted at about two years and one year prior to launch, focus on the pre-launch, launch, and operations phases of a program/project. The PMC will convene special program/project reviews if routine QSRs identify specific areas of concern.

6) Contractor Metrics Reviews. The PMC shall meet as necessary to review the results of contractor metrics reporting on major contracts, including the identification of issues for consideration by the Administrator based on individual contractor metrics reports.

7) Special Program/Project Reviews. Special program/project reviews include reviews for cancellation or continuation of programs and projects. The PMC will convene a special review whenever any schedule/technical commitment in the PCA is projected to be violated or whenever the program/project estimate-at-completion exceeds the program cost commitment or development cost commitment by more than 15 percent.

With the establishment of the PMC, NASA will be able to successfully support accomplishments of program and project objectives on schedule and within budget.

Improving Property Management

(continued from page 5)

the best interest of the government...." Of course, whenever COs decide that facilities are to be furnished under a FAR exception, the file should explain why, even though only one of the exceptions requires a formal D & F.

4. Cost-benefit analysis is one of the best tools available to support decisions on furnishing facilities, particularly when the cumulative value of the property is substantial. By methodically examining the total costs of acquiring, maintaining, managing, and disposing of facilities and comparing these costs with the estimated benefits of government ownership, decisions on providing facilities can be made less subjectively. The analysis should address both recurring and non-recurring costs. Benefits and disadvantages that are not quantifiable, such as the effects on competition, should be identified and discussed in the analysis. While there is no regulatory requirement for this approach, it is an excellent way to describe and consider all the factors that go into facilities decisions.

As we move ahead with our plan to improve NASA contract property management, we need your advice and experience. In addition to the input from each center on the property management improvement plan, feel free to contact us with your suggestions. I can be reached on e-mail at LPendlet@proc.hq.nasa.gov or on 202-358-0487 to discuss the issues or make a note of your recommendations.

The Next Issue...

of *Procurement Countdown* will be out in August. The deadline for any material submitted is Friday, July 22. Articles, questions to the AA, calendar of events, and personnel items are all accepted. For more information, contact Susie Marucci on (202) 358-1896.

The Use of Financial Guarantees for Facilities

by Joe Le Cren, Headquarters Contract Pricing and Finance Division

The NASA Inspector General (IG) has criticized the agency and its contractors because of facilities costs (primarily involving real property). According to the IG, there are many cases where NASA has paid costs well in excess of the fair market values of the facilities because contractors enter into a series of short term leases. To correct this problem, the IG recommended that alternative strategies be used.

One alternative is the use of financial guarantees. Financial guarantees would provide the government the right to use facilities for longer than the proposed firm contract period of performance. [Other alternatives appear in the NFS at 18-7.170-1(b)(10)(i).]

There are many cases where NASA has paid costs well in excess of the fair market values of the facilities

Special Arrangements

A financial guarantee is a special arrangement between the contractor and the government. The contractor leases or purchases a facility (not limited to office space) for longer than the firm contract period. If, at the contract end date, the contractor is not successful in a recompetition or there is no future requirement, the government decides on one of the following actions: the government takes over the facility, the contractor assigns the lease or sells the facility, or the contractor keeps the facility and the government is released from its liability. A financial guarantee could be triggered when options are not exercised, when the contractor is not selected in a recompetition, or when the program is completed or discontinued.

This system saves the government money because the contractor can use longer term leases or purchase the facility; both of these options are less expensive than short term leases.

Risky Business

While the government benefits by this arrangement, there is also potential risk involved. Because the government is "underwriting" the use of the facility, there is the possibility the government may have to pay additional funds to the contractor. This could occur if 1) the facility is owned or leased by the contractor for this contract, 2) the government does not continue to use the contractor after the contract end date, and 3) the contractor has difficulty disposing of the facility.

Because financial guarantees generally place the government at risk for significant dollar amounts, they should only be used when all of the following circumstances apply: 1) there is a demonstrated need for the facilities, and the facilities are unlikely to be needed for any purpose other than the program effort being contracted for; 2) the perceived risk of the program being discontinued or the funding being severely curtailed is considered minimal; 3) significant savings will result to the government; 4) other strategies are determined not practicable or are significantly more costly; 5) the investment risk will not be assumed by the contractor without such a guarantee; 6) the contractor agrees to use its best efforts to mitigate the potential cost to the government; 7) competition will not be adversely impacted if the contract is later recompeted; and 8) burdensome ownership or disposition responsibilities will not be created for the government.

Like other matters that may affect contract planning, the need for financial guarantees should be identified as early as possible -- ideally, at the time of the procurement plan or the acquisition strategy meeting. If a financial guarantee is determined the best approach for the government, the terms of the guarantee would need to be negotiated and a clause incorporated in the contract. The clause should describe the facilities covered, including the location if real property is involved, identify the arrangement the contractor intends to enter into for the facilities (lease or ownership), and clearly state how the actual liability will be determined. The clause also should clearly state that the government recognizes a potential liability for the facilities if its useful life extends beyond the contract end date and provide, in that case, for assignment or sale of the facilities to a third party (at the government's option).

A schedule should be included identifying the government's maximum liability for each option year after the contract end date. This amount should decrease each year until it reaches zero at the completion of all the contract's potential option periods. The actual liability may vary depending on several factors, including whether the facilities covered are contractor leased or contractor owned; whether the facilities are to be transferred to a third party or acquired by the government; the timing of any transfer; and the discount rate to be used if the contractor is to receive payments for facilities leased to a third party for more than 12 months.

(continued on page 10)

KSC's Off-Site Central Industry Assistance Office

by Joel Wells

NASA-KSC's Procurement Office has broken new ground in its out-reach efforts to private industry. An off-site Central Industry Assistance Office (CIAO) has been opened for business since the facility's ribbon cutting ceremony on March 7, 1994.

Historically, the procurement office has provided an industry assistance function to keep interested vendors informed of business opportunities at KSC and to familiarize them with the government contracting process. Until now that function was performed on center in the Headquarters Building, which greatly limited the public's access to these services. The industry assistance staff is confident that the off-site CIAO will remove many of the barriers encountered by vendors trying to get their feet in the door at KSC.

Vendors are able to counsel with representatives from NASA-KSC and the prime contractors under one roof without having to obtain clearance for access to the center. Panel presentations, vendor demonstrations and bid openings are also being conducted at the CIAO. Ann Watson, Chief of Industry Assistance and Acquisition Management, makes the purpose clear, "The principal goals are to provide private industry the maximum opportunity to do business with KSC and to present the ultimate team image -- one face to industry."

New Course Helps SDBs work with NASA

by Thomas J. Kolis, ARC

On April 19-21, the Ames Research Center hosted the first course offering under NASA's Training and Development of Small Disadvantaged Businesses in Advanced Technologies (TADSBAT) program. This program is a result of one of the several NASA Initiatives to increase the number of prime and subcontract awards to small disadvantaged businesses (SDBs), especially in high tech areas, under the NASA Eight Percent Plan established pursuant to Public Laws 101-144 and 101-507.

The Headquarters Office of Small and Disadvantaged Business Utilization (Code K) established this course; and MTA, Inc., itself an SDB, located in Huntsville., Ala., developed the course content and student material. MTA also conducted the classroom sessions. Speakers, such as marketing personnel from SDBs that have had successful contracts with NASA, representatives from the Defense Contract Audit Agency, the Jet Propulsion Laboratory (JPL), ARC, and NASA Headquarters supplemented MTA's professional staff.

The various speakers provided their insights, observations, and recommendations from a practical perspective. Course modules covered understanding the NASA culture; business management/development and marketing; accounting, finance, and contract administration; and project/task management. While the course had applicability to contracting with federal agencies in general and even to business in the private sector, its main focus was on NASA.

The course gave emphasis to agency and center cultural similarities and differences and NASA-unique policies, procedures, issues, and concerns. This practical, success-oriented advice will undoubtedly enhance the capabilities of the firms that participated.

The goal of this program is to increase the number of prime and subcontract awards to SDBs.

Approximately 50 officers and managers from technically-oriented SDBs attended. The Small Business Administration Procurement Center Representative for ARC and the small business specialists from ARC, DFRC, and JPL also actively participated. One particularly beneficial experience resulted from MTA's having made the arrangements for all of the participants to use the same local hotel for off-site, after-hours sessions as well as lodging. This increased networking opportunities and certainly made the course more enjoyable.

The program began with a welcome by Dr. Ken Munechika, the ARC Director, and a presentation by Rae Martel, from the Headquarters Office of Small and Disadvantaged Business Utilization.

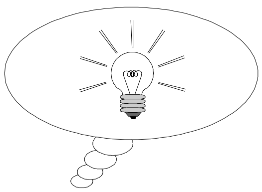
Feedback from the participants at the end of the program indicates that they found the course to be very worthwhile.

Other course sessions will be conducted at JSC, LeRC, and GSFC during FY 94. For more information, contact Code K at NASA Headquarters at (202) 358-2088.

Streamlining the 507 Process Saves Time and Money

by Roberta D. Beckman, JSC

To some people, Continual Improvement is just talk. But at JSC, the Procurement Support Division recently put the concepts of Continual Improvement to work with remarkable results -- improving the time to do a task by 85 percent!



A Great Idea!

The 507 (data gathering) process was tedious because much of the information is redundant to information reported on the contract instrument itself and because of the work that goes into acquiring this redundant information.

A project was initiated by the Procurement Support Division to explore and implement ways to relieve the contract specialists' (CSs) and contracting officers' (COs) burden in fulfilling the NASA FAR Supplement data requirements, with no degradation in accuracy/quality of data.

The analysis of the 507 process revealed that over 60 percent of this data was already in the contract document and in the contractor's proposal representations and certifications (Section K).

The major objective of the 507 Initiative was to streamline the 507 process by: reducing the CS's/CO's involvement and time in the 507 data gathering process; improving the accuracy of the 507 data; and minimizing the 507 forms.

Project participants used work process improvement diagramming to provide a common understanding of the basic process. The opportunities for improvement that were identified primarily pertained to the approach to the process, redundancy in the process, resources to assist in assembling the data correctly, and the 507 form.

EZ 507

The improvement alternative the team developed was the EZ 507. The EZ 507 consists of approximately 20 questions that cannot be found in either the contract instrument or the offeror's Section K. This form is submitted along with a copy of the signed contract and the offeror's Section K for processing. The form may be handwritten (as long as it is legible). Because of the accuracy necessary for this document, the CO must sign it.

Instructions for the CS/CO and for the data entry organization were developed and published as a JSC Procurement Instruction. Training was developed and provided prior to implementation. Resource manuals (e.g., The Federal Procurement Data System "Product and Services Codes" manual) were distributed to all procurement branches.

Results

Test model were run using the EZ 507 and the existing 507 series to check for time and accuracy. The quantifiable process improvement results expected were:

- ❒ An 85 percent reduction in the CS's/CO's time (which represents, for each new basic contract, a decrease from 3.5 hours to one-half hour for the combined effort of the CS/CO);
- ❒ An 80 percent reduction in the cost of CS's/CO's time; and
- ❒ A 97 percent reduction on the cost of the form.

If there is a lesson learned, it is that "process improvement" can greatly simplify (and time is money) a process with no degradation of the product. In terms of return on investment, the fixed value of the team's time over the 6-month project life was approximately $3,000, whereas the EZ 507 process improvements are expected to save $9,000 per annum.

For more information, contact Roberta D. Beckman, 713-483-8525.

Financial Guarantees

(continued from page 8)

If the contractor recovers funds from any other source or has its lease liabilities reduced by the lessor after the government has made payment under the contract, the government is entitled to a credit. If the contractor obtains approval from the government to retain the facilities rather than assign, lease, or sell them, the government will have no liability. Termination is covered by the contract's Termination for Convenience or Termination for Default clause, whichever applies in the particular circumstance.

Financial guarantees are complex, so it is advisable to obtain the assistance of other offices, such as legal and facilities, early on in the process. Concurrence of the installation Financial Management Officer must always be obtained since a financial guarantee will create a potential liability for the agency. This should take place as soon as the issue is identified, but is generally prior to negotiations.

For more information about financial guarantees contact Joe Le Cren via Internet at Jlecren@proc.hq.nasa.gov or at (202) 358-0444.

Award of Contract Prior to Resolution of Protest

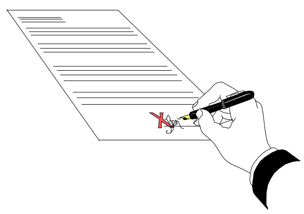
by Thomas J. Whelan, Procurement Policy Division

Occasionally, the Procurement Policy Division is asked what constitutes the "urgent and compelling circumstances that significantly affect the interests of the United States" required by the Competition in Contracting Act (CICA) before the head of a procuring activity may authorize award or continued performance of a contract prior to resolution of a protest. For NASA, this decision is delegated to the Associate Administrator for Procurement.

Generally within NASA, "urgent and compelling" means a finding that there will be significant programmatic impact if the selected contractor is not permitted to immediately begin or continue performance. Previous cases which met the urgent and compelling test include the slipping of a launch schedule where the window of opportunity was narrow and the potential loss of scientific data was great, and the inability to otherwise obtain the hardware or services necessary to continue an important research effort which cannot be interrupted or discontinued without significant harm to the program. Such a decision requires the experience and seasoned judgment of senior procurement personnel. The actual determination is reserved for the Associate Administrator for Procurement with the concurrence of the Office of General Counsel.

In struggling with this question, the Federal District Court for the Eastern District of North Carolina in DTH Management Group v. Kelso, 93-439-CIV-D, 1993, recently applied the "balance of hardships" test adopted by the U. S. Court of Appeals in determining whether or not urgent and compelling circumstances cited by the Navy justified the award of a contract prior to the resolution of a protest.

The Navy sought proposals for repair and maintenance services for Navy housing near the San Diego Naval Station. The protester, who was the incumbent, submitted the lowest



estimated cost of the ten offerors. During discussions, the Navy notified protester that its costs were unrealistically low. In its best and final offer, the protester raised its cost estimate by a significant amount. The Navy then selected another offer which was lower than protester's BAFO. (The case does not discuss the technical considerations.) Protester then filed its complaint with the GAO asserting that the Navy did not properly evaluate cost and that protester should have been considered the low offeror. The Navy awarded the contract in face of the protest on the grounds that urgent and compelling circumstances would not permit awaiting the GAO's decision.

In deciding the merits of protester's request to enjoin the award and performance of the contract, the court applied the four factors of the balance of hardships test: 1) the likelihood of irreparable harm to protester if the injunction was not issued, 2) likelihood of harm to the Navy with the injunction, 3) protester's likelihood of success on the merits, and 4) the public's interest.

In assessing injury to the protester (who was also the incumbent), the court considered the protester's demobilization costs, including liquidating a large inventory in protester's warehouses, liquidating a large amount of equipment and fixtures, dismissing more than 100 employees, terminating material supply contracts, interrupting its communication system, and discontinuing its state hazardous waste material license. These costs would not have been incurred if the incumbent was left in place pending the GAO's decision. Although these costs are considered incidental to normal business practices, if the incumbent was displaced and later the GAO ruled in its favor, these cost would have been unnecessarily incurred, and since they would not be recoverable, harm would inure to the incumbent.

The court recognizes that when an agency overrides a stay based on compelling circumstances, the GAO in determining a suitable remedy may consider the cost and disruption of terminating, recompeting, and reawarding the contract. (Competition in Contracting Act found in Title VII, Division B,

(continued on page 12)

Award of Contract

(continued from page 11)

of the Deficit Reduction Act of 1984, codified at 31 U.S.C. 3554(b)(2); GAO Protest Rules, 4 C.F.R 21.6(c).) Generally, these costs are considered to be costs to the government and the GAO may assess and use them to mitigate its decision. In this case, the court was willing to consider the cost to the protester for such disruption, etc.

In considering the likelihood of harm to the Navy, the court reviewed the Navy's claim that award to the selected contractor would cost less than continuing with the incumbent. Since the question of who was lower was in issue and since the cost figures proposed by both parties were imprecise, the court found that it could not adequately evaluate the cost savings to the Navy by awarding to the selected contractor or the potential harm to the Navy by keeping the incumbent on board.

The court determined that due to the uncertainty of any harm to the Navy and the apparent real harm to the protester, the balance of hardships leaned in favor of protester.

Concerning the merits of the Navy's determination of urgency, the court found that the findings contained only conclusory statements (without supporting justification) that the services provided under the contract were essential to health, safety, and morale and that any lapse in the services would have a detrimental effect. Nothing was said by the Navy about why the incumbent could not continue pending the outcome. The court held that the lack of performance by the selected contractor itself must constitute the urgent and compelling circumstances and not just that the performance of the work generally is urgent and compelling.

For service contracts, when the incumbent is being displaced, cost savings anticipated by award to the new contractor usually have not met the urgent and compelling test. Where the incumbent contractor is in place and is ready, capable, and willing to continue performance, the theory is that no significant harm could come to the program.

In the memory of this author, additional cost has risen to the level of urgent and compelling in NASA only once, in the late 1970s. In that case, the dollar savings were significant, measured in millions per month, and the incumbent was on the verge of bankruptcy which severely affected its ability to continue performance for two or three months pending resolution of the protest.

Finally, in the Navy case, the court determined that granting the stay was in the public interest. It believed that without the injunction, the Navy would face the possibility of switching the contract from the incumbent (protester) to the selected contractor and, if the incumbent won the protest, back again. Presumably this would create inefficiencies and turmoil inconsistent with the concept of public interest.

What is unique about this case is that the court did not assess the protester's chance of winning the protest on the merits of the protest issue itself, i. e. whether or not the Navy fairly evaluated the cost proposals. In other court decisions, likelihood of success on the merits is usually considered. Here, in assessing the "merits," the court only considered the merits of the Navy's decision to override the stay and award the contact. Apparently, here the court believed that it did not have to address the merits of the evaluation since the case would be remanded to the GAO.

The lesson to be learned here is that the decision to award in the face of a protest is a serious one, not to be taken lightly. It may be made only when the compelling circumstances clearly demonstrate real harm to the government and not just out of personal preference or for the sake of meeting a schedule which presents no serious consequences if missed.

Procurement Countdown

Procurement Countdown is published quarterly by NASA's Office of Procurement.

Editor................Susie Marucci
(202) 358-1896