



**Department of Veterans Affairs**

**CONTRACTING OFFICER'S  
TECHNICAL REPRESENTATIVES  
HANDBOOK**

**February 2001**

**Central Region Contract Service Center**

## FOREWARD

We are all becoming increasingly aware of the importance of proper Contract Administration in ensuring the maximum return on our contract dollars. The Contracting Officers Technical Representative (COTR) plays a critical role in affecting the outcome of the contract administration process. In fact, **the COTR often is the deciding factor in whether or not a contract is successful**. Frequently, the main focus in the Procurement cycle is on contract placement, overlooking the vital role of post-award administration. As a COTR, you must make sure that we at Veterans Affairs get everything the contract entitles us to. Every tax dollar that supports our contracts is spent wisely only when you properly monitor the contract to ensure that we get what we are paying for.

The purpose of this handbook is to provide guidelines that will assist you in carrying out your role throughout the procurement process. Read this handbook carefully and refer to it often. If you have any questions about material in this handbook, please ask your supporting Contracting Officer. Remember, successful contract administration can only happen through the combined efforts of the procurement, program, and financial offices.

Some of the important areas you will find as you read through this handbook are:

- Sections explaining both pre-award and post-award functions
- Appendices with sample forms and formats
- A general list of do's and don'ts for various areas throughout the procurement process
- Rules and regulations such as the Procurement Integrity Act requirements  
And the new COTR Certification Program

As you perform your duties, keep in mind that it is imperative that you understand your role and then carry out that role to the best of your ability.

Harlan Rochon  
Manager  
Great Lakes Acquisition Center

## POINTS OF CONTACT

Should you have questions, which cannot be fully addressed by your local Contracting Officer, help is just a phone call away. Do not hesitate to consult any of the individuals listed below:

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The Department of Veterans Affairs, Office of Acquisition and Materiel Management, is interested in any suggestions, which may improve the usefulness of this material to its recipients. Please forward any comments to:

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## **PART I. INTRODUCTION**

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### **GENERAL**

This handbook is issued by the Office of Acquisition and Materiel Management to provide Department of Veterans Affairs (VA) personnel who are designated as Contracting Officer's Technical Representatives (COTRs) with a source of basic guidance for monitoring contractor performance and for performing other contract administration duties. This handbook establishes standards, describes the assignment of responsibilities, and prescribes procedures for evaluating contract proposals, negotiating, awarding, and administering VA contracts. It is designed to provide COTRs with a convenient source of basic information about their role in administering and monitoring contracts of all types. It delineates the duties of the COTR, and explains which functions are the responsibility of the COTR and which are those of the Contracting Officer.

### **THE ROLE OF THE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE**

Once a decision is made to acquire products or services through the contracting process, a partnership is created between the Contracting Officer's Technical Representative (COTR) and the Contracting Officer. This partnership is essential to establishing and achieving contract objectives because these two officials are responsible for ensuring that the contracting process is successful. Contracting Officers and COTRs have both separate and mutual responsibilities, with lead responsibility shifting from one to the other during the various stages of the contracting process. During the pre-solicitation phase, the COTR has the lead and the Contracting Officer operates in an advisory capacity. However, as this phase ends and the solicitation and award phase begins, the lead responsibility shifts to the Contracting Officer, with the COTR acting largely as an advisor. During post-award administration, the COTR assumes lead responsibility for some functions, and the Contracting Officer for others. Contracting Officers sign contracts on behalf of the Government and bear the legal responsibility for each contract. They alone can enter into, terminate, or change a contractual commitment on behalf of the Government. COTRs support the Contracting Officer. As a team, they must ensure that program requirements are clearly defined and that the contract is designed to meet them. Together, they are responsible for ensuring that competitive sources are solicited, evaluated, and selected; and that the price the Government pays for the goods and services it acquires is reasonable. They must establish quality standards and delivery requirements, and make sure that these are met. While the contract is in force, COTRs monitor compliance with all contract terms and conditions, and must report any deviation to the Contracting Officer.

#### **Designation of COTRs**

The Contracting Officer's Technical Representative (COTR) is nominated in writing by the requirement's generating organization (Attachment A); designated in writing in the contract schedule; and notified by letter (Attachment B) signed by the Contracting Officer and in turn acknowledged by the COTR signing and returning a copy of the notification/designation letter. This letter should be tailored specifically for each contract. Large dollar or complex contracts require increased monitoring. Factors such as the contract type, the item or service being

procured, and the COTRs level of experience influence the degree of involvement needed for effective contract administration. The designation letter should reflect this. The designation does not change or supersede the established line of authority and/or responsibility of an organization. Changes in designation of the COTR will be made by modification to the contract, as the need arises. If the COTR changes, a new designation letter must be completed (Attachment C). Individual offices may designate a COTR by other titles in accordance with local practices, e.g., Project Manager, Project Officer, etc. An Alternate COTR (A/COTR) should also be designated to fill in for the primary COTR. Due to the scope or technical complexity of some contracts, “sub-COTR’s” are necessary, they will be included in the letter of appointment of the COTR, and will be the responsibility of, and responsive to, the COTR.

### **Responsibilities of the COTR**

Subject to program policy and operational procedures, individuals designated by the contracting officer as COTRs are assigned specific responsibilities including, but not limited to the following:

- Assist the contracting officer in developing the contract specification of work statement to promote full and open competitive procurement actions;
- Reviewing all proposed procurement actions for consideration for 8(a) or small business set-aside or other socioeconomic program goals;
- Coordinating with the program office all actions relating to funding and changes in scope of work;
- Monitoring the contractor’s performance of the technical requirements of the contract to assure that performance is strictly within the scope of the contract (Attachment E);
- Confirming in writing all significant technical instructions to the contractor;
- Assuring that changes in the work or services, and resulting effects on delivery schedule, are formally negotiated and implemented by written supplemental agreement or change order issued by the Contracting Officer before the contractor proceeds with the changes;
- Assuring prompt review of draft reports and providing approval to the contractor so that the distribution of the reports can be made within the specified completion date of the contract, and assuring prompt inspection and acceptance or rejection of other deliverable items;
- Informing the Contracting Officer when a contractor is known to be behind schedule, with the reasons therefore, and coordinating with the Contracting Officer corrective actions necessary to restore the contract schedule;
- Furnishing to the Contracting Officer a copy of Government-contractor conference reports and correspondence, and coordinating with the Contracting Officer on the content of any contractually significant correspondence addressed to the contractor, in order to

prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim. Normally, correspondence addressed to the contractor will be signed by the Contracting Officer;

- Requesting the Contracting Officer to authorize Government-furnished property and, when requested by the Contracting Officer, furnishing disposition advice on Government furnished property or contractor-acquired property;
- Monitoring financial management controls;
- Furnishing the Contracting Officer a notice of satisfactory or unsatisfactory completion; of delivery or performance of a contract, purchase order, delivery order, or any modification thereto (Attachment F);
- Reporting promptly and directly to the Contracting Officer or Inspector General, any suspected procurement frauds, bribery, conflicts of interest, and other improper conduct;
- Reviewing and submitting recommendations to the Contracting Officer on subcontracts with respect to their relationship with the prime contracts;
- Assuring that the contractor has a current facility security clearance, if applicable, as well as clearances for personnel actually engaged in contract performance to have access to security information, as soon as it is determined that access to such information will be required. Examples of clearances are most commonly found in access to ADP systems and contractor-owned software. Such a determination should be made in the beginning phase of the procurement process. It should be noted, however, that there are absolutely no exceptions authorized for the release of security information to contractors who do not possess a security clearance;
- Recommending to the Contracting Officer approval/disapproval of the contractor's requests for public release of information regarding work being performed under the contract;
- Notifying the Contracting Officer of inventions by the contractor during the performance of the contract;
- When required, furnishing the Contracting Officer a formal request for termination;
- Evaluating the contractor's request for travel;
- Reviewing the contractor's invoices to insure that they reflect accurately the work completed in accordance with the requirements of the contract and certifying acceptance; and,
- Assisting in the pre-award survey and technical evaluation of prospective contractors, when applicable.



## **What the COTR is prohibited from Doing**

The COTR is expressly prohibited from performing or being responsible for the following: *[This list is not meant to be all-inclusive but rather a list of the major areas of focus.]*

- Making commitments or promises oral or written to any contractor relating to the award of a contract;
- In competitive requirements, writing contract language around the product or capacity of one source, without disclosing such information to the Contracting Officer and Competition Advocate;
- Soliciting proposals;
- Modifying any of the stated terms of the contract;
- Issuing instructions oral or written to a contractor to start or stop work;
- Approving items of cost not specifically authorized by the contract;
- Directing changes oral or written;
- Signing supplemental agreements;
- Negotiating;
- Taking any action with respect to termination, except to notify the contracting officer that the action is desired;
- Authorizing delivery or disposition of Government-furnished property;
- Giving guidance to a contractor, either orally or in writing, which might be interpreted as a change in scope or terms of the contract;
- Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement; and,
- Directing contractor to begin work prior to contract award date.

## **REGULATIONS**

The Federal acquisition process is governed by a system of regulations and policy issuances. The primary document is the Federal Acquisition Regulation (FAR), which was established for the codification and publication of uniform policies and procedures. The Veterans Affairs

Acquisition Regulation (VAAR) is the document that implements and supplements the FAR within VA. Another important regulation is the Federal Management Regulation (FMR), which is the successor regulation to the Federal Property Management Regulation (FPMR). Issued as Chapter 102 of Title 41, CFR under the authority of the Federal Property and Administrative Services Act of 1949 (P.L. 152, 81st Congress) as amended, and other statutes, it prescribes policies and procedures governing management of real and personal property and administrative services. Containing eight Subchapters, its Subchapter E (Supply and Procurement) is pertinent to the acquisition process.

## **OVERVIEW OF THE HANDBOOK**

This handbook is divided into five Parts. Following the Introduction, Part II addresses standards of conduct, which are fundamental to all acquisition actions. Part III outlines acquisition basics necessary for a sound understanding of contracting. Part IV describes the process of turning a program requirement into a successful contract. Part V covers the crucial phase of post-award administration, which ensures that the contract is well and faithfully executed by both parties (i.e., the Government and the contractor), and that the Government's needs are met. The final portions of the Handbook are a glossary of terms and various Attachments, which provide formats.

## **PART II. STANDARDS OF CONDUCT**

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### **GENERAL**

It is the individual responsibility of the COTR to refrain from releasing to any individual, business establishment or its representatives any information concerning proposed procurement. Such information will be released to all potential contractors as nearly simultaneously as possible, and only through the contracting officer, so that one vendor may not be given an unfair advantage over another.

The Contracting Officer is the only person authorized to commit the Government with respect to award of contracts. Unauthorized discussion and commitments may give the Department the appearance of not acting in good faith. Unauthorized personnel shall refrain from making any commitment or promises relating to award of contracts and shall make no representation, which would be construed as such a commitment. The COTR should not, under any circumstances, advise a prospective contractor that an attempt will be made to influence the contracting officer in order to give the firm preferential treatment in the award of future contracts.

The COTR is prohibited from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other item of monetary value from a person who has, or is seeking to obtain, a contract with the Department of Veterans Affairs. Procurement Integrity Regulations are detailed at FAR 3.104. The COTR should carefully review these provisions, as the penalties for noncompliance are significant – up to a fine of \$50,000 plus twice the amount of compensation, which the individual received or offered for the prohibited conduct, and up to five years in prison. Any questions a COTR has in this matter should be directed to the Contracting Officer or the appropriate Ethics Officer.

In any issues involving conduct, one point is most important to remember. The APPEARANCE of misconduct is as damaging as the actual misconduct itself. For example, if a COTR is seen having lunch with a prospective bidder, the APPEARANCE of favoritism exists: whether the contractor paid for the lunch or not. Always keep in mind that your behavior is being watched, and any APPEARANCE of unethical behavior is as damaging as the actual deed.

The rules applying to Standards of Conduct can often be confusing: WHEN IN DOUBT, FIND OUT. If you have any questions or concerns, be sure to contact your VA Regional Counsel or Contracting Officer as soon as a problem arises.

### **GRATUITIES**

For purposes of this discussion, gratuities are defined as gifts, entertainment, or favors. Government employees are prohibited from accepting gratuities on the premise that “gifts, entertainment, or favors,” no matter how innocently offered and received, may be a source of embarrassment both to the Government and to the employee involved.

Accepting gratuities might give the impression that the objective judgment of the recipient has been affected and could impair public confidence in the integrity of the relationship between the Government and the private organization.

Basically, regulations prohibit a Government employee from accepting any “gift, gratuity, favor, entertainment, loan, or any other item of monetary value” from any outside source if the employee performs official duties that might affect the business, financial, or other interests of that outside source.

## **CONFLICT OF INTEREST**

In acquisition matters, this means that a Contracting Officer, COTR, proposal evaluator, or any other government official having a financial interest in one or more offerors responding to a proposal would be prohibited from engaging in decisions, approvals, disapprovals, recommendations, and investigations; providing advice; or making any other significant effort regarding the acquisition process. This includes participating in the development of draft specifications or Statement of Work for acquisitions when the employee expects a company in which he or she has a financial interest to submit a proposal.

Generally, employees who will have a conflict of interest, as described above, must disqualify themselves from participating in the acquisition process. However, this discussion of conflict of interest is only a general treatment of a fairly complex subject. Government employees who are required to participate in a particular acquisition that may present them with a conflict of interest should refer the matter to either the Contracting Officer or VA Regional Counsel.

## **PROTECTING THE INTEGRITY OF THE ACQUISITION PROCESS**

The term “integrity of the acquisition process,” in this instance, means allowing private sector firms to compete for the Government’s business on a scrupulously fair basis. The emphasis here is on the word “fair.” Not only is fairness a prerequisite in Government acquisition due to the Government’s unique position as representative of the American people, but fairness also helps ensure that the Government will obtain its supplies and services at the best price available.

Government personnel who are associated with the acquisition process have a responsibility to protect its integrity by maintaining fairness in the Government’s treatment of all vendors. There are numerous points within the acquisition process where the potential to lose this fairness is high. For example:

- Pre-solicitation. Allowing a vendor or vendors access to information on a particular acquisition (especially the specification or work statement) before such information is available to the business community at large may give the vendor(s) receiving the information an unfair advantage over others.
- Specifications. Intentionally writing an unnecessarily restrictive specification or work statement that would effectively exclude the products or services of a vendor and/or increase the prospects for award to another vendor is an obviously unfair practice. Not only does this give advantage to one or more vendors over others, but it also restricts competition and makes it more likely that the Government will ultimately pay a higher price.
- Confidentiality of proposals. From time to time, requests for information are received concerning proposals, before a contract is awarded. All information concerning the proposals, including their number and submitters’ identities, must be held in strict confidence. Should this information become available to one or more offerors, it could put other offerors at a distinct disadvantage. **Proprietary data remains confidential after award.**

## **PART III. ACQUISITION BASICS**

This Part describes the fundamentals of contract law and key basic principles of the Federal acquisition process. Familiarity with these basic concepts will help COTRs fulfill their responsibilities and know when to seek assistance from Contracting Officers when problems arise.

Acquisition encompasses the processes the Government employs to obtain goods or services through contracts, including small purchases and basic ordering agreements. The acquisition process almost always results in a contract. When the solicitation is a Request For Proposal (RFP) or an Invitation For Bid (IFB), the contract flows from an offer (i.e., a bid or a proposal) made by an offeror, and an acceptance of that offer by a Contracting Officer on behalf of the Government. When the solicitation is a Request For Quotation (RFQ), the Contracting Officer makes an offer on behalf of the Government by issuing a Purchase Order to the Contractor. A contract results when the Contractor accepts the Purchase Order, either in writing or by performing a substantial part of the work.

### **THE CONTRACT AS A LEGAL OBLIGATION**

#### **Nature of a Contract**

A contract can be defined as an agreement between two or more parties consisting of a promise or mutual promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Unlike most social exchanges of promises, a contract establishes a binding legal relationship that obligates parties to keep their promises. In nearly all Government contracts, the contractor, the “seller,” is obligated by the contract to provide goods or services. The other party is the Government, which, as the “buyer,” is obligated to pay for those goods or services. All contracts contain five elements:

- An Offer (a proposal by an offeror that a contract be entered into);
- An Acceptance (the expression by the offeree of his/her assent to the offer and communication of that assent to the offeror);
- For Mutual Consideration (something of value in the eyes of the law exchanged by the parties to bind the agreement);
- Between Competent Parties;
- For a Lawful Purpose.

In Government contracting, the bid or proposal is the offer. It is made by an offeror seeking to enter into a contract with the Government. An Invitation for Bid (IFB) or a Request for Proposal (RFP) issued by the Government is not an offer. Rather, these are called solicitations and are informational documents that express the Government’s needs

to the community of potential offerors. When the Government, after bid opening or proposal review and negotiation, chooses one offeror to contract with, it officially accepts the offer (usually by signing the contractual instrument). The consideration in Government contracts is usually payment by the Government, and delivery of supplies or services by the contractor. The contract must also have a lawful purpose—it cannot violate a statute, for example—and contracts must be entered into by mentally and legally competent parties for the contract to be valid. Contracts must have certainty of terms and conditions to be enforceable. Since courts have to rely on the meaning of the language of a contract to enforce it, this language must be clear and certain. Specifications or Statements of Work, for example, must communicate clear requirements. Although non-Government contracts may sometimes be oral, Government contracts (including modifications) are always in writing. Section 4202 of the Clinger-Cohen Act of 1996 authorizes a “Test Program for Certain Commercial Items” until January 1, 2002. Specifically, it authorizes use of Simplified Acquisition Procedures (SAP) for contracts for commercial items that do not exceed \$5 million. RFQ’s are generally used for simplified acquisitions. With RFQs, the vendor’s quotation is not an offer. Rather, the purchase order issued by the Government is the offer, which the Contractor accepts either in writing or by performing a substantial part of the work. Most supplies and services procured by the VA are considered to be commercial items and a very large number of these contracts do not exceed \$5 million. Consequently, RFQs, rather than IFBs or RFPs, are used very frequently. The major exceptions are contracts for construction and for Architect-Engineer services, which are not commercial items and generally use IFBs and RFPs.

### **Authority To Enter Into Contracts**

In VA, as in other Federal agencies, the authority to contract is delegated to certain key officials who, in turn, re-delegate this authority to Contracting Officers. Although Contracting Officers, in turn, may re-delegate certain limited authority to administer parts of the contract, they are the only persons authorized to enter into or modify contracts on behalf of VA.

As the Federal Government’s agents for the acquisition of goods and services, Contracting Officers have an important stewardship role in the acquisition process. They are responsible to ensure that contractors live up to their contracted obligations. COTRs must ensure that they do nothing to infringe upon unique Contracting Officer responsibilities. COTRs may be given certain limited authority to act on behalf of the Contracting Officer, particularly in providing technical direction to the contractor. This authority will be discussed in more detail in Part IV (Post-Award Administration) of this Handbook. It is important to point out that COTRs, generally, cannot obligate the Government or change the terms or conditions of contracts—only the Contracting Officer can do that. Practically the only exception to this is that COTRs are sometimes given authority to issue small dollar value change orders to contracts to expedite their processing – but this is rare. Just as the Government requires agents to act on its behalf, so does the other party to the contract: the contractor. Agents will almost always be used by the contractor to enter into and carry out the contract with the Government. One

important difference is that only a person with actual authority (by statute, regulation, or contract terms) may bind the Government. A contractor's employee, though, may have apparent authority, and thus may be considered to be an agent and bind the contractor, even in the absence of actual authority. Because of this, contractors usually try to limit and specify those who are its authorized agents, and Contracting Officers will usually verify that authority so as to avoid any possible future legal complications that might arise when dealing with an individual who has only apparent authority.

## **DIMENSIONS OF ACQUISITION**

Federal law defines the acquisition methods available to the Contracting Officer. Although these methods differ substantially, they have in common the goal of enhancing competition in contracting. Full and open competition in Federal contracting is the norm. Deviations from the norm are possible but require careful justification and high-level approval. The Clinger-Cohen Act of 1996 authorizes SAP for commercial item contracts up to \$5 million. While full and open competition is not required for such contracts, "maximum practicable competition" is. Maximum competition is not only mandatory from a public policy perspective, but it is also desirable because, if properly administered, competition in contracting will result in the timely delivery to the Government of quality products and services at the most reasonable cost. In short, it will usually provide the Government with the best deal. Acquisition can be looked at in three dimensions: the degree of competition, the method of solicitation, and the type of contract ultimately awarded. As with time and space, these three dimensions are interrelated and interactive.

## **COMPETITION IN CONTRACTING**

It is in the Government's best interests to maximize the use of effective and efficient competition in its acquisitions. Competition is a market-place condition under which both the buyer and the seller expect that the buyer will have alternate sources of supply. This may be reflected in technical or price terms, or a combination thereof.

- Technical competition, for example, is applicable to the acquisition of research and development, and results in the selection of an offeror whose proposal indicates a high degree of technical capability. While cost/price is always a factor, often the overriding consideration is the selection of an offeror who has a technically superior proposal.
- Price competition implies that all responsible, responsive offerors can successfully accomplish the required tasks and the only differentiating factor is price.

In July 1984, the Competition in Contracting Act (CICA) was signed into law, becoming effective, for the most part, on April 1, 1985. Incorporated into the Deficit Reduction Act of 1984 (P.L.98-369). CICA constituted the most far-reaching contracting reform since the passage of the primary procurement statutes in the late 1940s. It makes competition in Federal contracting the "law of the land," holds Contracting Officers statutorily

responsible for maximizing competition, and strictly defines (and thereby limits) the use of less than fully competitive procedures. CICA provides for three levels of competition:

- full and open competition;
- full and open competition after exclusions of sources; and,
- other than full and open competition

Full and open competition is the most desirable and favored form of contracting. This category includes contracting through:

- sealed bids;
- competitive proposals; and,
- other related procedures.

Full and open competition after exclusion of sources, a procedure somewhat less competitive than full and open competition, is used when the Government excludes certain potential offerors from consideration for a contract in order to establish or maintain alternative sources. This procedure is used to reduce the Government's dependency on one or a few sources, or to increase the manufacturing or supply base for national defense reasons. Exclusion of sources is also used for the set-aside of acquisitions for small businesses, economically disadvantaged businesses, and labor surplus area concerns. These set-asides are authorized by various statutes. Approval authority for use of a set-aside resides with the Contracting Officer. Once again, under the Clinger-Cohen Act of 1996, contracts for commercial items up to \$5 million are an exception to CICA but still have a requirement for maximum practicable competition. When circumstances exist that make it impossible to obtain competition, the COTR shall provide the Contracting Officer sufficient information to justify the award of a contract on a sole-source basis or with limited competition. The Contracting Officer and the Competition Advocate, as prescribed in VAAR Subpart 806.3 and FAR Subpart 6.3, will review this written information. (Or FAR 13.5 for contracts for commercial items up to \$5 million). When the COTR determines it necessary to include restrictive language in the statement of work or specifications, written approvals will be required of this action as well, in accordance with VAAR Part 810 and FAR Part 10.

## **METHODS OF SOLICITATION**

The second dimension of acquisition involves the method of solicitation, which subsequently determines the processing requirements through to award. There are three solicitation techniques: sealed bidding, requests for proposals, and requests for price quotations.

### **Sealed Bidding**



Sealed bidding is an objective, rigid method of solicitation based entirely on competition. An Invitation for Bid (IFB), the solicitation, is prepared describing the Government's requirements clearly, accurately, and completely. The IFB is then publicized (synopsized) in the Commerce Business Daily (among other methods) in sufficient time. To enable prospective offerors to prepare and submit bids. The bids are publicly opened at a predetermined time and place, and the amount of each bid is publicly announced.

The Government evaluates each bid, but holds no negotiations with the bidders. An award is made to the responsible and responsive bidder whose bid is most advantageous to the Government, considering only price and price-related factors. A "responsive" bidder is one who bid conforms to the terms and conditions of the solicitation. A "responsible" bidder is one with adequate financial resources to perform the prospective contract; is able to meet the required delivery schedule; has a satisfactory record of performance; has a satisfactory record of integrity and business ethics; has necessary organization, business and financial systems (or the ability to obtain them) to handle the prospective contract; and has the required production, construction, and technical equipment and facilities (or the ability to obtain them) to perform the work.

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

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. The objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.

- Step one consists of the requests for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined above.
- Step two involves the submission of sealed, priced bids by those who submitted acceptable technical proposals in step one. Award then proceeds as with the regular sealed bidding procedure.

### **Contracting by Negotiation**

Many acquisitions in which COTRs will be involved are made through the process of contracting by negotiation.

Contracting by negotiation includes several discrete steps. After the requirement is determined and the acquisition is planned according to VA procedures, an advance notice or synopsis must be published in Commerce Business Daily to inform the contracting community of the forthcoming solicitation.

A Request for Proposal (RFP) is prepared and transmitted to a number of sources, some of who are identified from an established list of offerors and others who responded to the Commerce Business Daily synopsis or other advertising. Offerors then prepare and submit proposals in response to the RFP. These proposals normally consist of a technical proposal and a business or cost proposal. Technical proposals are evaluated against a set of technical evaluation factors that was included in the RFP. The cost proposals are evaluated to determine whether the proposed costs and prices are reasonable, and to determine the offerors' understanding of the work and their ability to perform the contract. Proposals will also be evaluated to determine the offerors overall experience and past performance, and other factors that are determined to potentially impact upon the offerors' ability to successfully complete the work.

The Contracting Officer next determines which proposals are in the competitive range. The determination is made on the basis of cost or price, and evaluation factors. Proposals are included in the competitive range when they have a reasonable chance of being selected for award.

The next step is the conduct of oral and written discussions. This is a customary and expected step. It is required when the evaluation factors for award indicate that the award may be made to other than the lowest priced offeror (as in "best value" scenarios). During discussions, the Contracting Officer attempts to resolve uncertainties concerning any part of the proposal and to provide the offerors with reasonable opportunity to submit revisions to their proposal as a result of the discussion. After discussions are concluded, the Contracting Officer allows adequate time for submission of revised proposals from all offerors in the competitive range. Usually, no further discussions are held, although the Government has the right to reopen discussions and to allow revision of proposals. Upon completion of negotiations, the Contracting Officer will proceed with award.

Any type of contract may be used when contracting by negotiation. The foregoing steps constitute a brief overview of the negotiation process. This handbook will discuss each step in more detail in Part IV. Another method of solicitation is the issuance of a Request for Quotation (RFQ). An RFQ may be used for any proposed contract action. For many years it was used mainly for contracts at or below the Simplified Acquisition Threshold, which is currently \$100,000. Since the Clinger-Cohen Act of 1996, it is widely used for contracts for commercial items that do not exceed \$5 million. A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract. It is informational in character and may be used when the Government does not intend to award a contract on the basis of a solicitation, but wishes to obtain price, delivery, or other market information for planning purposes.

## **TYPES OF CONTRACTS**

The Federal Acquisition Regulation provides for two families of contract types: fixed-price and cost-reimbursement. Each family consists of variations on the type, but the essential characteristics within each family are the same.

The Contracting Officer chooses the type of contract, although this choice can be subject to negotiation with contractors. COTRs need to understand the characteristics of each major contract type because these can significantly affect acquisition planning and contract administration duties.

The contract types differ in two key respects. One difference is the amount of risk placed on the Government and the contractor. The other is the degree of contract management or administration that each type requires by the Government.

### **Fixed-Price Contracts**

Firm fixed-price contracts place maximum risk on contractors, and little or no risk on the Government. The contractor has made a commitment in the contract to deliver all it promised in return for the specified consideration. The Government has the right to receive what it contracted for, for the price it promised to pay. If the contractor fails to perform at the contract price, it is liable for breach of contract, which can bring severe additional costs on the contractor.

Because the risk is high to contractors, their incentive to perform according to the terms and conditions of the contract is quite high. Therefore, the Government's contract monitoring requirements are usually far less than those for cost-reimbursement type contracts.

If firm fixed-price contracts confer maximum risk on contractors while minimizing Government risk and if they minimize Government monitoring responsibility, why aren't they always used for Federal acquisitions? The main reason is that many Government requirements cannot always be translated into the definable and clear-cut specifications needed for this kind of contract. For an offeror to prepare a realistic proposal on a fixed-price basis, the specification must contain little or no uncertainty. If such specifications are possible, then responsible potential contractors are willing and able to develop a fair and reasonably priced offer, and to assume a reasonable risk.

Many of our requirements, however, cannot be specified with the certainty required for fixed-price contracts. In the absence of this certainty, responsible potential contractors have no way of estimating the price of the work with the degree of accuracy needed to assume fixed-price contract risk. Research and development and related requirements are typical examples of work that may have too much uncertainty attached to them to use fixed-price contracts. If the Government tried to use a fixed-price contract to meet these needs, it would either result in offers from sources that are not responsible or capable of

doing the work, or offers that have unreasonably high prices attached to them to cover the great potential risk to contractors.

### **Cost-Reimbursement Contracts**

There are several variations of cost-reimbursement contracts, the most common being the cost-plus-fixed-fee contract. This type of contract is used when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of fixed-price type contracts.

Rather than guaranteeing to perform all contract terms and conditions at a specified price, the contractor agrees to deliver its “best efforts” to perform the requirements in return for costs incurred and a reasonable profit (fee). This type of contract provides for negotiations of estimated cost and a payment of a fixed dollar fee to the contractor. This fee cannot be changed unless the parties change the scope of work in the contract to the contract.

A pure cost-reimbursement contract is virtually the same as a cost-plus-fixed-fee contract except that there is no provision for a profit or fee. Rather, it involves a straight reimbursement of contractor costs within stipulated limits. This type of contract is suitable, therefore, to academic and other non-profit institutions, whereas the cost-plus-fixed-fee is used in connection with the profit-making firms. Every cost-reimbursement type contract contains a Limitation of Cost clause (if completely funded from the beginning) or a Limitation of Funds clause (if only partially funded). These clauses limit the contractor from exceeding the total estimated cost. The clauses require the contractor to notify the Government when it expects to reach 75-85 percent of total estimated costs in the next 30-90 days (these figures are the normal ranges available to the Contracting Officer—exact figures will be specified in each contract). COTRs should review these clauses carefully. They spell out the essential nature of cost-reimbursement contracts in terms of contractor performance obligations and cost limitations.

In cost-reimbursement type contracts, the contractor’s risk is minimal. The Government’s risk is commensurately high. It has no guarantee that it will get the specified work. If the work is not completed and the maximum costs have been reimbursed to the contractor, the Government has two choices, sometimes equally unsatisfactory. It can elect to not add funds to the contract and therefore not get any further work, or it can elect to add money to the contract to fund the remaining work. This later action is known as funding a cost overrun.

Cost overruns may occur in a cost-reimbursement type contract. While overruns are caused by contractor waste or inefficiency, often they are due to the lack of certainty in the contract requirements. Given the nature of the work acquired by cost-reimbursement. Contracts, contractor performance often evolves in ways neither the contractor nor the Government foresaw at the time of award. Because of the high Government risk and the lack of guaranteed performance, cost-reimbursement contracts must be monitored far more closely than fixed-price types. The COTR must ensure that the contractor is indeed providing its best efforts, and that it is judiciously expending funds and controlling costs.

Cost type contracts should be used for repetitive buys. If you have a recurring requirement, a definite statement of work should be developed with the goal of reducing risk to the Government through the use of a fixed price contract.

### **Other Types of Contracts**

Besides the fixed-price and cost-reimbursement contract, there are other contract types, many of which are simply variations of those described above. The most important, in terms of our use, are: Indefinite Delivery Type Contracts, Time and Materials and Labor Hour Contracts, and Basic Ordering Agreements (not an actual contract, and cannot be used to restrict competition).

Contract types are discussed in detail in FAR Part 16. Please discuss with your Contracting Officer which contract type he/she thinks will be the most appropriate for the goods or services being procured. It is the Contracting Officer's decision as to what type of contract will end.

### **INCREMENTAL FUNDING**

An incrementally funded contract is a contract in which the total work effort is to be performed over multiple time periods, and funds are allotted to cover discernible phases or increments of performance. To date, this has been a little used funding method within VA. The incremental funding technique is usually applied to cost-reimbursement contracts for the acquisition of research and development services and other, related types of services. This funding technique allows for contracts to be awarded for periods in excess of one year, even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

Projects of multiple-year duration should be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

- a project, which is part of an approved program, is anticipated to be of multiple-year duration, but funds are not currently available to cover the entire project;
- the project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which time additional funds may be obligated, increasing the obligation to the contract;
- the project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple-year duration; and,
- the statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

## **SOURCES FOR SOLICITATION**

### **Developing a Source List**

Within a particular field of interest, a COTR becomes familiar with many potential sources and acquires knowledge of each source's technical capability, physical resources, experiences in a given area, and performance history. The COTR should use this knowledge in developing a recommended source list for the Contracting Officer. The COTR also should review appropriate business and scientific journals to identify new sources, in addition to those the Contracting Officer will obtain from advertising in the Commerce Business Daily.

It is Government policy that Contracting Officers must publicize contracting actions in the CBD in order to:

- increase competition;
- broaden industry participation in meeting Government requirements; and,
- assist small business concerns and small disadvantaged business concerns.

Other techniques may be used to locate additional potential sources. With appropriate approval, requirements may be advertised in periodicals such as science and trade magazines, professional and trade associations might be contacted, other Government agencies doing similar work can be contacted, and so forth. The Contracting Officer also has direct access to several standard source lists and vendor directories.

The point is that all reasonable effort to maximize competition must be made. The Contracting Officer is charged by Federal law to do this and must have the COTRs full understanding and cooperation to do it well. COTRs must realize that, generally speaking, less than maximum competition provides only short term advantages and must be avoided whenever possible.

## **ACQUISITION THROUGH OTHER THAN FULL AND OPEN COMPETITION**

“Other than full and open competition” is authorized under certain conditions. This is popularly thought of as “sole sourcing” or “noncompetitive procurement,” but these are misnomers: in some instances, other than full and open competition may involve limited competition as will be pointed out below.

In any event, contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions listed below. It should be noted that lack of advance planning or concerns about funds availability are not bases for avoiding competition. Use of any exception requires an approved justification for other than full and open competition, which is

referred to as “Justification For Other Than Full and Open Competition (JOFAOC).” The exceptions are:

- Only one responsible source, and no other supplies or services will satisfy agency requirements. Examples include follow-on contracts for major systems; unsolicited proposals; existence of limited rights in data, copyrights, patent rights, secret processes, or control of basic materials; public utilities; or contracts pursuant to an agency standardization program. Use of this exception must be supported by a synopsis of the proposed contract action in the Commerce Business Daily (CBD).
- Unusual and compelling urgency. This exception applies to situations wherein unusual and compelling urgency precludes full and open competition, and delay would result in serious injury to the Government. The JOFAOC must contain the rationale as to the extent and nature of harm to the Government, although the JOFAOC may be executed after award if to do otherwise would cause unreasonable delay. However, the Government must still solicit and consider as many potential sources as practicable. A typical example is acquisitions to support disaster relief efforts.
- Industrial mobilization, or experimental, developmental, or research work. This exception is used to maintain suppliers for national emergency or to achieve industrial mobilization; or to establish or maintain essential R&D capability of an educational or nonprofit, institution or a Federal Funded Research and Development Center. This exception differs from “full and open competition after exclusion of sources” in that this exception is for the purpose of soliciting only one source whereas “exclusion” applies where only some of the potential sources are actually being excluded from competition. Examples of use of this exception include maintaining vital facilities for national emergency, training a selected supplier, preventing loss of capability, or maintaining active R&D work.
- International agreement. This exception is authorized where terms of an international agreement preclude full and open competition, or when directed in writing by a foreign Government, which reimburses the agency for the cost of the acquisition, or the supplies or services for such Government.
- Authorized or required by statute. Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or when the agency needs a brand name commercial item for authorized resale. Examples include acquisitions from qualified nonprofit agencies for the blind or other severely handicapped, acquisitions under the Small Business Administration’s 8(a) Program, or acquisitions from Federal Prison Industries. Acquisitions from these sources do not need to be supported with a JOFOC.

- National security. This exception may be used when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits offers. The acquisition must still be synopsisized if that will not violate security and as many sources as possible must be solicited. This exception cannot be used merely because an acquisition carries a security classification.
- Public interest. The other requirements of CICA notwithstanding, the head of the agency may determine that conducting a particular acquisition with less than full and open competition is in the public's interest. Only the head of the agency may make this determination, it must be in writing, and the Congress must be notified in writing of such determination not less than 30 days before award of the contract. Section 4202 of the Clinger-Cohen Act of 1996 authorizes use of Simplified Acquisition Procedures for contracts for commercial items up to \$5 million. Such procedures require maximum practicable competition. JOFAOCs for such contracts must be processed in accordance with FAR 13.5.

### **Justifications and Approvals Required**

The program office should discuss prospective requests with its supporting contracting office as early as possible during the acquisition planning stage, preferably before submitting the purchase request. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays that might otherwise occur should it be determined that the request for other than full and open competition is not justified.

When a program office desires to obtain certain goods or services by contract without full and open competition, it shall, at the time of forwarding the purchase request, furnish the Contracting Officer with a justification (JOFAOC) explaining why full and open competition is not feasible. As stated previously, this document will be reviewed by the Competition Advocate whose role is to maximize competition to the fullest practicable extent. By law, the Competition Advocate is invested with authority to determine the scope of competition for the requirement.

### **UNSOLICITED PROPOSALS**

#### **General Policy**

An "unsolicited proposal" is a written offer to perform a task or effort, prepared and submitted by an organization on its own initiative without a formal solicitation from VA. It must be an original effort by the offeror in the form of new ideas, which are unique, and because of the offeror's proposal development efforts, a sole source acquisition is warranted. Advertising material, commercial product offerings, and contributions or inventions are not considered to be unsolicited proposals.



Contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offeror an understanding of the agency mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal.

It is important to distinguish between unsolicited proposals and technical correspondence. Technical correspondence includes written inquiries regarding VA's interest in research descriptions or suggestions which request or require no VA funding. Correspondence of this nature is handled directly between the interested individual or organization, and the appropriate office employee. It should be emphasized that acceptance of an unsolicited proposal and its subsequent award as a contract constitutes a contract award with other than full and open competition. As such, it must be supported by an approved justification for other than full and open competition and by a synopsis of proposed contract action, published in the Commerce Business Daily.

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## **PART IV. THE ACQUISITION PROCESS**

### **SECTION 1. PRE-SOLICITATION ACTIVITIES**

The negotiated contracting process has three discrete – preparing for the solicitation, soliciting and awarding the contract, and administering an awarded contract. This Section is concerned with the first of these phases – pre-solicitation activities. It outlines the basic tasks that the Government must complete before it approaches the business community for offers. It concentrates on the responsibilities of the COTR, although many of these tasks require close cooperation with the Contracting Officer to be accomplished effectively.

#### **ADVANCE PLANNING AND SCHEDULING**

Planning for an acquisition is the best way of ensuring that the product or service will be acquired in the most efficient, trouble-free manner. This process should begin as soon as a program need is identified and it becomes obvious that need must be met outside the Government. Acquisition planning involves a general consideration of all the elements that will be required in connection with a particular acquisition. Advance planning helps both the Contracting Officer and the COTR efficiently acquire goods and services by enabling them to allocate and schedule the work involved in an acquisition, and to resolve potential problems early in the process. It will also allow for the scheduling of all activities necessary to conduct market surveys, publish pre-solicitation notices, etc.).

Failing to schedule the overall acquisition workload may result in an inordinate percentage of contract awards being made in the closing months, weeks, and even days of the fiscal year. Excessive year-end spending diminishes the integrity of the acquisition process, is not conducive to full and open competition between potential offerors, and invites increased intervention and scrutiny by outside sources.

The main components of the advance planning and the advance scheduling process are: developing the concept, developing the procurement plan document for the particular proposed acquisition, and obtaining required approvals and clearances.

#### **Concept Development**

Concept development is the first step in an acquisition. It begins when the program office realizes that an acquisition is necessary and defines, in broad terms, what this effort will entail. Concept development may include assessment of prior contracts, in-depth literature searches, and discussions with technical and scientific personnel, both inside and outside of the Government. These discussions may serve to determine interest, scientific approaches, technical capabilities, and the state-of-the-art relevant to the subject area. In holding such discussions with people outside the Government, care must be taken

not to disclose advance information on any specific acquisition, proposed or contemplated, because to do so might create the impression that the Government has given the recipient an unfair, competitive advantage over other organizations subsequently solicited. Once the concept has been formulated, it must be reviewed for program relevance, need, merit, priority, and timeliness by the appropriate management staff. In many agencies, the concept development phase is intimately connected with its budget process because these agencies use the budget process as the primary means of identifying, defining and approving agency acquisitions.

Although many COTRs do not become involved with an acquisition until after the initial budgeting has been accomplished, all COTRs have to deal with budget considerations. This happens, for example, when the initial cost of an acquisition is underestimated and additional funds are required. Although it is important to have funds for an acquisition—especially a major one—included in the agency’s budget, occasionally one that has not been included is turned over to a COTR. If funds have not been budgeted, it may still be possible to fund a particular acquisition. COTRs faced with this situation should contact their budget representative for advice and guidance.

It should be emphasized that Contracting Officers can provide valuable advice to the program managers and to COTRs in this early stage. For example, types of contracts suitable for the contemplated acquisition can be discussed, which can impact upon amount and timing of funding needed; or market research and historical analysis of similar acquisition can be performed, which will assist the directorate in assessing the capability of the market place to satisfy its needs. Program managers and COTRs should involve their supporting contracting staff early in the development of all requirements.

### **THE STATEMENT OF WORK (SOW)**

(Another comment on terminology: “Specification” and “Statement of Work” both refer to the technical description of the goods or services that are the object of the contract. “Specification” connotes goods while “SOW” connotes services, but the two terms are often used interchangeably, in a generic sense.)

The Statement of Work is the single most critical document in the acquisition process. It describes the work to be performed or the services to be rendered, defines the respective responsibilities of the Government and the contractor, and provides an objective measure so that both the Government and the contractor will know when the work is complete and payment is justified. It should be noted that the SOW defines requirements that are reasonable and necessary; it does not merely repeat commercial specifications from a preferred source.

The SOW must be precisely worded because it will be read and interpreted by a variety of people, such as attorneys, acquisition personnel, cost estimators, accountants, technical specialists, etc. If the SOW does not state “exactly what is wanted,” or does not state it precisely, it will generate contract management problems for both the COTR and the

Contracting Officer, such as disputes, over ambiguous wording, delays, and (ultimately) higher contract costs.

Statements of Work are sometimes referred to administrative boards or the courts for interpretation. These interpretations represent what an objective third party thinks is the intention of the document. Generally speaking, the court or board will not concern itself with what the drafter intended to express, but will look at what was expressed. This determination is usually made solely on the bases of the words used and the context in which they appear.

How the Statement of Work is written affects the entire acquisition cycle. It determines the type of contract that is awarded, it influences the number and quality of proposals received, and it serves as a baseline against which to evaluate proposals and, later, contractor performance. Thus, the SOW is the key element in shaping and directing all three stages of the acquisition cycle: pre-solicitation, solicitation and contract award, and post-award administration.

## **INDEPENDENT GOVERNMENT COST ESTIMATES**

Contractors responding to an RFP must submit a cost proposal in addition to a technical proposal. Regardless of whether or not price competition will be obtained, the COTR needs to make sure that the prices offered are within the range that the program has budgeted for a particular acquisition that offered prices are fair and reasonable, and that offered prices reflect an understanding of the Government's requirements. The COTR will assist the Contracting Officer in this area in two ways: by providing an independent Government cost estimate (Attachment I), and by reviewing and commenting upon certain portions of offerors' cost proposals.

While independent Government cost estimates are critical to the acquisition process, to be of substantive value they must truly be independent. COTRs must not contact potential offerors to elicit information to help develop their cost estimate. Technical personnel should normally have a good estimate of staff hours, equipment, travel requirements, etc., that will be required to meet the Government's requirement.

Independent Government cost estimates are developed by (or under the auspices of) the COTR and come in two types: lump sum and detailed. Lump sum cost estimates are the most prevalent, comprising the "total cost" entered on the purchase request. The lump sum may be simply a "best guess" on the part of the COTR or it may be the product of an informal, detailed cost estimation. Either way, the lump sum estimate is generally useful only for broad comparison with offered costs/prices.

## **BONDING AND INSURANCE**

In some instances, it may be necessary to require special commitments from the contractor to ensure VA interests are fully protected during contract performance. The COTR and CO should assess the particular requirement and determine the need for

bonding (bid, performance, payment) and insurance covering the contractor. Guidance is available in VAAR Part 828 and FAR Part 28. FAR policy 28.103-1 states agencies should not require Performance and Payment Bonds for other than construction contracts except for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. Construction contracts under the Miller Act require Bid Bonds, Performance and Payment Bonds for contracts over \$100,000.00. Payment Protection is required for construction contracts between \$25,000.00 and \$100,000.00. Bid Guarantees for other than construction contracts can only be used when a Performance or Payment bond is required (FAR 28.101-1). Bonds and insurance will rise contract pricing to a degree so their merits should be carefully weighed before including such requirements.

## **EVALUATION PLANNING**

### **Planning for the Evaluation of Proposals**

In Part III we discussed the differences between contracting by sealed bidding and contracting by negotiation. The most fundamental difference between the two is that in contracting by negotiation, as the name implies, award is based on the results of negotiations, which are based on the results of evaluations of offers (i.e., proposals) received in response to a solicitation. The evaluation of proposals is based on the evaluation factors specified in the solicitation (i.e., the Request for Proposals). The Statement of Work and the evaluation factors, taken together, establish the principal ground rules for these acquisitions. The SOW states precisely what products or services the Government is requesting, while the evaluation factors clearly state the factors that will be used in evaluating proposals and the relative importance of each factor. It is important to plan evaluation factors while writing the Statement of Work because these two parts of the RFP are intimately connected.

Evaluation factors are generally developed in four groups. These are:

- Mission Suitability Factors;
- Cost Factors;
- Experience and Past Performance Factors; and,
- Other Factors

## **SECTION 2. SOLICITATION AND AWARD**

The Federal Government uses different methods and approaches to acquire goods and services. These acquisition methods and approaches, their differences and similarities, are discussed in Part II of this handbook.

Contracting by negotiation is a commonly used approach. It is also the more complex and places the most demands on the COTR than the sealed bidding method of contracting. In competitive negotiations, the Government communicates its requirements to the business community by means of a solicitation document known as a Request for Proposal. In addition to the Statement of Work, this document contains various representations and/or certifications to be completed by prospective contractors, as well as the proposed terms and conditions of the resulting contract. Also included are instructions to offerors to guide them in preparing their proposals, and information telling offerors how the Government will evaluate proposals to determine which offer will be selected for contract award.

The primary responsibility shifts to the Contracting Officer during most aspects of the solicitation and award of an acquisition. The COTR's role in this phase is to support the contracting officer.

### **THE REQUEST FOR PROPOSAL**

The purpose of the RFP is to convey information that prospective offerors need to prepare a proposal. The RFP describes all the information that prospective offerors must furnish to permit a meaningful and equitable evaluation of their offers. The RFP must be clear, complete, accurate, and consistent with the requirements of the acquisition so that it provides all who received it with the same understanding of the requirements.

The Contracting Officer is responsible for preparing the RFP, with the assistance of the COTR. However, much of the information in the RFP is derived directly from the purchase request or is otherwise furnished by the COTR. Normally, the Contracting Officer does not have the technical knowledge to uncover or correct any substantive deficiencies that may exist in the technical data. The COTR must, therefore, take care to develop a purchase request and supporting documentation during the pre-solicitation phase that will fully satisfy program needs and objectives when included in the RFP. While "acquisition" lead-time begins with preparation of the purchase request, your Contracting Officer cannot begin the procurement process until your purchase request is complete, including a clearly written statement of work; certification of funds; JOFOC when needed; and other clearances that may be needed, such as ADP approval. Therefore, "procurement" lead-time does not begin until you have provided your Contracting Officer with a complete purchase request package ready to use as the basis for the RFP. The COTR should review the final RFP before it is printed and released.

### **AMENDING THE SOLICITATION**

It may be necessary to amend the RFP during the solicitation period. This circumstance could occur for a variety of reasons—for example, material changes are made in the specifications, terms or conditions contained in the original solicitation; or quantities are increased or decreased. Amendments to solicitations increase administrative effort and costs, and they may delay contract award and performance. For this reason, they should be held to a minimum through careful acquisition planning. When an amendment is

unavoidable, as in situations where questions from contractors regarding the RFP must be answered, contracting personnel prepare and distribute it to all recipients of the RFP. Any amendment to an RFP must provide a reasonable time for potential offerors to respond to the change.

## **RECEIPT AND MANAGEMENT OF PROPOSALS**

Proposals received under a competitive procurement may be accepted only by the Contracting Officer. Their receipt will be recorded by time and date, and they will be properly safeguarded by the Contracting Officer until the deadline for submission has passed.

No proposal received after the time and date specified in the RFP will be accepted unless it is received before an award is made and was:

- sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers;
- sent by mail and it is determined by the Contracting Officer that late receipt was solely the fault of the Government; or,
- the only proposal received.

One of the most important administrative responsibilities of program and contract personnel during the pre-award period is to maintain the confidentiality of the proposals received. Unless offerors are assured that their data and other essential information about their operations. However, care must be taken when considering the use of disclosure of technical data to ensure that VA has sufficient rights to use the data in the desired manner. To preclude the improper use or disclosure of the offeror's data, program personnel must ensure that their receipt, storage, and handling of proposals for evaluation include all safeguards necessary to prevent offerors from receiving information that might give them a competitive advantage.

In addition, program personnel must not reveal any information related to the identity or number of potential contractors, information concerning any proposal, or the status of any proposal in relation to others. Release of such information could jeopardize any resultant award and subject the persons involved to disciplinary action.

After the closing date, the Contracting Officer will forward the technical proposals to the COTR or Technical Evaluation Board (TEB) chairperson for evaluation. The Contracting Officer will normally retain the business proposals until the technical evaluation is completed.

## **COMMUNICATION WITH OFFERORS**

To ensure that competition is fair and equitable, every firm must be provided with the same information. Under no circumstances may any Government employee take any action that might give one firm an advantage over another.

In the interval between the time the solicitations are mailed and a contract is subsequently awarded, all contact with potential or actual offerors, relating to the particular acquisition, should be coordinated through the Contracting Officer.

The RFP gives the name of the Contracting Officer and states that only he/she represents the Government. All correspondence to prospective contractors (relating to the particular acquisition) must be signed by the Contracting Officer or the authorized representative, and all correspondence from prospective contractors (relating to the acquisition) must be received by the Contracting Officer. In addition, under no circumstances should the COTR conduct private tours of any portion of the facility.

If, for any reason, one offeror is given information that goes beyond what is contained in the RFP, the same information must be given to all other organizations responding to the solicitation. This must be done by means of a formal amendment that corrects, clarifies, or changes RFP requirements.

## **REVIEW OF PROPOSALS**

VA's policy is to select contractors on the basis of objective review of offers and to document source selections thoroughly. These reviews are generally accomplished by the combined efforts of the Contracting Officer, the program management specialists, and other personnel as may be necessary. The mix and degree of participation of these individuals depends upon the type of offer(s) being evaluated.

### **Source Evaluation**

All proposals submitted in response to an applicable RFP will be reviewed and evaluated to determine which are technically acceptable. The COTR/evaluation team is responsible for evaluating the original technical proposals; ranking them in order of merit; making recommendations to the Contracting Officer regarding clarifications needed and deficiencies identified; reviewing supplemental and/or revised offers; and, if required, assisting the Contracting Officer during negotiations. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals.

### **The Technical Evaluation Report**

When the Contracting Officer forwards the technical proposals to the COTR/evaluation team for evaluation, they will be accompanied by specific guidance for conducting the evaluation and for preparation of the Technical Evaluation Report.



The Technical Evaluation Report must be prepared and signed by the COTR or TEB Chairperson for submission to the Contracting Officer. The report is maintained as a permanent record in the contract file. The report should reflect the ranking of proposals and identify each proposal as acceptable or unacceptable. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal and any uncertainties, reservations, qualifications, or areas to be addressed that might affect the selection of the source for award.

The report should include specific points and questions that are to be raised in subsequent discussions with the offerors. A determination of technical unacceptability must be supported with concrete technical data and/or other rationale. Phrases such as “it could not be determined” and “sketchy presentation” for example, are not adequate support for unacceptable ratings. Since the narrative forms the basis for later debriefings, specific references and terms must be used.

### **Review of Business/Cost Proposals**

The Contracting Officer is responsible for evaluating business considerations, i.e., those factors relating to cost/price analysis and determination of the contractor’s responsibility (e.g., adequate financial resources, ability to comply with delivery or performance schedule, satisfactory record of performance, etc.). The Contracting Officer will need the COTR’s assistance to effectively accomplish this. The Contracting Officer may also be assisted by other specialists including field-pricing support provided by the Department of Defense Contract Audit Agency (DCAA).

The COTR/evaluation team should be prepared to analyze such items as:

- the number of labor hours proposed for various labor categories;
- the mix of labor hours and categories of labor in relation to the technical requirements of the project;
- the types, numbers, and hours/days of proposed consultants;
- proposed travel, including number of trips, locations, purpose, and traveler’s and,
- the type and quantity of data processing requirements.

The COTR/evaluation team should inform the Contracting Officer of whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements should be supported in sufficient detail to allow the Contracting Officer to negotiate effectively.

In addition, the Contracting Officer may request that the COTR/evaluation team review cost or pricing data as a means of facilitating the decision about including a proposal in the competitive range.

## **DETERMINING THE COMPETITIVE RANGE**

After initial identification of proposals not considered acceptable, the COTR/evaluation team will tentatively rank the remaining proposals in accordance with the scoring system established in the solicitation. After this ranking is completed, the proposals will be reviewed to recommend which proposals to include in the competitive range: namely, those, which have a reasonable chance of being selected for award. The competitive range will consist of the best proposals, considering mission suitability, cost or price, experience and past performance, and other factors. When there is doubt as to whether a proposal should be included within the competitive range, include it.

The competitive range will be determined on the basis of the array of scores or relative ranking of the offerors, but not on the basis of a predetermined passing score. Borderline proposals will not be excluded from consideration automatically if there is a reasonable chance that discussions will make them acceptable.

## **DISCUSSIONS AND SELECTION FOR NEGOTIATION**

After the Contracting Officer has determined the competitive range the process moves into the discussion phase.

The Contracting Officer and the COTR should discuss uncertainties and/or other deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the COTR/evaluation team and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the Contracting Officer, with assistance from the COTR as necessary and from cost advisory personnel.

Careful judgment will be exercised in determining the extent of discussions. The time available, the expense and administrative limitations, and the size and significance of the acquisition will be considered in deciding on the type, duration, and depth of the discussions.

Upon receipt of revised offers or other responses to questions raised during discussions, the COTR/evaluation team will re-evaluate the proposals in the competitive range. These evaluations will be prepared and submitted in writing to the Contracting Officer in the same manner as the initial evaluations.

The Contracting Officer will review the latest evaluations and again rank the proposals. This may include removing a given proposal(s) from the competitive range if it is now determined that meaningful negotiations could not be conducted with that offeror.

The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. A proposal initially included in the competitive range will not be rejected without giving the offeror and opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range

unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been in the competitive range initially.

The Contracting Officer will then identify the offeror whose proposal is the most advantageous to the Government, all factors considered.

## **DEBRIEFINGS**

When a proposal is no longer to be considered for contract award, the offeror will be promptly notified in writing, with a general, reasonably brief explanation of the reasons. If an offeror requests in writing a debriefing as a result of such notice, it will be accorded a formal debriefing. Such a debriefing will be provided at the earliest feasible time.

If an unsuccessful offeror believes that its failure to obtain the award was not justified, it will rely, at least in part, on the information given in the debriefing to determine whether it should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror be absolutely factual and consistent with the findings of the Contracting Officer and the basis on which the award was made.

A debriefing should not reveal confidential or privileged commercial or financial information, trade secrets, techniques, or processes of the other offerors, or the relative merits or technical standing of the other unsuccessful offerors.

## **NEGOTIATION, SELECTION AND AWARD**

### **Negotiation**

Once the Contracting Officer has determined the competitive range of offers for negotiation purposes, a pre-negotiation strategy will be developed. "Negotiation," as used here, means the process by which the Contracting Officer resolves weaknesses and deficiencies in the technical and management aspects of a proposal, and resolves any unbalanced or unallowable costs in a business proposal. After the completion of negotiations, the Contracting Officer will prepare the Price Negotiation Memorandum.

### **Completion of Contract Award**

The Contracting Officer is responsible for preparing the final contract document. Before release of this document to the contractor for signature, the Contracting Officer coordinates with all parties to the negotiation to assure that the final document fully delineates the agreement reached at negotiations and is representative of the needs of the program office. An important element of this final phase is to ensure that the schedule anticipated for receipt of supplies and/or services remains accurate. For example, if ordering ADP equipment that requires environmental changes to the Government facility ensures that completion of those changes occurs before the equipment arrives. Another

example would be if Government furnished property is to be provided, make sure you will be able to furnish that property by the agreed upon time.

## **PROTEST PROCEDURES**

At any time subsequent to release of the solicitation and even beyond contract award, an interested party may challenge VA's actions. This is formally known as a "protest." Protests are categorized as pre-award or post-award.

The rights of the protester are very different depending upon the category of protest filed.

Protests may be filed in four places: (1) With the Contracting Officer; (2) With the Head of the Agency; (3) With GAO or GSBCA; (4) In the Circuit Courts.

## **PART V. POSTAWARD ADMINISTRATION**

Contract administration involves ensuring that the contract is performed-as written—by both the contractor and the Government. No matter what type of contract is involved, a breakdown in administration can undo all previous achievements discussed in the other parts of this Handbook. The COTR must monitor a contractor’s progress closely and make known to the Contracting Officer any and all potential problems that threaten performance so that remedial measures may be taken.

Administration of a contract begins after negotiations have been successfully concluded and the contract has been signed; it ends at the closeout of the contract when performance has been completed and the contractor has received its final payment. Therefore, contract administration includes all the functions and duties relating to such tasks as:

- monitoring the contractor’s technical progress;
- approving invoices for payment in accordance with contractual terms;
- controlling Government property;
- monitoring subcontractors;
- reviewing purchase orders;
- evaluating cost proposals submitted as a result of changes or as requested by the Contracting Officer;
- overseeing contract modifications and terminations where authorized; and,
- performing any and all other administrative tasks required by the contract.

Contract administration can be simple, or complex and time consuming, depending on the type of contract, contractor performance, and the nature of the work. For example, a fixed-price contract requires relatively little post-award administration, whereas a cost type contract requires careful technical surveillance and auditing of cost.

No matter what type of contract is involved, however, it must be closely monitored. If technical or business problems are not solved before they disrupt the contractor’s scheduled performance, the Government may find itself in a situation of a pending termination or unnecessary costs that could have been avoided if the Government had administered the contract properly.

### **Communicating with the Contracting Officer**

The Contracting Officer delegates certain contract administration functions to the COTR, but the legal responsibility for the contract remains with the Contracting Officer. The COTR functions as the “eyes and ears” of the Contracting Officer, monitoring technical performance, and reporting any potential or actual problems to the Contracting Officer. It is imperative that the COTR stay in close communication with the Contracting Officer, relaying any information that may affect contractual commitments and requirements.

## **POSTAWARD ORIENTATION**

The fundamental task of Government contract administration is to ensure that the contractor fulfills its obligations. Post-award orientation is a useful tool for ensuring good contractor performance by:

- ensuring that the contractor understands the contract requirements;
- clarifying contract administration procedures that will be applied; and,
- clarifying the roles of Government personnel who will be involved in
- administering the contract.

In relatively simple acquisitions, post-award orientation may be accomplished by the Contracting Officer in a letter. This letter would identify the Government officials responsible for contract administration and clearly identify any special or unusual requirements, such as production tests, special reports, and subcontracting consent requirements.

The Contracting Officer may decide that a post-award conference is necessary when an analysis shows that the contractor may not have a clear understanding of the scope of all the technical or other requirements of the contract, or when there are other existing or potential problems that may adversely affect contract performance.

Any post-award orientation conference will usually be preceded by a meeting of all the Government personnel with administrative responsibilities for the contract to establish a coordinated Government position regarding the agenda and the specific responsibility of each Government representative. The agenda will cover all matters that need to be clarified or otherwise discussed with the contractor to avoid misunderstanding of the contract requirements.

If the Contracting Officer does not chair the orientation conference, this responsibility can be delegated to the COTR. The conference should be conducted in a businesslike manner, with the recognition that both parties have an existing contractual relationship and that the purpose of the conference is to promote accurate understanding of the contract, not to alter it.

Post-award orientation of subcontractors is the responsibility of the prime contractor. If the prime contractor invites subcontractor personnel to the post-award conference, Government representatives attending should recognize that the Government has no privity of contract with any subcontractor. Therefore, all instructions, interpretations, or other contractual dealings with the subcontractor are the business of the prime contractor, unless problems arise that cannot be resolved by the prime contractor.

## **INSPECTION AND ACCEPTANCE RESPONSIBILITIES**

Before services or products required by the contract can be accepted, acceptability must be determined by review, test, evaluation, or, inspection. These functions are performed by the COTR, who then reports the results to the Contracting Officer.

Final acceptance of the services or products by the Contracting Officer concludes performance by the contractor, except for administrative details relating to contract closeout. After final acceptance, the contractor can no longer be held responsible for unsatisfactory effort, unless otherwise specified in the contract. Therefore, the COTR must ensure that the work performed under the contract is measured against the work statement. If performance does not meet contract requirements, it is incumbent upon the COTR to identify deficiencies and to advise the Contracting Officer so that remedial action can be taken before final payment and contract closeout.

## **CONTRACT MONITORING**

The contractor has primary responsibility for performance of the contract, but the COTR and the Contracting Officer have a vested interest in continually monitoring contractor performance. Unsatisfactory performance under a contract may jeopardize a project and even an entire program.

In monitoring a contractor's performance, the Government is primarily interested in progress toward completion of the specified requirements and the financial status of the contract. One valuable tool in this area is reporting requirements. The Government may require in the contract document that the contractor provide progress or administrative reports. It must be remembered, however, that the contractor will charge the Government for all reports: therefore, report requirements should serve a useful purpose for monitoring contractor performance. Reports are discussed in greater detail below.

Additional information may also be obtained in the form of letters and phone calls between the contractors, and COTR and Contracting Officer. Visits to the contractor's facilities are sometimes necessary to evaluate the contractor's performance. However, it is important to maintain a reasonable balance. Although the Government has a right and a duty to monitor contractor performance, Government personnel may be subject to charges of interference in the contractor's operation or of making unreasonable demands if discretion is not used in this area.

### **Technical Progress Reports**

Progress reports should include all relevant details to provide the COTR with most of their information on the progress of the work. However, they should not become too burdensome to prepare. Technical progress reports may be submitted in letter form and may include the number and names of persons working on the project; the facilities devoted to the work; the number of man-days expended; the direction of the work; and

the latest observations, problems encountered, predictions, plans for the next reporting period, and actions required by the Government, if any.

### **Financial Status Reports**

Financial reports are an important element in contract administration, especially in cost-reimbursement type contracts. They reveal the financial status of the contract and provide information that is helpful in avoiding or anticipating cost overruns. Financial reports provide both the COTR and the Contracting Officer with a means of checking the contractor's expenditures based on the negotiated cost elements and enable them to match the costs incurred with the technical results achieved.

The amount of detailed financial information required will vary, depending on the type of contract involved, the nature of the work or services being procured, and the method of payment. Under a cost reimbursement contract, the contractor is entitled to full and prompt payment for all incurred allocable and allowable costs, without any holdback by the Government pending completion of performance. Therefore, cost reimbursement contracts require close monitoring by the COTR so that the Government does not pay excess costs for the end product either because of a contractor's inefficiency (e.g., missed schedules, unacceptable reports, etc.), or as a result of unforeseen problems which, if promptly addressed, could have prevented excess costs.

### **Deliverables**

As stated above, the COTR is responsible for determining whether products delivered by the contractor conform to the technical requirements of the contract. In discharging this responsibility, the COTR should keep in mind that, once a contractor's work has been formally accepted, the contractor is excused from further performance or correction of work that has already been accepted, should it prove to be unsatisfactory (except for latent defects).

In some contracts, the end result or deliverable is a report, such as a study. The COTR is responsible for conducting a technical review of the report, comparing it to the requirements set forth in the contract Statement of Work and applicable specifications. Where appropriate, the COTR should solicit the comments and concurrence of other appropriate technical experts and/or from other affected program personnel. Any required revisions must be transmitted to the contractor over the signature of the Contracting Officer.

In the event that the work is deemed unsatisfactory, the COTR and the Contracting Officer must determine what further actions are required, seeking the advice of legal counsel if necessary. The COTR should provide written notification to the Contracting Officer when the contract work has been judged complete and technically acceptable, so that the Contracting Officer can communicate acceptance to the contractor.



## **Reviewing Invoices and Vouchers**

Contractors are required to submit invoices and vouchers to VA for work completed or costs incurred. COTRs may become involved in the approval process of invoices and vouchers on contracts. It is possible, for example, that the COTR might be asked to approve the invoice for a particular supply contract or progress payments under another contract. In any event, the COTR will receive instructions regarding his/her involvement in the review and approval of invoices and vouchers from the Contracting Officer.

## **INADEQUATE CONTRACTOR PERFORMANCE**

In a delinquency or default situation, contractor performance is delayed, inadequate, or both. COTRs must thoroughly understand the rights and responsibilities of both the Government and the contractor so that they will do nothing that might be considered prejudicial to either party.

When unsatisfactory contract performance is identified, the COTR should notify the Contracting Officer promptly so that remedial steps can be taken. Silence on the part of the Government could be interpreted by the contractor as acceptance by the Government. Such situations could adversely affect the Government's right to withhold payments, terminate for cause/default, or otherwise exercise certain rights under the contract.

Unsatisfactory performance can be considered in degrees, and the Government's actions can be oriented to correct the unsatisfactory performance or to protect the Government's interest in the event of contractor's default. Depending upon the Contracting Officer's evaluation of the seriousness of the unsatisfactory performance, he/she may:

- by letter or through a meeting, bring the particular deficiency to the attention of the contractor and obtain a commitment for appropriate corrective action;
- extend the contract schedule if excusable delays in performance are involved;
- withhold contract payments in cases where the contractor fails to comply with delivery or reporting provisions of the contract; or
- terminate the contract for cause/default.

After a complete review of the situation, the Contracting Officer may send a notice of failure of performance to the contractor. This notice, which officially notifies the contractor of the delinquency, requires the contractor to inform the Contracting Officer of the cause(s) of the delinquency so that a proper determination can be made concerning continuation or termination of the contract.

## **Withholding Payment**

All Government contracts contain a clause allowing the Government to withhold payments. A contractor's failure to either submit a report, or to perform or deliver services or work when required by the contract is considered a default in performance. In either circumstance, the Contracting Officer is directed to immediately issue a formal

“cure notice,” which is to include a statement to the effect that contract payments will be withheld if the default is not “cured” or is not determined to be excusable. A “cure notice” from the Contracting Officer points out a deficiency in contractor performance and directs that it be “cured” within a specified time—usually 10 days.

If the default or failure is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer initiates withholding action on all contract payments and determines whether termination for default or other action would be in the best interest of the Government. When determination is made that contract payments should be withheld, the Contracting Officer will immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

## **Terminations**

Situations may arise when the work contracted for does not run to completion. Two standard contract clauses are designed to cover this eventuality: the “Termination for Convenience of the Government” clause and the “Cause/Default” clause. Both types of terminations can be either partial or complete; that is, all or any part of the work can be subject to the termination. The portion that is not terminated must be completed by the contractor. The contractor has no contractual right to decide that the remaining work is insufficient to merit its attention and then opt not to continue with it. No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.

### **Termination for Convenience**

The Termination for Convenience clause gives the Government the right to cancel a contract when to do so is in the best interest of the Government, notwithstanding the contractor’s ability and readiness to perform.

Termination for convenience requires that a financial settlement be made for the work that has been accomplished under the contract up to the effective date of the termination. Settlements may be reached by one, or a combination of the following methods:

- negotiated agreement;
- determination of the Contracting Officer; and,
- costing out under invoices or vouchers (in the case of costs under cost-reimbursement contracts).

Following the termination, the Government, and the Contractor may need to reach an agreement on an equitable settlement. The Contracting Officer evaluates the contractor’s settlement claim and establishes the Government’s position with respect to the various elements of cost or price included. A cost or price analysis must be performed and, in some cases, the contractor’s books and records must be audited. A memorandum documenting the negotiations must be placed in the contract file.

## **Termination for Cause/Default**

Termination for Cause is the termination clause for Commercial Item Contracts. Termination for Default is the termination clause for other than Commercial Item Contracts.

The Termination for Cause/Default clause allows the Government to terminate the contract when the contractor fails to make progress with the work or to perform any other contract requirements within the period provided by a “cure notice.” Once a Contracting Officer has determined that it is necessary to invoke the Termination for Cause/Default clause, the COTR should have no further contact with the contractor unless specifically directed to do so by the Contracting Officer.

## **CONTRACT MODIFICATIONS**

A contract modification is a written alteration of contract provisions, (e.g., work statement, period of performance, quantity, price or other provisions or a contract), accomplished in accordance with a contract provision or regulation. During the contract life, different types of modifications may be necessary to incorporate new requirements or to handle problems that develop after contract award. Contract modifications must be made in writing by the Contracting Officer in order to preclude any misunderstanding between the parties concerning work to be performed.

### **Modifications Invoicing New Acquisition Actions**

Before initiating a modification, it is necessary to determine that it is within the scope of the existing contract rather than a “new acquisition” outside the scope of the contract. A “new acquisition” must be conducted as a separate acquisition action.

If a new acquisition is involved and the Government decides to contract with a contractor who is already providing the desired services (under an existing contract), the new requirement may be covered by a new contract or by a modification to the existing one. Regardless, this new (or continuing) requirement must be treated as a new acquisition and processed as such. This means, for example, that a synopsis must be published in the “Commerce Business Daily,” as discussed in Part II.

When a new acquisition is contemplated, it should be subject to competition: it cannot be awarded automatically to a contractor simply because the contractor has a current contract with VA. Advance planning is critical to ensuring uninterrupted service. Once a contract has expired, it cannot be modified.

### **Modifications**

Generally there must be consideration whenever a contract is modified. “Consideration” is the benefit each party confers upon the other for the modification.

Although contract modifications usually result in price increases, they may sometimes result in price reductions. The requirement for consideration, as set forth in various decisions of the Comptroller General, is that no officer or employee of the Government may alter a contract to the prejudice of the Government unless the Government receives corresponding, tangible contractual benefits. Thus, there is really no such thing as a “no cost” extension to the period of performance of a contract. If the Government allows a long period of time for delivery, the “cost” to the Government is its right to delivery of the product or service by the date agreed upon. The law requires the contractor to provide some form of consideration for the Government’s giving up of that right.

Certain administrative changes may be made without consideration provided the contractor’s rights are not affected; e.g., change in the appropriation data or a change in the paying office, etc. Once a valid contract is executed, no adjustment can be made to its terms merely because it may appear, in retrospect, that either the contractor or the Government had made a “bad bargain.”

## **CHANGES**

The contract clause entitled “Changes” distinguishes Government contracts from other contracts by the control over performance vested in one of the contracting parties—the Government.

Unlike contracts in the private sector where performance must conform to pre-agreed terms in the absence of a modification issued by both parties, the “Changes” clause in a Government contract allows the Government to alter the work to be performed without the consent of the contractor.

The “Changes” clause provides, in essence, that the Contracting Officer may by written order make any change in the work within the general scope of the contract. Such changes may result also in an appropriate upward or downward equitable adjustment in the contract price, delivery schedule, or time for performance. Additionally, the clause provides that dispute over the equitable adjustment is a question of fact under the “Disputes” clause, and that nothing in the clause excuses the contractor from proceeding with the contract as changed. This power, unique to Government acquisition, allows the Contracting Officer to alter performance without unnecessary interruption and to subsequently determine the appropriate contract price adjustment.

### **Constructive Changes**

A “constructive change” arises whenever, by informal action or inaction of the Government, the situation of the contractor is so altered as to have the same effect as though a written order had been issued under the Change clause. The term is derived from the verb “to construe”—not from “to construct.” Thus, the constructive change is a situation that can be construed as having the effect of a Change Order.

If a specification is defective in such a way that reasonable review prior to preparation of a bid or proposal would not disclose the defect (i.e., the defect is latent), this has the effect of making the work more difficult for the contractor than is reasonably expected. Adding a work requirement in this accidental manner is tantamount to making a change to the specifications. It leads to an obligation on the part of the Government to make an equitable adjustment in a fashion similar to that which would be made under the Changes clause. This general area includes cases where performance is completely impossible.

If, during the course of contract performance, questions arise concerning the meaning of the specifications (or other terms of the contract), the contractor is required to ask for a decision from the Contracting Officer, as to the meaning. The Government's interpretation may differ from the contractor's. Under the Disputes clause, the contractor must comply with any subsequent "final decision" issued by the Contracting Officer in response to the contractor's written request. Later, this disagreement may be subject to review by a Claims Court, if the contractor elects to appeal the Contracting Officer's final decision. If it is determined that the Government had required more than a reasonable reading of the specifications would require, then the contractor is entitled to an adjustment.

Overly strict inspection is closely related to erroneous interpretation of specifications. Presume that a delivery has been made. The COTR, in the role of inspector, rejects the items and requires certain corrections. The contractor then makes those corrections. If the contractor later makes a claim for additional work and it is determined that the initial delivery was not defective, the adjustment will be under the principles of constructive change.

If the Government causes a delay for the contractor but then insists on having the original delivery schedule met, this is a constructive acceleration. Time should have been added for performance.

Finally, there are the cases of improper technical direction, usually from the COTR. The difference between improper technical direction and overly strict inspection or erroneous interpretation of specifications, is that the error occurs because the COTR either does not bother to determine the limits of his/her authority, or deliberately ignores such limits.

### **How to Avoid Constructive Changes**

Careful preparation of initial contracts (removing ambiguities or inconsistencies from the specifications) is the first step in avoiding constructive change. This includes careful drafting of a formal modification. The Government often does not consider the magnitude of the effect a modification will have on the contractor. For example, when an equitable adjustment is negotiated, the Government does not allow the contractor enough additional time to perform. This, in turn, creates a constructive change for which an adjustment will become due.

The second step in avoiding constructive changes is for the COTR to know what the contract requires. Both erroneous interpretation of specifications and overly strict inspection tend to result from a failure by the COTR to read the contract carefully. When decisions are made based on what “everybody” knows the specifications ought to say rather than on what they really do say, claims frequently result.

The third step is for the COTR to keep proper records. For example, if, during an interim inspection, the COTR tells the contractor that some aspect of performance is inadequate, the aspect should be explained in writing, with a copy transmitted to the contractor through the Contracting Officer.

Documentation of final inspection is also important. It is not sufficient to tell the contractor that the product is unacceptable, specific problems should be identified in writing. Contractors can mistake general comment about one way to correct a problem as specific direction that this is the only acceptable way. Good documentation can eliminate the sort of misunderstanding.

## **SUBCONTRACTS**

Subcontracting is defined as contracting between a prime contractor and one or more other organizations or individuals to obtain goods or services to carry out the objective of the prime contract. The prime contractor, not the Government is responsible for administering subcontracts. When the Government buys the services of a contractor it is buying, among other services, its management services. It is the responsibility of the prime contractor in an acquisition to ensure the performance of the subcontractor. Nevertheless, there are a number of monitoring and contract administration functions a COTR can perform to promote effective subcontract operations.

### **Action Prior To Award**

The COTR has the opportunity to begin monitoring the subcontracting process prior to award. When the COTR reviews proposed subcontracts before forwarding them to the Contracting Officer for approval, the FAR suggests that the following questions be considered by the COTR (there are additional questions the Contracting Officer should consider):

- Is the decision to subcontract consistent with the contractor’s approved make-or-buy program if any?
- Is the subcontract for special test equipment or facilities that are available from Government sources?
- Is the selection of the particular supplies, equipment, or services technically justified?
- Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?
- Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

- Is the proposed price fair and reasonable? In reviewing the proposed subcontract, the COTR should be especially careful if:
  - the prime contractor has had previous subcontracting problems;
  - there has been little or no competition for the goods or services;
  - there is a close relationship between the prime contractor and the proposed subcontractor; and,
  - the subcontract is to be placed on a cost-reimbursement, time and material, labor hour, fixed-price incentive, or fixed-price pre-determinable basis.

### **Action After Award**

After the subcontract has been let, it is the prime contractor's responsibility to manage it. But here again, the COTR has certain responsibilities to ensure that the prime contractor is managing it adequately. The COTR can review the effectiveness of the contractor's subcontract administration function by making observations of such things as the support, direction, and timeliness of actions provided by the contractor to subcontractors.

An important area to be covered in any review of subcontract administration is the contractor's system for making subcontract changes. Procedures must provide not only for timely processing of changes but also for prompt notification of all parties concerned, including the Government.

### **OPTIONS**

An option is a provision in a contract under which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract at an established price, at a price that can be established by reference to some specific method of calculation which will make the price certain, or at costs to be negotiated prior to exercising the option. An option may call for delivery of the option quantity within the initial contract period or may call for delivery of the option quantity subsequent to the initial contract period.

Options are most often used in situations where the Government is indefinite as to the quantities it requires. A contract with an option provision will allow for the purchase of a specified quantity, with the Government retaining the right to purchase a specified further quantity at a set price at some later time, or at a cost to be determined later.

Option provisions invariably contain a statement to the effect that the government will notify the contractor within some specified time (e.g., 60 days before the expiration date of the contract) of its intent to exercise the option. The decision to acquire the option quantity is primarily the COTR's. In order to avoid the possibility of losing the Government's right to exercise the option, the COTR must notify the Contracting Officer of this decision in sufficient time to allow the Contracting Officer to put the contractor on notice within the time specified in the contract.

To exercise an option, revalidation of the requirements, as well as market analysis to establish that doing so is in the Government's best interest, may be required. If so, the COTR will have a role to play in these functions.

The COTR is also responsible for providing the funds necessary to pay for the option quantity.

## **CONTRACT CLOSEOUT**

Contract closeout actions are primarily the responsibility of the Contracting Officer, but the assistance of the COTR may be required to certify that all services have been rendered in a satisfactory manner and all deliverables are complete and acceptable. The COTR assistance is indispensable when disputes, litigation, patent and copyright problems, etc., are involved.

Upon completion of the contract, the Contracting Officer must ensure or determine, as applicable, that:

- all services have been rendered;
- all articles have been delivered and accepted;
- all payments and collections have been made;
- releases from liabilities, obligations, claims have been obtained from the contractor;
- assignments of refunds, credits, etc., have been executed by the contractor;
- all administrative actions have been accomplished, including the settlement of disputes, protests, and litigation; determination of final overhead rates; release of funds; and disposal of property; etc.; and,
- the file is properly documented.

Contract closeout is necessary to ensure that Government funds were properly expended, excess funds are de-obligated, Government property, if used, is properly returned, contractor releases from further claims are obtained and the contractor's performance is rated for future Government use. Failing to complete contract closeout in a timely manner increases the staff time needed to complete the closeouts because the passage of time makes it more difficult to obtain the necessary information.

## **SECURITY**

If a contract involves access to information by contractor personnel, which is determined by local personnel to be confidential or proprietary, a security clause will be included in the contract.



## **Access to Security Information**

As soon as it is determined that a contractor will require access to security information, the COTR shall determine, in consultation with appropriate VA officials, levels of clearances for personnel actually involved in the classified aspects of the contract.

## **Requests for Classified Documents**

The COTR will evaluate all requests for classified documents. Requests received by the Contracting Officer will be forwarded to the COTR for certification of the need-to-know and transmittal to the VA or bureau security office for approval.

COTRs shall also ensure that visit authorization requests are received from contractors in advance of contractor visits/access to information.

## **GOVERNMENT PROPERTY**

When Government property, whether or not listed in the contract, is required for performance, the COTR must submit to the Contracting Officer a written request for delivery to the contractor. The request will be forwarded to the Contracting Officer regardless of the source of the property. The Contracting Officer will normally approve transportation costs as a reimbursable item under cost-reimbursement contracts on which the property is assigned. In these cases, shipment will be authorized on a commercial bill of lading.

Each request for Government-furnished property will identify the items to be furnished, serial number, date required, the name and address of the person to receive the property, the name of the contractor, contract number, and the contractor's need for the equipment in performance of the contract.

Authorization for delivery of Government-furnished property shall be made only by the Contracting Officer.

The COTR will be responsible for furnishing recommendations to the Contracting Officer for the disposition of Government-furnished property in the hands of the contractor. Before recommending storage for potential future use, consideration will be given to packaging, transportation, and storage.

There may occasions under cost reimbursement contracts where in the contractor must acquire property for use in completing the contract. In such situations, the COTR is required to ensure that such property is used for the intended purpose and, if applicable, is returned to the Government in reasonable condition upon contract completion. In some cases, the contractor may purchase the equipment/property, and therefore title remains with the contractor unless contract states otherwise.

The contractor may be authorized to use the property on other Government contracts and on commercial work. The contractor is usually charged rent when Government property is used on commercial work. The rent payments received from the contractor should be subjected to periodic audits by the contract auditor.

## **TRAVEL**

### **Travel by Contractor**

In evaluating contractor requests for travel, the COTR will assure that travel to be performed is authorized in the contract, with due consideration for any limitation specified therein. The COTR will also assure that, whenever possible, Government cost-reimbursement contractors use GSA contract airlines, under the conditions established by Federal Property Management Regulations (FPMR) Temporary Regulation A-22 and GSA Bulletin FPMR A-87. In evaluating contractor requests for travel, as a minimum, the COTR will assure that:

- Travel proposed is essential to the effective performance of the contract;
- The contractor and any subcontractor have screened reimbursement travel to avoid nonessential participation in conferences, meetings, or conventions;
- The contractor and any subcontractors are limiting the mode of travel to the most economical method and are relating travel to production time;
- When unable to use any GSA contractor airline, the contractor and any subcontractors are making reservations for air travel sufficiently in advance to obtain business class or coach rates; and,
- The contractor and any subcontractors are limiting the cost of travel to Federal Per Diem Rates.

## **PROCUREMENT OF ADVISORY AND ASSISTANCE SERVICES**

All contracts for advisory and assistance (A&A) services shall be in accordance with VAAR Subpart 837 and the Office of Management and Budget's (OMB) Circular No. A-120. A&A services are those services of a purely advisory nature relating to the Governmental functions of agency administration management and agency program management. These services are normally provided by persons and/or organizations that are considered to have knowledge and specific abilities that are not generally available within the agency.

## **SMALL BUSINESS PROGRAM (SBP)**

It is the policy of the Department of Veterans Affairs to ensure that a fair proportion of its procurement expenditures go to small business firms, disadvantaged individuals, firms located in HUB Zones, and women-owned or veteran-owned business enterprises. The Department's Office of Small and Disadvantaged Business Utilization (OSDBU) coordinates the establishment of VA goals and assists the contracting offices of bureaus

in identifying suitable procurement through the screening of current and prospective awards.

The COTR, with the assistance of the Small Business Specialist (SBS), shall seek, identify, and tailor program requirements to permit participation of qualified small and disadvantaged business. The COTR shares in the responsibility for meeting small business program goals and can participate actively toward their achievement by:

- Becoming familiar with the procurement preference program goals;
- Identifying portions of work suitable for performance by small businesses;
- Searching out emerging firms eligible for participation that may not be on a current solicitation mailing list; and,
- Keeping open the channels of communication with the OSDBU in coordinating activities to assure that VA will continue to improve its program achievements.

COTRs are encouraged to contact their respective SBS for assistance in identifying appropriate requirements for which there may be prospective small and disadvantaged small business sources available.

## **SUMMARY**

This handbook was created to assist you in your job as a COTR. It will not provide all the answers to the questions, which may arise during the procurement process. Good contract performance requires your diligence and good judgment, along with cooperation with your Contracting Officer.

To assist you, a few pages of Do's and Don'ts are provided in Attachment J. As stated before, if you have any questions, consult with the Contracting Officer as soon as they arise.

Good Luck!

## **GLOSSARY OF ACQUISITION AND CONTRACT TERMS**

<b>TERM</b>	<b>USAGE</b>
Acquisition	The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase, lease, or barter, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.
Administrative Contracting Officer (ACO)	A Government contracting officer, often at a location other than the one that made the contract, who handles the business administration of the contract.
Allocation	Funds made available for departmental subdivisions from the department allocation: a control point.
Allotment	Authorization by an agency head to an agency subdivision to incur obligations within a specified amount.
Apportionment	Statutory authorization to spend from VA for specified purposes.
Best and Final Offer (BAFO)	An advanced step in the Source Selection process which permits an offeror to submit revised technical and cost proposals, after clarification and discussion of the offeror's original proposal(s)
Bid	A prospective contractor's (bidder's) reply to a sealed bid solicitation document (IFB). Needs only Government acceptance to constitute a binding contract. Sealed Bid as identified under Title VII – Competition in Contract Act of 1984.
Bidders Conference	In sealed bid acquisitions, a meeting of prospective bidders arranged by the Contracting Officer during the solicitation

	period to help solicited firms fully understand the Government's requirement and to give them an opportunity to ask questions.
Bidders List (Solicitation Mailing List)	List of sources maintained by the procuring office from which bids (sealed bidding) or proposals or quotations may be solicited.
Blanket Purchase Agreement (BPA)	A negotiated agreement between a contractor and the Government under which individual "calls" may be placed for a specified period of time and within a stipulated amount.
Budget	The Federal administrative package presented to Congress each year by the President as the nation's basic financial planning document.
Change Order	Unilateral direction to a contractor to modify a contractual requirement within the scope of the contract, pursuant to the Changes clause contained in the contract
Commerce Business Daily (CBD)	Publication synthesizing proposed Government acquisitions, sales, and contract awards. Also publishes information on subcontracting opportunities and advance notices of acquisitions.
Commitment	A firm administrative reservation of funds authorizing subsidiary activities to start action leading to an acquisition obligation.
Competitive Proposal	Technical and Cost Proposals for negotiated acquisitions as cited in Title VII – Competition in Contracting Act of 1984.
Competitive Range	In competitive negotiations, the group of firms, which have the potential to receive the contract award(s).
Comptroller General	Head of the General Accounting Office appointed by the President (and confirmed by the Senate) for a 15-year term.

Contracts	All types of agreements and orders for obtaining supplies or services. Includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fee, or the issuance of job orders, task orders or task letters; letter contracts, purchase orders and supplemental agreements, to name a few.
Contracting	(Sometimes referred to as procurement) Purchasing, renting, leasing or otherwise obtaining supplies or services. Includes description (but not determination) of supplies and services required, solicitation of sources, preparation and award of contracts, and all phases of contract administration.
Contract Type	A reference to the pricing terms of the agreement between a buyer and a seller; may refer to the special nature of other important terms in the agreement. The following are some examples:
<ul style="list-style-type: none"> <li>•Cost reimbursement Contracts</li> </ul>	In general, a category of contracts whose use is based on payment by the Government to a contractor of allowable costs as prescribed by the contract. Normally, only “best efforts” of the contractor are involved. Includes (I) cost, (ii) cost sharing, (iii) cost-plus-fixed-fee, (iv) cost-plus incentive-fee and (v) cost-plus-award fee contracts.
<ul style="list-style-type: none"> <li>•Fixed Price Contracts</li> </ul>	In general, a category of contracts whose use is based on the establishment of a firm price to complete the required work. Includes (I) firm fixed price, (ii) fixed price with escalation, (iii) fixed price redeterminable, and (iv) fixed price with incentive provisions contracts
<ul style="list-style-type: none"> <li>•Indefinite Delivery/Indefinite Quantity</li> </ul>	Used when the precise quantity of items or specific time of delivery desired is not know. Usually will specify a maximum and/or minimum quantity. Such acquisition is effected via (I) a definite quantity

contract, (ii) a requirement contract, or (iii) an indefinite quantity contract. May be established through either sealed bid or negotiated procedures.

•Letter Contract

An interim type of contractual agreement, sometimes called a “Letter of Intent,” authorizing the commencement of manufacturing of supplies or performance of services. Used in negotiated acquisitions only when a definitized fixed-price or cost-reimbursement contract cannot be written until a later date.

•Time and Materials/Labor Hour Contract

Negotiated contracts based on specified fixed hourly rates to complete a given task. Used only in situations where it is not possible at the outset to estimate the extent or duration of the work involved or to anticipate cost with any substantial accuracy. Least desirable contract type for the Government.

Cost Overrun

The amount by which a contractor exceeds (I) the estimated cost and/or (ii) the final limitation of his contract.

Data

All recorded information to be delivered under a contract. Technical data excludes management and financial data

Determination & Findings (D&F)

Written justification by a Contracting Officer for such things as: (I) entering into contracts by negotiation, (ii) making advance payments in negotiated acquisitions, (iii) determining the type of contract to use.

Economic Price Adjustment Provision

Contractual provision for resetting the contract price when a contingency, such as a change in cost of labor or materials occurs: commonly used in gasoline or heating oil contracts.

Extras

Additions to items being purchase, or any quantity above that called for by the contract

(besides allowable variation in quantity), or any combination of these two.

Federal Acquisition Regulation (FAR)

The primary regulation for use by all Federal Executive agencies in the acquisition of supplies and services with appropriated funds.

Invitation for Bid (IFB)

A solicitation document used in sealed bidding acquisitions.

Joint Consolidated List for Debarred, Ineligible, and Suspended Contractors

A list of contractors who, for various reasons, are partially or wholly prevented from award of Government contracts.

Materiel

Anything incorporated into, or consumed in, the manufacture of an end item. Includes raw and processed material, parts, components, assemblies and usable tools

Modifications

Any formal revision of the terms of a contract, either within or outside the scope of the agreement. Includes Change Orders.

Negotiation

The method of acquisition used when one or more of the basic conditions incident to sealed bidding is absent and/or when there is justification under one or more of the 7 exceptions provided by the Competition in Contracting Act of 1984.

Negotiation Authority

Authority to negotiate a contract under one of the 7 statutory exceptions granted by Congress, rather than the sealed bid method of acquisition.

Obligation

A monetary liability of the Government limited in amount of the legal liability of the Government at the time of recording. Must be supported by documentary evidence of the transaction involved.



Offer/Proposal/Quotation	A prospective contractor's response to the solicitation form (RFP/RFQ) used for a negotiated acquisition.
Office of Management & Budget	Basic financial control agency in the executive branch. Reports directly to the President.
Office of Small and Disadvantaged Business Utilization (OSDBU)	VA's program office with responsibility for advocating small business concerns. Serves as liaison office with SBA on certificates of competency
Option	A contractual clause permitting an increase in the quantity of supplies beyond that originally stipulated or an extension in the time for which services on a time basis may be required.
Pre-award Survey	Study of a prospective contractor's financial, organizational and operational capability, and managerial status, made prior to contract award, to determine his responsibility and eligibility for Government acquisition.
Presolicitation Conference	A meeting held with potential contractors prior to a formal Conference solicitation to discuss technical and other problems connected with a proposed acquisition. The conference is also used to elicit the interest of prospective contractors in pursuing the task.
Price and Fee •Ceiling Price	The negotiated monetary limit – in a fixed-price-type contract – to the amount that the Government is obligated to pay. Costs incurred beyond this point must be absorbed by the contractor.
•Fee	An amount, in addition to allowable costs, paid to contractors having CPFF, CPAF, or

	CPIF contracts. In CPFF contracts, the fee is fixed a percentage (stated in dollar amount) of the initially estimated cost of the acquisition
Progress Payments	Payments made to the prime contractor during the life of a fixed-price-type contract on the basis of percentage of the total incurred cost or total direct labor and material cost. Very common in construction contracts.
Progressing	The monitoring of contract performance by personnel of the Government agency or of the prime contractor.
Protest	A formal action by an interested party, which challenges VA's ability to progress with a solicitation or contract performance until the challenger's issues are resolved.
Purchase Order (PO)	A contractual acquisition document used primarily to purchase supplies and non-personal services when the aggregate amount involved in any one transaction is relatively small (i.e., not exceeding \$25,000).
Purchase Request (PR)	Document that describes the required supplies or services so that an acquisition can be initiated. Some activities actually refer to the document by this title; others use different titles, such as Purchase Directive, etc. Requests must be placed on forms established by VA Acquisition Regulation.
Qualified Products List (QPL)	A list of products that are pre-tested in advance of actual acquisition to determine which suppliers can comply properly with specification requirements. <sup>64</sup>
Request for Proposal (RFP)	A formal solicitation form. Acceptance by VA is legally binding upon the offeror.
Request for Quotation (RFQ)	An informal solicitation form, commonly used in small purchase procedures.

	Acceptance by VA is not legally binding upon the offeror.
Request for Technical Proposal (RTP)	Solicitation document used in Step One of Two-Step Sealed Bidding. Normally in letter form, it asks only for technical information. Price and cost breakdowns are solicited only during Step Two.
Requiring Activity	Any activity originating a request for supplies or services.
Sealed Bid	See Bid.
Small Business Administration (SBA)	A Federal agency created to foster and protect the interests of small business concerns.
Statement of Work	Although varying widely in precise definition, the term generally covers that portion of a contract that describes the actual work to be done by means of specifications or other minimum requirements, quantities, performance dates, and a statement of requisite quality.
Subcontract	A contract between a buyer (usually the prime contractor) and a seller in which a significant part of the supplies or services being obtained is for eventual use in a Government contract. The term frequently implies a substantial dollar value and/or non-standard specifications.
Supplemental Agreement	Bilateral written amendment to a contract by which the Government and the contractor settle price and/or performance adjustments to the basic contract.
Termination	The canceling of all or part of a prime contract or a subcontract prior to its completion through performance. May be for the convenience of the Government, or default of the contractor due to non-performance.

Unsolicited Proposal

Innovative ideas, either written or oral, made to the Government by organizations or individuals acting in their own behalf. Such proposals have no relation to a particular solicitation used by the Government as a basis for acquisition.

Value Engineering

An incentive plan used to encourage cost reduction and cost avoidance by providing contractors with profit incentives for developing changes that will reduce overall cost while maintaining accomplishment of the required function of the item or service being acquired.

**ATTACHMENT A**

**CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)  
NOMINATION SAMPLE FORMAT**

Name \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Project Name \_\_\_\_\_ Contract No. \_\_\_\_\_

**TRAINING QUALIFICATIONS:**

Course Title \_\_\_\_\_ Dates Attended \_\_\_\_\_

COTR Training (List any others)

**TECHNICAL QUALIFICATIONS/EXPERIENCE:**

List technical qualifications as well as types of contracts administered (indicate supply or service, contract type, i.e., cost, fixed price)

Agency or division where obtained \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

**CONTRACT ADMINISTRATION USE ONLY:**

Recommendation for Designation:

Concur

Do Not Concur

Notes:

## **ATTACHMENT B**

### **COTR DESIGNATION SAMPLE FORMAT**

#### **ADDRESS**

Dear \_\_\_\_\_:

You are hereby designated as the COTR in connection with the technical phases of Contract No. \_\_\_\_\_, (list title of requirement after the contract number).

#### **A. DESIGNATION OF COTR**

The COTR is designated in writing in the contract schedule and by this letter. This designation will set forth in detail the full extent of the COTR's authority and limitations therein. The designation does not change or supersede the established line of authority and/or responsibility of any organization. Changes in the designated COTR will be made by modification to the contract and letter appointment as the need arises. The appointment as COTR applies to the subject contract only, and shall terminate on completion of the contract.

#### **B. SCOPE OF SPECIFIC RESPONSIBILITIES**

1. Developing the contract specifications or work statement in such a manner as to promote competitive procurement actions;
2. Coordinating with the program office actions relating to funding and changes in scope of work;
3. Monitoring the Contractor's performance of the technical requirements of the contract to assure that performance is strictly within the scope of the contract;
4. Confirming all significant technical instructions to the Contractor;
5. Assuring that changes in the work or services, and resulting effects on delivery schedule, are formally effected by written modification issued by the Contracting Officer before the Contractor proceeds with the changes;
6. Assuring prompt review of draft reports and providing approval to the Contractor so that his distribution of the reports can be within the specified completion date of the contract, and assuring prompt inspection and acceptance or rejection of other deliverable items;
7. Maintaining a contract-working file;

8. Referring to the Contracting Officer those matters, other than purely technical problems, which may affect the contract;
9. Informing the Contracting Officer when a contractor is known to be behind schedule, with the reasons therefore, and coordinating with the Contracting Officer corrective action necessary to restore the contract schedule;
10. Furnishing to the Contracting Officer a copy of conference reports and correspondence and coordination with the Contracting Officer on the content of any contractually significant correspondence addressed to the Contractor in order to prevent possible misunderstanding or the creation of a condition that may be made the basis of a later claim. All correspondence addressed to the contractor will be signed by the Contracting Officer;
11. Requesting the Contracting Officer to authorize Government furnished property and, when requested by the Contracting Officer, furnishing advice on Government-furnished property or contractor-acquired property disposition;
12. Monitoring financial management controls;
13. Furnishing the Contracting Officer a notice of satisfactory or unsatisfactory completion;
14. Reporting to the Contracting Officer and legal counsel suspected procurement frauds, bribery, conflicts of interest, and other improper conduct;
15. Reviewing and submitting recommendations to the Contracting Officer on subcontracts with respect to their relationship with the prime contracts;
16. Assuring that the Contractor has necessary clearances for access to the facility and any data required by the contract;
17. Advising the Contracting Officer on Contractor's requests for public release of information regarding work being performed under the contract;
18. Notifying the Contracting Officer of inventions by the Contractor during the performance of the contracts;
19. When required, furnishing the Contracting Officer a formal request for termination;
20. Evaluating Contractor's request for travel; and
21. Reviewing the Contractor's invoices to ensure that they reflect accurately the work completed in accordance with the requirements of the contract and certifying acceptance.

C. EXCLUSIONS FROM COTR RESPONSIBILITIES

The COTR is expressly excluded from performing or being responsible for the following:

1. Making commitments or promises to contractors relating to award of contracts;
2. Writing contract requirements around the product or capacity of one source;
3. Soliciting proposals;
4. Modifying the stated terms of the contract;
5. Issuing instructions to contractors to start or stop work;
6. Approving items of cost not specifically authorized by the contract;
7. Directing changes;
8. Executing supplemental agreements;
9. Rendering a decision on any dispute on any question of fact under the Disputes provision of the contract;
10. Taking any action with respect to termination, except to notify the Contracting Officer;
11. Authorizing delivery or disposition of Government furnished property not specifically authorized by the contract;
12. Giving guidance to Contractors, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract;
13. Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement.

Violation of the foregoing may give the appearance that VA is not acting in good faith. Commitments made to contractors by other than duly appointed Contracting Officers may result in formal protests by other companies, embarrassment to the Department, criticism by the General Accounting Office and possible monetary loss to the individual and the firm involved.

Sincerely,

\_\_\_\_\_  
Contracting Officer  
Acknowledgement:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**ATTACHMENT C**

**COTR REPLACEMENT SAMPLE FORMAT**

Dear \_\_\_\_\_:

Please be advised that \_\_\_\_\_ of the \_\_\_\_\_ has been assigned the COTR's responsibilities previously performed by \_\_\_\_\_ on Contract No. \_\_\_\_\_. Please coordinate all technical matters with \_\_\_\_\_, telephone number \_\_\_\_\_. If you have any questions regarding this or any other administrative matters, please contact \_\_\_\_\_, telephone number \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Contracting Officer

cc:

Contract File  
CSC Read File

COTR \_\_\_\_\_ w/statement of COTR's Responsibilities  
Previous COTR.

**ATTACHMENT D**

**CONTRACTOR'S PROGRESS REPORT SAMPLE FORMAT**

\_\_\_\_\_  
Contractor  
Contracting Officers  
Technical Representative

\_\_\_\_\_  
Contract Number  
Report Frequency  
 Quarterly  Final

1. HOW WOULD YOU DESCRIBE THE CONTRACTOR'S PERFORMANCE TO DATE?

A-Satisfactory  B-Marginal  C-Unsatisfactory

If "B" or "C" is checked in item 1 above, give a brief description of your findings:

2. WERE DELIVERABLES RECEIVED ON TIME AND IN GOOD CONDITION?

Yes  No-Give a brief description of facts:

3. WERE THE CONTRACTORS SERVICES/PRODUCTS IN ACCORDANCE WITH SCOPE OF WORK?

Yes  No-Describe any deficiencies:

4. HAVE YOU, AS COTR, PROVIDED TECHNICAL ASSISTANCE TO THE CONTRACTOR?

Yes  No-Describe why not:

5. STATE ANY OTHER SIGNIFICANT ISSUES WHICH SHOULD BE BROUGHT TO THE CONTRACTING OFFICER'S ATTENTION.

NOTE: ATTACH COPIES OF ALL DOCUMENTATION OF CONTRACTOR AND COTR DISCUSSIONS AND FORWARD WITH THIS REPORT.

SIGNATURE OF COTR \_\_\_\_\_ DATE \_\_\_\_\_.

**ATTACHMENT E**

**CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)  
CHECKLIST SAMPLE FORMAT**

**MEMORANDUM**

To: Contracting Officer/Contract Administrator

FROM: Contracting Officer's Technical Representative

SUBJECT: Contract No. \_\_\_\_\_ (Completion Data)

The contractor's performance under the subject contract has been evaluated and data pertinent to the closing of the file is noted below:

(1) All  reports and  deliverable items required under the terms of the subject contract  have been accepted;  have not been received;  have not been accepted and the list of exclusions is enclosed.

(2) Government Property  is not involved under the subject contract; Government property  is involved under the subject contract and disposition instructions will be provided under separate correspondence.

(3) The contractor's performance was  outstanding,  satisfactory,  unsatisfactory. A narrative supporting the checked rating is enclosed.

## ATTACHMENT F

### TECHNICAL EVALUATION OF CONTRACTOR PERFORMANCE SAMPLE FORMAT

CONTRACT NO:

CONTRACTOR:

PERIOD OF PERFORMANCE:

NAME OF COTR:

Evaluate the Contractor's performance under Subject Contract by checking the appropriate box for each of the following evaluation criteria. Indicate "N/A" for Not Applicable where appropriate.

1. Promptness and thoroughness in informing the Government Project Officer regarding actual or potential problems:

**Outstanding** [ ] **Above Average** [ ] **Average** [ ] **Below Average** [ ] **Unsatisfactory** [ ]

2. Promptness in submission of required progress reports:

**Outstanding** [ ] **Above Average** [ ] **Average** [ ] **Below Average** [ ] **Unsatisfactory** [ ]

3. Adequacy of progress and final reports:

**Outstanding** [ ] **Above Average** [ ] **Average** [ ] **Below Average** [ ] **Unsatisfactory** [ ]

4. Attitude and initiative of Contractor towards meeting the requirements or needs of the Government:

**Outstanding** [ ] **Above Average** [ ] **Average** [ ] **Below Average** [ ] **Unsatisfactory** [ ]

5. Characterization of Contractor's overall performance and quality of work performed:

**Outstanding** [ ] **Above Average** [ ] **Average** [ ] **Below Average** [ ] **Unsatisfactory** [ ]

6. Comments on above items and any other comments relative to Contractor's performance:

**ATTACHMENT G**

**INSPECTION, ACCEPTANCE AND RECEIVING REPORT SAMPLE FORMAT**

DATE:  
CONTRACT NUMBER:  
MODIFICATION NUMBER:  
CONTRACTOR'S NAME:  
ORDER NUMBER:

DATE ITEMS RECEIVED OR DATE RECURRING PAYMENT DUE:

LOCATION WHERE ITEMS WERE DELIVERED OR CONTRACTOR'S PERFORMANCE:

ALL THE REQUIREMENTS HAVE BEEN INSPECTED, RECEIVED AND ACCEPTED BY ME AND MEET THE TERMS OF THE CONTRACT EXCEPTED AS NOTED BELOW:

LIST THE REQUIREMENTS THAT WERE NOT ACCEPTED AND/OR THE DEDUCTIONS MADE AND STATE THE REASON WHY:

TOTAL AMOUNT OF DEDUCTIONS:

TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE:

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

\_\_\_\_\_  
DATE SIGNED

## **ATTACHMENT H**

### **STEPS IN DEVELOPING DETAILED INDEPENDENT COST ESTIMATES**

Detailed cost estimates will occasionally be required by the Contracting Officer, depending upon the circumstances of the particular acquisition. The following step-by-step procedures may be used in developing detailed cost estimates. If the Statement of Work has been written first, several of these steps will already have been accomplished. Please note that this is a simplified example applicable mostly to acquisitions of support services and R&D—other acquisitions (such as for construction services) will require a different mix of cost elements.

1. Divide the effort into identifiable tasks or logical steps.
2. List the categories of labor that will be required in each task or step (e.g., clerical, engineer, research scientists, etc.). In a “level of effort” acquisition, it is necessary to identify, in as much detail as possible, the categories of expertise desired and the training and experience that will be required for each category. This will yield a more accurate estimate.
3. Estimate the per-hour cost of each category of labor.
4. Estimate the total number of hours for each labor category, by task.
5. Multiply the number of hours in each category by the estimate of time required. This will yield the estimated direct labor costs.
6. Estimate the amount and type of materials and supplies that will be required and the cost of each.
7. Identify any other elements of direct cost that the acquisition may require, such as consultant services, computer rentals, etc., and estimate the cost of these.
8. Estimate the travel requirements, if any. Identify the designation, the number of people involved, the length of each trip, and the total cost of this travel in terms of both transportation and per diem.
9. If subcontracting is expected, identify the tasks to be subcontracted and estimate the cost.
10. Estimate the amount of overhead that will be charged.

When all of this information has been collected, a detailed cost estimate can be prepared. The sample format on the next page may prove helpful.

**ATTACHMENT I**

**SAMPLE FORMAT FOR INDEPENDENT GOVERNMENT COST ESTIMATES**

**INDEPENDENT GOVERNMENT ESTIMATE OF COST**

Direct Labor by Category	No. of Hours	Rate	Total
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____

**TOTAL DIRECT LABOR** \_\_\_\_\_

**DIRECT LABOR OVERHEAD** (\_\_\_\_%) \_\_\_\_\_

**TOTAL LABOR COSTS** \_\_\_\_\_

Other Direct Costs \_\_\_\_\_  
Travel and Per Diem \_\_\_\_\_

Consultants (\_\_\_\_ days at \$\_\_\_\_/day) \_\_\_\_\_  
Materials \_\_\_\_\_

**TOTAL OF OTHER DIRECT COSTS** \_\_\_\_\_

**GENERAL AND ADMINISTRATION EXPENSE (G&A)** \_\_\_\_\_

**TOTAL COST** \_\_\_\_\_

**FIXED FEE** \_\_\_\_\_

**TOTAL (COST PLUS FEE)** \_\_\_\_\_

## **ATTACHMENT J**

### **DO'S AND DON'TS FOR COTRS CONTRACT PLANNING**

#### Do

1. Think about contract administration requirements while writing the statement of work or the specifications.
2. Separate discussion of administrative and progress reporting requirements from discussion of required procedures and deliverables when drafting the statement of work or specifications.

#### Don't

1. Write vague specifications, assuming that “the contractor will do whatever is necessary to satisfy us.”
2. Ask for progress reports, test samples, or other items from the contractor unless the items are needed for the program or for efficient administration and monitoring.

### **PREPARATION FOR CONTRACT ADMINISTRATION**

#### Do

1. Carefully review the contract, especially the technical requirements.
2. Develop, or obtain from the contractor, a detailed schedule of performance.
3. Work with the contract personnel and the contractor to clear up any misunderstandings and to establish organized contract administration and monitoring procedures.

#### Don't

1. Assume without reading it that the specification or statement of work is complete, clear, and fully understandable.
2. Allow planning to become an end in itself. Remember: the goal is to get results, not just pretty charts showing the “plan.”
3. Forget to update plans and schedules as the situation changes.
4. Overlook or ignore contract requirements for Government-furnished property, timely reviews and approvals, or technical assistance and direction.

### **PROJECT MONITORING**

#### Do

1. Set a level of monitoring consistent with the type of contract, the complexity of the product or service, and the importance of the contract to the overall program.
2. Read progress reports and immediately act on problems they reveal.
3. See that the contractor complies with every requirement of the contract.
4. Immediately contact the CO when deficiencies or delinquencies are noted.
5. Use the contractor's invoices to help monitor technical progress.



### Don't

1. Assume that “no news is good news.”
2. Wait until delivery is due or overdue to check progress.
3. Take action against a delinquent contractor on your own. Work through the CO.
4. Order, request, or even suggest that the contractor do work that is not called for by the contract.
5. Act as if you are the contractor’s personnel manager. The COTR should review and approve or disapprove—the contractor supervises contractor personnel.
6. Assume the contractor billings are correct

## **GENERAL CONTRACT ADMINISTRATION**

### Do

1. Remember that the COTR is an agent of the U.S. Government, with only the authority delegated by the CO.
2. Get the names of contractor personnel authorized to represent the contractor.
3. Find out the specific authority of contractor personnel. Does the person you are dealing with have the authority to obligate the contractor?
4. See that all Government approvals or consents are provided in a timely manner.

### Don't

1. Accept less than what is required by the contract.
2. Assume an interpretation of ambiguous contract language, which would be favorable to the Government. Remember: if the contractor’s interpretation is reasonable, it will prevail.
3. Hold up payment unless performance is deficient or defective.
4. Accept supplies or services without complete inspection.
5. Make any change, modification, deletions, or additions to the contract requirements. Work through the CO.
6. Automatically consider all contractor claims unreasonable. Be fair and impartial.

## **REMEDIES**

### Do

1. Exercise Government rights, such as warranties. Make sure that any problems are dealt with before the warranty period runs out.
2. Work with the contracts personnel to prevent problems before they arise.
3. Take actions to protect Government rights before delivery is due.

### Don't

1. Act without consulting the CO. Work through the contract administration team.
2. Allow interim or final delivery dates to be waived.