Procurement Countdown

Spring 1996, No. 106

Performance Based Contracting Initiative

by Kenneth Sateriale, Headquarters Analysis Division

Inside:

The schedule driven days of the Apollo Program brought with them a mind set of "let cost be no object to mission success." At that time the nation was ready to pay any price for a successful moon landing. Level-Of-Effort (LOE) contracting was the order of the day and became embedded into the NASA culture. While there is no disputing that LOE is a highly effective and convenient way to do business, it is costly. For example, how many of us would contract to have the grass cut in our own yards on a level of effort basis? With the passage of the Government Performance and Results Act of 1993 and the Federal Acquisition Streamlining Act of 1994, Congress let us know that the perception of acquisition waste and inefficiency in the public consciousness is undermining the financial commitment we need to accomplish our programs.

Performance-based contracting (PBC) simply means structuring all aspects of an acquisition around the purpose of the work to be performed. It emphasizes objective, measurable performance requirements and quality standards in developing statements of work, selecting contractors, determining contract type and incentives, and performing contract administration. Coverage at NFS 18-10.002-71 states that: "Use of performance-based specifications, where feasible, is the preferred method for establishing contract requirements. Requiring activities shall, to the maximum extent practicable, use performance-based specifications, purchase descriptions and statements of work in order to give contractors freedom to innovate and economize, and to hold contractors accountable for the end results."

From a practical point of view, PBC means: greater use, where appropriate, of IFBs, acquisition of commercial items, and fixed-price arrangements; preference for objective measures of performance; decreased reliance on award fee contracts; and, most importantly, writing work statements and specifications around the desired outcome or output of the contract. Baselining requirements and eliminating the frills or "Nice-to-Haves" should yield savings from reduced contract costs and reduced government oversight. Furthermore, PBC should require fewer government resources to be needed for contractor surveillance.

Specifically, the major advantages to be obtained from PBC are:

- Enhanced Price Competition From Well Defined SOWs
- Stimulating Contractor Innovation To Reduce Costs
- Shifting Cost Risk To The Contractor
- Paying For Quality Results, Not Best Efforts

The President's Management Council has endorsed the use of PBC methods and, accordingly, NASA has taken a pledge to the Office of Federal Procurement Policy (OFPP) that we will implement their Policy Letter 91-2 (i.e. performance work statements, formal, measurable performance standards and surveillance plans, best value selection procedures, fixed price contracts, positive and negative incentives, etc.,) and apply PBC methods to our service contracts. Additionally, the NASA Chief Engineer, who is our Agency PBC leader, and the Associate Administrator for Procurement endorse the application of PBC methods to all contracts.

PBC not only makes sense as a better way to do business, but our Agency is counting on it! Mr. Goldin has indicated that we need to realize up to $200M in savings from PBC through 1999. That money saved can translate into saved program content and greater value for the taxpayer.

PBC can only work if it has support throughout the Agency. Tom Luedtke, the Deputy Associate Administrator for Procurement, conducted an executive level two-hour PBC-awareness road show to all Centers which was followed by a working level one-day road show. In FY 1996, we plan to conduct one-week sessions in writing the performance work statement for Center operating services contracts. If you have any questions please contact me at ksateria@proc.hq.nasa.gov or (202) 358-0491.

Ombudsman Program

by Joe Le Cren, Headquarters Analysis Division

The Agency has established an Ombudsman program to open up the acquisition process, from the identification of a requirement through completion of a contract, to interested outside parties. The purpose of the program is to facilitate communications on an informal basis so that concerns can be resolved before they become major problems. The Ombudsman Program addresses various commitments the Agency has made to industry and to OMB. It also meets certain requirements set forth in the Federal Acquisition Streamlining Act of 1994 (FASA).

The duties of the Ombudsman Program are carried out by the designated NASA and Center Ombudsmen (hereafter referred to as Ombudsman). The NASA Ombudsman is the Deputy Associate Administrator for Procurement, while the Center Ombudsmen are senior managers designated by each Center Director. The individuals holding these positions do not assume any duties in which they would be a source selection official, a member of an SEB, or act in the capacity of a contracting officer. Many of the Center Ombudsmen are also the Competition Advocates.

Before becoming actively involved in a particular case, the Ombudsman first encourages interested parties to resolve their concerns with the contracting officer. If the interested party requests the Ombudsman's continued involvement, the Ombudsman works with the appropriate persons within NASA to resolve the concerns.

In performing his/her duties, the Ombudsman collects all relevant facts from the appropriate offices necessary to resolve the issue. These facts could involve source selection and proprietary information to which the Ombudsman would have access. Those issues that cannot be resolved at the Center level, or those having Agency-wide implications, are referred to the NASA Ombudsman.

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People on the Move

The Centers and Headquarters lost a number of procurement personnel in the past year from the buyouts, retirements, transfers to other Centers and more.

People who left the Agency: Stennis: **John Williams**, the Procurement Officer; **Carl Marceron**, the Procurement Analyst/Small Business Specialist; **Charlotte Holmes** and **Glenn Bremenkamp**, both contract specialists. Headquarters: **George Hammer**, of the Headquarters Acquisition Division. KSC: **Rachel Ott**, **Gerard Fradette**, **Anne Reed**, **John Tobin**, **Ruth Walker**, **Robert Robold**, **Ingo Castronova**, **Doris Castro**, **Beverly Wesche**, **Linda Rogers** (Procurement Officer), **Lorraine Brown**, **Karen Baker**, **Lori Hicks**, **Tim Pugh**, and **Doris Roberson**. **Mike Masterson** and his wife **Dee**, will be leaving the Agency in April. (Dee is a contractor at KSC.) JSC: **Helen Agnew** of the Space and Life Sciences Business Management Office. Space Station: **Lee Evey**, a former Procurement Officer, who had been chairing the business committee for the Space Flight Operations Contract Source Evaluation Board at JSC is now working for the Air Force.

People who went to other Centers: KSC: **Rechea Hutchinson**, **Marianne Bachstein**, **Mary Kincaid**, **Tom and Carol Neely**, **Rob Kolb**, and **Kelly Murray** all went to JSC.

People who went to other organizations: **Joel Wells** went from the Procurement Office to Public Affairs, both jobs are at KSC; and **Shari Wagler**, went from the Acquisition Management Office to the Shuttle Operations Directorate, both jobs are at KSC.

Lori Hicks, a Contracting Officer in the Mission Support Office, returned to KSC after going out to industry.

Congratulations to:

Ron Brade, Headquarters Acquisition Division, and **Michelle B. Isermann**, JSC, who passed their Certified Associate Contracts Manager examinations; **Carol Bleile** and **Rex Elliott**, both from Goddard Space Flight Center, who became NCMA Fellows; **Lucy Yates**, who became the Procurement Officer for the Space Station Program Office; **Jim Hattaway**, who became the Procurement Officer at Kennedy (see the right column for details).

Ann H. Watson, Chief of the KSC Acquisition Management Office, was selected as Deputy Director of the Procurement Office. Ann is a past National President of the National Contract Management Association, a 1995 recipient of the Center Director's Award (the highest award given by KSC) and an adjunct professor with Florida Tech.

Ginger Darnell, the Deputy Procurement Officer and the Manager of the Procurement Management Office was selected as a candidate in the SES Career Development Program. Ginger spent one of her two assignments outside of her organization at NASA Headquarters in Legislative affairs.

*The list of **People on the Move** only includes those names that were submitted to the Procurement Countdown. If you know people who should be listed in this column, contact your Center Procurement Countdown point of contact, or send the names to the editor, Susie Marucci on (202) 358-1896, e-mail susie.marucci@hq.nasa.gov*

James E. Hattaway, Jr., KSC's Newest Procurement Officer

James E. Hattaway, Jr., was selected as the Director of Procurement for the John F. Kennedy Space Center in November 1995. He replaced Walker Lee Evey as Director of Procurement.

Hattaway was born April 3, 1948, in Spartanburg, South Carolina. Upon completion of his military service, Hattaway earned a Bachelor's degree in Business Administration from the University of Tampa in 1973. He earned a Master's degree in Acquisition Management from the Florida Institute of Technology in 1979.

Hattaway entered federal service in 1974 as a contract negotiator for the U.S. Air Force at Warner Robins Air Force Base, Georgia. In 1977 he transferred to KSC as a contracts specialist. Since joining NASA he has held numerous managerial positions serving as the Chief of the Purchasing Services Section; Chief of the Construction and Ground Support Equipment Section; Chief of the Operations Contracts Office; and Deputy Director of the Procurement Office. Throughout his career, Hattaway has received numerous honors and awards, including Certificates of Commendation from the KSC Center Director in 1988 and 1994, and the NASA Exceptional Service Medial in 1990.

Hattaway and his wife Judy reside in Titusville and have two daughters, Jennifer and Jessica.

FASA Pricing Reform: Industry's View

The Federal Contracts Report dated 12/4/95 contains an article by Richard Wall (a partner in the accounting firm of Ernst & Young) entitled "Grading Commercial Pricing Reform - Safe Harbors at Last?" That article reviews the FAR implementation of FASA coverage on the use of commercial pricing techniques, and is summarized below. This summary contains interpretations and opinions of Mr. Wall, and so should not be relied on for official guidance, although it is relatively accurate. It is presented to facilitate understanding of how offerors may view the new rules. A few notes have been added by Bill Childs, the Code HC editor for clarity.

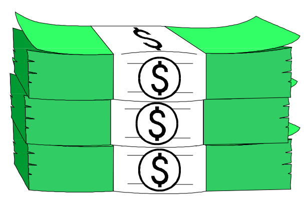
One of FASA's goals was to induce substantial reform of the government's largely irrelevant commercial pricing rules. FASA provided a broad definition of commercial items, and applied it to TINA. A new "if all else fails" TINA exception was created for commercial items. The cost or pricing data requirements on modifications to contracts for commercial items were relaxed.

Congress recognized that many of the government's barriers to market entry by companies were caused by implementing regulations rather than TINA itself. The House-Senate Conference Report on FASA stated that the current regulatory interpretation [of the catalog or market price exception] should be changed in light of the purposes of this Act to provide broader flexibility for the purchase of commercial items.

Following is a grading of how the TINA implementation addresses industry's Top Ten concerns. For comparison, the previous FAR 15.8 gets a "D" grade; the 1990 reform proposal [never finalized] is "F"; the initial FASA rule is "D"; and the final rule is "B".

Cost or Pricing Data

Some companies felt that certified and uncertified data were being required in inappropriate situations. The new rule furnishes an order of preference to guide the contracting officer, and clarifies and limits when certification may be required. However, there is still a problem with the policy that allows requirements for price support data for determining price reasonableness or cost realism when adequate price competition exists. Price competition should be sufficient to determine price reasonableness, and the use of



cost realism is poorly described in the new rule. Also, any requirement for cost data, even uncertified data, may subject the contractor to Cost Accounting Standards and accompanying rules. **Grade: B.**

Adequate Price Competition

Some contracting officers have been overly restrictive when interpreting TINA's exception for prices based on adequate price competition.

The new rule clarifies that this exception can apply to "best value" awards, if price is a substantial evaluation factor. The Comptroller General has ruled that price could be weighted as low as 20 percent and still be a substantial factor.

The FAR also expands the exception to cover situations where there is a realistic expectation of competition, by both industry and the government, but only one offer is received.

Finally, the rule clarifies the meaning of "based on." The contracting officer can apply the exception in the absence of direct competition, by relying on a recent price competition for similar items under comparable terms and conditions. This might include competitions conducted in the commercial marketplace. **Grade: A.**

Commercial Item Definition

It has been difficult for the government to buy emerging technologies until there have been substantial sales to the general public. There were also problems in buying discontinued or modified items, ancillary services (e.g., installation), professional and technical services, and leased or licensed items.

The new definition of commercial items, in conjunction with the new TINA commercial item exception, overcomes most of these issues. However, for commercial items, FASA prohibits the use of cost type contracts and specifies that services be for specific tasks at catalog prices. **Grade: B.**

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NASA's New Mentor-Protégé Program -- Active and Online!

By Rae C. Martel, Office of Small and Disadvantaged Business Utilization

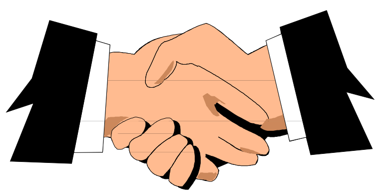
During the Spring of 1995, NASA implemented a 3-year pilot program that can be of benefit to many Small Disadvantaged Businesses (SDBs), including women-owned, in light of the prospect of increased contract consolidations. The primary focus of the Mentor-Protégé program is to enhance the high-tech capability of certain firms. Secondarily, the mentoring relationship can greatly assist some prime contractors in meeting SDB subcontracting goals where the Agency is placing a greater emphasis on SDB participation in core technical program areas. For the pilot phase of the program, Mentor-Protégé activity is limited to Cost-Plus-Award-Fee (CPAF) contracts.

Relationship

The concept for the NASA Mentor-Protégé Program, includes a Prime/Subcontractor relationship between the mentor and the protégé firm. In the role of subcontractor, the protégé will contribute to the contract efforts. To enhance contractual performance and augment technical capability, the protégé will receive developmental assistance as described in NFS 1819.7214, from the prime contractor mentor firm that will enable them to participate in high technology areas that represent non-traditional industries for the protégé.

The purpose of the program is to: (1) provide incentives to major NASA contractors performing under CPAF contracts to provide developmental assistance that will enhance the capabilities of Socially and Economically Disadvantaged Businesses to perform High-Tech NASA contracts and subcontracts; (2) increase the overall participation of Socially and Economically Disadvantaged Businesses as NASA contractors and subcontractors; and (3) foster the establishment of long term business relationships between protégé entities and NASA prime contractors.

NASA contractors who are approved mentors under DoD's Mentor-Protégé program can transfer credit features under the DoD program to their NASA contracts. Eligible mentors are NASA's large prime contractors performing under CPAF contracts containing at least one active subcontracting plan. Small business primes performing under CPAF contracts, who are capable of providing developmental assistance to potential proteges may also be approved as mentors. Small businesses owned and controlled by socially and economically disadvantaged individuals, including women, Historically Black Colleges and Universities, and other Minority Educational Institutions can qualify as protégés. Participation in the program is voluntary and mentor firms select their protégés.



An active Mentor-Protégé arrangement requires the protégé to be a subcontractor under the mentor's prime contract with NASA. This condition is in response to the comments from a number of prime contractors who expressed concern about reimbursement for expenses they would possibly incur providing developmental assistance to protégés.

Assistance

In this regard, the program policy allows that costs incurred by mentors to provide developmental assistance, technical, or managerial assistance as described in NFS 1819.7214 to protégé subcontractors are allowable. Specific assistance includes engineering and other technical assistance, financial and business management assistance, loans, rent-free use of equipment and facilities, and temporary assistance of the mentor's personnel for training purposes.

Essentially, the NASA program is designed to facilitate relationships where technical assistance is primary. While business management assistance is allowable, it will not represent the majority of the developmental assistance provided under approved applications. Rather, the OSDBU has taken steps to provide business management assistance by offering a training program for owners of SDB's to address areas critical to advancement.

This successful 3-day training program is unique among any training currently available in federal government -- and it is free to participants.

There are a number of incentives for prime contractors to participate in the program including: (1) ability to earn award fee associated with their

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The Spaceport USA Concession Agreement Evaluation

by Laura B. Rochester, Kennedy Space Center

On May 1, 1995, the new Concessioner for Spaceport USA at the Kennedy Space Center began operations. The mission of Spaceport USA is to tell the NASA story.

Spaceport USA is open to the public and currently consists of narrated bus tours of the operational areas, space exhibits, IMAX movie shows, an art gallery, restaurants and souvenir shops. In a state full of tourist attractions, Spaceport USA happens to be Florida's fifth largest.

As you can imagine, evaluating something like this as an SEB was not a common occurrence for us government procurement folks. The following is an overview of that evaluation from the business committee angle and a highlight of some of the features of the Concession Agreement itself.

We strongly encouraged innovation and wrote the Prospectus as broadly as possible to allow for creativity by the offerors.

In writing the Prospectus (long for RFP) and the instructions for proposal submission, we battled with allowing offerors the flexibility to propose anything from continuing operations as they are today, to rumors of a company like Walt Disney Co. coming in here with $100M to completely revamp the place, while at the same time getting enough (and the correct) information to do a thorough evaluation. We strongly encouraged innovation and wrote the Prospectus as broadly as possible to allow for creativity by the offerors. Although capital investment was not required by the Prospectus, it was encouraged.

In this procurement, because we were evaluating income as well as cost, we had a Financial Factor in lieu of a Cost Factor. The mission suitability element, Business Approach, was very closely related to the Financial Factor evaluation. Under the Business Approach, the management committee assessed the benefits provided to the Public Visitor's Program (PVP), and the value to the visitor. They assessed the offeror's basis and rationale for visitation projections, the effectiveness and appropriateness of the marketing approach, and the value derived from the proposed pricing structure.

The Financial Factor assessed what we called the "Financial Viability" of each offeror's proposal. The Financial Viability was comprised of four areas of evaluation: the proposed operating profit and/or loss, the development funding and expenses, the financial condition and capability, and the financial risk. What was all of that?? Well, to start, we required two sets of financial forms and data. The first set was very much like the typical cost forms in a regular RFP. These forms captured the proposed operating profit and/or loss of the day-to-day PVP operations.

The second set of forms were created to fit unique Concession Agreement requirements and to capture the proposed development funding and plans. The funds (income) on these forms either came from the P&L forms through various concession agreement requirements, concessioner investment, sponsorships, or interest earnings. The expenses on these forms reflected the concessioner's proposed development, major repairs and maintenance, transportation plans, etc., all outside of the regular day-to-day operations.

For both of these sets of financial data, the business committee performed the usual validity, reasonableness, and realism tests. We also developed income and cost adjustments for each set.

The financial condition and capability of the offeror was critical in this evaluation for two reasons. Each offeror proposed significant capital contributions. In order to receive a strength for this contribution in mission suitability, they were required to prove their capability to have the financial strength to fulfill their promise.

The other reason is that the Concession Agreement is a for-profit business they are operating without the help of any type of government funding. So the offerors had to also prove they had the financial strength in working capital to maintain profitable operations, considering that at least the first year

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Converting Contract Type

by Susan D. Dupuis, Stennis Space Center

Change for the sake of change, or change for the better? The latter is the ultimate goal of the SSC NASA and contractor team in the conversion of the Facility Operating Support Services (FOSS) contract from a Cost-Plus-Award-Fee (CPAF) contract to a Cost-Plus-Fixed-Fee (CPFF)/Cost-Plus-Incentive-Fee (CPIF) type contract.

Last Year, NASA and the FOSS Contractor, Johnson Controls World Services Inc. mutually agreed to change the contract type for Option 5 (year six of an eight-year contract) with the agreement that this contract type would be re-evaluated prior to exercising Option 6.

Decision to Change

The decision to convert contract type was promulgated not only by NASA/SSC's desire to allow the contractor to manage its contract with less day-to-day government involvement but also by SSC's attempt to support the NASA-wide near-term cost control initiatives. Besides, it made sense for SSC to initiate this change in consideration of reduced budgets, government downsizing efforts and a greater knowledge by SSC about the types and amounts of services being provided by the FOSS contractor.

The contractor also recognized the need for change in contract type because the administrative burden of the award fee process was out of proportion to the improvements expected in the quality of its performance and overall project management. Faced with the challenge of doing things faster, better and cheaper with less, the SSC team, by practical necessity agreed to change the contract type that had been in existence with various contractors at SSC for the past 30 years.

Type of Contract

In determining the new contract type, an analysis was made of the current CPAF environment (i.e., historical award fee earned, timing of award fee payments and the administrative time, for both the government and the contractor, spent on the Performance Evaluation Board (PEB) process); the nature and volume of work; the risk and maturity of the effort under the contract; the different available variations of fixed-price and cost-type contracts; and, finally, the cost impact of changing contract type.

In analyzing the CPAF environment, it was determined that the government was very comfortable with the evaluation flexibility that a CPAF contract offered. Historically, the FOSS contractor earned an award fee in the excellent range. The PEB process was handled properly (i.e., not overly strict or lenient with the contractor); however, it took an inordinate amount of time and documentation.

Experience indicated that the nature of the FOSS is relatively stable, yet fluctuating workloads still remain a concern due to varying levels of support to resident agencies at SSC. The presence of unknown and unpredictable contingencies inherent in the reimbursable environment at SSC precluded converting to a fixed-price contract at that time; therefore, a cost reimbursement contract remained the appropriate type. The demand work was the most difficult issue to address in deciding the most appropriate variation(s) of the cost type contract, keeping in mind that the change should reduce administration and result in cost savings.

The SSC team mutually agreed that an appropriate contract type would be a CPFF/CPIF. The fluctuating workloads resulted in a portion of contract costs being outside the control of the contractor. These costs are government-driven and are associated with demand services

It made sense for SSC to initiate this change in consideration of reduced budgets, government downsizing efforts and a greater knowledge by SSC about the types and amounts of services being provided.

from resident agencies, construction, and other areas. As a result, NASA considered it appropriate to convert that portion of the uncontrollable cost to a CPFF contract. While this type contract offers no real incentive for the contractor to cut costs and effect economies, it, nevertheless, is fair and reasonable considering that these are government-driven uncontrollable costs.

The CPIF arrangement is limited to cost incentives. The purpose of the incentive fee arrangement is to motivate the contractor to achieve cost savings yet maintain a continued high level of performance. The

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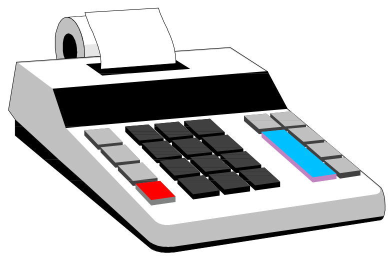
Cost Accounting Standards for Commercial Items

by Bill Childs, Code HC, Headquarters Analysis Division

The Federal Acquisition Streamlining Act of 1994 revised the Office of Federal Procurement Policy Act to indicate that firm fixed price commercial-item contracts are excluded from the mandatory use of CAS. The new Federal Acquisition Reform Act of 1995, not yet implemented, extends this exclusion to all commercial-item contracts.

FAR Part 12 does not include the FAR CAS clauses in the list of clauses applicable to commercial-item contracts. However, the regulations issued by the Cost Accounting Standards Board state that CAS applies to any contract for which cost data was obtained, whether or not it was certified. Although the Board provides certain exceptions, commercial-item contracts are not among them.

To resolve what may be perceived as a conflict between



the FAR and the CAS regulations, the Board has delegated to agencies the authority to issue CAS waivers on individual firm fixed price contracts for commercial items. NASA Headquarters has decided not to redelegate this authority to the Centers, because we believe the FAR already indicates that CAS clauses are not to be used in commercial-item contracts, and therefore no individual waivers are required.

Bottom line: CAS clauses cannot be used in commercial-item contracts and no waiver is needed.

The NASA Headquarters policy contact is Bill Childs, Code HC, who can be reached on (202) 358-0454.

Easy Training Information on New FAI Home Page

A just-established home page for the Federal Acquisition Institute (FAI) features acquisition training courseware available for downloading. FAI, established in 1976 under the Office of Federal Procurement Policy Act, fosters and promotes government-wide career management programs for a professional procurement workforce. Its new home page, available at http://www.gsa.gov/staff/v/training.htm, includes the following special and regular features:

HOT: Documents and websites most in demand.

FAI NEWS: Training issues relevant to the acquisition community, such as plans for FASA training and course development.

COURSES: FAI desk references available for downloading. Web versions of the courseware are in the new Portable Document Format (PDF). Use the free Adobe Acrobat Reader to view, search, print, and copy text from PDF documents.

Currently, ten FAI courses are available for downloading. The available training courses include Introduction to Contracting, Procurement Planning, Sealed Bidding, Contracting by Negotiation, Price Analysis, Cost Analysis, Basic Contract Administration, Source Selection, Construction, and Architect-Engineering Services. FAI will make additional courseware available in the future.

FAI provides guidance on Agency-level procurement career management programs, assists universities in establishing programs in acquisition disciplines, and supports development of standards and examinations for acquisition positions. Its training materials are tremendously useful resource documents.

REMINDER

When administering a *Cost Type Level-Of-Effort (LOE) Term Form Contract*, you **shall not** carry-over hours from one period of performance to the next. According to FAR 16.306(d)(2), the contractor is obligated by the contract to provide a specified LOE for a stated period of time. Any increase in those Direct Productive Labor Hours (through carry-over) would constitute new work and must be treated accordingly. If you have any questions or concerns contact Anne Guenther of Code HK, NASA Headquarters at (202) 358-0447 or via e-mail at aguenthe@proc.hq.nasa.gov.

FASA Changes Pricing Practices

by Bill Childs, Code HC, Headquarters Analysis Division

For many years, the Truth in Negotiations Act (TINA) has mandated that we obtain certified cost or pricing data for procurements over a certain threshold (currently $500,000). Below the threshold, obtaining certified data was optional. There was a general climate that encouraged obtaining as much data as possible as often as possible.

The Federal Acquisition Streamlining Act of 1994 (FASA) makes major changes in this area. Congress has revised the emphasis to indicate that we should not obtain data from offerors, certified or otherwise, if there is any other way to determine that the price is reasonable.

FAR 15.802 (as revised in FAC 90-32) contains an order of preference for obtaining data.

Order of Preference

This order applies in general, and while not mandatory, should be used unless there are strong reasons to do otherwise:

(1) Obtain no further information if there is adequate price competition.

(2) Seek pricing data from within the government or from sources other than the offeror, before requesting data from the offeror.

(3) Obtain information other than cost or pricing data.

(4) Obtain cost or pricing data.

FASA has forced us to use the phrase "cost or pricing data" to mean only "certified cost or pricing data." Uncertified data is "information other than cost or pricing data."

The law and the FAR still contain the traditional exceptions to the requirements for certified cost or pricing data; adequate price competition, catalog or market priced commercial items, and prices set by law or regulation. There are also two new exceptions: commercial items, and modifications of contracts for commercial items if the basic contract was exempt under one of the three traditional exceptions.

The previous waiver authority has been enumerated as a statutory exception as well. The FAR includes some relaxation of the previous standards for use of the waiver. This is to highlight the FASA emphasis on minimizing the number of times we require certified data.

Prohibition

Below the threshold, obtaining certified cost or pricing data is prohibited if (1) no exceptions apply, unless the Head of the Procuring Activity (Center Director) determines it is needed to assure that the price is fair and reasonable, or (2) any of the exceptions apply.

Above the threshold, if the contracting officer decides that one of the exceptions applies, obtaining certified cost or pricing data is now prohibited; there is no option to obtain a certification on data in cases where the certification is not mandated. It is anticipated that the new commercial-item exception may draw some dubious claims that a supply or service meets the definition in FAR Part 2; these should be examined carefully. Nevertheless, decisions cannot be arbitrary. Also, note the revised descriptions of "sold in substantial quantities" and "general public" in FAR 15.804-1.

Limited amounts of data may always be obtained for cost realism analysis or other limited cost analysis purposes. However, if an exception applies, the contracting officer cannot require that the data be certified.

DCAA

The Defense Contract Audit Agency has sometimes refused to audit contractors' proposals when a certification is not required. We have had discussions about this with DCAA Headquarters, and they are advising their field activities that certification is no longer a prerequisite for an audit. However, we can anticipate that the audits will be more limited or will contain disclaimers. Negotiators may need to brush up their price analysis skills!

In the past, we have often asked for certifiable data first and decided on an exception later. This can cost offerors a lot of time and money, which eventually show up in their prices to us. Congress clearly wants to stop this practice. Therefore, we should not routinely ask in solicitations for certified data; instead, decide whether it is likely that an exception will apply. Additional data and a certification can always be obtained later in the process, if the apparent winning offeror does not actually qualify for an exception.

The NASA Headquarters policy contact is Bill Childs (Code HC), who can be reached on (202) 358-0454.

Initiating Change at SSC

by Rebecca S. Dubuisson, Stennis Space Center

During the last year, we have undertaken several new initiatives to ensure that customers are supported in a timely and efficient manner and that we do our share in implementing ideas associated with the National Performance Review. Some of the ongoing initiatives are:

(l) **CONVERSION OF CONTRACT TYPES.** During the latter part of 1994, we tasked our prime contractor for facility operating support services to solicit a Firm Fixed-Price (FFP) proposal for custodial services. This required a conversion from a Cost-Plus-Award-Fee (CPAF) subcontract. This conversion was very successful. As a result, the prime solicited a fixed-price proposal and awarded a fixed-price subcontract for this current option year which began in August 1995.

We also converted our security services contract from a CPAF to a Cost-Plus-Fixed-Fee (CPFF) which involved converting a small business set-aside contract. We made a decision to go CPFF (based on earned award fee history/stability) instead of moving straight to FFP. We plan to issue the follow-on solicitation on a firm-fixed price basis.

Finally, we converted our facility operating support services contract from a CPAF contract to a Cost-Plus-Fixed-Fee/Cost-Plus-Incentive-Fee (CPFF/CPIF) hybrid contract. (See the article on page 7.) At this time, the contractor has recognized approximately \$2.1M in cost savings during the first year after conversion. All three efforts had been under CPAF contracts/subcontracts for approximately 30 years. These challenging actions significantly changed the environment at SSC and should prove to be efficient and effective.

(2) **SHARING RESOURCES WITH RESIDENT AGENCIES AT SSC.** There are currently 22 agencies resident at SSC (e.g., Department of Defense, Environmental Protection Agency, Department of Commerce). We are actively reviewing ways in which we can utilize shared resources. Tenant (resident) agencies already utilize NASA's support service contractors via a work ordering system that permits "demand" work to be accomplished in accordance with the Statements of Work. We have also begun to look at duplications among the agencies. For example, the Navy has a state-of-the-art library and, under a memorandum of agreement with the Navy, we deleted the NASA library requirement under our facility operating support services contract. Our NASA staff are utilizing the Navy library. Work is ongoing to identify other resources that can be shared among the resident agencies.

(3) **PERFORMANCE-BASED CONTRACTING.** The SSC Facility Operating Support Services (FOSS) contract, Stennis' largest contract, is currently undergoing a major rewrite of the Statement of Work to a performance-based work statement. We are using Johnson Space Center's draft solicitation for Base Operations Support Services as a guide. Stennis' environment is somewhat different from other Centers in that we serve as host to 22 resident agencies and they utilize our support service contracts (demand work).

Defining demand work and test-complex support into a performance-based work statement is difficult; however, the Procurement Development Team is continuing to attempt to baseline the demand, test-complex and unique support requirements sufficiently to permit inclusion in the resultant PBC. We plan to issue a draft RFP and conduct an observation period. We also plan to incorporate the federal energy savings management initiatives into the work statement. During this next calendar year, SSC will begin converting security services and computer-maintenance contracts into performance based type work statements.

(4) **STREAMLINING THE PEB PROCESS.** We have streamlined the PEB process for the travel services contract. Prior to streamlining the process, a full PEB would convene semi-annually to review the business and achievement coordinators report and to make a recommendation to the Rebate Determining Official (RDO) on the contractor's performance rating for the previous six-month period. The recommendation would then be forwarded to the RDO for a final determination. The contractor consistently received excellent ratings and, in

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FASA Pricing Reform: Industry's View

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Market Price

The government rules for application of the TINA market price exception require pricing information from sources independent of the offeror.

Only modest changes were made. The government did not adopt the "objective evidence" criterion vigorously sought by industry. **Grade: D.**

Catalog Price

The catalog concept has changed considerably in commercial practice versus federal policies and procedures.

Catalogs can now include price lists or other verifiable records, including interactive computer systems, and discount prices. The requirement that the government's purchase terms must be similar to the offeror's commercial terms was removed. The "based on" rule was revised to allow price comparison of similar (versus nearly identical) items, if differences in price can be justified on the basis of price analysis alone.

The new rule does not provide the definition of "established price discount" sought by industry. This definition would have distinguished between price discounts and competition-driven concessions. Also, the requirement that discounts be available for customer inspection is contrary to many firms' policies. **Grade: C.**

Catalog Price Support Data

Previous data requirements were onerous and used a government-unique categorization.

The FAR eliminated the SF1412, Claim for Exemption From Submission of Certified Cost or Pricing Data, and the requirement to disclose the lowest actual sale price. The offeror may provide any objective evidence to establish sales prices, provided it is consistent, accurate, and verifiable.

The SF1412 was not required for items under $50,000 in multiple-item contracts. There is a concern that with the deletion of the form, contracting officers might require objective evidence

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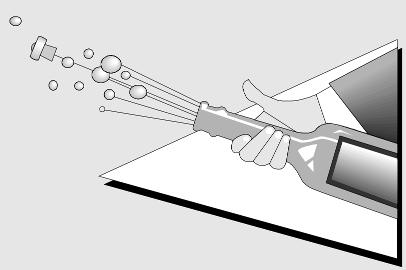
Misa Kawano: 38 Years of Devoted Civil Service

When Misa Kawano came to the NASA Office at JPL a two lane road led to the front gate and the main quadrangle area was just a parking lot. That was 34 years ago. Misa retired on March 31,1995, completing a 38 year civil service career that began as a secretary with Army Ordnance in Pasadena. She completed her career as a contract specialist with the NASA Management Office processing task orders on the $5 Billion JPL contract. We truly miss Misa's professionalism and great personality, but we know she's spending more time with her grandchildren and on her golf game.



Congratulations Misa !!!

NASA Ombudsman

(continued from page 2)

Each Ombudsman is required to keep a log to track the individual cases from receipt to disposition. Names are not to be recorded in the log if an interested party requests anonymity.

NMI 1210.3, which was effective August 14, 1995, established the Ombudsman Program. In addition, the NFS was revised to incorporate a prescription and clause; they became effective October 1, 1995. The NFS rule notifies offerors, potential offerors, contractors, and industry representatives of the purpose of the NASA Ombudsman Program, as well as provides the names and phone numbers of the NASA and applicable Center Ombudsmen.

Mentor-Protégé

(continued from page 5)

performance as a mentor; (2) ability to establish long-term business relationships with selected SDBs; (3) and, possibility of receiving credit during major source selection activity, since Mentor-Protégé participation is evaluated within the framework of SDB utilization under the Mission Suitability factor.

Applications from proposed mentors are submitted to the NASA OSDBU for approval. Code K provides a copy of the information to the NASA technical program manager and the Contracting Officer for parallel review and concurrence. In accordance with current public policy encouraging electronic distribution and collection of data, prime contractors may submit Mentor-Protégé applications electronically. This process is optional, applications are still accepted via standard mail carrier.

Sixteen firms have been approved for participation in the NASA Program. Some represent new relationships in existing mature programs while others represent components of proposals being submitted in full and open competitions.

The NASA Headquarters Office of Small and Disadvantaged Business Utilization has a home page located at: http://mercury.hq.nasa.gov/office/codek. This home page gives a variety of information, including the final rule for the Mentor-Protégé program. In addition, the NASA Headquarters Office established an Electronic Mail Internet address for Inquiries regarding Mentor-Protégé at: mntrprtg@sdbu.hq.nasa.gov

For more information on any aspect of the program, contact the Mentor-Protégé manager, Rae C. Martel, NASA Headquarters, (202) 358-0640 or by e-mail at rmartel@sdbu.hq.nasa.gov

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Rene E. Paquette: NASA's Contract Manager of the Year

For the second consecutive year, a Kennedy Space Center Contracting Officer was selected as NASA's "Contract Manager of the Year". Rene E. Paquette has been the Contracting Officer on the complex and highly visible Base Operations Contract since coming to NASA/KSC in January 1985. For his highly professional performance Rene was selected for the prestigious award.

Prior to his coming to NASA, Rene served as Contracting Officer for the Air Force Titan Program and several other Cape Canaveral Air Station programs. His tenure at the cape goes back to 1974. Prior assignments included CO at Holloman AFB, New Mexico and Hanscomb AFB, Massachusetts. He also spent 10 years with the Navy, 3 in Wash., DC, and 7 at the Naval Base, Newport, R.I.

With over 31 years of service, Rene is starting to think RETIREMENT is not too far in the future. Rene and his wife Carolyn have lived in Titusville for over 20 years and plan to stay in Florida after retirement. Carolyn is a Computer Analyst here at KSC. Their three children, along with a grandson, all reside in Orlando.

Rene's interests include being a sun worshipper on the beach and shopping in thrift shops and flea markets for junk he and his wife do not need. He is an avid Miami Dolphins fan and a member of singer Patti Page's Appreciation Society. He recently was selected as the "Patti Page Fan of the Year".

Guess 1995 was his year.

The next issue of *Procurement Countdown* should be out in July 1996. If you would like to submit stories, please send them to Susie Marucci by June 15. Ms. Marucci's phone number is (202) 358-1896. Her e-mail address is: susie.marucci@hq.nasa.gov.

Spaceport, USA

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would be more likely to run at a loss than at a profit.

The final piece of the financial evaluation was an assessment of risk. Risk was considered in terms of both risk to the concessioner, e.g. if they failed to realize some of their projections, and risk to the PVP, e.g. contemplated development not occurring.

This risk was identified by the business, management, or technical committees, and sent to the business committee as a finding for evaluation purposes. The business committee would discuss these risks, apply analytical techniques to them, if possible, and assign an adjective rating to the individual risk. As part of the risk assessment, we performed a break-even analysis on each of the offerors to determine what amount of negative impact they could withstand to their projected visitation before development or profitability would suffer. Once all the risks were analyzed, the business committee assessed an overall risk for each offeror, based upon the individual risks, and an adjective rating was assigned for the overall risk.

The business committee was then able to determine the overall viability for each offeror, based upon the P&L data evaluation, the development data evaluation, the financial capability, and the risk assessment, and an adjective rating was assigned for Financial Viability.

There are many unique features that we have included in the Concession Agreement itself as well. Experience over at least the last 15 years (the duration of the previous Concession Agreement) has shown that it is not always easy to get the concessioner to spend money on items that NASA considers to be important to the appearance of Spaceport USA or the enhancement of visitor value.

These items affect the concessioner's bottom line, because all expenditures at Spaceport USA are funded through revenues generated by the operations there. Therein lies the problem. To help alleviate that problem in this new Concession Agreement, we established "funds" for exhibits, facilities, and transportation. The purpose of these funds is to provide for replacement, renovation, upgrade, and general improvement in each of the areas identified. The concessioner is required to deposit an established amount to each of these funds each year, and the amount is tied to the Consumer Price Index for the life of the Concession Agreement. Candidate projects funded with these funds can be identified by either the concessioner or NASA.

Another unique feature of this Concession Agreement is a performance fee. The performance fee is very similar to an award fee, except that instead of having appropriated funds set aside for fee, the concessioner's profit is held in a separate bank account, and the amount of that profit that the concessioner will actually earn is based upon an evaluation of the concessioner's performance over the performance period, against criteria transmitted to the concessioner prior to the beginning of that period, just as in an award fee evaluation.

This was a very complicated, but interesting procurement, and I'm sure our hard work will prove to be well worth the effort in improvements to the Public Visitor's Program and Spaceport USA, soon to be renamed the Kennedy Space Center Visitor Center. We at KSC invite you, your family, and friends to come down and visit after the grand reopening in 1998!

Changing How We Do Business: Exclusions to Foreign Contracts

As you are aware, Procurement Notice 89-70 deleted the requirement that NASA Headquarters award all NASA foreign contracts. We have developed a list of FAR and NFS provisions/clauses that do not apply to foreign procurements outside the United States, its territories, possessions, and the District of Columbia. There are over 100 provisions and clauses on the list; far too many to list in this publication. Generally, the provisions and clauses that do not apply to foreign procurements include required sources of supplies and services, contractor qualifications, small business programs, application of labor laws to government acquisitions, environmental, conservation, occupational safety, drug free workplace, Buy American Act, patents, data, copyrights, taxes, cost accounting standards, and acquisition of utility services. If you would like a copy of the complete listing, please contact Harold Jefferson, Code HK, at (202) 358-0409.

Converting Contract Type

(continued from page 7)

critical element with this portion of the contract was to negotiate a sharing formula and maximum and minimum fees that offer an incentive over a wide range of possible cost outcomes. The CPIF portion pertains to contractor controllable labor and pay-related costs associated with base operations; test complex services; Space Shuttle Main Engine (SSME) support; and other areas. Under this negotiated CPIF plan, the contractor is eligible to earn incentive fee on an annual contract year basis. The incentive fee earned will be calculated based on the degree to which the total actual controllable costs deviate, either upward or downward, from the target controllable costs in accordance with agreed sharing formulas.

Concerns

Concerns have been expressed about changing the contract type toward the end of the total period of performance, as well as the elimination of the award fee process resulting in the potential for degradation of performance. Since there were two years left on the contract, it was a good time for a pilot program before the recompetition for the follow-on contract. This pilot program would monitor the methodology for administering this type of contract. Since the contractor's performance has historically been excellent, NASA felt that the contractor would not allow performance to be degraded in order to underrun costs. The contractor is obligated to perform the requirements of the contract, and nonperformance could result in disallowance of costs or nonpayment of fees. Insofar as quality of performance, informal performance reviews will continue. Furthermore, a short semiannual performance summary, prepared by the Contracting Officer and the Contracting Officer's Technical Representative, will be provided to the Center Director (this can be delegated to another senior manager, if so desired) who, in turn, will review the progress with appropriate corporate contractor personnel. This summary progress report will be retained by the procurement office for past performance references.

Summary

Currently, the CPFF/CPIF contractual arrangement appears to be successful. The SSC team is adapting to the change in contract type. As a matter of fact, the cultural change sets the groundwork for Performance-Based Contracting for the recompetition of the follow-on contract.

The contractor is making more of its own decisions on how the work is to get done. Contractual requirements are being met with continued quality performance, less government involvement and increased cost-savings initiatives. The contractor experienced $2.1 million in cost savings on the incentive portion of the contract for Option 5. The government was able to use the savings to enhance/improve program content, thereby delivering more content for less money. The contract type was re-evaluated toward the end of Option 5 with both parties agreeing to continue with this contractual arrangement in Option 6.

Initiating Changes at SSC

(continued from page 10)

accordance with the contract terms and conditions, continued to rebate at the excellent level.

After streamlining, the process now requires the Contracting Officer and the Contracting Officer's Technical Representative to meet semiannually to review the contractor's performance for the previous six-month period. If no major shortcomings are identified, the contractor is notified to continue rebating at the excellent level. If major shortcomings were to be identified, the full PEB process would be reactivated.

If other Centers are undergoing similar changes or implementing other initiatives, we would like to learn about their experiences.

We are also available to share information about our experiences with other Centers. For additional information, contact Rebecca Dubuisson at (601) 688-1636 or at e-mail: rdubuiss@wpogate.ssc.nasa.gov

We Want to Hear from You!

Do you have a questions you'd like answered? Do you want to know the current status of an agency-wide Procurement Initiative? Do you have something interesting going on at your center that you'd like to share? We hope so. Procurement Countdown is looking for interesting stories, ideas, topics and questions. Send yours to the editor, Susie Marucci, at susie.marucci@hq.nasa.gov or call her at (202) 358-1896.

FASA Pricing Reform: Industry's View

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for hundreds of items in IDIQ contracts, which would be excessive and unreasonable. [Editor's note: The FAR specifically allows sampling - see 15.804-1(c)(1).] Industry also regards the discount disclosure requirement to be a potential risk. **Grade: A-.**

Relational Sales Test

"Substantial sales" was based on the percentage of sales to the public versus sales to the government. Therefore, qualification for the TINA catalog item exception could change if too many units were sold to the government.

This test was eliminated by FASA. Sales are substantial if they are more than a nominal quantity based on the norm of the industry segment. [Editor's note: Sales and prices of essentially the same item by other manufacturers or vendors may also be considered.] **Grade: A.**

Most Favored Customer Price

The SF1412 required that an offeror disclose its MFC prices.

The SF1412 was eliminated. The new solicitation notice does not require disclosure of MFC prices.

The government refused to adopt industry's proposal to prohibit demands for MFC prices, as this would be contrary to the philosophy of empowering the contracting officer. Hopefully, the changes will be enough to move the contracting officer's negotiation objective from MFC price to fair and reasonable price. Arguably, to do otherwise would be a deviation requiring special approval. As long as MFC prices are demanded, this will be a high-risk area, and the seller needs to beware. [Editor's note: MFC prices may be a significant piece of information in some circumstances, but they should not be generally viewed as a negotiation ceiling.] **Grade: D.**

Access to Records and Postaward Audit

The FAR imposed access to records and postaward audit rights on commercial items, notwithstanding the TINA exemption for contracts based on catalog or market prices.

The new solicitation notice only provides preaward access to examine records for verification of price reasonableness. However, when the new TINA commercial item exception is used, FASA provides access and audit rights regarding the accuracy of price information until 2 years after contract award. There is no clear guidance on what happens if inaccurate information is discovered. Industry suggests that inaccuracies be a past performance factor or an indicator of the needed extent of preaward audits on future contracts. **Grade: B.**

Price Reduction Provision

Earlier drafts of proposed rules on commercial pricing allowed for postaward price reductions based on defective price data or MFC price guarantees.

No such provisions were included in the final FASA implementation. Industry remains concerned with agencies that use such provisions in their own regulations or contracts. It is expected that policies and procedures inconsistent with FAR, TINA and FASA will eventually be challenged by the private sector. **Grade: B.**

Overall Grade: B

It is clear that the government has attempted to address many of the barriers to commercial business firms. Some serious problems remain. In addition, not all government officials are happy. For instance, the GSA and VA Inspectors General have complained that the elimination of audit rights and certification requirements in FASA has removed key safeguards in the procurement process. This highlights serious differences in perceptions about the commercial marketplace and what is needed to protect the taxpayers' interests.

Procurement Countdown

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

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

FY 1996 - OFFICE OF PROCUREMENT SCHEDULE ACQUISITION DEVELOPMENT INITIATIVE COURSES

	CLASS DAYS	TITLE	CLASS SIZE	DATES	SITE
CON-104	15	CONTRACT PRICING	25	TBD	R*
CON-201	10	CONTRACT LAW	25	05/13/96 - 05/24/96	R*
CON-3X1	5	SOURCE EVALUATION BOARD (SEB)/PILOT*** (WITH FAR METHOD)	25	05/20/96-05/24/96	HQ*
CON-2X2	5	INCENTIVE CONTRACTING***	25	06/03/96 - 06/07/96	ARC
CON-2X3	5	PBC FOR CENTER OPERATING SERVICES - PILOT***	25	06/17/96 - 06/21/96	HQ*
CON-3X1	5	SEB***	25	06/24/96-06/28/96	TBD
CON-101	20	CONTRACTING FUNDAMENT.	25	TBD	TBD
CON-3X1	5	SEB***	25	07/22/96-07/26/96	TBD
CON-211	15	INT'MED. CONTRACTING	25	07/22/96 - 08/09/96	R*
CON-231	10	INT'MED. CONTRACT PRIC.	25	07/29/96 - 08/09/96	W*
CON-3X1	5	SEB***	25	08/12/96-08/16/96	TBD
CON-3X2	5	PROC. MANAGERS SEMINAR	30	08/12/96 - 08/16/96	R*
CON-2X1	5	CONT./SUBCONTRACT MGMT	50	08/26/96 - 08/30/96	R*
CON-2X2	5	INCENTIVE CONTRACTING***	30	08/26/96 - 08/30/96	LeRC
CON-2X2	5	INCENTIVE CONTRACTING***	30	09/16/96 - 09/20/96	GSFC

*R - RAMADA INN, HAGERSTOWN, MARYLAND
*W - WALLOPS FLIGHT FACILITY, WALLOPS ISLAND
*HQ - LIMITED TDY ATTENDANCE FROM CENTERS
***COURSE FOR PROCUREMENT AND TECHNICAL PERSONNEL
(HQ/CODE H PAYS FOR PROCUREMENT PERSONNEL ONLY)

For More Information about these classes, call Lillian Stone at NASA Headquarters on (202) 358-0473.