

# Summary of Changes

The following changes to the Supplying Principles and Practices are effective August 27, 2008.

The Supplier Disagreement Resolution General Practice has been revised to reflect the November 14, 2007, changes made to the Postal Service's purchasing regulations in 39 CFR, Section 601.

Some of the major changes to the practice include the following:

- The term Ombudsman has been changed to Supplier Disagreement Resolution Official (SDR Official).
- Suppliers must lodge disagreements in writing with the Contracting Officer (lodging disagreements orally is no longer permitted).
- At the conclusion of the 10-day resolution period, the Contracting Officer (CO) must communicate, in writing, to the supplier his or her resolution of the disagreement and a copy of that letter must be sent to his or her manager. The decision letter must include the supplier's appeal rights.
- The use of arbitration may not be used without the approval of the vice president (VP), Supply Management (SM). Language has also been added stating that the disagreement resolution process should be business-like and not adversarial.
- Language regarding the potential actions available to COs during the resolution process has been expanded to state that COs and management should consider a range of business options to resolve the matter, including, denial of the disagreement; overturning a contract award; reopening the purchasing process, or the amendment of the solicitation.
- The material that must be forwarded to the SDR Official after a disagreement has been lodged with the SDR Official has been revised.

In the **Information Technology Commodity-Specific Practice**, the **Security Considerations** section has been revised to require that purchase/SCM teams ensure that specifications and statements of work (SOW) for Information Technology (IT) purchases and other types of purchases that may involve Personally Identifiable Information (PII), and resulting solicitations and contracts, address information security and privacy protection requirements. In order to ensure that IT and sensitive information is protected, purchase/SCM teams must coordinate their activities with the Corporate Information Security Office (CISO), and include new **Provision 4-10, Application Information Security Requirements**, and new **Clause 4-19, Application Information Security Requirements**, in solicitations and contracts as necessary. In addition, suppliers are precluded from placing any Postal Service data onto laptops or other mobile media without the prior approval of the CO; COs must coordinate such requests with CISO, and may not consent to such requests without CISO's approval. As a result of this change, ancillary revisions have been made to the **Privacy Considerations** and **Supply Chain Security General Practices**, and the new provision and clause have been added to the **Clauses and Provisions** sections.

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# Introduction to the Postal Service Supplying Principles and Practices

In order to institutionalize supply chain management throughout the Postal Service™, these *Supplying Principles and Practices* have been developed to replace the Interim *Internal Purchasing Guidelines*. The Supplying Practices are intended for internal use only to assist the Postal Service in obtaining best value and efficiently conducting its supply chain functions. They are advisory and illustrative of approaches that may generally be used by Postal Service employees to conduct SCM activities, but are intended to provide for flexibility and discretion in their application to specific business situations. They are designed to supplement the Postal Service's purchasing regulations contained in 39 C.F.R. Part 601.

The Supplying Principles are the overarching business principles which the Postal Service will follow in its SCM efforts. The Supplying Practices are the business practices the Postal Service will follow to fulfill the intent of the Principles. The Practices are organized according to six process steps and those process steps are further organized according to tasks and topics. While the process steps and tasks are organized sequentially, some practices are sometimes carried out simultaneously, and others may not be applicable to a specific business situation. The Purchase/SCM Team is responsible for selecting the Supplying Practices that are applicable or relevant to a specific business situation.

In addition to the specific Supplying Practices organized by Process Steps, Tasks and Topics, there are General Supplying Practices which inform the entire supply chain process, and Commodity-Specific Practices. The General Practices address overarching topics and include subjects such as Laws, and Material and Property Accountability. The Commodity-Specific Practices discuss business practices relevant to a specific commodity such as mail transportation or design and construction.

The Vice President (VP), Supply Management (SM), is responsible for ensuring that Postal Service supplying activities further the business and competitive interests of the Postal Service and for approving and issuing the Supplying Principles and Practices, and supplemental guidance. Proposed changes to enhance the Supplying Principles and Practices are welcome from all supply chain stakeholders, including suppliers and the general public.

# United States Postal Service Supplying Principles

## General Overview of United States Postal Service Supplying Principles

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### Background

The United States Postal Service® was established by the Postal Reorganization Act (PRA), Public Law 91-375 (codified at Title 39 of the United States Code) as an independent establishment within the executive branch whose purpose it is to bind the nation through the personal, educational, literary, and business correspondence of the American people. The Postal Service™ operates from its own revenues in providing its public service. Since it was established, it has faced rapidly increasing competition from both technology and businesses targeting market niches within the postal product line. Consequently, the Postal Service's ability to provide efficient, economical service is driven by market forces.

The Postal Service acquires property and services in accordance with the PRA and all other applicable laws enacted by Congress. The Postal Service has promulgated regulations governing the acquisition of goods and services at 39 C.F.R Part 601. The public should reference both the PRA and the regulations for guidance regarding the Postal Service's purchasing regulations. These Supplying Principles and the accompanying Supplying Practices are not binding regulations of the Postal Service. The public should be guided by and may rely upon the Postal Service regulations referenced above and the terms of specific solicitations/requests for proposals rather than the *Supplying Principles and Practices*, which are intended for internal use only to assist the Postal Service in obtaining best value and efficiently conducting its supply chain functions. These *Supplying Principles and Practices* are advisory and illustrative of approaches that may generally be used by Postal Service employees, but are intended to provide for flexibility and discretion in their application to specific business situations. Consistent with that intent, these *Supplying Principles and Practices* create no rights, substantive or procedural, enforceable against the Postal Service.

## **Purpose of Principles**

The eight Supplying Principles contained herein represent the strategic elements that guide Postal Service buying and material management activities. Each of these Principles is central to obtaining the financial, operational, and public policy goals outlined in the Postal Service's *Transformation Plan*.

## **Responsible Parties**

The Vice President (VP), Supply Management (SM), is responsible for ensuring that Postal Service supplying activities further the business and competitive interests of the Postal Service and for approving and issuing these Supplying Principles and supplemental guidance.

To assist the VP, SM, in carrying-out these responsibilities, two cross-functional bodies provide advice and insight to ensure that Postal Service goals are met and that these Principles promote an efficient and effective supply chain. The Supply Chain Advisory Council (SCAC), comprised of Postal Service officers from across the supply chain, meets periodically to advise the VP, SM, on general supply chain issues, including these Supplying Principles. The Supply Chain Management Committee (SCMC), comprised of Postal Service executives, meets on a more frequent basis and makes recommendations with regard to the development, implementation, review, and enhancement of these Principles and supplemental guidance.

The Supply Management Infrastructure organization supports both bodies in their efforts.

## **Change Management**

These Principles will be continually evaluated and improved in order to ensure continuing effectiveness and consistency with the current Postal Service strategic direction and supply chain innovation. Proposed changes to enhance these Principles are welcome from all supply chain, including suppliers.

# **Postal Service Supplying Principles**

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## **Authority and responsibility**

The Vice President (VP), Supply Management (SM), is authorized to ensure that all Postal Service supplying activities further the business and competitive interests of the Postal Service. In doing so, the VP, SM, has both a fiduciary and a business responsibility to (1) maximize the financial position of the Postal Service and (2) to facilitate the business goals of internal clients. The VP, SM, defines the overall business strategies of the Postal Service's various supply chains, and, in concert with the Postal Service management involved in the supply chains, manages them to promote the Postal Service's

overall business success. The VP, SM, is also responsible for the effectiveness of supply chain collaboration and planning — internally, and with the supplier community. Because supplier relationships are central to supply chain success, the VP, SM is responsible for source selection, defining supplier relationship strategies, ensuring that supplier relations are conducted in a fair, objective, and business-like manner, and addressing and resolving supplier relationship issues.

The Postal Reorganization Act provides purchasing authority to the Postmaster General, who has delegated all purchasing and related policy development authority to the VP, SM. In turn, the VP, SM, has delegated to individuals the authority to negotiate, award, modify, and terminate contracts, and, in some cases, the authority to redelegate these authorities. Individuals delegated any or all of these authorities must ensure that all of their contractual actions, including negotiations, contract awards, modifications, and terminations, are within the scope of their delegated authority before taking those actions.

The VP, SM, is also responsible for the effective management of Postal Service material throughout its life cycle and the flow of materials through supply chains, ensuring that the best business practices are employed in fulfilling this responsibility.

When required by these Supplying Principles or supplemental guidance, Contracting Officers must ensure that all required and appropriate reviews and approvals are obtained before taking a particular contractual action.

## **Best Value**

The Postal Service bases sourcing and material management decisions on best value. Best value is defined as the outcome that provides the optimal combination of elements such as lowest total cost of ownership, technology, innovation and efficiency, assurance of supply, and quality relative to the Postal Service's needs. In the sourcing area, best value is generally achieved through competition, which brings market forces to bear and allows the direct comparison of proposals and life-cycle costs, although market conditions may dictate that a single- or sole-source strategy will be the best business approach. Purchase/SCM teams are empowered to pursue strategies and tactics that enable the Postal Service to achieve best value, and have broad flexibility in (1) deciding which elements of value will be sought by the Postal Service and expressed in solicitation evaluation factors and their weightings and, (2) determining the most effective SCM business practices (early supplier involvement, consolidating requirements, scope and method or market research, etc.) to employ.

## **Ethics and Social Responsibility**

The Postal Service is committed to maintaining its standing as a responsible service organization, and understands that socially responsible behavior is good for business. This principle solidifies this element of corporate culture and enhances the trust factor in key business relationships.

## **Business Ethics**

Postal Service supplying professionals will act with the highest standards of conduct, ethics and integrity. All Postal Service employees must adhere to the “Standards of Ethical Conduct for Employees of the Executive Branch”, 5 CFR 2635 and the “Supplemental Standards of Ethical Conduct for Postal Employees” at 5 CFR Part 7001. In addition, Postal Service supplying activities are guided by the Institute of Supply Management’s “Principles of Social Responsibility” available at <http://www.ism.ws/ISMMembership/Principles.cfm>. The Postal Service will be fair, objective, and business-like in its dealings with the supplier community, ensuring that business decisions are driven by business considerations.

## **Conflicts of Interest**

The Postal Service will seek to minimize both personal and organizational conflicts of interest. Postal Service supplying professionals are prohibited from establishing and maintaining relationships of self-interest with any suppliers or potential suppliers. The Postal Service will attempt to avoid situations in which a supplier has an unfair competitive advantage or other interests that may impair the supplier’s objectivity in dealing with the Postal Service or in its ability to perform satisfactorily on Postal Service contracts.

## **Post-Employment**

The Postal Service does not contract with former Officers or Postal Service Executive Service (PCES) executives or entities with which such individuals have a substantial interest for one year after the date of their separation from the Postal Service (whether by retirement or otherwise) if the contract calls for substantially the same duties as they performed during their career with the Postal Service, as determined by the Vice President of Human Resources. The Vice President of Human Resources may grant exceptions to this policy when he or she determines that doing so is in the best interest of the Postal Service. Lastly, contracts with former employees (those who are not former Officers or executives), or with suppliers proposing the use of former Officers, executive or employees, are subject to the review and approval of the VP, Human Resources.

## **Environmental Responsibility**

Promoting an environmentally responsible supply base furthers the Postal Service’s business and competitive interests. Therefore, the Postal Service complies with applicable environmental laws and regulations and is committed to encouraging its supply chain partners to promote and enhance environmental responsibility in their conduct of postal business.

## People and Culture

### Professionalism

To stay competitive in an increasingly complex and changing world, the Postal Service requires supplying personnel who are world-class professionals. A well-educated workforce with higher competencies to perform the business practices essential to successful supply chain management, including such things as strategic sourcing, demand management, and supplier relationship management, is a prerequisite to achieving the cost and operational efficiencies in the supply chain. Consistent with this need, only individuals possessing baccalaureate degrees from accredited colleges or universities will be considered for appointment as a Postal Service contracting officer (CO). Additionally, Supply Management will hire and promote individuals into management positions only if they have a baccalaureate or post-graduate degree from an accredited college or university. All supply management specialists must maintain professional proficiency and remain qualified for their positions.

### Empowerment and Risk-taking

Postal Service supplying professionals are empowered to use their professional judgment and creativity to arrive at innovative methods of managing supply to create value for the Postal Service. Establishing what is prudent risk requires the effective analysis of a business situation and consideration of different business solutions followed by the adoption of actions that, while posing some risk of failure, offer the chance of significantly enhancing operational or financial performance. Postal Service supplying professionals are encouraged to take prudent risks to achieve these goals; when desired outcomes are not achieved, focus will be on lessons learned. Examples of prudent risk-taking include:

- Trying a new supplier to get an advantage on a critical program even though other qualified and experienced suppliers already exist.
- Awarding a noncompetitive contract to gain an exceptional advantage that is unattainable through competition.
- Forming a shared-savings or other innovative arrangement with a supplier.
- Taking a calculated risk on new technology that has good prospects of providing advantage to the enterprise in terms of capability, cost, time to market, etc.

### Performance Based Culture

The Postal Service's Transformation Plan stresses the importance of improving both individual and team performance through breakthrough productivity initiatives and aligning recognition for individuals and teams to their performance. Supply Management professionals will work with clients on an annual basis to agree upon the goals they are committed to achieving. These goals will be aligned with Supply Management's, the client's and the

Postal Service's goals; goals will also be the basis for metrics used to assess and reward the performance of Supply Management professionals and will be results-oriented, specific, measurable, and achievable.

## **Planning and Strategies**

### **Best Practices**

Postal Service supplying professionals will strive to meet the Postal Service's financial goals by adopting proven supply management tools and techniques. The Postal Service has adopted continuous improvement as a strategic business imperative, and is committed to continually analyzing and improving its supplying practices to enhance its competitiveness, efficiency and effectiveness. Postal Service supplying professionals will use a variety of means, including benchmarking and other market research, participation in professional organizations, etc., to ensure that the best business practices are being used in the Postal Service's supplying operations.

### **Strategic Planning**

Early, detailed, cross-functional strategic planning is an essential component in meeting supply chain goals. Obtaining cross-functional involvement ensures a more holistic view of the purchase and enables Supply Management to better meet Postal Service and client goals. Strategic sourcing is an important element in increasing the potential for achieving best value and reducing transactional costs. Therefore, each Category Management Center (CMC) and Purchasing Service Center (PSC) team is required to develop and maintain a written supply strategy (including advice from applicable clients) for each major spend category for which they are responsible. The strategy will focus on planned objectives, as well as the tactics and resources necessary to achieve client satisfaction and business success in the supply category in the coming year. At a minimum, category strategies will be reviewed annually by appropriate management levels within Supply Management.

### **Market Research**

The Postal Service relies on market research as a best practice supplying tool in order to enhance strategic thinking, research, analysis, and decision-making and to sharpen its competitive advantages. All Supply Management portfolios must perform and regularly update their market research in a cross-functional and collaborative manner. Research will focus on areas including, but not limited to: current and projected availability of products or services; the extent of competition in the market; the range of product or service performance characteristics; future industry, technology, and macro-economic trends; price trends and current market prices; supply base assessment; and types of available distribution and management systems.

## **Forecasting**

Early forecasting is a key component of supply chain management (SCM); it can be a valuable mechanism for bringing the supply and demand for goods into convergence, and for reducing inventory levels and associated costs.

Effective communication throughout the supply chain is essential to successful forecasting. Therefore, Supply Management and clients will work together to forecast future demand to the best of the organizations' ability and to communicate this information throughout the supply chain to optimize performance. Forecasts for core goods and services, those critical to the Postal Service's business success, will receive priority focus. Similarly, forecasts and changes to forecasts should be shared with suppliers, who are also encouraged to share Postal Service demand forecasts with their suppliers. Sharing relevant business information ensures that the Postal Service and its suppliers can work together more effectively and efficiently.

## **Leveraging Spend**

The Postal Service recognizes the power of leveraging spend across the enterprise through centralized procurement in facilitation of the achievement of best value. Therefore, unless there are compelling business reasons to do otherwise, all spend categories are centralized in order to maximize financial benefits by reducing total cost, including transaction costs, and improving quality and performance.

## **Demand Management and Product Standardization**

Category Management Centers must continually work with their clients to reduce both the types and quantities of goods and services that they purchase in order to reduce costs on existing and future contracts. The Postal Service recognizes that product standardization is a powerful means to achieve best value when dealing with suppliers. By driving product standardization, the Postal Service will be able to negotiate better pricing, reduce overhead costs, and focus on developing relationships with strategic suppliers. Each Category Management Center (CMC) is responsible for identifying candidates for product standardization within its commodity category.

## **Statutory and Regulatory Requirements**

In conducting its supply management activities, the Postal Service complies with its statutory obligations and its obligations under the purchasing regulations contained in the Code of Federal Regulations (CFR).

## **Supplier Relations**

Suppliers are essential and valued business partners of the Postal Service, and the Postal Service is committed to treating its suppliers in a fair, objective, and business-like manner. Relations between the Postal Service and its suppliers will be strong, mutually beneficial, and based upon sound



business practices, respect and trust, with both parties working toward a common goal.

Within the relationship, both parties - Postal Service supplying professionals and suppliers — are expected to act ethically, keep commitments, ensure the delivery of high-quality goods and services, and focus on continuous improvement of products, processes, and costs and prices. The Postal Service will manage supplier relationships based on the potential impact the supplier's performance will have on the Postal Service's operational and financial position.

### **Supplier Base**

The Postal Service is committed to having a world-class supply base. Therefore, the Postal Service will continuously measure, analyze, and enhance supplier performance relative to contractual requirements and the best practices of world-class supply organizations.

Postal Service supplying professionals will seek out methods to optimize its supplier base in line with the specific characteristics of the market, the good or service being supplied, and the goals of the Postal Service. In many cases, optimizing the supply base will include efforts to consolidate purchases among a smaller group of more capable and strategic suppliers to reduce costs (including transaction costs) and to improve quality and performance.

The Postal Service also understands that a diverse supplier base is important from both a performance and business standpoint. Therefore, through promotion, outreach efforts, and other means, the Postal Service will strive, as a strategic business initiative, to establish and maintain a strong, competitive supplier base that reflects the diversity of the supplier community. Additionally, Postal Service suppliers are expected to use small, minority, and woman-owned businesses as subcontractors to the maximum extent consistent with effective contract performance.

The Postal Service is an establishment of the U.S. government whose customer base is comprised mainly of American citizens and businesses. The Postal Service understands its interest in promoting American industry and a free market economy in countries with which the United States has entered into trade agreements. Therefore, as a matter of both business relations and effectiveness, and subject to the limitations set-out in the implementing practice, proposals considered for selection and (1) offering domestic end products or (2) proposals offering end products produced in designated World Trade Organization Government Procurement Agreement (WTO GPA) and Free Trade Agreement (FTA) countries are given preference by the Postal Service when they compete with proposals of relatively equal value containing end products from non-designated WTO GPA and FTA countries.

## **Teaming and Communications**

Members of the Postal Service's unified supply chain, from the supplier's supplier to the end customer, will work in an integrated and collaborative manner to maximize the efficiency and effectiveness of the flow of goods, services, and information. This collaboration will include communication and feedback, knowledge-sharing, supply and demand planning and management, product and service design, make vs. buy decisions, production and scheduling, order fulfillment, warehousing, inventory control and distribution, and disposal.

The Postal Service will explore innovative teaming, supplier-managed inventory, strategic alliance, value-engineering, shared-savings, and other non-traditional contracting arrangements with suppliers.

The Postal Service will provide offerors notification of and rationale for contract awards; debriefings will be available if requested. In order to attract and retain quality suppliers, develop true strategic relationships, and spur communication of innovative solutions without the fear of suppliers' capabilities and ideas becoming known to competitors, the Postal Service will protect proprietary business information to the extent required by law and good business practice. In turn, when requested by the Postal Service, suppliers are expected to provide current, complete, and accurate cost or pricing data or any other information to ensure reasonable pricing.

Lastly, in order to maintain effective performance and Postal Service-supplier communication, contractual disagreements will be addressed by both parties at the Contracting Officer or appropriate management level; if disagreements are not resolved at this level, they may be pursued with the Postal Service's Supplier Ombudsman.

## **Technology**

Electronic commerce with suppliers is a major enabler of transactional cost reductions and of moving the Postal Service toward SCM excellence. It is the goal of the Postal Service to have an integrated electronic business solution for all supply processes. This extends to the entire supply chain, including communications and document exchanges between clients, Supply Management, suppliers, and other Postal Service supplying stakeholders. The Postal Service will attempt to automate the supply chain process — particularly from order placement to disposal — as much as possible.

Inherent in this principle is an expectation that Postal Service suppliers will become capable of conducting business electronically. New suppliers will be enabled by electronic requirements, purchase order, and invoice and payment processes, when an electronic business solution is available. Additionally, commitments with existing suppliers using requirements, purchase order, and invoice and payment processes will be transacted using an electronic communications method whenever possible.

# USPS Supplying Practices General Practices

## Appointment and Selection of Contracting Officers

### **Contracting Officer Levels**

Contracting officers (COs) are appointed by the VP, SM, and by individuals delegated appointment authority. Appointees to the position of CO levels I through IV must be career employees in good standing and must meet the qualifications for the particular level (see below). Generally, contracting authorities are grouped by contracting officer level. There are four general levels of contracting officer:

- Level I contracting officers. Generally, these contracting officers are delegated up to \$100,000 of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
- Level II contracting officers. Generally, these contracting officers are delegated up to \$1 million of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
- Level III contracting officers. Generally, these contracting officers are delegated up to \$10 million of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
- Level IV contracting officers. Level IV contracting officers are delegated unlimited contracting authority.

### **Educational Requirement**

Effective July 30, 2007, all individuals nominated to be contracting officers must have baccalaureate degrees. The individual nominated must have earned at least 24 semester hours in subjects related to purchasing, such as accounting, business finance, commercial (business) law, economics, quantitative analysis, marketing, contracting or purchasing, organization, or management. The required 24 semester hours may have been earned during the individual's pursuit of a baccalaureate degree, or at any other time. Individuals who do not have a baccalaureate degree and were appointed to Contracting Officer Level I before July 30, 2007, may retain their

appointment, subject to the Continuing Professionalism requirements discussed below.

## Professional Certifications

Although professional certification is not a mandatory qualification factor for CO appointment, appointment authorities should consider it when determining whether an individual should be appointed and to which level he or she should be appointed. The professional certifications offered by the Institute for Supply Management and the National Contract Management Association are the only certifications which appointment authorities should consider when making this determination. Information on these certifications is available at [www.ism.ws/certification](http://www.ism.ws/certification) and [www.ncmahq.org/certification](http://www.ncmahq.org/certification).

## Contracting Officer Level Qualifications

Appointment to a particular contracting officer level requires progressively more exacting qualifications. In addition, the following qualifications apply to contracting officers appointed by the VP, SM:

1. Contracting Officer Level I:
  - a. *Experience:* One year of experience performing substantive purchasing tasks.
  - b. *Training:* Satisfactory completion of 32 hours of formal training in each of the following subjects:
    - (1) Fundamentals of Supply Management.
    - (2) Contracting Methods and Principles.

If the contracting officer will be delegated purchasing authority for design and construction purchases, the following Postal Service training course is also required:

    - (3) Introduction to Facilities R&A Contracting (this course is available at the Postal Service's Center for Leadership Development).

**Note:** The formal training may be obtained through an accredited college or university, a federally sponsored program, a nationally recognized training organization, or a supply management-related professional association or organization.
2. Contracting Officer Level II:
  - a. *Experience:* Three years of current, progressively complex and responsible experience in performing competitive and noncompetitive purchasing (not including simplified purchasing). Generally, this experience must have been gained in intermediate level contracting positions.
  - b. *Training:* In addition to the training requirements for a Level I CO, satisfactory completion of 32 hours of formal training in each of the following subjects:
    - (1) Negotiation Strategies.
    - (2) Total Cost of Ownership/Cost and Price Analysis.

- (3) Contract Management/Administration.
- (4) Project Management.
- (5) Contract Law.

If the contracting officer will be delegated purchasing authority for design and construction purchases, the following Postal Service training course is also required:

- (6) Contract Administration, Pricing, and Claims (this course is available at the Postal Service's Center for Leadership Development).

**Note:** The formal training may be obtained through an accredited college or university, a federally sponsored program, a nationally recognized training organization, or a supply management-related professional association or organization.

c. Contracting Officer Level III:

- (1) *Experience:* Five years of current, progressively complex and responsible experience in soliciting, negotiating, awarding, and administering competitive and noncompetitive purchasing actions. Ordinarily, this experience must have been in higher-level purchasing positions.
- (2) *Training:* In addition to the training requirement for Levels I and II CO, satisfactory completion of 32 hours of formal training in Purchasing/Supply Management Advanced Strategic Issues.

**Note:** The formal training may be obtained through an accredited college or university, a federally sponsored program, a nationally recognized training organization, or a supply management-related professional association or organization.

d. Contracting Officer Level IV. The holders of the following positions are Level IV contracting officers:

- (1) Manager, Facilities Portfolio.
- (2) Manager, Mail Equipment Portfolio.
- (3) Manager, Services Portfolio.
- (4) Manager, Supplies Portfolio.
- (5) Manager, Transportation Portfolio.

## Waivers and Interim Appointments

*Waivers.* Waivers to the qualification requirements may be requested for individuals who, due to their extraordinary experience or extraordinary circumstances, should be granted contracting officer authority. Requests must be submitted through organizational levels to the VP, SM.

*Interim Appointments.* Ordinarily, individuals will not be appointed as contracting officers if they do not meet the relevant qualification criteria. However, when necessary, appointing officials may grant an interim

appointment to an individual who has not yet completed necessary training or education. No interim appointment may exceed one year, and no interim appointment may be granted to an individual more than once if the individual fails to complete the required training or education.

## **Continuing Professionalism**

All contracting officer appointments, regardless of level, must be reviewed annually by the appointing official in order to ascertain that the contracting officer has maintained professional proficiency and otherwise remains qualified. Therefore, contracting officers must:

1. Attend 21 hours of formal purchasing training covering such areas as new requirements, techniques, or policies and procedures brought about by changes in statutes, regulations, business research, or evaluations of postal purchasing practices.
2. Maintain their professionalism through (a) attendance at seminars, conferences, meetings, or other professional activities and (b) performing coursework in contracting and purchasing commensurate with their CO level and responsibilities. The appointing official will determine whether a particular CO's efforts in these areas meet the professional development requirements.
3. Sustain and expand their knowledge of the purchasing field through reading professional literature.

## **Termination**

Termination of a contracting officer appointment may be made by an appointing authority or by the VP, SM. Terminations may be made for reasons such as reassignment, termination of employment, or unsatisfactory performance. The termination must indicate the effective date of termination. Termination of employment automatically terminates a contracting officer's appointment. Terminations may not be made retroactively.

## **Develop Commodity Strategy**

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A commodity strategy is the purchasing plan for a specific product or service (commodities) that facilitates the management of the supplier base, avoids and/or proactively solves potential problems, and is the basis of future Postal Service business practices surrounding a purchase of the commodity involved. The competitive market demands that the Purchase/SCM Team develop focused concepts and methods and apply them to purchasing behavior. A commodity strategy is based on the commodity sourcing strategy plan (CSSP) that ensures the use of systematic processes for developing strategies to achieve supply chain management goals that fully support objectives. Strategies, as their name implies, should be strategic and focus on standardization and innovation, not just on technical and tactical support. Strategies are developed by establishing goals and specific baselines that are generated by a thorough understanding of the external supplier

environment and the internal Client reality. Every year, strategies are reviewed in face-to-face meetings with the Purchase/SCM Team and the Vice President, Supply Management (VP, SM). The most crucial factors and points of reference for all category strategy planning are:

- Best value
- Reliable partnerships — mutually beneficial business relationships
- Improvements and enhancements in operational efficiency
- Sourcing Strategy (whether leveraging spend and demand are best addressed through a single or multiple source strategy and provide a best value decision)
- Centralization (the strategy does not stand alone, but considers the other Category Management Centers [CMCs] in a collaborative and shared approach)
- Operational benefits and functions of product/service to the Postal Service
- Profits, results, Client satisfaction generated

Early, detailed, cross-functional strategic planning is an essential component in meeting supply chain goals. Obtaining cross-functional involvement ensures a more holistic view of the purchase process and enables Supply Management to better meet its goals and its Clients' goals. Collaboration among the CMCs as an overall strategy requires:

- Open, continuous, and timely communication
- Use of best practices
- Alliances that will be manifested internally and externally
- Constant steps toward innovation and improvement
- Market research
- Cost and price understanding (Price Analysis)
- Awareness that strategic issues with suppliers have impact on other CMCs
- Realization that total cost is more important than the immediate price when making purchasing decisions (Total Cost of Ownership Analysis)
- Use of feedback from stakeholders and Clients
- Collective knowledge sharing of the Purchase/SCM Team regarding appropriate functional areas (e.g., divulged expertise surrounding engineering designs, manufacturing methods, quality controls and measures, and inventory planning)

Each Category Management Center (CMC) Team is required to develop and maintain a written commodity strategy (including input from applicable Clients) for each major spend category for which the Team is responsible. The CMC Team has a composition similar to that of a Purchase/SCM Team and comprises buyers, Market Analysts, Price Analysts, and Item Managers with expertise and experience specific to each commodity. The CMC Team

applies supply chain management (SCM) business practices to both strategic sourcing and individual purchases and examines demand trends, the marketplace, and the supplier community to determine how to achieve best value for the Clients and which practices will be of the greatest significance.

The strategies developed by the CMC Team will focus on planned objectives, as well as the tactics and resources necessary to achieve Client satisfaction and business success in the supply category in the coming year. It is especially important that the CMC Team, when developing commodity strategies, identify the technological nature of the commodity (if any) and what technology is needed to support the purchase throughout the life cycle. Goals are translated into specifics and sequentially broken down according to:

- Volume and volume normalization:
  - By location
  - By Client
  - Usage seasonality
  - Historical data
  - Sourcing trends
  - Usage forecast
  - Spend analysis
- Price:
  - By location
  - By Client
  - By supplier and logistics channel
  - Price seasonality
  - Historical data on price
  - Forward pricing (the establishment of prices now for future transactions)
  - Total cost of ownership analysis
- Product specifications:
  - Functional specifications
  - Design and quality specifications
  - Level of customization
  - Level of standardization
  - Specification of ownership
- Current purchasing process:
  - Process trigger points
  - Specification process
  - Supplier evaluation
  - Negotiation
  - Buying decision



- Performance monitoring (quality, reject rate, technical support, and service provided)
- Constraints and restrictions:
  - Mandatory Sources
  - Client requirements (e.g., supplier list, local content restrictions)

A commodity strategy is developed by evaluating, considering, and leveraging data about the following:

- Requirements of the Client
- Value and risk assessments (quadrant analysis)
- Marketplace and market research
- High-level logistics support
- Final goals and benefits to be realized
- Quadrant approach

## Requirements

The CMCs within the Postal Service are ultimately responsible for the purchase of goods and services that allow the Postal Service to function. As explained in the Define Requirements topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs, every Client and every CMC has specific requirements for the products and services that they purchase, and this information must be known throughout every CMC. When developing category strategies, the actual requirements and objectives of the Client are the basis for any planning. Analyzing and understanding the Client's needs (once identified) are the foundation of any category strategy, as explained in the Define and Understand Client Needs, Goals, and Strategies topic of the Conceptualize Need task of Process Step 1: Identify Needs. These objectives are used to develop a category strategy.

Spend analysis is also used to discover what financial requirements exist and to plan for the eventual allocation of monetary resources. Spend analysis (which is generated from data that describe the amount spent, number of suppliers used, clients served, purchasing locations, and commonality of suppliers) is properly carried out in the Conduct Spend Analysis topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. Spend analysis is an extremely important tool that must be leveraged to understand what dollar amounts are spent on each commodity and, inherently, on each Supplier. In supply chain management, knowing what financial resources are required for purchases is extremely important to developing category strategies.

## Quadrant Analysis Tool — Value and Risk Assessment

All commodity purchases are pertinent to SCM, facilitate the achievement of Postal Service objectives, and can be mapped to a Quadrant Analysis (see Figure 1). This Quadrant *Analysis* is different from the Quadrant *Approach*

used throughout the rest of these Supplying Practices. The Quadrant Approach classifies all Postal Service purchases into four categories, depending on their impact on Postal Service core competencies (noncore versus core) and complexities (standard versus custom). The Quadrant *Approach* assists in identifying key considerations for various practices in each of the four categories. The Quadrant *Analysis* below identifies commodities according to value and risk, and determines the most appropriate supply management strategies.

The Quadrant Analysis tool was developed by Postal Service SCM Strategies to assist commodity teams in performing quadrant analysis and to standardize the analysis process across the entire Supply Management organization. This tool provides a list of questions that serve as the criteria for evaluating each commodity. Based on the inputs provided by the user, the tool performs a weighted calculation to determine the overall relative value and risk of each commodity and graphs the results on a quadrant chart. Category strategies must consider the value and risk of commodities. For example, a low-value/low-risk item is treated with routine planning and does not require the attention and line of attack that a high-value/high-risk item requires.

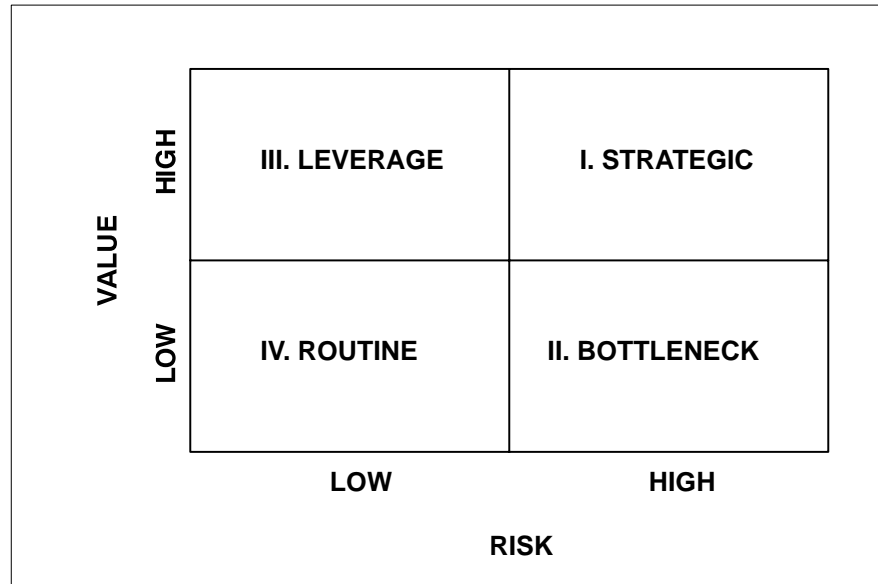
**Value** is the relative importance of the commodity to the Postal Service. Factors in assessing value include:

- Criticality to business operations
- Importance to profitability
- Importance of product or service quality
- Spend amount
- Percentage of total spend
- Relationship to strategic goals

**Risk** is the degree of supply challenge. Factors in assessing risk include:

- Number of suppliers
- Availability of qualified sources
- Availability of alternate or substitute products
- Complexity of specifications
- Use of new technologies or untested processes
- Pricing scenarios (assignment of probabilities to possible outcomes)

Figure 1  
**Quadrant Analysis**



**Strategic** commodities are characterized by complex specifications, few qualified supply sources, and typically large individual expenditures. The quality of these products/services is critical. These commodities tend to be highly important to profitability and operations.

**Bottleneck** commodities have characteristics that include complex specifications requiring complex manufacturing or service processes, few alternate products available, and few qualified sources of supply. These commodities may impact ongoing operations or maintenance or may involve new technology or untested processes.

**Leverage** commodities include high expenditure levels, many alternative products/services, numerous suppliers, and readily available sources of supply.

**Routine** commodities include many existing alternate products/services, many sources of supply, relatively low value items, and many small individual transactions that are easily purchased. These commodities are often items of everyday use.

## Marketplace and Market Research

The Postal Service relies on market research, the continuous process of gathering data on product and service characteristics, to enhance strategic thinking, research, analysis, and decision making and to sharpen competitive advantages. The most important insight gained from market research is an understanding of potential suppliers. All Supply Management (SM) portfolios must perform and regularly update existing market research in a cross-functional and collaborative manner by conducting a quarterly market analysis, the commodity-based assessment of supplier segmentation, trends in supply and demand, economic factors, volatility, and risks, which identifies the current supplier market, industry trends, and market trends. Suppliers

should be ranked by percentage of market share, using the Supplier Analysis Worksheet, which should be leveraged when the market analysis is generated. Information regarding suppliers is then used to help identify key suppliers and show the Postal Service how to create competition. The development of category strategies will be tailored to these key suppliers.

Market research should focus on areas and market issues, including, but not limited to:

- Current and projected availability of products or services
- Extent of competition in the market
- Range of product or service performance characteristics
- Future industry, technology, and macroeconomic trends
- Price trends and current market prices (establishment of target price)
- Supply base assessment (e.g., industry structure)
- Types of available distribution and management systems

Benchmarking should also be used to compare a given CMC's present performance (e.g., quality of outputs, success level of operational methods, process innovation) against the performance of other CMCs (as well as that of external organizations in the industry). Benchmarking should be performed as part of market research and is discussed in detail in the Conduct Market Research and Benchmarking Analysis topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs. Benchmarking demonstrates whether the strategies focused on the general approach to the development and management of the core competencies, innovations, and change that are already in place are functional or whether requirements and the market necessitate more extreme innovation (the development of completely new category strategies). Benchmarking offers competitive intelligence on what already exists and indicates what is achievable in future transactions with suppliers. When competitive intelligence demonstrates that little is achievable in future transactions with suppliers, the category strategy must reflect that in-house manufacture of the commodity is warranted.

Another important element of commodity strategies is an understanding of Postal Service capabilities (e.g., innovation level of internal methodologies, patent protection) assessed by the strengths, weaknesses, opportunities, and threats (SWOT) analysis. By understanding which strengths to exploit, which weaknesses to improve, which opportunities to pursue, and which threats to negate, the Postal Service can develop realistic plans that are tailored to Postal Service circumstances and can strategically approach the purchasing process.

## High-Level Logistics

As already mentioned, CMCs will have overlapping strategies. Ultimately, high-level logistics will play a crucial role in supply chain support, ensuring that requirements get to the relevant Clients accurately, at low cost, and “in sync” with commodity strategies. For more information regarding high level

logistics see the Develop Logistics Support Strategy topic in the Decide Make vs. Buy task in Process Step 1: Make vs. Buy.

## **Finalization and Benefits of Category Strategy Development**

The various requirements of the commodity, logistics support options, value and risk of the commodity, and the marketplace allow for the actual development of a strategy that incorporates business considerations and impedes risk. An effective commodity strategy identifies priorities and key areas surrounding the purchase, such as:

- Costs incurred and pricing
- End results and delivery on commitment
- Innovation and improvement
- Distribution, storage, and transportation methodologies
- eBuy availability (e.g., the availability of a commodity on eBuy, electronic data interchange [EDI] compliance of the existing supplier pool)
- Information management
- Operational efficiency and systems management
- Necessary skill sets

An effective commodity strategy also has the following benefits:

- Identification of Postal Service core competencies, capabilities, and capacities
- Increased negotiation power (information that can be leveraged)
- Reduced time-to-market cycle times for new products and services as a result of expanded organizational flexibility and alignment
- Increased agility in addressing the market and technological trends/changes
- Increased Client satisfaction with reduced response times and costs
- Reduced operating expenses
- Reduced transactional costs
- Enhanced product and service quality
- Elimination of unidentified risks and proactive risk management

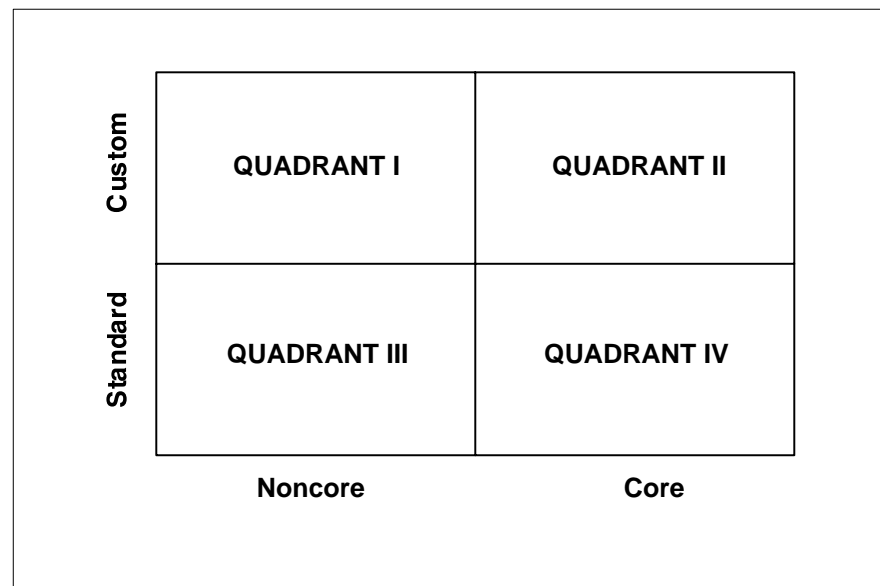
## **Quadrant Approach**

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). These four categories are not the same as the categories within the meaning of Category Management Centers (CMCs). The quadrant *approach*, used throughout these supplying practices to explain product/service

competencies and complexities, is different from the quadrant *analysis* discussed above, which is used specifically for category strategy development, and which identifies commodities according to value and risk (and determines the amount of attention and strategic approach that must be afforded to types of purchases). The quadrant approach should be leveraged by the Purchase/SCM Team; VP, SM; and SM Operations Specialists to develop strategies that are specific to each category (quadrant) and to each Category Management Center (CMC).

The Quadrant Approach is extremely useful when establishing how the purchase process, in general, should be addressed and the steps that should be emphasized and prioritized, as shown in Figure 2.

Figure 2  
**Quadrant Approach**



### **Quadrant I: Noncore/Customized Purchases**

CMCs in Quadrant I require the overall management of suppliers. The Contracting Officer must ensure that Postal Service personnel are in compliance with purchase policies and procedures and help resolve questions or concerns. The CMCs in Quadrant I are:

- Environmental and MRO
- Professional, Printing, and Creative Services
- Facilities

The Contracting Officer must ensure that supplier continuity is encouraged and promoted. The Purchase/SCM Team should try to fulfill requirements with more standard products or services in the hope of decreasing the uniqueness of the purchase.

The Contracting Officer should develop as many contract renewals as possible with the suppliers and develop competition.

### **Quadrant II: Core/Customized Purchases**

CMCs in Quadrant II require the coordination of supply and continuous innovation. Clients must help install leading-edge usage practices. The CMCs in Quadrant II are:

- Delivery and Industrial Equipment
- Material Handling
- Mail Transportation Equipment (MTE) and Spare Parts
- Stamp Printing (subcategory)

Products and services that will be purchased by Clients from CMCs in Quadrant II have restricted sources because they are customized. In addition, they are core and essential to the business operations of the Postal Service and are therefore of high value. Stronger and more mutually beneficial working relationships with suppliers should be forged. Strategically, the Postal Service must continue to select innovative sources of customized and core products/services. Innovation is integral to the Postal Service remaining efficient and competitive. These characteristics must drive the strategy that will be developed for each category/portfolio in Quadrant II.

Because of the high value of these products and services, discussions and negotiations are encouraged to maintain prices at a fair level. The Contracting Officer must continuously consult the Market Analyst and Pricing Analyst in regard to the availability of potential sources, the availability of similar products and services, and the current prices being charged for similar products and services.

### **Quadrant III: Noncore/Standard Purchases**

The purchases pertinent to Quadrant III CMCs require the overall management of the entire supply chain. Market leaders with lowest costs/prices and self-checking improvements are sought out. The CMCs in Quadrant III are:

- Information Technology (IT)
- Office Products and Utilities
- Travel, Retail, and Temporary Services
- Commercial Printing and Packaging and Containers (subcategory)

Products and services that will be purchased by Clients from CMCs in Quadrant III have many sources and provide the Postal Service with many options in terms of supplier selection. The presence of competition means that the Postal Service must aggressively pursue lower prices and award contracts to suppliers with past successful performance and on-time deliveries. The Postal Service must attempt to reduce the costs associated with administration and evaluation to realize cost savings. The CMCs in this quadrant should look for opportunities to centralize and concentrate purchasing to realize savings through leveraging spend.

The Contracting Officer must leverage the talent of Contracting Officer's Representatives and delegate administrative tasks to them. In addition, the Contracting Officer should try to minimize attention to negotiation while focusing high expectations on the evaluation of submitted proposals (both solicited and unsolicited).

### **Quadrant IV: Core/Standard Purchases**

As with the purchases in Quadrant II, the Purchase/SCM Team must coordinate supply of core and standard goods and services for CMCs of Quadrant IV. Market leaders must be sought out, and innovation must be encouraged and leveraged. The entire Purchase/SCM Team must work closely with the Client to ensure that the products and services purchased are specifically appropriate to the CMC's needs because their activities are essential to Postal Service business. The CMCs in Quadrant IV are:

- Air Transportation
- Surface Transportation
- Transportation Asset Management
- Vehicles

Products and services that will be purchased by Clients from CMCs in Quadrant IV have many sources and provide the Postal Service with many options in terms of supplier selection. As with products and services in Quadrant III, the Postal Service must maximize commercial advantage (e.g., aggressively pursue lower prices and award contracts to suppliers with successful past performance and on-time deliveries). The CMCs in this quadrant should look for opportunities to centralize and concentrate purchasing and realize savings through leveraging spend. The



Purchase/SCM Team must regularly reassess the market and maintain flexibility (e.g., be willing to switch suppliers frequently, although the products/services remain the same).

## **Other Topics Considered**

Define Requirements topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Define and Understand Client Needs, Goals, and Strategies topic, Conceptualize Need task, Process Step 1: Identify Needs

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Logistics Support Strategy topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Spend Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## **Bonds, Insurance, and Taxes**

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### **Bonds**

A bond is a written instrument executed for the benefit of the Postal Service as security for the Supplier's obligations, and to assure payment of any bonded loss. Bonds (other than bonds required for construction contracts) and performance guarantees should only be obtained when needed to protect the interest of the Postal Service. The purchase plan must describe and explain any requirements for bonds and performance guarantees.

A bond is executed by an offeror or supplier identified in the instrument as the principal, together with a second party identified as the surety. The surety is an individual or corporation legally liable for another's debt, default, or failure to satisfy a contractual obligation. Clause 7-2: Additional Bond Security must be included in all contracts for which a bond is required.

There are several kinds of bonds used by the Postal Service:

- Annual bond
- Patent infringement bond
- Fidelity bond
- Contract Postal Unit bonds
- Performance bond
- Payment bond

### **Annual Bonds**

Annual bonds are a single bond in place of separate bonds to secure all of a Supplier's obligations under contracts entered into during a specific fiscal year.

## **Patent Infringement Bonds**

Patent infringement bonds are given as security for a Supplier's obligations under a patent clause. A patent infringement bond may be required under a contract containing a patent indemnity clause if a performance bond is not obtained. The penal amount must be the minimum necessary to protect the Postal Service's interest. Clause 7-1: Patent Infringement Bond Requirements must be included in the contract if the Supplier may be required to submit a patent infringement bond.

## **Fidelity Bonds**

A fidelity bond is used to assure the faithful performance of an employee's duties to his or her employer and the employer's clients. The bond is used to cover losses such as employee thefts or embezzlements. A fidelity bond in an amount sufficient to protect the interest of the Postal Service may be required for any contract that requires Supplier employees to handle Postal Service funds. When a fidelity bond is required, Provision 7-3: Fidelity Bond Requirements must be included in the request for proposals (RFP), and the amount must be reviewed periodically to ensure that the Postal Service's interest is adequately protected.

## **Contract Postal Unit bonds**

Contract Postal Unit Bonds impose obligations on a Supplier similar to those required under performance, payment, and fidelity bonds.

## **Performance Bonds**

A performance bond is a bond given as security for the Supplier's obligations under a contract. Performance bonds may be required only if the Contracting Officer determines that performance bonding is essential to the interest of the Postal Service. Examples of situations that require performance bonds include:

- A contract provides for the use of Postal Service property or funds in contract performance
- A Supplier has sold all its assets to, or merged with, another firm and the Postal Service needs assurance of the new firm's capability
- The product or service is not scheduled for first delivery until at least 12 months after contract award, and substantial progress payments are contemplated

The penal amount of the performance bond must be the minimum needed to protect the Postal Service's interest. A penal amount is the amount specified in a bond (expressed in terms of dollars or a percentage of the contract price) as the maximum payment for which the surety is obligated. If it is determined that performance bonding is essential to the interest of the Postal Service, Provision 7-1: Performance Bond Requirements should be included in the RFPs for non-construction contracts. If the penal amount is less than 100% of the contract price, the provision must be modified accordingly.

Annual performance bonds may be used only for contracts other than construction contracts. The penal amount of such a bond may not be more than the total amount of all contracts secured by the bond.

### **Payment Bonds**

A payment bond assures payment of all persons supplying labor and material under a contract. Payment bonds may be required only if the Contracting Officer determines that payment bonding is essential to the interest of the Postal Service. Examples of situations that require payment bonds include:

- A contract is for supplies or services unique to the Postal Service that can be obtained only from a source that is not the producer of the supplies or services;
- A Supplier has sold all its assets to, or merged with another firm and the Postal Service needs assurance of the new firm's responsibility;
- Supplies requiring substantial production costs are not scheduled for first delivery until several months after contract award, and no progress payments are contemplated; or
- Uninterrupted provision of the supplies or services is essential to the continued operation of Postal Service functions.

The penal amount of the payment bond must be the minimum needed to protect the Postal Service's interest. If it is determined that payment bonding is essential to the interest of the Postal Service, Provision 7-2: Payment Bond Requirements should be included in RFPs for non-construction contracts.

Annual payment bonds may be used only for contracts other than construction contracts. The penal amount of such a bond must be sufficient to cover the bonded portions of the contracts awarded.

### **Performance and Payment Bonds for Construction Contracts**

The Miller Act (40 U.S.C. 2701-270f) requires performance and payment bonds or alternate payment protection for any construction, alteration, or repair of any public building or public work valued at over \$25,000. For construction contracts greater than \$25,000 but less than \$100,000, the Contracting Officer must select a payment bond or one or more of the following payment protections, giving consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

- An irrevocable letter of credit — a written commitment by a federally insured financial institution to pay all or part of a stated amount of money on demand by the Postal Service until the expiration date of the letter. The letter of credit cannot be revoked or conditioned.
- Certificates of deposit — the Supplier deposits certificates of deposit from a federally insured financial institution with the

Contracting Officer, in an executable form, executable by the Contracting Officer.

- Tripartite escrow agreement — the prime Supplier establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement must establish the terms of payment under the contract and of resolution of disputes among parties. The Postal Service makes payments to the Supplier's escrow account, and the escrow agent distributes the agreement, or triggers the disputes resolution procedures if required.
- Assets — United States bonds or notes with a maturity date less than five (5) years from the date of the contract, together with an agreement authorizing collection or sale in the event of default (the par value of the bonds or notes must be at least equal to the penal amount of the bond); or certified check, cashier's check, bank draft, postal money order, or currency (deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the United States Postal Service).

Additional information on construction contract bonds can be found in Handbook P-2: *Design and Construction Purchasing Practices*.

### **Deposit of Assets Instead of Surety Bonds**

In lieu of any bond (other than a payment bond for a construction contract), the Supplier may deposit certain kinds of assets with the Postal Service instead of furnishing a bond.

The only assets acceptable in place of a surety bond are:

- United States bonds or notes with a maturity date less than 5 years from the date of the contract, together with an agreement authorizing collection or sale in the event of default (the par value of the bonds or notes must be at least equal to the penal amount of the bond)
- A certified check, cashier's check, bank draft, postal money order, or currency (the deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the United States Postal Service)

When the Supplier pledges assets instead of providing a surety bond, the Supplier must complete the bond form as principal, and the bond form must describe the assets pledged. The Contracting Officer must deposit currency, checks, and drafts with the information service center, with instructions to hold the funds for the benefit of the Supplier. A perpetual inventory of all deposited items must be kept by the senior contracting official at the purchasing office.

For all purchases involving the furnishing of a bond (other than payment bonds for construction contracts), include Provision 7-4: Deposit of Assets Requirements in the RFP. Clause 7-3: Deposit of Assets Instead of Surety

Bonds must be included in every contract requiring a bond for which assets may be deposited in lieu of bonds.

### **Execution of Bonds**

Prescribed formats for bonds, as well as guidance and procedures, can be found in the relevant handbook. When there is no prescribed format for a bond (as when a patent infringement or fidelity bond is required), a suitable commercial bond form may be used, or an appropriate format may be prepared with the assistance of Legal Counsel.

An original signed copy of any bond must be retained in the RFP and contract file. Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of." When a corporation is a principal, the state of incorporation must be listed.

Unless an annual bond is accepted, performance or payment bonds must be dated after the date of the contract.

### **Consent of Surety**

Consent of surety is an acknowledgment by a surety that its bond continues to apply to the contract as modified. When a contract modification increases the contract price, the Supplier and the surety must execute a consent of surety to increase the penal amount, and submit it to the Contracting Officer. When more than one surety's consent is required, each surety must execute the form.

When an increased bond amount is obtained from a party other than the original surety, the original surety must execute a consent of surety. Novation agreements require the execution of a consent of surety.

### **Acceptable Sureties**

The Postal Service does not accept individual sureties. Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the Supplier's obligation. Any corporate surety offered for a bond furnished the Postal Service must appear on the list contained in Treasury Department Circular 570. The amount of the bond may not exceed the underwriting limit stated for the surety in that list.

### **Irrevocable letter of credit (ILC)**

Irrevocable letter of credit (ILC) is a written commitment by a federally insured financial institution to pay all or part of a stated amount of money on demand by the Postal Service until the expiration date of the letter. The letter of credit cannot be revoked or conditioned.

Any offeror or supplier required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured. A separate ILC is required for each bond. The ILC must be irrevocable, unconditional, expire only 90 days following final payment or until completion of any warranty period for performance bonds only, and be issued by an acceptable federally insured financial institution. ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

To draw on the ILC, the Contracting Officer will use a sight draft and present it with the ILC to the issuing financial institution or the confirming financial institution (if any). If the supplier does not furnish an acceptable ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting Officer shall immediately draw on the ILC. If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the Contracting Officer will draw on the ILC prior to the expiration date of the ILC to cover these claims.

The ILC must be issued or confirmed by a federally insured financial institution rated investment grade or better. The supplier shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. If the Contracting Officer learns that a financial institution's ratings has dropped below the required level, the Contracting Officer will give the supplier 30 days to substitute an acceptable ILC or will draw on the ILC using a sight draft.

When the contract performance period is extended, the Contracting Officer will require the Supplier to provide an ILC with an appropriately extended maturity that meets the expiration requirements of 90 days following final payment; or until completion of any warranty period for performance bonds only.

### **Contract Management**

A copy of all correspondence relating to contract modification, termination, renewal, or nonperformance must be provided to each surety, with proof of delivery requested. Additional information on contract performance and payment must be provided to sureties upon request.

When a payment bond has been provided, the Contracting Officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The Contracting Officer may furnish additional general information on such matters as the progress of the work, the payments made, and the estimated percentage of completion.

### **Failure to Perform**

If there is a failure to perform, the Contracting Officer must send each surety a copy of any notice of impending termination, demand for adequate assurances, assessment of liquidated or other damages, or other formal

notice of failure to perform under the contract, with a notice that the surety may be liable for damages suffered by the Postal Service.

If a Supplier's failure to perform necessitates a claim against a surety, the Contracting Officer must give the surety written notice of the amount of and reasons for the claim. If the surety refuses to pay or does not respond, the Contracting Officer must obtain procedural assistance from assigned Legal Counsel. The Contracting Officer will only authorize payment from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the Supplier that the payment is due and owed, or a signed agreement between parties as to the amount due and owed.

### **Surety Takeover Agreements**

Because of the surety's liability for damages resulting from a Supplier's default, the surety has certain rights and interests in the completion of the contract work and the application of any undisbursed funds. Before terminating a contract for default, the Contracting Officer must consider any proposal by the surety for completion of the work. The surety should be permitted to complete the work unless the Contracting Officer has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified.

Because of the possibility of conflicting demands for the defaulting Supplier's unpaid earnings (including retained percentages and unpaid progress payments), the surety may condition its offer of completion upon the execution of a takeover agreement establishing the surety's right to payment from the unpaid earnings. If so, and with the concurrence of the Vice President, Supply Management (VP, SM), the Contracting Officer may enter into such an agreement with the surety in writing after the effective date of contract termination. The Contracting Officer should consider including the defaulting Supplier as a party to the agreement in order to preclude any disagreement on the Supplier's residual rights.

The agreement must provide that the surety will complete the work according to all contract terms and conditions, and that the Postal Service will pay the surety the balance of the contract price unpaid at termination, but not more than the surety's costs and expenses, subject to the following conditions:

- Any unpaid earnings of the defaulting Supplier, including retained percentages and progress payments for work accomplished before termination, are subject to debts owed the Postal Service by the Supplier, except to the extent that the unpaid earnings are required to pay the completing surety the actual costs and expenses it incurs in completing the work, exclusive of the surety's payments and obligations under the payment bond given in connection with the contract.
- The agreement may not waive or release the Postal Service's right to liquidated damages for any delay in completion of the work that is not excusable under the contract.

- If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings unless the assignee consents to the payment in writing.
- The surety may be reimbursed for discharging its liabilities under the payment bond of the defaulting Supplier only when:
  - There is mutual agreement among the Postal Service, the defaulting Supplier, and the surety;
  - The Postal Service Board of Contract Appeals makes a final determination of the amount due; or
  - A court of competent jurisdiction orders payment

### **Contract Completion**

Upon Supplier completion of all contract obligations, the Contracting Officer must issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from any obligation under a payment bond. When the Supplier has deposited assets instead of providing a surety on a payment bond, the Contracting Officer must refund the assets, with accrued interest, within 90 days after final completion of contract performance, unless notice of a claim is received during the 90-day period. If a claim is received, the assets may be released only with the agreement of the claimant or by order of a court of competent jurisdiction.

Assets deposited to secure any other bond may be refunded, with accrued interest, upon final completion and receipt of the Supplier's release. Upon request, the Contracting Officer will furnish a Certificate of Substantial Completion to sureties of a construction Supplier if the project is substantially complete (usable for the purpose intended). If the Contracting Officer is uncertain whether the project is substantially complete, the advice of assigned Legal Counsel must be obtained.

### **Insurance**

Suppliers may be required to carry insurance only when necessary to protect the interest of the Postal Service. Examples of situations appropriate for insurance include:

- It is desirable to use the facilities and service of the insurance industry (for example, safety protection and claim services);
- Insurance is necessary or desirable in connection with contract performance (for example, in transportation of valuable Postal Service property); or
- Commingling of property or other contract conditions makes insurance reasonably necessary for protection of the parties' interests.

The Postal Service is not usually concerned with the insurance carried by fixed-price Suppliers, except in special circumstances such as the following:

- The Supplier, or a segregated operation of the Supplier, is engaged primarily in work for the Postal Service



- Postal Service property of substantial value is involved
- The contract work required is performed within a Postal Service facility
- The Postal Service agrees to assume risks for which the Supplier ordinarily obtains commercial insurance

In circumstances such as those described above, these types and amounts of liability insurance may be required:

- Workers' compensation and employers' liability insurance
- General liability insurance
- Automobile Liability Insurance
- Self Insurance

### **Workers' Compensation and Employers' Liability Insurance**

Compliance with applicable workers' compensation and occupational disease statutes is required, and employers' liability coverage must be obtained when available. In jurisdictions where occupational disease is not compensable by law, the supplier must carry insurance for occupational disease under the employers' liability section of the insurance policy.

### **General Liability Insurance**

The Supplier must carry bodily injury liability insurance, with minimum limits of \$100,000 per person and \$500,000 per accident, on a comprehensive form of policy. The Contracting Officer, at his or her discretion, may require higher limits of insurance coverage. Clause 7-4: Insurance should be amended to reflect the higher levels of insurance coverage. The Supplier must carry property damage liability insurance in an amount determined by the Contracting Officer when the nature of the contract operations warrants it, or when those operations are not separable from the Supplier's commercial operations.

### **Automobile Liability Insurance**

The Supplier must carry automobile liability insurance on a comprehensive form of policy that provides for bodily injury and property damage liability covering the operation of all automobiles used in contract performance. Minimum limits of \$100,000 per person and \$500,000 per accident for bodily injury and \$100,000 per accident for property damage must be carried. The Contracting Officer, at his or her discretion, may require higher limits of insurance coverage. Clause 7-4: Insurance should be amended to reflect the higher levels of insurance coverage.

## **Self-Insurance**

A qualified program of self-insurance covering any kind of liability may be approved in place of any type of insurance when found to be in the interest of the Postal Service. However, in a jurisdiction where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved only if:

- The Supplier also maintains an approved program of self-insurance for any employer's liability that is not covered; or
- The supplier has shown that the combined cost to the Postal Service of self-insurance for workers' compensation and commercial insurance for employers' liability will not exceed the cost of covering both kinds of risks by commercial insurance.

## **Errors and Omissions Insurance**

Suppliers providing the following categories of professional services must carry errors and omissions (malpractice) insurance:

- Accountants.
- Architects.
- Engineers.
- Fiscal agents.
- Medical doctors and dentists.

Insurance coverage for these practitioners should be at least \$200,000, unless the Contracting Officer determines that a different limit is needed to protect the interests of the Postal Service. The Contracting Officer may waive the requirement for errors and omissions insurance in whole or in part, with the concurrence of Legal Counsel.

The Contracting Officer may require other professional services Suppliers to carry errors and omissions insurance when in the interest of the Postal Service.

## **Insurance Policies**

When insurance is required, it may be provided either by specific insurance policies or by the Supplier's existing insurance policies. When existing policies are used, they must be amended to make the Postal Service a loss payee. Clause 7-4: Insurance must be included when a Supplier is required to carry insurance. Clause 7-5: Errors and Omissions must be included when errors and omissions insurance is required.

## **Notice of Cancellation or Change**

When insurance (other than errors and omissions insurance issued on an occurrence basis) is required by the contract, the insurance policy must contain an endorsement to the effect that a cancellation of or material change in the policy that adversely affects the interest of the Postal Service will not be effective until at least 30 days after written notice of the cancellation or change is given to the Contracting Officer.

## **Taxes**

Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and pertinent tax laws and regulations. Therefore, when tax questions arise, Contracting Officers must request assistance from assigned Legal Counsel.

To ensure consistent treatment within the Postal Service, the Senior Legal Counsel, Contract Protests and Policies, must be consulted before negotiating with any taxing authority for the purpose of:

- Determining whether a tax is valid or applicable; or
- Obtaining exemption from, or refund of, a tax.

Usually, suppliers are responsible for settling tax applicability questions in consultation with authorities, independent of Postal Service involvement. When the constitutional immunity of the Postal Service from state or local taxation is at issue, however, suppliers should be discouraged from negotiating independently with taxing authorities, and assigned Legal Counsel should be consulted, if the contract is either:

- A cost-reimbursement contract; or
- A fixed-price contract containing a tax escalation clause.

## **Federal Excise Taxes**

Federal excise taxes are levied on the sale or use of particular supplies and services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041 et seq., and its implementing regulations, Title 26 Code of Federal Regulations (CFR) 40–299, cover miscellaneous federal excise tax requirements. Questions on federal excise taxes should be directed to Legal Counsel. The most common excise taxes are:

- Manufacturers' excise taxes imposed on certain motor vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and
- Special fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

## **General Exemptions from Federal Excise Taxes**

No federal manufacturers' or special fuels excise taxes are imposed when the supplies are for any of the following:

- Shipment to a U.S. possession or Puerto Rico, or for export. Shipment or export must occur within 6 months of the time when title passes to the Postal Service. When the exemption is claimed, the words "for export or shipment to a possession" must appear on the contract or purchase document, and the Contracting Officer must furnish the seller proof of export or shipment to a possession (see 26 CFR 48.4041–12).

- Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes, however) (see U.S.C. 4221).
- Emergency vehicles (see 26 U.S.C. 4064(a) and 4064(b)(1)(c)).

### **Request for Proposals (RFP)**

Contracting Officers must solicit price proposals on a tax-exclusive basis when it is known that the Postal Service is exempt from federal excise taxes and the exemption is at least \$100. Proposals must be solicited on a tax-inclusive basis when no exemption exists or the exemption is less than \$100.

### **State and Local Taxes**

State and local taxes means taxes levied by the states, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

Although the Postal Service, as an establishment of the federal government, is constitutionally immune from state and local taxes imposed directly on it, the applicability of particular taxes is a legal question often requiring the advice and assistance of Legal Counsel. The applicability of a tax in a postal transaction may depend on the nature of the tax and whether its legal incidence, as opposed to its economic burden, is on the Postal Service as purchaser. In many instances in which the Postal Service is not constitutionally exempt, it may take advantage of statutory exemptions provided by state or local law.

Prime Suppliers and subcontractors may not normally be designated as agents of the Postal Service for the purpose of claiming exemption from state and local taxes. Such designation, when appropriate, must be accomplished in the RFP, and only after coordination with assigned Legal Counsel.

### **Exemption from Tax**

Whenever a state or locality asserts its right to tax Postal Service property directly or to tax a Supplier's possession or use of, or interest in, Postal Service property, the Contracting Officer must obtain advice from assigned Legal Counsel concerning the appropriate course of action.

Under paragraph k of Clause 4-1: General Terms and Conditions or if the contract includes Clause 7-6: Federal, State and Local Taxes, Clause 7-7: Federal, State, and Local Taxes (Short Form), or Clause 7-8: Federal, State, and Local Taxes (Noncompetitive Contract), it is the Supplier's responsibility to determine to what extent state and local taxes are applicable to its proposal. The Contracting Officer should make no representations concerning the applicability of any state or local tax, and the Postal Service should have no involvement in resolving any dispute between the Supplier and a taxing authority concerning tax applicability.

As an exception, regarding fixed-price contracts, the Postal Service must, upon the Supplier's request, furnish the Supplier evidence to establish

exemption from any specified tax if a reasonable basis for the exemption exists. When requested, the Contracting Officer may furnish such evidence under cost-reimbursement contracts. Evidence may also be furnished upon request under other contracts that contain no tax provision if the Supplier (a) certifies that the contract price does not include the tax or, if the transaction or property is granted an exemption, (b) consents to a reduction in the contract price.

Evidence of exemption may include:

- A copy of the contract.
- Copies of other documents (such as purchase orders, shipping documents, or invoices) identifying the Postal Service as the buyer.
- A U.S. Tax Exemption Certificate (Standard Form 1094).
- A state or local form indicating that the supplies or services are for the exclusive use of the Postal Service or the federal government.
- Any other state or locally required document for establishing exemption.
- Shipping documents indicating that shipments are in interstate or foreign commerce.

### **Matters Requiring Special Consideration**

The resolution of tax issues requiring special consideration must be coordinated with Legal Counsel in the course of RFP preparation. The following are examples of state and local tax issues that may require special contract treatment:

- When there is a reasonable question of the applicability or allocability of a tax, or when the applicability of a tax is in litigation, the contract may:
  - State that the contract price includes or excludes the particular tax and is subject to adjustment upon resolution of the tax question; or
  - Require the Supplier to take specific actions regarding payment, non-payment, refund, protest, or other treatment of the tax.
- When the applicability of state and local taxes depends on the place and terms of delivery, and the effect of tax on the contract price will be substantial, alternative places of delivery and contract terms should be considered in light of tax consequences.
- When leased equipment is to be obtained under an indefinite-delivery contract, the Supplier's property may be subject to a wide variety of state and local property, use, or other taxes. Because these taxes can vary considerably from jurisdiction to jurisdiction, use Clause 7-9, State and Local Taxes (Indefinite Delivery Equipment Rental), to relieve the Supplier of uncertainty about tax consequences in this situation.

## Clause & Provisions

- Provision 7-1: Performance Bond Requirements
- Provision 7-2: Payment Bond Requirements
- Provision 7-3: Fidelity Bond Requirements
- Provision 7-4: Deposit of Asset Requirements
- Provision 7-5: Alternative Payment Protections
- Clause 4-1: General Terms and Conditions
- Clause 7-1: Patent Infringement Bond Requirements
- Clause 7-2: Additional Bond Security
- Clause 7-3: Deposit of Assets Instead of Surety Bonds
- Clause 7-4: Insurance
- Clause 7-5: Errors and Omissions
- Clause 7-6: Federal, State, and Local Taxes
- Clause 7-7: Federal, State, and Local Taxes (Short Form)
- Clause 7-8: Federal, State, and Local Taxes (Noncompetitive Contract
- Clause 7-9: State and Local Taxes (Indefinite Delivery Equipment Rental)

## Supplier Disagreement Resolution

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To more effectively manage supplier relationships, the Postal Service has established a two-tiered supplier disagreement resolution process. It is the policy of the Postal Service and in the interest of suppliers to resolve supplier business disagreements at the Contracting Officer/management level. In order to expeditiously resolve disagreements that are not resolved at the Contracting Officer or appropriate management level, to reduce litigation expenses, inconvenience, and other costs for all parties, and to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons, the Postal Service's supplier disagreement resolution process has been established as the sole and exclusive means to resolve disagreements, and a Supplier Disagreement Resolution Official (SDR Official) has been appointed to oversee the process. While the SDR Official's decisions are final, they may be appealed to a federal court, but only on the grounds that the decision was procured by fraud or other criminal misconduct, or was obtained in violation of the regulations. Title 39 Code of Federal Regulations (CFR) 601 located at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4ad8e08c01596bf834a8ffdf62220f2a&rgn=div5&view=text&node=39:1.0.1.8.45&idno=39> defines supplier business disagreements, establishes the applicable time frames in which they may be lodged and resolved, and provides the relevant regulatory information. In the event of a conflict between this practice and the regulations in 39 CFR 601, the regulations take precedence.

## **USPS SDR Official**

The SDR Official is appointed by the Vice President, Supply Management, and provides a means for the Postal Service's supplier community to lodge disagreements concerning the Postal Service's purchasing. Business disagreements ("disagreements") are all disputes, protests, claims, or demands that arise between potential suppliers and the Postal Service during the pre-contract-award and the contract-award phases of the purchasing process. However, the following are not categorized as disagreements and are not subject to this process: (i) disputes that arise pursuant to a contract under the Contract Disputes Act under section 601.109, (ii) matters concerning debarment, suspension, or ineligibility under section 601.113 or (iii) disputes that arise out of the non-renewal of transportation contracts containing other provisions for the review of such decisions. The SDR Official will review and resolve disagreements in accordance with 39 CFR 601 to ensure that the Postal Service purchases products and services that represent best value.

## **Initial Disagreement Resolution**

Disagreement resolution is an important aspect of supplier relationship management. It is in the interest of the Postal Service and suppliers to resolve potential disagreements by mutual agreement at the Contracting Officer or another appropriate management level. This process, which replaces the bid protest process, emphasizes business partners resolving disagreements. Therefore, all disagreements with the Postal Service by persons or organizations ("suppliers") arising in connection with the purchasing process must be lodged with the Contracting Officer for resolution (claims that arise under the Contract Disputes Act, that involve the non-renewal of transportation contracts or concerning debarment, suspension, or ineligibility do not use this process). Disagreements may arise at any point during the pre-contract-award and contract-award phases of the purchasing process, such as over the terms of a solicitation, or arising from a supplier's objections to the evaluation of its offer, to some element of the qualifications of a successful offeror or the evaluation of a successful offeror's proposal.

If a disagreement arises between the Contracting Officer and supplier during the pre-contract-award and contract-award phases, the supplier must lodge the disagreement with the responsible Contracting Officer no later than ten (10) calendar days from the date the disagreement arose. For instance, if a disagreement arises from a notification-of-award letter sent to a supplier, the supplier has ten (10) calendar days from the date that it receives the notification letter to lodge a disagreement with the Contracting Officer. If a debriefing gives rise to a disagreement, the supplier has ten (10) calendar days after the debriefing to lodge the disagreement with the Contracting Officer. A disagreement must be lodged with the Contracting Officer in writing and can be initiated by facsimile, e-mail, hand delivery or U.S. Mail.

If a supplier lodges a disagreement within the required ten (10) calendar day time frame, the supplier, the Contracting Officer and the Contracting Officer's

management have ten (10) calendar days from the date the disagreement is lodged to resolve the disagreement. During the ten (10) calendar days that the parties are attempting to resolve the disagreement, the parties may not consult with the SDR Official about issues pertaining to the disagreement or any matter that might jeopardize the SDR Official's objectivity should the disagreement be elevated to the SDR Official.

The parties must consider the use of Alternative Dispute Resolution (ADR). If ADR is used, both the Contracting Officer and the supplier must agree to its use. Various types of ADR methods are available, including negotiation and mediation, however, arbitration may not be used without approval from the VP, SM.

Negotiation is the most common form of dispute resolution and occurs when the parties or management attempt to resolve the disagreement. Mediation happens when a neutral third party assists in the negotiation. Mediation helps the parties communicate, understand each other, and resolve differences. If the use of ADR is agreed upon, the ten (10) calendar day limitation is suspended; if the parties cannot reach an agreement under ADR, the supplier has ten (10) calendar days to lodge its disagreement with the SDR Official. For more information about ADR, you should consult your legal counsel.

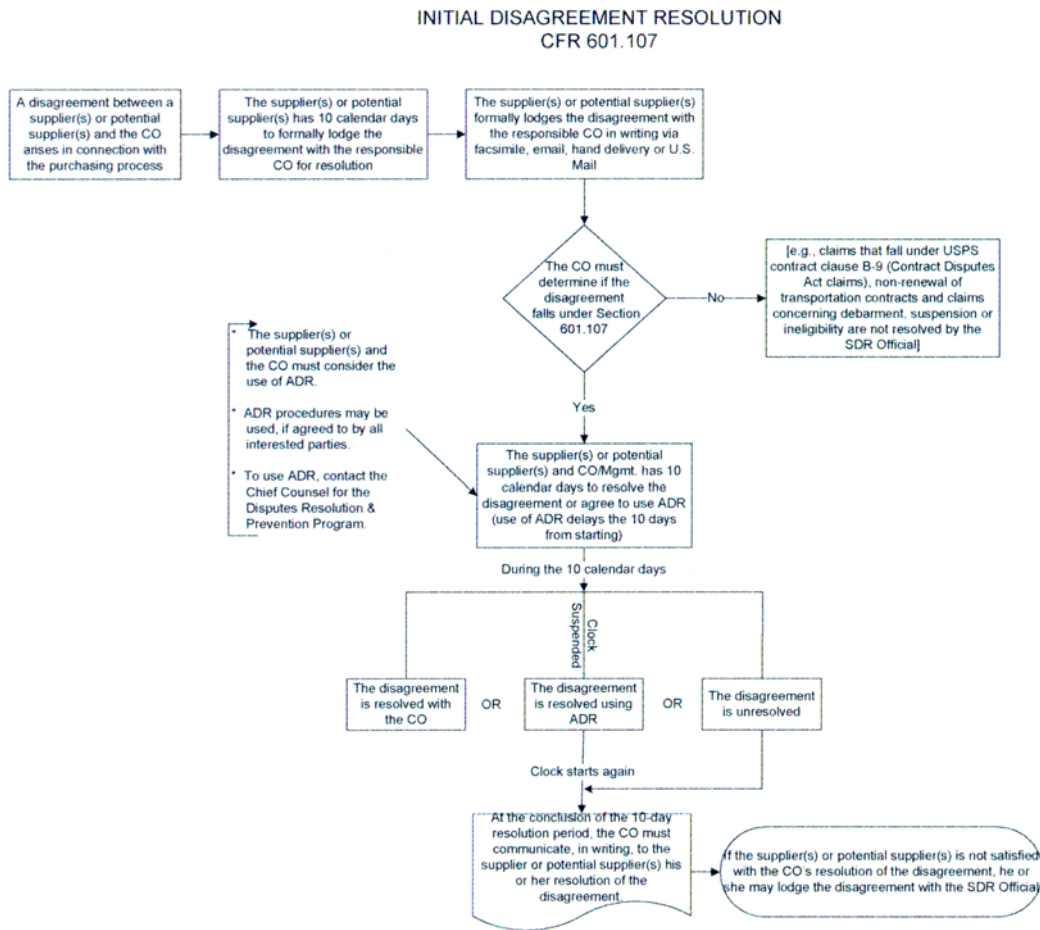
The disagreement resolution process should be business-like and not adversarial. Legal counsel may be engaged as necessary.

During the initial disagreement the Contracting Officer must seek to resolve the issues raised in the disagreement. The Contracting Officer should also inform and/or engage management in the resolution effort. Lastly, contracting officers and management should consider a range of business options to resolve the matter, including, denial of the disagreement; overturning a contract award; reopening the purchasing process; or the amendment of the solicitation.

During the disagreement resolution, the Contracting Officer must ensure the involvement of management. The extent of that involvement will depend upon the particulars of the disagreement. Regardless of the outcome of the disagreement-resolution effort, the Contracting Officer must promptly document the disagreement and the resolution efforts taken in response to it in the contract file. The Contracting Officer must draft a letter to the supplier that describes his or her decision and the rationale for that decision. A copy of the decision must be sent to his or her manager. The decision letter must contain the supplier's appeal rights. The Contracting Officer must issue his or her decision letter by the tenth calendar day after receipt of the disagreement.



**FLOW CHART #1**



**SDR Official Disagreement Resolution**

If a disagreement is not resolved with the Contracting Officer during the initial resolution period, the supplier may then lodge the disagreement in writing by U.S. mail, e-mail, or fax with the SDR Official for final resolution. The disagreement must be lodged with the SDR Official within twenty (20) calendar days after the time it was lodged with the Contracting Officer as required by CFR 601.107. The SDR Official has exclusive authority to issue a final and binding decision, as established in 39 CFR 601.108.

When lodging a disagreement with the SDR Official, the supplier must state the factual circumstances relating to the matter, the remedy sought, and the basis for the disagreement. The SDR Official may grant an extension of time to the supplier and interested parties to lodge a disagreement or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to

the SDR Official on or before the time to lodge a disagreement lapses. The address of the SDR Official is:

ATTN: SDR OFFICIAL  
 UNITED STATES POSTAL SERVICE HEADQUARTERS  
 ROOM 4130  
 475 L'ENFANT PLAZA, S.W.  
 WASHINGTON, DC 20260-4130  
 FAX NUMBER (202) 268-6234

The supplier may also lodge a disagreement with the SDR Official by e-mail at *SDROfficial@usps.gov*.

When the SDR Official receives the disagreement, the Contracting Officer is promptly provided a copy of the disagreement and instructed to send a letter to all interested parties (i.e., actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract) with copies to the SDR Official. The Contracting Officer's letter must briefly recite each issue raised and refer the recipients to the relevant regulations in 39 CFR 601.108.

The responsible Contracting Officer must forward a copy of the contract file to the SDR Official. The contract file must include the following information:

- Requisition and Statement of Work/Specifications
- Source List
- Solicitation Document
- All Proposals Received
- Proposal Evaluation Document(s), including Best-Value Determination
- Award Document
- Award Notification
- Whether a Debriefing was requested, if so, the date it was given
- All Pre-Award Correspondence (Letters, E-mails, Memorandum for Record)
- If ADR was used, the date the parties failed to achieve resolution
- Copy of the Final Decision Letter responding to the Disagreement
- Any Other Information Relevant to the Disagreement

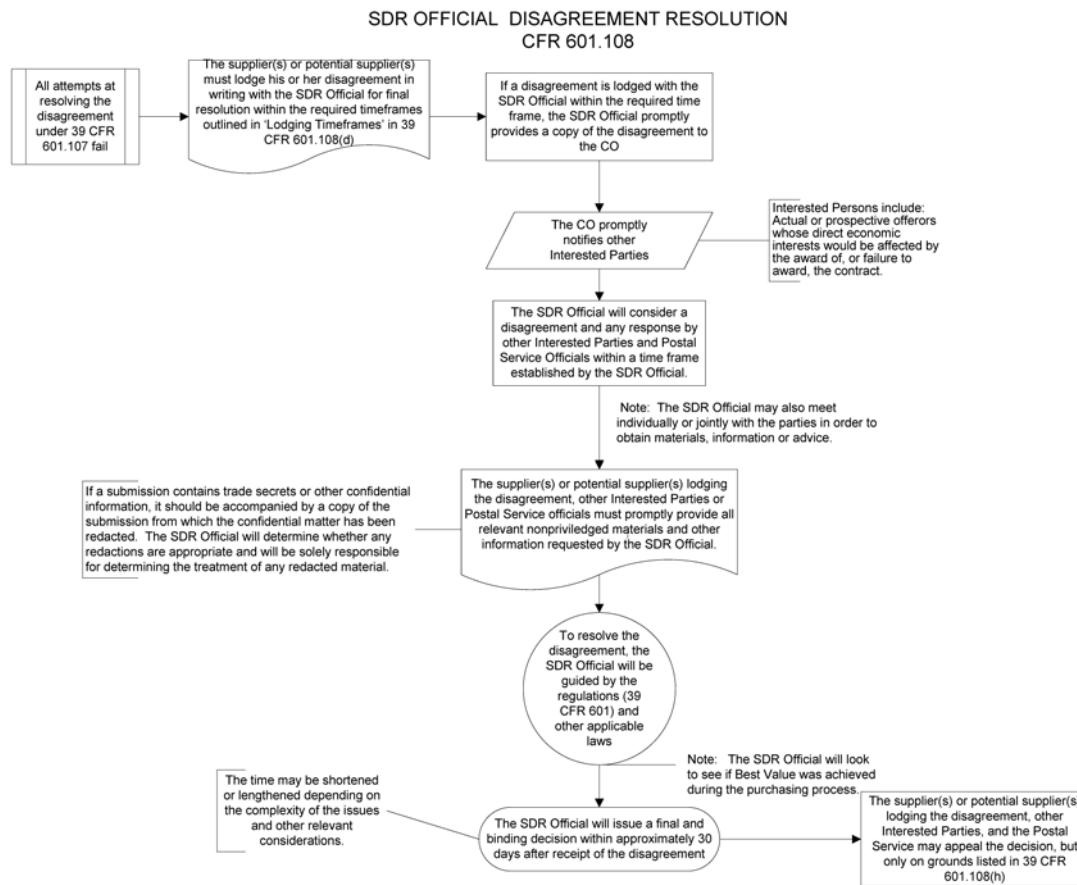
The SDR Official will consider the disagreement, the Contracting Officer's contract file, and any response by other interested parties and Postal Service officials. The SDR Official may also request meetings, individually or jointly, with the supplier, interested parties, or Postal Service officials to obtain additional materials, information, or advice. The supplier lodging the disagreement, other interested parties, or Postal Service officials must provide all relevant non-privileged materials and other information requested by the SDR Official. If the information being submitted to the SDR Official is confidential and privileged, the supplier, interested parties, or Postal Service officials must indicate that the information is confidential and privileged. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any

redactions are appropriate and will be responsible for determining the treatment of any redacted materials. Failure of any party to provide promptly the requested information may be taken into account by the SDR Official in the decision. As stated in 39 CFR 601, it is the SDR Official's goal and intent to resolve disagreements within approximately 30 calendar days from the date on which the disagreement was lodged. The time to make a decision may be shortened or lengthened by the SDR Official, depending on the complexity of the issues, the timeliness of the receipt of requested information and other relevant considerations.

In his or her consideration and resolution of disagreements, the SDR Official's decision will be guided by the regulations in 39 CFR 601, whether the Postal Service received best value, and all applicable public laws enacted by Congress.

The decision of the SDR Official will be final and binding on the person or organization lodging the disagreement, other interested parties, and the Postal Service. However, any of these parties may appeal the decision to a Federal court with jurisdiction over such claims. The decisions may be appealed only on the grounds that the decision was procured by fraud or other criminal misconduct or that the decision was obtained in violation of the regulations in 39 CFR 601 or applicable public laws enacted by Congress.

**FLOW CHART #2**



## Other Disagreement Resolution Matters

**SDR Official's role in Contract Dispute Act (CDA) claims.** When a supplier lodges a disagreement during contract performance and certifies the disagreement as a claim, the claim is resolved by methods pursuant to the Contract Disputes Act (CDA) under 39 CFR 601.109. During contract performance and before the supplier certifies the disagreement as a claim under CDA, the SDR Official may serve as a mediator in ADR between the Contracting Officer and the supplier. The SDR Official serves as a mediator before the disagreement is certified as a CDA claim only upon the agreement by both the Contracting Officer and supplier. As a mediator, the SDR Official assists in facilitating disagreement resolution, but does not issue a final decision. The Contracting Officer, in this instance, issues the final decision.

**Conflict of interest.** If the SDR Official issued a final decision or acted as a mediator in a matter(s) that is being contested pursuant to 39 CFR 601.106, the SDR Official must recuse himself or herself from being the final decision maker under 39 CFR 601.108. The SDR Official will refer the matter to the Alternate SDR Official, who will review the disagreement and make the final decision.

**Disagreements received before contract award.** While a disagreement is pending, an award will not be made unless compelling circumstances so require. The Contracting Officer must document the contract file that an award is being made while a disagreement is being resolved, the reasons why the contract is being awarded, and document the approval of the relevant portfolio manager.

## Publication

The SDR Official's decisions will be published internally on the Postal "Blue" page under Supply Management Infrastructure and published externally at [www.usps.com](http://www.usps.com).

## Other Topics Considered

Hold Discussions topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Negotiate with Suppliers topic, Perform Preaward Activities task, Process Step 2: Evaluate Sources

Award Contract and Notify Suppliers topic, Make Final Decision task, Process Step 3: Select Suppliers

## Laws & Regulations

Title 39 Code of Federal Regulations 601 et. seq.

Contract Disputes Act of 1978

## Emergencies

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An emergency is any unforeseen combination of circumstances, or the resulting state, that prevents the completion of a task necessary to the Postal Service's operation. Emergencies also include situations that might interrupt Postal Service operations or damage an asset that is vital to the Postal Service's operations. Examples of emergencies range from those having significant impact (e.g. catastrophic events such as a natural disaster) to those of a more minor nature (e.g. eBay servers being down). Depending on the size and scope of the emergency, various responses are appropriate. The Postal Service has developed a range of responses to various types of emergencies. In the SCM area, Purchase/SCM Teams should either: 1) as part of their purchase planning prepare contingency plans for emergencies or 2) be prepared to effectively respond to an emergency. In addition, portfolio managers should establish a contingency plan so that requirements met by his or her portfolio can continue to be met during an emergency.

Coverage of emergency contracts for mail transportation are addressed in the commodity specific practices.

## Unauthorized Contractual Commitments and Maverick Purchases

It is the objective of the Postal Service to curb unauthorized contractual commitments and maverick purchases. An unauthorized contractual commitment occurs when a Postal Service employee who has not been delegated contracting or local buying authority, or who exceeds such authority, takes action to cause another party to deliver goods or services. Because such actions may not be an appropriate or advantageous business arrangement for the Postal Service, management attention is warranted. In addition, unauthorized contractual commitments do not include the required terms and conditions necessary to protect the interests of both parties. Unauthorized contractual commitments range from simple misunderstandings to serious deviations from Postal Service Supplying Principles and Practices. Procedures for ratifying unauthorized contractual commitments may be found in the Management Instruction AS-710-1999-2, titled Unauthorized Contractual Commitments.

A maverick purchase occurs when Postal Service employees purchase supplies or services from a source other than from a supplier with whom the Postal Service has negotiated a framework agreement and, therefore, specific discounts. Maverick purchases prevent the Postal Service from leveraging purchasing power and ensuring the integrity of the supplier evaluation and selection process. For this reason, the Client and Supply Management must work together to actively monitor and eliminate maverick purchases.

## Emergency Purchases

In emergencies, the Client must always contact the Contracting Officer for any immediate purchasing needs. If the Contracting Officer cannot be reached, the Client may commit funds to sustain the Postal Service's operations through the use of eBuy. eBuy is the electronic commerce portal that provides the Postal Service's employees with electronic requisitioning, approval and invoice certification capability and is available at <http://ebuy.usps/jsp/co/Login.jsp>. eBuy is the Postal Service's preferred method of order placement.

However, if eBuy is not available or if the requested products or service cannot be found on eBuy, the Client may contact a supplier to begin emergency work. The Client may then pay through either credit card or invoice to the Postal Service. Although these commitments occur before obtaining Contracting Officer approval, they do require the concurrence of the Client's manager. The Client must contact the Contracting Officer the next business day to determine whether any follow-up work or a contract is needed. When such postpurchase approval practices are used, the Contracting Officer must provide approval within ten (10) business days of the actual commitment. The documentation must include a justification of postapproval.

## Other Topics Considered

Ordering topic, Place Order task, Process Step 4: Deliver and Receive Requirements

## Deviations

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Conformance with mandatory Supplying Practices promotes consistency and integrity throughout the Postal Service supply chain. However, there are circumstances when departures from the Supplying Practices are necessary or desirable. Deviations may be authorized in such circumstances.

## Examples of Deviations

Contracting Officers will forward deviation requests through the appropriate organizational channels to approval officials who keep copies of all deviation approvals (portfolio managers are delegated authority to approve one time deviations and may redelegate this one time approval authority to their direct reports. The Vice President, Supply Management, may approve any request for deviations regarding a single purchase or series of purchases.) Following are some examples of deviations:

- Omitting or modifying a provision or clause required by a Practice
- Supplementing a provision or clause required by a Practice with another provision or clause in a manner that modifies the *substance or intent* of the original provision or clause

- Using a provision or clause that differs from the provision or clause required by a Practice that is in regard to the same topic and subject matter
- Failure to follow a practice that is mandatory within the context of a given business situation

However, using provisions or clauses included in these practices to replace selected text contained in Provisions 4-1, Standard Solicitation Provisions, and 4-2, Evaluation, and Clause 4-1, General Terms and Conditions, does not constitute a deviation and does not require authorization.

Following are some examples of situations that are not considered deviations:

- Clauses written to meet the requirements of a specific purchasing situation that is not outlined in the Practices
- Procedures or instructions that are developed to meet specific operational needs with the approval of the Vice President, Supply Management
- Interim procedures or instructions used to try or test out new techniques and methods
- Interim procedures or instructions used to promote Postal Service efficiency

## **Deviations vs. Changes**

Repeated deviations may indicate areas for improvement that require a change. Changes are proposed to the Supply Chain Management Committee (SCMC) following the procedures discussed in the Continuous Improvement topic of the General Practices.

## **Laws**

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Congress afforded the Postal Service broad powers of operation in the marketplace, excluding it from most Federal laws and regulations concerning contracts, property, works, officers, employees, budgets, and funding; as well as the establishment, adjudication, and judicial review of administrative procedures and determinations. Most important, the Postal Service is not subject to the Federal Acquisition Regulation (FAR), which is the primary regulation governing all Federal executive agencies in their purchasing of goods and services with appropriated funds. Please see Clauses & Provisions for a complete list of clauses and provisions applicable to the Postal Service.

There are a number of laws governing purchasing and material management at the Postal Service. Some of those laws are mandated in Title 39 Code of Federal Regulations (CFR) either as enacted or since amended, and others are applied to the Postal Service by its own terms. Supply Management must comply with those requirements in all activities.

## Federal Laws Applicable To The Postal Service

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There are a number of laws governing purchasing and material management at the Postal Service. Some of those laws are mandated in Title 39 Code of Federal Regulations (CFR) either as enacted or since amended, and others are applied to the Postal Service by its own terms. Supply Management must comply with those requirements in all activities.

The followings laws are applicable to the Postal Service:

- Service Contract Act of 1965 (Public Law 89–286, 41 U.S.C. 351 et seq.)
- Davis-Bacon Act (40 U.S.C. 276(a) et seq.)
- The Copeland Anti-Kickback Act (18 U.S.C. 874 and 41 U.S.C. 276(c))
- Randolph-Sheppard Act (20 U.S.C. 107 et seq., made applicable by 39 U.S.C. 410(b)(3))
- Miller Act (40 U.S.C. 270(a)–(f))
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)
- Prohibition on Convict Labor (under 39 U.S.C. 2201)
- Walsh-Healey Public Contracts Act (41 U.S.C. 35–45, made applicable by 410(b)(5)(A))
- Freedom of Information Act (5 U.S.C. 552)
- Fair Labor Standards Act (29 U.S.C. 201–219)
- The Privacy Act of 1974 (5 U.S.C. 552(a))
- Architectural Barriers Act (42 U.S.C. 51, made applicable by 39 U.S.C. 410(b)(8))
- Administrative Dispute Resolution Act of 1996 (ADRA) (28 U.S.C. 1491(b))
- Rehabilitation Act of 1973 (29 U.S.C. 702 et seq.), including Section 508
- The Javits-Wagner-O’Day Act (41 U.S.C. 46–48)
- Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 4212)
- Contract Disputes Act (41 U.S.C. 601 et seq.)



- Prompt Payment Act of 1974, as amended (31 U.S.C. 3901 et. seq.)

## **Service Contract Act (Public Law 89-286, 41 U.S.C. 351 et seq.)**

### **Applicability**

The Service Contract Act applies to any contract whose principal purpose is to provide services to be performed by service employees.

Many types of services are covered by the Service Contract Act, which attempts to cover contract workers who do not fall under the Davis-Bacon Act for construction and the Walsh-Healey Public Contracts Act for supplies. Title 29 CFR 4, Subpart C, and CFR 4.101 provide examples of coverage. The Service Contract Act does not cover executive, administrative, or professional personnel. If services are only incidental to the performance of a contract, the Service Contract Act does not apply.

The Service Contract Act also applies to subcontracts under covered contracts, and Suppliers must include the Service Contract Act provisions in subcontracts for services. Except where indicated, the terms “contract” and “Supplier” include “subcontracts” and “subcontractors” in this part.

### **Exemptions**

The following contracts are exempt from the Service Contract Act (subject to the subsequent condition):

- Any contract for construction, alteration, or repair, including painting and decorating.
- Any work covered by the Walsh-Healey Public Contracts Act.
- Any contract for transporting freight or personnel by ship, plane, bus, truck, express, railway line, or oil or gas pipeline when published tariff rates are in effect or rates are covered by Section 10721 of the Interstate Commerce Act.
- Any service contract with a radio, telephone, telegraph, or cable company subject to the Communications Act of 1934.
- Any contract for public utility services, including electric light and power, water, steam, and gas.
- Any employment contract with individuals for direct services.
- Any contract that is principally for contract postal units.
- Contracts with common carriers for mail transportation by rail, air (except air-taxi routes), bus, or ocean vessel on regularly scheduled runs over established routes, when mail accounts for a small portion of the revenue.
- Contracts for mail service with an individual owner/operator, when it is not believed that the Supplier will hire service employees under the contract except for short vacations or unexpected contingencies or emergencies.

- Contracts principally for the maintenance, calibration, or repair of:
  - Automated data processing equipment (including office information and word processing equipment);
  - Scientific and medical equipment involving sophisticated technology; or Office or business machines not included under contracts for construction, alteration, or repair, including painting and decorating, when the services are performed by the manufacturer or Supplier.

This last exemption applies only when the supplier certifies that:

- The ADPE or other equipment is commercially available, used regularly outside the government, and normally sold or traded by the supplier to the public in substantial quantities;
- Prices are established catalog or market prices; and
- Wages and fringe benefits paid under the contract are the same as the supplier pays employees servicing the same equipment for commercial customers.

## Requirements

The Service Contract Act applies to any contract whose principal purpose is to provide services to be performed by service employees.

Many types of services are covered by the Service Contract Act, which attempts to cover contract workers who do not fall under the Davis-Bacon Act for construction and the Walsh-Healey Public Contracts Act for supplies. Title 29 CFR 4, Subpart C, and CFR 4.101 provide examples of coverage. The Service Contract Act does not cover executive, administrative, or professional personnel. If services are only incidental to the performance of a contract, the Service Contract Act does not apply.

The Service Contract Act also applies to subcontracts under covered contracts, and Suppliers must include the Service Contract Act provisions in subcontracts for services. Except where indicated, the terms “contract” and “Supplier” include “subcontracts” and “subcontractors” in this part.

## Clauses

- **Contracts Over \$2,500 — Clause 9-10:** Service Contract Act must be included in every contract for services covered by the Service Contract Act that is over \$2,500 or is modified to exceed \$2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500. Clause 9-10: Service Contract Act is incorporated by reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders when checked off by the Contracting Officer.
- **Contracts of \$2,500 or Less — Every contract of \$2,500 or less for services covered by the Service Contract Act must include Clause 9-11: Service Contract Act — Short Form.** Clause 9-11: Service Contract Act — Short Form is incorporated by reference in Clause 4-2: Terms and Conditions Required to

Implement Policies, Statutes, or Executive Orders when checked off by the Contracting Officer.

- **Multiyear Service Contracts and Service Contracts With Renewal Options:** Except for mail transportation contracts, multiyear service contracts and service contracts with options to renew that include Clause 9-10: Service Contract Act or Clause 9-11: Service Contract Act — Short Form must also include Clause 9-12: Fair Labor Standards Act and Service Contract Act — Price Adjustment. Clause 9-12: Fair Labor Standards Act and Service Contract Act — Price Adjustment is incorporated by reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders when checked off by the Contracting Officer.

### **Notice of Intent to Make a Service Contract**

The Contracting Officer must file a notice of intent to make a service contract with the Wage and Hour Division, Employment Standards Administration, Department of Labor, for any contract over \$2,500 covered by the Service Contract Act. Standard Form 98, Notice of Intention to Make a Service Contract must be used. The notice must be accompanied by Standard Form 98, Notice of Intention to Make a Service Contract or a statement indicating the numbers and classes of service employees expected to perform the contract or a statement that the number will not exceed five (5).

Whenever possible, notice of intent must be filed at least 60 days (30 days for unanticipated requirements) before a competitive solicitation is issued, noncompetitive negotiations begin, an option is exercised, a contract is extended, or the anniversary date of a multiyear contract. If it is not possible to file a notice before the 30-day limit, it must be filed as soon as possible, with an explanation of why it was not filed on time.

If the contract will be for substantially the same services as are being furnished at the same location by an incumbent Supplier whose contract the proposed contract will succeed and the wages and fringe benefits of the service employees are determined by a collective bargaining agreement, the agreement must be filed with the Standard Form 98, Notice of Intention to Make a Service Contract, along with any related documents specifying wages and fringe benefits that will apply to the contract. If the Contracting Officer believes that the collective bargaining agreement was not the result of "arm's-length" negotiations, a statement of the facts leading the Contracting Officer to that conclusion must accompany the agreement, and the Office of Special Wage Standards must be advised if the wages and fringe benefits vary substantially from those for similar services.

### **Minimum Wage Determinations**

If more than five (5) service employees will be involved in performing work covered by the Service Contract Act, the contract may not be awarded without a Department of Labor determination of applicable minimum wages and fringe benefits, unless the determination will be incorporated in the contract after award.

The required determination will normally be issued by the Wage and Hour Division, Employment Standards Administration, in response to the notice of intent filed under the Notice of Intent to Make a Service Contract, in sufficient time to be included as an attachment to the solicitation.

If the place of performance is unknown when the solicitation is issued, a wage determination need not be included in the original solicitation. Instead, when proposals are received, a notice of intent must be filed in accordance with Notice of Intent to Make a Service Contract, showing each location where the contract might be performed, so that a wage determination may be made for each. The wage determination that applies to the successful potential Supplier must be included in the contract. If the Department of Labor finds this impracticable, the Department may issue a composite wage determination.

The Contracting Officer must contact the Wage and Hour Division to find out whether a wage determination is still current when a solicitation or negotiation has been delayed for more than 60 days from the anticipated date of award stated on the Standard Form 98, Notice of Intention to Make a Service Contract submitted. Any wage determination received in response must replace the earlier wage determination.

When a Notice of Intent to Make a Services Contract has been filed, but the wage determination has not been received in time for attachment to the solicitation, the solicitation must state that the wage determination will be issued as an amendment to the solicitation or incorporated into the contract at the time of award.

Any revision of a wage determination received less than ten (10) days before proposals are due is not effective unless there is enough time to notify potential suppliers. If the contract action involves noncompetitive procedures, exercise of an option, or extension of a contract, any revision of a wage determination received after award is not effective if performance begins within thirty (30) days after award; otherwise, any revision received at least ten (10) days before performance begins is effective.

If circumstances require that a contract be awarded before a wage determination is obtained, the contract must include Clause 9-10: Service Contract Act and provide for equitable adjustment of the contract terms when the wage determination is incorporated, effective from the date of issuance unless another effective date is specified in the determination. The notice of intent, if not already filed, must be filed promptly and explain the need for immediate award.

The Wage and Hour Division may require that a wage determination be applied to a contract retroactively, if the contract is subject to the Service Contract Act and more than five (5) service employees are involved in performing the work. If the Contracting Officer questions the applicability of the Service Contract Act to the contract, the Contracting Officer must forward the matter for resolution to assigned Legal Counsel. If it is determined that the Service Contract Act is not applicable to the contract, the Contracting Officer must advise the Department of Labor of the basis for this

determination. No further action is needed unless the Secretary of Labor determines that the contract is subject to the Service Contract Act.

If a wage determination does not contain all the classifications and rates requested in the notice of intent, those classifications for which no determinations were received must be deleted from the attachment incorporating the wage determination. When omitted classifications or classifications not previously contemplated are found necessary after award, they must be incorporated following the procedures in Clause 9-10: Service Contract Act.

### **Award**

The following requirements apply to contract awards under the Service Contract Act:

- Notice of Award — Upon the award of a contract of \$10,000 or more that includes Clause 9-10: Service Contract Act (or upon issuing the first order under an indefinite-delivery contract or ordering agreement containing that clause), the Contracting Officer must send an original and one copy of Standard Form 99, Notice of Award of Contract to:

Attention: Office of Special Wage Standards

U.S. DEPARTMENT OF LABOR  
WASHINGTON, DC 20210-0001

- Department of Labor Poster — At the time of award, the Contracting Officer must supply the Supplier with WH Publication 1313, a Department of Labor combination letter and poster explaining the Service Contract Act.

- Inquiries Concerning the Service Contract Act — Suppliers or their employees with questions about the applicability of the Service Contract Act must be referred to:

DEPUTY ASSISTANT SECRETARY  
EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
WASHINGTON, DC 20210-0001

- Questions concerning safety or health must be referred to:

DIRECTOR, BUREAU OF LABOR STANDARDS  
EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
WASHINGTON, DC 20210-0001

General questions about the Service Contract Act may also be directed to any regional office of the Employment Standards Administration of the Department of Labor.

### **Withholding Contract Payments and Contract Termination**

A violation of the stipulations of Clause 9-10: Service Contract Act or 9-11: Service Contract Act — Short Form makes the responsible party liable for the sum of any deductions, rebates, refunds, or underpayments due employees.

At the written request of a District Director (or above) of the Department of Labor, as much of the accrued payment due on the contract (or any other contract between the Supplier and the Postal Service that has not been assigned) must be withheld as is necessary to pay the employees. Withheld sums must be kept in an escrow fund. Any compensation that the Postal Service or the Wage and Hour Division have found to be due must be paid directly from the withheld payments.

If the withheld payments are insufficient to reimburse the underpaid employees, this fact must be reported to the General Accounting Office (for possible setoff), the Wage and Hour Division of the Department of Labor, and the Department of Justice. The United States may bring an action to recover the remaining amount. Any sums recovered must be held in the escrow fund and paid, on order of the Secretary of Labor, directly to the underpaid employees.

Any violation of Clause 9-10: Service Contract Act or Clause 9-11: Service Contract Act — Short Form may be cause for termination of the Supplier's right to continue the work. If the contract is terminated, the Postal Service may enter into other contracts or arrangements to complete the work, charging any additional costs to the terminated supplier.

The Comptroller General is responsible for sending a list of names of people or firms in violation of the Service Contract Act to all government agencies. Unless the Secretary of Labor recommends otherwise, Postal Service contracts may not be awarded to any violator on the list (or to any firm, corporation, partnership, or association in which such violator has a substantial interest) for three years from the date the list was published.

### **Enforcement**

The Secretary of Labor administers and enforces the Service Contract Act.

### **Davis-Bacon Act (40 U.S.C. 276(a) et seq.)**

The Davis-Bacon Act requires that construction contracts over \$2,000 contain a provision setting the minimum wages to be paid to all classes of laborers and mechanics working on the work site. Minimum wage rates are determined by the Secretary of Labor on the basis of prevailing wage rates. Further guidance concerning the Davis-Bacon Act is provided in Handbook P2, *Design and Construction Purchasing Practice*.

### **The Copeland Anti-Kickback Act (18 U.S.C. 874 and 41 U.S.C. 276(c))**

The Copeland Anti-Kickback Act applies to any contract over \$2,000 subject to the Davis-Bacon Act. The Copeland Act makes it unlawful to force laborers or mechanics to give up any part of their compensation except for permissible deductions such as taxes and union dues.

### **Randolph-Sheppard Act (20 U.S.C. 107 et seq.)**

This act allows for the operation of food service and vending facilities by the blind on Federal properties to expand the economic opportunities of the blind,

and for other purposes. Postal facilities are to include space for vending facilities operated by or on behalf of the blind.

### **Requirements**

Blind suppliers licensed under the provisions of the Randolph-Sheppard Act or by a state licensing agency must be given priority for the operation of food vending services in Postal Service facilities. See Handbook AS-707H, *Contracting for Food Services* and Handbook EL-602, *Food Service Operations* for additional details.

### **Miller Act (40 U.S.C. 270(a)–(f))**

#### **Applicability**

The Miller Act requires contract surety bonds on Federal construction. Specifically, a contractor on a Federal project must post two bonds: a performance bond and a labor and material payment bond. The surety company issuing these bonds must be listed as a qualified surety on the Treasury List <http://www.fms.treas.gov/c570/c570.html>, which the U.S. Department of the Treasury issues each year.

The Miller Act payment bond covers subcontractors and Suppliers of material who have direct contracts with the Prime Supplier. These are called first-tier claimants. Subcontractors and material Suppliers who have contracts with a subcontractor, but not those who have contracts with a Supplier, are also covered and are called second-tier claimants. Anyone further down the contract chain is considered too remote and cannot assert a claim against a Miller Act payment bond posted by the contractor.

A subcontractor or Supplier who has a direct contract with the Prime Supplier has no duty to provide any notice to the Prime Supplier before filing a suit on the bond. When the claimant is a second-tier subcontractor or material Supplier, however, formal notice must be given to the Prime Supplier within 90 days of the last date the claimant furnished labor or materials for the project.

The final step in perfecting a claim on a payment bond is filing a lawsuit. For both first-tier and second-tier claimants, suit must be filed no sooner than 90 days after the last labor and material were furnished and no later than one year after that date. Full text of the Miller Act can be found on <http://www.sio.org/html/miller.html>.

#### **Requirements**

The Miller Act provides that before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the United States with the following:

- A performance bond in an amount that the Contracting Officer regards as adequate for the protection of the United States. The bond amount is normally 100 percent of the contract price.

- A separate payment bond for the protection of Suppliers of labor and materials. The amount of the payment bond shall be equal to the total amount payable by the terms of the contract unless the Contracting Officer awarding the contract makes a written determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by the Contracting Officer. In no case shall the amount of the payment bond be less than the amount of the performance bond.

## **Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)**

### **Requirements**

The Contract Work Hours and Safety Standards Act requires that certain contracts contain a clause specifying that no laborer or mechanic doing any work under the contract may be required or permitted to work more than 40 hours in any workweek unless paid at least one and one-half times the basic rate of pay for all overtime hours. A violation makes the Supplier liable for liquidated damages. Lease agreements, being subject to Reorganization Plan No. 14 of 1950 under 39 U.S.C. 410(d), are subject to the safety standards of the Contract Work Hours and Safety Standards Act, in addition to the overtime pay requirements.

### **Exemptions**

The Secretary of Labor is responsible for enforcement of the Work Hours and Safety Standards Act and may permit variations and exemptions from the Work Hours and Safety Standards Act's requirements when necessary in the public interest or to prevent injustice or undue hardship (29 CFR 5.14).

### **Clauses**

Clause 9-2: Contract Work Hours and Safety Standards Act — Overtime Compensation is incorporated by reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders and must be checked off by Contracting Officers for all contracts, lease agreements, and ordering agreements that may involve the employment of laborers or mechanics, except:

- Construction contracts and lease agreements involving alterations or improvements of \$2,000 or less, and other contracts and lease agreements of \$2,500 or less;
- Indefinite delivery contracts and ordering agreements, if the total amount of all orders placed for one (1) year after the effective date will not exceed the above limits involving construction contracts and lease agreements involving alterations or improvements;
- Contracts for supplies usually purchased in the open market or requiring labor merely incidental to the sale;



- Contracts for work subject solely to the Walsh-Healey Public Contracts Act;
- Contracts for transportation by land, air, or water; and
- Any other contracts exempt under regulations of the Secretary of Labor (see 29 CFR 5.15).

## **Prohibition on Convict Labor (39 U.S.C. 2201)**

### **Requirements**

Under 39 U.S.C. 2201, the Postal Service may not contract for supplies to be manufactured by convict labor, except for purchase from Federal Prison Industries, Inc. The Postal Service may purchase supplies from firms employing persons on parole or probation under the conditions set forth in Executive Order 11755, December 29, 1973, as amended, which the Postal Service has elected to follow.

### **Clauses**

Except for purchases from Federal Prison Industries, Inc., all contracts involving the employment of labor must contain Clause 9-1: Convict Labor. Clause 9-1: Convict Labor is incorporated by reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders.

Federal Prison Industries, Inc. (UNICOR)

The Postal Service uses Federal Prison Industries, Inc. (UNICOR) as a source of supply for:

- Mailbag requirements exceeding the capacity of the Mail Equipment Shops; and
- May obtain other products and services available from FPI.

Price and delivery terms must be reasonable compared with those available in the commercial marketplace (as determined by market research or other means not involving obtaining competitive proposals).

### **Ordering**

Supplies and services available from FPI are listed in its Schedule of Products brochure. This brochure and individual product and service catalogs (which provide detailed ordering instructions) are available at FPI's website ([www.unicor.gov](http://www.unicor.gov)) and are available from:

UNICOR CORPORATE DIVISION  
FEDERAL PRISON INDUSTRIES, INC.  
320 FIRST STREET, N.W.  
WASHINGTON, DC 20534-0001

## **Walsh-Healey Public Contracts Act (41 U.S.C. 35–45,)**

### **Applicability**

The Walsh-Healey Public Contracts Act applies to indefinite-delivery contracts and ordering agreements if the aggregate amount of all orders is

expected to exceed \$10,000 during the year following award. Indefinite delivery contracts and ordering agreements not initially subject to the Walsh-Healey Public Contracts Act become subject to the Walsh-Healey Public Contracts Act if orders will exceed \$10,000 during any year after the first year. Applicability must therefore be determined annually until the contracts or agreements become subject to the Act.

If a contract for \$10,000 or less is modified to exceed \$10,000, the Walsh-Healey Public Contracts Act applies. If a contract that exceeds \$10,000 is modified to \$10,000 or less, the work performed after the modification is subject to the Walsh-Healey Public Contracts Act if both parties agreed to the modification.

### **Exemptions**

The following purchases are exempt from the Walsh-Healey Public Contracts Act:

- Noncompetitive purchases, when delaying the purchase would seriously harm the Postal Service.
- Perishables, including dairy, livestock, and nursery products.
- Purchases of agricultural or farm products processed for first sale by the original producers.
- Commercially available items.

When a contract subject to the Walsh-Healey Public Contracts Act is awarded, the Contracting Officer, under the regulations or instructions issued by the Secretary of Labor, must:

- Give the Supplier a Department of Labor combination letter and poster (WH Publication 1313) explaining the Walsh-Healey Public Contracts Act; and
- Report any violation of the representations or stipulations required by the Walsh-Healey Public Contracts Act to the Secretary of Labor through the Inspection Service.

The Secretary of Labor may allow exceptions to the requirement that the representations and stipulations of the Walsh-Healey Public Contracts Act be included in contracts. The Contracting Officer must submit requests for exceptions to the Administrator, Wage and Hour Division, Department of Labor, through the Manager, Supply Management Infrastructure.

### **Requirements**

The Walsh-Healey Public Contracts Act requires that certain contracts for the manufacture or furnishing of supplies must incorporate the Walsh-Healey Public Contracts Act requirements by reference. No Contracting Officer, Supplier, or subcontractor may purchase quantities amounting to less than \$10,000 to avoid compliance with the Walsh-Healey Public Contracts Act.

### **Clauses**

All contracts subject to the Walsh-Healey Public Contracts Act must include Clause 9-6: Walsh-Healey Public Contracts Act, which is incorporated by

reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders, and must be checked off by the Contracting Officer, as appropriate.

### **Freedom of Information Act (5 U.S.C. 552)**

The Freedom of Information Act (FOIA) provides the public with a right of access to records (hard-copy and electronic) that are maintained by Federal agencies, including the Postal Service. The FOIA contains exemptions that authorize the withholding of certain information. Postal Service regulations implementing the FOIA are located in 39 CFR 265. For procedures that implement FOIA, consult Handbook AS-353, *Guide to Privacy and the Freedom of Information Act*. For Postal Service Supplying Practices pertaining to FOIA, refer to the Respond to External Communication Requirements topic of the Make Final Decisions task of Process Step 3: Select Suppliers. For additional information, visit [www.usps.com/foia](http://www.usps.com/foia).

### **Fair Labor Standards Act (29 U.S.C. 201–219)**

The Fair Labor Standards Act provides for minimum wages and maximum work hours, and it appoints the Wage and Hour Division of the Department of Labor to interpret and enforce the Fair Labor Standards Act (including investigating and inspecting general suppliers). The Fair Labor Standards Act applies to all employees (with some exceptions) engaged in interstate or foreign commerce, the production of supplies for such commerce, or any closely related process or occupation essential to such production. It also prohibits oppressive child labor.

Suppliers or their employees who inquire concerning the applicability or interpretation of the Fair Labor Standards Act must be advised that rulings fall under the jurisdiction of the Department of Labor and must be referred to the Regional Administrator, Wage and Hour Division, Department of Labor.

### **The Privacy Act of 1974 (5 U.S.C. 552(a))**

The Privacy Act provides privacy protections for personal information maintained by Federal agencies. The Privacy Act provides privacy protections for personal information that agencies maintain in a “system of records,” which includes files, databases, or programs from which personal information is retrieved by name or other identifier. Postal Service regulations regarding the Privacy Act are located in 39 CFR 266 and 39 CFR 268. Handbook AS-353, *Guide to Privacy and the Freedom of Information Act* describes procedures relating to the Privacy Act, a full description of Privacy Act protections, as well as the Postal Service systems of records.

### **Requirements**

When an agency maintains a system of records, it must publish a notice that describes the system in the Federal Register. The notice must document how the agency manages personal information within the system. This includes how information is collected, used, disclosed, stored, and discarded. It also includes how individuals can exercise their rights to obtain access to and amend their personal information that is maintained in the system. The

Privacy Act further requires that the Postal Service provide an appropriate privacy notice to individuals when they are asked to provide information about themselves.

### **Penalties**

The Privacy Act provides criminal penalties, in the form of fines, for any officer or employee who:

- Willfully maintains a system of records that contains information about an individual without giving appropriate notice in the Federal Register; or
- Knowing that disclosure is prohibited, willfully discloses information about an individual in any manner to any person or agency not entitled to receive it.

The Privacy Act also provides criminal penalties, in the form of fines, for any person who knowingly and willfully requests or obtains under false pretenses any record about another individual.

### **Architectural Barriers Act (42 U.S.C. 51)**

The Architectural Barriers Act requires that Postal Service buildings (both owned and leased) are accessible to the physically handicapped. Like Section 508 of the Rehabilitation Act of 1973, the Architectural Barriers Act impacts the cost of constructing or leasing buildings. Accessibility requirements of the Americans with Disabilities Act, applicable to private structures, have less stringent standards and put the burden on lessor, as opposed to the lessee. Full text of the Architectural Barriers Act can be found on <http://www.access-board.gov/about/ABA.htm>.

### **Administrative Dispute Resolution Act of 1996 (ADRA) (28 U.S.C. 1491(b))**

The Administrative Dispute Resolution Act (ADRA) constitutes a mandate to all Federal agencies to provide Alternative Dispute Resolution (ADR) services. It requires the Postal Service to have policies that address the use of ADR techniques and to appoint a Dispute Resolution Specialist. For Postal Service practices concerning ADR, consult the Discussions and Negotiations topic of the Perform Award Activities task of Process Step 2: Evaluate Sources, as well as the Supplier Disagreement Resolution topic of the Manage the Supplier Relationship task of Process Step 5: Measure and Manage Supply.

### **Applicability**

ADRA requires the Postal Service to examine the use of ADR in connection with:

- Formal and informal adjudications
- Rulemakings
- Enforcement actions
- Issuing and revoking licenses or permits

- Contract administration
- Litigation brought by or against the Postal Service
- Other Postal Service actions

### **Requirements**

For the purpose of the statute, alternative means of dispute resolution include conciliation, mediation, facilitation, fact finding, minitrials, and the use of an ombudsman.

ADRA:

- Provides that the Postal Service, once having agreed to binding arbitration, may not vacate or “opt out” of arbitral decisions with which it does not agree
- Exempts certain confidential communications between a party to a dispute and a neutral party, which were made during ADR proceedings, from disclosure under the Freedom of Information Act (FOIA)

### **Rehabilitation Act of 1973 (29 U.S.C. 702 et seq.)**

The Rehabilitation Act of 1973 requires Suppliers to take affirmative action to employ and advance qualified individuals without discrimination as to their physical or mental handicaps.

### **Applicability**

With the exceptions outlined below, every contract for supplies or services (including construction and transportation services) over \$2,500 must include Clause 9-13: Affirmative Action for Handicapped Workers, which is incorporated by reference in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders, and must be checked off by the Contracting Officer when applicable.

### **Requirements**

The Postal Service complies with the Rehabilitation Act of 1973, Executive Order 11758 of January 15, 1974, and the implementing regulations of the Secretary of Labor (41 CFR 60–741). The requirements of Clause 9-13: Affirmative Action for Handicapped Workers does not apply to any agency, instrumentality, or subdivision of the state or local government that does not participate in work under the contract.

### **Exemptions**

The Vice President, Supply Management (VP, SM), may exempt any Supplier or subcontractor (or any group or category of Supplier or subcontractor) from any provisions of Clause 9-13: Affirmative Action for Handicapped Workers in the Postal Service’s interest. The Contracting Officer must submit a justification for any proposed exemption to the VP, SM.

## **Section 508**

Section 508 of the Rehabilitation Act is a law that requires Federal agencies, including the Postal Service, to procure electronic and information technology (EIT) that is accessible to persons with disabilities. The law requires that EIT equipment and systems procured on or after June 21, 2001, comply with standards written by the Architectural and Transportation Barriers Compliance Board (Access Board). These standards were published December 21, 2000, in the Federal Register. EIT includes technology such as web pages, software applications, computers, self-contained kiosks, copiers, multimedia, and telecommunications systems. These standards are intended to make these technology products more accessible to individuals with disabilities.

## **Department of Labor Notices**

Under Clause 9-13: Affirmative Action for Handicapped Workers, the Contracting Officer must provide the Supplier with Department of Labor notices that state the Supplier's obligations and handicapped individuals' rights under the Employment of the Handicapped program. These notices may be obtained from:

OFFICE OF INFORMATION  
EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
WASHINGTON, DC 20210-0001

## **Collective Bargaining Agreements**

When performance under Clause 9-13: Affirmative Action for Handicapped Workers requires revision of a collective bargaining agreement, the unions that are parties to such agreements must be advised that the Department of Labor will give them appropriate opportunity to express their views. Neither the Contracting Officer nor any representative of the Contracting Officer may discuss with representatives of the Supplier or of the unions any aspects of the collective bargaining agreements.

## **Complaints**

The Contracting Officer must forward any complaint concerning the Rehabilitation Act through channels to the VP, SM. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, SM.

## **Department of Labor Sanctions**

When Supply Management Infrastructure is notified that the Department of Labor has imposed sanctions on a Supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the Supplier) for violation of Clause 9-13: Affirmative Action for Handicapped Workers, the Contracting Officer must put the sanctions into effect as soon as possible.

### **The Javits-Wagner-O'Day Act (41 U.S.C. 46–48)**

The Javits-Wagner-O'Day Act requires that the Postal Service and other Federal agencies purchase certain supplies and services from qualified workshops that employ people who are blind or severely disabled. The Committee for Purchase from People Who Are Blind or Severely Disabled determines which supplies and services must be purchased and their price. Additional information on the applicability of the Javits-Wagner-O'Day Act can be found in the Purchase From Mandatory Sources topic of the Develop Sourcing Strategy Task in Process Step 2: Evaluate Sources.

### **Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 4212)**

#### **Applicability**

Except as provided in submitted reports, every contract for supplies or services (including utility, construction, and transportation services) or for the use of real or personal property (including lease arrangements) in the amount of \$25,000 or more must include Clause 9-14: Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, which is included in Clause 4-2: Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders, and must be checked off by the Contracting Officer as applicable. No Contracting Officer, Supplier, or subcontractor may purchase quantities of supplies or services in less-than-normal quantities to avoid application of Clause 9-14: Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

#### **Requirements**

The Vietnam Era Veterans Readjustment Assistance Act of 1972, Executive Order 11701 of January 23, 1973, the Veterans Employment Opportunities Act of 1999, and the implementing regulations of the Secretary of Labor (41 CFR 60–250) require Suppliers to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veterans' status, and to list all employment openings with appropriate local employment services.

Contracts may not be awarded to suppliers that have not submitted an annual Form VETS-100, Federal Contractor Veterans' Employment Report. To determine whether a report has been submitted, Contracting Officers must:

- Query the Department of Labor's VETS-100 Database via the Internet at [www.vets100.cudenver.edu/vets100search.htm](http://www.vets100.cudenver.edu/vets100search.htm), using the validation code "vets" to proceed with the search in the database; or
- Contact the VETS-100 reporting system via e-mail at [verify@vets100.com](mailto:verify@vets100.com) for confirmation, if the supplier represents that it has submitted the VETS-100 Report and is not listed in the database.

### **Request for Exemptions**

The Contracting Officer must submit a detailed justification for any proposed exemption to the VP, SM for submission through channels to the Postmaster General and the Director, Office of Federal Contract Compliance Programs (OFCCP).

### **Department of Labor Notices**

The Contracting Officer must furnish the Supplier appropriate notices for posting when such notices are prescribed by the Director, OFCCP at the Department of Labor's Employment Standards Administration.

### **Complaints**

The Contracting Officer must forward any complaint concerning the Vietnam Era Veterans Readjustment Assistance Act of 1972 through channels to the VP, SM. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, SM.

### **Department of Labor Sanctions**

When Supply Management Infrastructure is notified that the Department of Labor has imposed sanctions on a Supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the Supplier) for violation of Clause 9-14: Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, the Contracting Officer must put the sanctions into effect as soon as possible.

## **Contract Disputes Act (41 U.S.C. 601 et seq.)**

### **Requirements**

The Contract Disputes Act (CDA) creates a comprehensive system for resolving disputes between a Supplier and Supply Management at the Postal Service relating to the performance of most purchase contracts. The trigger point for this system is the Contracting Officer's decision. The claims of both the Supplier and the Postal Service must be the subject of a Contracting Officer's decision. The Supplier may appeal such a decision to the appropriate agency board of contract appeals; such boards are specifically authorized by the Contract Disputes Act. Alternatively, the Supplier, in lieu of appealing a Contracting Officer's decision to a board of contract appeals, may file suit on its claim in the United States Court of Federal Claims (CFC). In both forums, the claim is heard de novo. If the Supplier or the Postal Service (with the approval of the Attorney General) wishes, either may appeal a decision of a board of contract appeals or the CFC to the United States Court of Appeals for the Federal Circuit (CAFC). Additional information regarding the CDA procedures can be found in sections 601.109 through 601.112 of Title 39 Code of Federal Regulations (CFR), and regulations governing proceedings under the CDA before the Postal Service Board of Contract Appeals can be found at Part 955 of Title 39, CFR.



### **Applicability**

The CDA applies to nearly all contracts with the Postal Service, express or implied, executed on or after March 1, 1979, for:

- The purchase of goods, other than real property;
- The purchase of services;
- The purchase of construction, alteration, repair, or maintenance of real property; or
- The disposal of personal property.

### **PROMPT PAYMENT ACT, AS AMENDED (39 U.S.C. 3901 et seq.)**

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 et. seq., as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496, in accordance with Clause 4-1: General Terms and Conditions, paragraph i, or Clause B-22: Interest.

## **Equal Employment Opportunity**

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Executive Order (EO) 11246 prohibits any discrimination in employment by government Suppliers and Subcontractors based on race, color, religion, sex, or national origin. The Executive Order sets forth a clause (Clause 9-7: Equal Opportunity) for inclusion in all nonexempt government contracts and subcontracts. Regulations that implement EO 11246 are the responsibility of the Secretary of Labor and can be found in Title 41 Code of Federal Regulations (CFR) 60. The Secretary of Labor delegates the authority to carry out the program to the Director, Office of Federal Contract Compliance Programs (OFCCP). The Director, OFCCP, may exempt the Postal Service from having to include one or more of the requirements of EO 11246 in any contract when required by special circumstances in the national interest, and may also exempt groups or categories of contracts when it is not feasible to act upon each "case" individually (or when group exemptions are more convenient).

The Postal Service stipulates that no contract (or contract modification involving a new purchase) may be entered into, and no subcontract approved, with a supplier or subcontractor found ineligible by the Director, OFCCP, for reasons of noncompliance with EO 11246. The Contracting Officer and members of the supplier community are responsible for compliance and may not award a contract for supplies or services in a way designed to avoid the requirements of EO 11246. The Contracting Officers may request exemptions by submitting a justification to the Director, OFCCP.

The Contracting Officer must supply appropriate quantities of Poster OFCCP-1420, Equal Opportunity Is the Law, to suppliers subject to EO 11246. The poster is available from the General Services Administration (GSA) and contains text in both English and Spanish. (The stock number is 7690-00-926-8988.)

## Affirmative Action Program Requirements

Except for exempt contracts, each nonconstruction Supplier and each (nonconstruction) Subcontractor with 50 or more employees and (1) a contract or subcontract of \$50,000 or more or (2) government bills of lading that in any 12-month period, total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. More information can be found in Title 41 Code of Federal Regulations (CFR) 60-1.40.

Except for exempt contracts, construction Suppliers are required to meet affirmative action requirements that apply to covered geographical areas or projects, and the applicable requirements of Title 41 CFR 60-1 and 60-4. A Contracting Officer contemplating a construction purchase project over \$10,000 within a geographic area not known to be covered by specific affirmative action goals must request the most current information from the OFCCP regional office before issuing the request for proposals (RFP). Contracting Officers must give written notice to the OFCCP regional office within 10 days after award of a contract subject to these requirements.

## Preaward Compliance Reviews

Before awarding any contract of \$10 million or more (excluding construction contracts and other contracts that may be exempt), the Contracting Officer must request the appropriate OFCCP regional office to conduct a compliance review of the supplier's employment practices, and those of all known first-tier subcontractors with subcontracts of \$10 million or more, except when a compliance review has been conducted within 12 months prior to award. Whenever possible, preaward review requests must be submitted at least 30 days before the anticipated award date. Oral requests must be confirmed in writing. This requirement applies to a modification of an existing contract that increases its value to \$10 million or more, a contract modification constituting a new purchase of \$10 million or more, a letter contract, and an indefinite delivery contract or ordering agreement (OA) under which orders are expected to aggregate \$10 million or more.

The Contracting Officer must include the following information in the preaward request:

- Name and address of prospective supplier or subcontractor
- Telephone number
- Anticipated contract award date
- Information about previous government contracts or subcontracts held by supplier(s)
- Place of performance
- Estimated dollar amount of the contract or subcontract

If the OFCCP has not made a final preaward determination within 30 days from submission of the request, the Contracting Officer must withhold award of the contract for an additional 15 days, or until clearance is received, whichever occurs first. If the additional 15 days expire, and the OFCCP has

neither found the supplier to be in compliance nor made a final written determination declaring the supplier ineligible for reasons of noncompliance, the award may be made. The Contracting Officer must notify the OFCCP regional office of the award.

These procedures do not apply when the Vice President, Supply Management (VP, SM), finds that the procedures would delay an urgent or critical award or delay an award beyond the time specified for acceptance of a proposal. In such cases, the contracting officer must inform the Director, OFCCP, requesting a postaward review.

## **Request for Proposals (RFP) Language**

A request for proposals (RFP) associated with equal employment opportunity will include paragraph d of Provision 4-3: Representations and Certifications, which addresses the certification for nonsegregated facilities and applies to all contracts except those exempt from EO 11246. In addition, RFPs must include the following provisions:

- (For all nonconstruction contracts) Provision 9-1: Equal Opportunity Affirmative Action Program (which is incorporated by reference in Provision 4-3), and must be checked-off by Contracting Officers when proposals of \$50,000 or more are anticipated from offerors having 50 or more employees
- (For all nonconstruction contracts) Provision 9-2: Preaward Equal Opportunity Compliance Review (which is incorporated by reference in Provision 4-3), and must be checked-off by Contracting Officers when the amount of the contract is expected to be \$10 million or more
- (For all construction contracts) in addition to paragraph d of Provision 4-3, Provision 9-3: Notice of Requirement for Equal Opportunity Affirmative Action (which is included by reference in Provision 4-3), and must be checked-off as appropriate

## **Contract Language**

Contracts not exempt from EO 11246 must include the following clauses:

- Clause 9-7: Equal Opportunity (which is incorporated by reference in Clause 4-2: Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders) and must be checked-off by the Contracting Officer
- Clause 9-8: Affirmative Action Compliance Requirements for Construction, in contracts for construction
- Clause 9-9: Equal Opportunity Preaward Compliance of Subcontracts, in contracts over \$10 million

## **Exceptions for Transactions of \$10,000 or Less**

Contracts and subcontracts of \$10,000 or less are exempt from the requirements of EO 11246 and Clause 9-7: Equal Opportunity, unless the aggregate amount of all contracts or subcontracts awarded to the Supplier or

Subcontractor in any 12 month period will exceed \$10,000. It is essential to note that government bills of lading, contracts with depositories of Postal Service funds, and contracts with financial institutions that are issuing and paying agents for U.S. savings bonds and savings notes are not exempt regardless of amount.

Indefinite delivery contracts and ordering agreements are exempt only when the amount to be ordered in any year under the contract will not exceed \$10,000. The Contracting Officer must determine this at the time of award for the first year, and annually for each succeeding year. Whenever a single order exceeds \$10,000, Clause 9-7 applies. Once Clause 9-7 applies, it continues in effect for the duration of the contract or ordering agreement, regardless of the amounts ordered or expected to be ordered.

### **Exceptions for Contracts With State or Local Governments**

If a contract is with a state or local government, the agencies, instrumentalities, or subdivision that are not involved in the contract work do not fall under the requirements of EO 11246.

### **Exceptions for Contracts With Certain Educational Institutions**

It is not a violation of EO 11246 for an educational institution to employ members of a particular religion if the institution is owned, supported, controlled, or managed (in whole or substantial part) by a religious group, or if the curriculum propagates a particular religion.

### **Exceptions for Work On or Near Indian Reservations**

It is not a violation of EO 11246 for a Supplier to announce publicly a preference for employment of American Indians living on or near an Indian reservation. "Near" includes the area within which a person could commute daily. Suppliers extending such a preference must not, however, discriminate among Indians on the basis of religion, sex, or tribe. Using such a preference does not exclude a Supplier from complying with the Executive Order.

### **Exceptions for Contracts with a Religious Corporation, Association, Educational Institution, or Society**

If a contract is with a religious corporation, association, educational institution, or society, it is not a violation of Section 202 of EO 11246 to employ individuals of a certain religion to perform work connected with the carrying-on of such an entity in its activities.

### **Contracts Exempted by the Vice President, Supply Management (VP, SM)**

The VP, SM, may determine that a contract is essential and must be awarded without complying with one or more of the requirements of EO 11246 in the interest of the Postal Service.

## **Complaints**

Any complaint received by the Contracting Officer concerning compliance with EO 11246 must be referred to the OFCCP regional office, and the complainant must be notified of the referral in writing. The complainant's name, the nature of the complaint, or the fact that the complaint was received may be disclosed only to the OFCCP.

## **Enforcement**

At the written direction of the Director, OFCCP, one or more of the following actions, as well as administrative sanctions and penalties, may be exercised against suppliers found to be in violation of EO 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

- Publication of the names of the suppliers or their unions
- Cancellation, termination, or suspension of the supplier's contracts or portion thereof
- Debarment from future contracts, or extensions or modifications of existing contracts, until the supplier has established and carried out personnel and employment policies in compliance with EO 11246 and the regulations of the Secretary of Labor
- Referral by the Director, OFCCP, of any matter arising under EO 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings

## **Clauses & Provisions**

Provision 4-3: Representations and Certifications

Provision 9-1: Equal Opportunity Affirmative Action Program

Provision 9-2: Preaward Equal Opportunity Compliance Review

Provision 9-3: Notice of Requirement for Equal Opportunity Affirmative Action

Clause 4-2: Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders

Clause 9-7: Equal Opportunity

Clause 9-8: Affirmative Action Compliance Requirements for Construction

Clause 9-9: Equal Opportunity Preaward Compliance of Subcontracts

## **Laws & Regulations**

Title 41 Code of Federal Regulations (CFR)

Executive Order (EO) 11246

## Material and Property Accountability

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### Accountability and Responsibility

All Postal Service employees and suppliers working with Postal Service property are responsible for the security and proper use of the property in their possession. Installation Heads are responsible and accountable for all material in their facility. Installation Heads always retain responsibility for materials, but may delegate accountability activities to a Material Accountability Officer (MAO). Functional Managers, who manage a portion of the facilities material, are accountable for all capital and sensitive property in their area. The Functional Managers assign Material Accounting Assistants (MAAs) to represent them in the day-to-day dealings with capital, expense, and sensitive property; to maintain the accuracy of their property records and files; and to aid the MAO. Supervisory personnel, District Material Management Specialists (DMMSs), and Material Service Center (MSC) personnel work with the MAO in some capacity in their own areas.

MAOs are directly accountable for all property assigned to their finance number. They are also responsible for overseeing compliance with material accountability policies and procedures. The Installation Head's delegation of accountability to the MAO makes the MAO responsible for specific tasks. These tasks are the controls necessary for optimal maintenance, use, and disposal of Postal Service materials and property, and they include:

- Ensuring that all capital property verification, physical inventory, and reconciliation procedures are followed.
- Evaluating the status and maintain property records and files.
- Ensuring prompt and proper disposal of all material declared obsolete, surplus, not repairable, and authorized for disposal.
- Reporting all inactive property into the excess item catalog (EIC) or to the District Material Management Specialist.

### Characterizing the Material and Property

The Item Manager and Client must ensure that the material or property type is appropriately classified, because the type dictates accountability processes and procedures. Material and property types include:

- Capital — has a service life of more than one year, is identified as a stand-alone item of property throughout its useful life, has a unit cost of \$3,000 or more, and depreciates in value
- Expense — items that cost less than \$3,000; repair parts and replacement components (e.g., batteries, motors), regardless of cost; and, for the most part, mail transport equipment (MTE), neighborhood delivery and collection box units (NDCBUs), workroom furniture, and similar items
- Sensitive — materials considered especially vulnerable to theft or loss (e.g., calculators, computers, cameras, valuable portable equipment)

## Asset Transactions

The MAO plays a role in the following transactions that occur throughout an asset's life cycle:

- Receipt Processing — discussed in the Receipt and Inspection topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements
- Transfers — internal transfers (within a facility) and external transfers (from facility to facility)
- Equipment Loans — capital or expendable equipment loaned to a private mailer or a Postal Service activity or furnished as Postal Furnished Equipment (PFE) to a supplier
- Inactive Equipment — equipment that is not in use because it is either not needed (excess), not yet needed or installed (restricted use), surplus, obsolete, or unserviceable
- Disposal — discussed in the Dispose topic of the Investment Recovery task of Process Step 6: End of Life
- Depreciation — allocation of the cost of an asset over a period of time

Handbook AS-701, *Material Management* should be referred to for more information regarding asset transactions.

## San Mateo Accounting Service Center

The Property and Equipment Accounting System (PEAS) is a system managed by the Accounting Service Center (ASC) in San Mateo, California. It is designed to record capital personal property transactions and maintain a national inventory of capital personal property. The system tracks each item of capital personal property through the purchase, use, and disposal stages. The PEAS inventory record is related to the finance number of the facility to which the property is assigned and can provide accountability information within the finance number. A primary function of the PEAS is to calculate, allocate, and record depreciation expense against the finance number.

The Postal Service has property reports available in the Accounting Data Mart (ADM) that provide assistance to account properly for capital property. Figures for the undepreciated values of current equipment are also available through reports from the ADM. Information in the ADM reports come directly from the PEAS.

## Suppliers working with or on Postal Service Property

Just as Postal Service personnel are accountable and responsible for materials and property entrusted to them, in relation to the performance of a contract, Postal Service suppliers are also accountable and responsible when they are working with or on Postal Service property, especially those material and property types described above. The Postal Service may provide materials or other property to suppliers when it will result in significant

economies, standardization, expedited production, or when it is otherwise in the Postal Service's interest.

As the purchase is planned, the property to be furnished must be identified, and then specified in the request for proposals (RFP) in sufficient detail (including requisitioning procedures) so that potential suppliers may evaluate it accurately. When special tooling or test equipment is associated with a supplier's future contract performance, and the Postal Service will obtain identifiable special tooling or test equipment under a contract, the request for proposals (RFP) must specify each item or category as a contract line item. A category of items costing less than \$1,000 may be grouped as a single line item. Further information regarding RFPs, their development, and their publication, are discussed in detail in the Review and Finalize Request for Proposals (RFP) topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

Depending on the nature, scope, and complexity of the purchase and associated contract performance, the Purchase/SCM Team must consider the following:

- Information concerning the eligibility requirements of mail transportation suppliers in relation to contract performance associated with Postal Service property is contained in the Mail Transportation Purchasing topic of Commodity Specific Practices.
- Security considerations regarding the protection of sensitive Postal Service information technology is contained in Information Technology topic of Commodity Specific Practices.
- Information regarding data rights and intellectual property is contained in the Clarify Data Rights and Intellectual Property topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.
- Information regarding the supplier's overall capability and integrity, which is generated in the Conduct Supplier Capability (Technical and Financial) Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources.
- Generic issues related to the protection of Postal Service resources, personnel, and assets are discussed in the Supply Chain Security topic of the General Practices.

## **Considerations about Special Tooling and Test Equipment**

The Purchase/SCM Team may decide to provide Postal Service special tooling and test equipment to suppliers for use in contract work, if doing so will not disrupt programs of equal or higher priority, or it is in the Postal Service's best interests. Contracts authorizing the furnishing of special tooling or test equipment must contain:

- A complete description of the tooling or equipment
- The terms and conditions of shipment



- The terms covering the cost of adaptation and installation

In competitive purchases when Postal Service special tooling or test equipment is not available, suppliers ordinarily provide and retain title to special tooling and test equipment required for contract performance. Competition usually results in fair charges for amortizing the costs of such tooling and equipment. In noncompetitive situations, the Postal Service should obtain the special tooling or test equipment, or the rights to it, because it may facilitate future competition.

When special tooling or equipment is provided by the supplier, the Purchase/SCM Team must determine whether to purchase the tooling or equipment, or rights to it, by considering:

- Future needs for the items (including in-house use)
- The estimated residual value of the items
- The added administrative burden of reporting, record-keeping, preparation, handling, transportation, and storage
- The feasibility and probable cost of making the items available to other offerors in future purchases
- The amount, if any, offered by the supplier for the right to keep the items
- The effect on future competition and prices

When there is a possibility of future purchases of the same item and the Purchase/SCM Team has decided not to obtain rights or title, the solicitation must indicate current estimates of the future requirements, in the interest of reducing amortization charges. Suppliers must be cautioned that these are only estimates and not a guarantee to purchase future quantities.

When the Postal Service will furnish property that is valued at or above \$10,000, the Contracting Officer will include one of the following clauses in the contract:

- Clause 2-11: Postal Service Property — Fixed-Price, when a fixed-price contract will be awarded and the total value of Postal Service property is \$50,000 or more. If the contract provides for reimbursement of costs for certain materials, the clause with its alternate paragraph c will be used.
- Clause 2-12: Postal Service Property — Short Form, when a fixed-price, time-and-materials, or labor-hour contract will be awarded and the total value of Postal Service property is less than \$50,000.
- Clause 2-13: Postal Service Property — Non-Fixed-Price, when a cost-reimbursement, time-and-materials, or labor-hour contract will be awarded with Postal Service property valued at \$50,000 or more. If the contract is for basic or applied research at a nonprofit institution of higher education or nonprofit organization whose primary purpose is to conduct scientific research, the clause with its alternate paragraph c will be used.

- Clause 2-14: Postal Service Property Furnished “As Is”, when Postal Service property will be furnished “as is”
- Clause 2-15: Special Tooling, or Clause 2-16: Special Test Equipment, must be included in solicitations for fixed-price contracts when the rights or title to special tooling or test equipment will be required but cannot be identified as a specific line item. Rights or title to special tooling or test equipment in a cost-reimbursement contract are obtained using Clause 2-13: Postal Service Property — Non-Fixed-Price.

## **Clauses & Provisions**

Clause 2-11: Postal Service Property — Fixed-Price

Clause 2-12: Postal Service Property — Short Form

Clause 2-13: Postal Service Property — Non-Fixed-Price

Clause 2-14: Postal Service Property Furnished “As Is”

Clause 2-15: Special Tooling

Clause 2-16: Special Test Equipment

## **Other Topics Considered**

Supply Chain Security topic, General Practices

Clarify Data Rights and Intellectual Property topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Conduct Supplier Capability (Technical and Financial) Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Dispose topic, Investment Recovery task, Process Step 6: End of Life

Mail Transportation Purchasing topic, Commodity Specific Practices

Information Technology topic, Commodity Specific Practices

## Continuous Improvement

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The Postal Service is committed to continually evaluating and improving upon these Supplying Principles and Practices to ensure continuing effectiveness and consistency with Postal Service strategic direction and supply chain innovation. This practice defines the process for identifying, documenting, reviewing, recommending, and implementing improvement opportunities (IO) to further the Postal Service's progress toward supply chain management (SCM) excellence in the categories defined in the Postal Service Supply Management Maturity Model.

### Responsibility

The Vice President, Supply Management (VP, SM) is responsible for ensuring that the Postal Service's supplying activities further the business and competitive interests of the Postal Service and for approving and issuing Postal Service Supplying Principles and Practices and related material.

To assist the VP, SM in carrying out these responsibilities, two cross-functional bodies provide advice and insight to ensure that Postal Service goals are met and that the Supplying Principles and Practices promote an efficient and effective supply chain. The Supplying Principles and Practices governance structure comprises:

- Supply Chain Advisory Council (SCAC)
- Supply Chain Management Committee (SCMC)

### Supply Chain Advisory Council (SCAC)

SCAC is responsible for:

- Anticipating and adapting to strategic, organizational, technological, process, and cultural opportunities and challenges related to issues affecting the Postal Service supply chain
- Regularly reviewing and improving communications between supply chain members
- Sharing information with respective constituencies
- Providing leadership and resource assistance, when needed
- Advising the VP, SM on supply chain issues and opportunities

SCAC comprises:

- Vice President, Supply Management (Chairperson)
- Chief Technology Officer (CTO)
- Vice President, Engineering
- Vice President, Facilities
- Vice President, Network Operations Management (NOM)
- Deputy General Counsel, HQ Operations

## **Supply Chain Management Committee (SCMC)**

SCMC is responsible for:

- Reviewing and making recommendations regarding changes to Supplying Principles and Practices language
- Regularly reviewing and improving alignment between Supplying Principles and Practices and supply chain strategies
- Framing strategic issues and agenda for SCAC
- Anticipating and adapting to organizational, technological, process, and cultural opportunities and challenges related to Supplying Principles and Practices
- Sharing information with respective constituencies
- Providing leadership and resource assistance with regard to Supplying Principles and Practices.
- Advising the VP, SM concerning matters related to communications with Postal Service executive leadership about Supplying Principles and Practices and integrating and operating the Postal Service supply chain

SCMC comprises:

- Manager, Supply Management Infrastructure (Chairperson)
- Manager, Mail Equipment Portfolio
- Manager, Facilities Portfolio
- Manager, Supplies Portfolio
- Manager, Services Portfolio
- Manager, Transportation Portfolio
- Manager, Operations
- Manager, SCM Strategies
- Senior Counsel, Contract Protest and Policies
- Client representatives

## **Supply Management Infrastructure (SMI)**

SMI is responsible for:

- Reviewing and evaluating IOs
- Preparing Supplying P&P issues and IOs and proposing revisions for review by the SCMC
- Managing and overseeing the continuous improvement process and serving as the point of contact for all inquiries and communications related to Postal Service Supplying Principles and Practices

## **Submitting Improvement Opportunities (IOs)**

Anyone may propose an IO for consideration. The stimulus for IOs can include, but are not limited to:

- Internal or external assessments (e.g., best practices)
- Management directives
- Analysis of defects or root cause
- Lessons learned
- External process reviews (e.g., organizational-level reviews)

The originator(s) of an IO should complete and submit an improvement opportunity form to SMI that identifies:

- Text (e.g., Process Step, Task, Topic, etc.) in which the change is sought
- Proposed wording
- Rationale for the change
- Potential effects of the change in terms of cost or personnel
- Other documents (e.g., supporting directives or manuals) that may or will be affected by the proposed changes
- Any other relevant information

Once received, IOs will be reviewed for effectiveness and, if appropriate, submitted to SCMC for review. SCMC will review all IOs that are submitted for consideration by SMI to determine which IOs will be recommended to the VP, SM for approval. SMI is responsible for reviewing and approving changes that are administrative and editorial in nature.

Information on changes and updates to Postal Service Principles and Practices will be posted online in the “What’s New” section of this website. The originator of IOs will be notified of the result of their submission, whether approved or rejected.

## Supplier Debarment, Suspension, and Ineligibility

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### **Initiating a Request for Debarment or Suspension**

The Contracting Officer, the Office of Inspector General (OIG), the Inspection Service, General Counsel, or a representative from any other affected area of the Postal Service that becomes aware of circumstances that may serve as the basis for a debarment or suspension may make the request to the Debarring Official (Vice President, Supply Management [VP, SM]) through appropriate channels (e.g., Contracting Officer, Manager, General Counsel, Debarment and Suspension Coordinator). However, circumstances that involve possible criminal or fraudulent activities must first be reported to the OIG or Inspection Service, as appropriate, for investigative consideration.

A debarment or suspension request should be in the form of a memorandum or e-mail addressed to the VP, SM. The request must identify the party or parties proposed to be debarred or suspended, including specifically, where applicable, the identities of corporate officers, agents, affiliates, or others

proposed to be included in the requested action; it must clearly identify and explain the cause(s) for debarment or suspension; and it must be accompanied by the following information, as applicable:

- Legal name, taxpayer identification number (TIN) and/or social security number (SSN), and address of the party(ies).
- An explanation why debarment or suspension specifically is in the Postal Service's best interest is required. Any mitigating factors (see 39 CFR 601-113(f)) known to the requester should be documented in the request.
- Where Postal Service debarment is to be premised on debarment by another Executive agency or department, an explanation in reasonable detail why debarment, rather than treatment pursuant to 39 CFR 601-113(d)(3), *Treatment of Suppliers on Postal Service or GSA Lists*, is appropriate.
- All relevant supporting documentation, such as evidence of indictment or criminal conviction, evidence of willful failure to perform a postal contract or of repeated instances of failure to perform or of unsatisfactory performance of a postal contract, or of other indicated grounds for debarment or suspension.
- If debarment or suspension of a corporation, limited liability company, partnership, or the like is proposed based on the conduct of an individual associated with the firm, evidence that the conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of the firm.
- An estimate of any damages sustained by the Postal Service as a result of the action(s) of the party(ies) proposed for debarment or suspension, including an explanation of the method used in making the estimate.

## **Debarment and Suspension Coordinator**

The Debarment and Suspension Coordinator in Supply Management Infrastructure, with assistance from General Counsel, will review the debarment or suspension request for thoroughness, accuracy, and adherence to the requirements of the CFR before forwarding it to the VP, SM with a recommended course of action.

If the VP, SM determines that debarment or suspension is not warranted based on the information contained in the debarment/suspension request and the advice of General Counsel, the requester will be notified by the Debarment and Suspension Coordinator and will close the file on the request. The original debarment/suspension request will be maintained by Supply Management Infrastructure for a period of six (6) years.

If the VP, SM determines that debarment or suspension is warranted, the Debarment and Suspension Coordinator, with the assistance of General Counsel, will prepare written notice to the party advising it of the proposed debarment or suspension. The Supplier will be provided thirty (30) days to

respond to the proposed debarment or suspension. If there is no response or the Supplier's response is not sufficient and the VP, SM still determines that debarment or suspension is warranted, the Debarment and Suspension Coordinator will notify the GSA via its Excluded Parties List System (EPLS), the Inspection Service, and the Postal Service Office of Inspector General of the debarment or suspension and post the debarment or suspension on the Postal Service internal web page, available at [http://blue.usps.gov/purchase/infrastructure/smi\\_pa\\_debar.htm](http://blue.usps.gov/purchase/infrastructure/smi_pa_debar.htm).

When a Supplier submits, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment or suspension, the Debarment and Suspension Coordinator will assist General Counsel and the VP, SM with the request (e.g., coordinating and facilitating in-person meetings, drafting or finalizing documents, etc.).

## **Supplier Recourse**

A party served with a notice of proposed debarment or suspension is provided an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

The Supplier has the burden of demonstrating, to the satisfaction of the Debarring Official, its present capability and that debarment is not necessary.

## **Supplier Capability Analysis**

Suppliers debarred, suspended, or proposed for debarment are excluded from receiving contracts, and the Postal Service shall not solicit offers from, award contracts to, or consent to subcontracts with these Suppliers, unless the VP, SM (via documentation by the Contracting Officer) determines that there is a compelling reason for such action. Suppliers debarred, suspended, or proposed for debarment are also excluded from conducting business with the Postal Service as agents, subcontractors, or representatives of other Suppliers.

Proposals, quotations, or offers received from any listed Supplier shall not be evaluated for award unless the VP, SM (via documentation by the Contracting Officer) determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated before award, the Contracting Officer may, but is not required to, consider such proposals, quotations, or offers.

Contracting Officers are responsible for reviewing the GSA Excluded Parties List System and the Postal Service List to ensure that no award is made to a listed Supplier unless acceptable in accordance with the GSA Summary Code (see [http://blue.usps.gov/purchase/\\_doc/GSAcodesum.doc](http://blue.usps.gov/purchase/_doc/GSAcodesum.doc)) or there is a compelling reason for such action (as addressed above). It is advisable for Contracting Officers to again review the lists immediately before award to ensure that no award is made to a listed Supplier.

## **Effect of Debarment or Suspension on Existing Contracts**

Notwithstanding the debarment, suspension, or proposed debarment of a Supplier, the Postal Service may continue contracts or subcontracts in existence at the time the Supplier was debarred, suspended, or proposed for debarment unless the VP, SM directs otherwise.

When the circumstances giving rise to the debarment or suspension also constitute a default in the Supplier's performance of the contract, termination for default under the contract's "default" clause is appropriate. A decision as to the type of termination action, if any, to be taken should be made only after review by the Postal Service Contracting Officer and technical personnel and by Legal Counsel to ensure the propriety of the proposed action.

If the Supplier presents a significant risk to the Postal Service in completing the current contract, the Contracting Officer shall determine whether termination for convenience or cancellation under appropriate contract provisions is in the Postal Service's best interest. In making this determination, the Contracting Officer shall consult with Legal Counsel and should consider the following factors:

- Seriousness of the cause for debarment or suspension.
- Extent of contract performance.
- Potential costs of termination and repurchase.
- Urgency of the requirement and the impact of the delay of repurchase.
- Availability of other safeguards to protect the Postal Service's interest until completion of the contract.

For Suppliers or subcontractors that are debarred, suspended, or proposed for debarment, unless the VP, SM makes a written determination of the compelling reasons for doing so, and with exception for service changes under mail transportation contracts, Contracting Officers may not place orders exceeding the guaranteed minimum under indefinite-quantity contracts; place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or add new work, exercise options, or otherwise extend the duration of current contracts or orders.

## **Other Topics Considered**

Conduct Supplier Capability (Technical and Financial) Analysis topic,  
Evaluate Proposals task, Process Step 2: Evaluate Sources



## Contracts with former Postal Service Officers, Executives, and Employees, and Employees and their Immediate Families

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The Postal Service does not award contracts to (1) Postal Service employees, (2) their immediate families, or (3) business organizations substantially owned or controlled by Postal Service employees or their immediate families. A Postal Service employee is any Postal Service officer or any employee working on a full-time or part-time basis in a career or non-career position, specifically persons in temporary positions such as Postmaster replacements and rural carrier reliefs. Immediate family refers to the spouse of, minor child or children of, or other individual related by blood to an employee and residing in the employee's household.

### Exceptions

The prohibition against the award of a contract to Postal Service employees or their immediate families is waived when the Contracting Officer specifically authorizes such a waiver in writing under the following circumstances:

- New real estate leases of interior space of 3,000 square feet or less
- Renewals and extensions of leases of interior space of 3,000 square feet or less
- Renewals and extensions of leases of interior space of 3,000 square feet or more, subject to review and concurrence of the Associate Ethical Conduct Officer
- Renewals of existing highway contract routes with immediate family members of a Postal Service employee, subject to review and concurrence of the Associate Ethical Conduct Officer
- Cleaning service contracts with immediate family members of nonsupervisory employees
- The licensing of a patented invention that is the sole property of the employee
- The lease of an individual employee's vehicle in connection with his or her employment

### Contracts With Former Officers and Executives

It is Postal Service policy not to contract with former officers or Postal Service Executive Service (PCES) executives or entities with which such individuals have a substantial interest for one year after the date of their separation from the Postal Service (whether by retirement or otherwise) if the contract calls for substantially the same duties as they performed during their career with the Postal Service, as determined by the Vice President of Human Resources. Purchase teams must enforce this policy when purchasing professional/technical or consulting services and include Provision 1-4: Prohibition Against Contracting with Former Officers or PCES Executives, in

relevant solicitations, and Clause 1-11: Prohibition Against Contracting with Former Postal Service Officers or PCES Executives, in resulting contracts.

The Vice President of Human Resources may grant exceptions to this policy when he or she determines that doing so is in the best interest of the Postal Service. All such exceptions must be documented and included in the contract file.

## **Contracts With Other Former Employees**

The Postal Service may contract with former employees (other than former officers or PCES executives) or with suppliers proposing the use of former employees during contract performance when the former employee's expertise will further the success of the purchase and the business and competitive interests of the Postal Service. Contracts with former employees or with suppliers offering the services of former employees should not be confused with the employment of annuitants.

All requests for contracts with former employees (non-officer or executive) must be forwarded by the purchasing organization to the manager of Corporate Personnel Management (CPM), for review and approval. The manager of CPM will decide whether the former employee should be hired as a retired annuitant or should be contracted with by the purchasing organization. When appropriate, the purchasing organization may award a personal services contract to the former employee.

When a supplier proposes using a former employee, the manager of CPM will review the former employee's employment history and advise the Purchase/SCM Team as to whether the substitution of another individual is in the best interests of the Postal Service. If such substitution is the case, the contracting officer must advise the supplier to propose another individual to perform the duties called for. If, following contract award, the supplier proposes the use of a former employee, the same review and approval process is required before the former employee may begin work.

Purchase teams must consider this policy in light of the particular purchase, and the potential need for reviews and approvals, and as necessary, include Provision 1-5: Proposed Use of Former Postal Service Employees, in relevant solicitations, and

Clause 1-12: Use of Former Postal Service Employees, in resulting contracts.

## **Clauses & Provisions**

Provision 1-4: Prohibition Against Contracting With Former Postal Service Officers or PCES Executives

Provision 1-5: Proposed Use of Former Postal Service Employees

Clause 1-11: Prohibition Against Contracting With Former Officers or PCES Executives

Clause 1-12: Use of Former Postal Service Employees

## Laws & Regulations

Title 39 Code of Federal Regulations (CFR) 447.31

### Supply Chain Security

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The Postal Service has proprietary assets that contribute to its competitiveness and success as a business. Protecting these assets is critical; however, in order to effectively meet the demands of a secure supply chain in today's environment, a comprehensive and integrated security focus is required, extending beyond asset protection and preventing the introduction of unauthorized contraband, people, and weapons of mass destruction into the supply chain.

The protection of goods and commodities as they travel through the supply chain poses unique challenges. Not only must the Postal Service be concerned about security procedures within our own processes and those of first-tier suppliers, but also they are dependent on the security procedures throughout the entire supply chain. Comprehensive supply chain security requires a partnership involving the Postal Service, supply chain partners, and other government agencies. The Purchase/SCM Team is responsible for complying with Postal Service security policies and procedures outlined in *Administrative Support Manual (ASM) 2.7.2, Security*, and ensuring that suppliers and supplier personnel are included when complying with security requirements.

In addition, protecting Postal Service information resources and sensitive information (including customer and employee personally-identified information (PII)) is an essential element of supply chain security, specifically when the Postal Service purchases IT or other information processing and information gathering services or when we make purchases that involve the collection or generation of PII. This includes incorporating adequate safeguards to protect the Postal Service's information technology assets and to prevent misuse or improper disclosure of clients and employee's personal information. Therefore, purchase/SCM teams must ensure that specifications or statements of work for IT purchases and associated RFPs and contracts address information security requirements. Additional information on the protection of PII and purchases of IT or other information processing and information gathering services is found in the [Information Technology](#) topic of the Commodity Specific Practice. Suppliers that have access to customer or employee data, or operate a customer website, may also be subject to the Postal Service's privacy requirements implementing the Privacy Act. Additional details on privacy considerations can be found in the [Privacy Considerations](#) topic of the General Practices.

### Other Topics Considered

Material and Property Accountability topic, General Practices

Information Technology topic, General Practices

Privacy Considerations topic, General Practices

## Privacy Considerations

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Postal Service records management is based on best practices, business needs, and legal requirements. When considering whether to release records publicly, the Postal Service balances the confidentiality and privacy of the records with the public's right to access those records to the maximum extent possible. These considerations are in accordance with Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*, and Title 39 *Code of Federal Regulations (CFR) 265*, which implements the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Privacy Act (5.U.S.C. 552a).

Protecting Postal Service information resources and sensitive information (including customer and employee personally-identified information, PII) is an essential element of privacy considerations, and can be particularly important when the Postal Service purchases IT or other information processing and information gathering services or when we make purchases that involve the collection and generation of PII. In such cases, coordination with the Corporate Information Security Office (CISO) is necessary, as discussed in the Information Security section of the Information Technology Commodity-Specific practices. Additional information on the security aspects of IT purchases or other information processing and information gathering services is found in the Information Technology topic of the Commodity Specific Practices.

Suppliers that have access to customer or employee data, or operate a customer Web site, may be subject to the Postal Service's privacy requirements implementing the Privacy Act and its privacy policy posted on [www.usps.com/common/docs/privpol.htm](http://www.usps.com/common/docs/privpol.htm). Clause 1-1: Privacy Protection is incorporated by reference in Clause 4-2, Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders when checked off by the Contracting Officer. The clause must be included in:

1. Contracts in which a supplier or subcontractor operates a Privacy Act system of records on the Postal Service's behalf;
2. Contracts in which a supplier or subcontractor will have access to any Postal Service customer or employee information, including address information;
3. Contracts in which a supplier or subcontractor assists the Postal Service in establishing or administering a customer Web site or places links or ad banners on a Postal Service Web site or any Web site on the Postal Service's behalf; or
4. Contracts in which a supplier or subcontractor assists the Postal Service to conduct a marketing e-mail campaign.

In most cases, suppliers must turn over all customer or employee information in its possession to the Postal Service upon completion of the contract. Under certain circumstances, suppliers will retain the information, and in these cases the contracting officer must work with the Privacy Office and legal counsel to ensure that all interests are protected. In all cases,

Purchase/SCM Teams should work with the Chief Privacy Officer and legal counsel to ensure that the Postal Service's privacy commitments are upheld.

## **Clauses and Provisions**

Clause 1-1: Privacy Protection

Clause 4-2: Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders

Provision 4-10: Application Information Security Requirements

Clause 4-19: Application Information Security Requirements

## **Laws & Regulations**

Privacy Act (5 U.S.C. 552a)

Freedom of Information Act (FOIA) (5 U.S.C. 552)

Title 39 Code of Federal Regulations (CFR)

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# USPS Supplying Practices Process

## Step 1: Identify Needs

### Define and Understand Client Needs, Goals, and Strategies

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The Conceptualize Need task of Process Step 1: Identify Needs begins by assessing Clients' needs, goals, and strategies. Clients' needs are unique and are tailored to their business strategies, and it may be necessary for the entire range of talents of the Purchase/SCM Team to be employed in helping them make the most effective business decisions. Defining Clients' needs requires the determination of what they want to achieve and whether the solution they require can be achieved through the application of supply chain management (SCM) business practices and related actions.

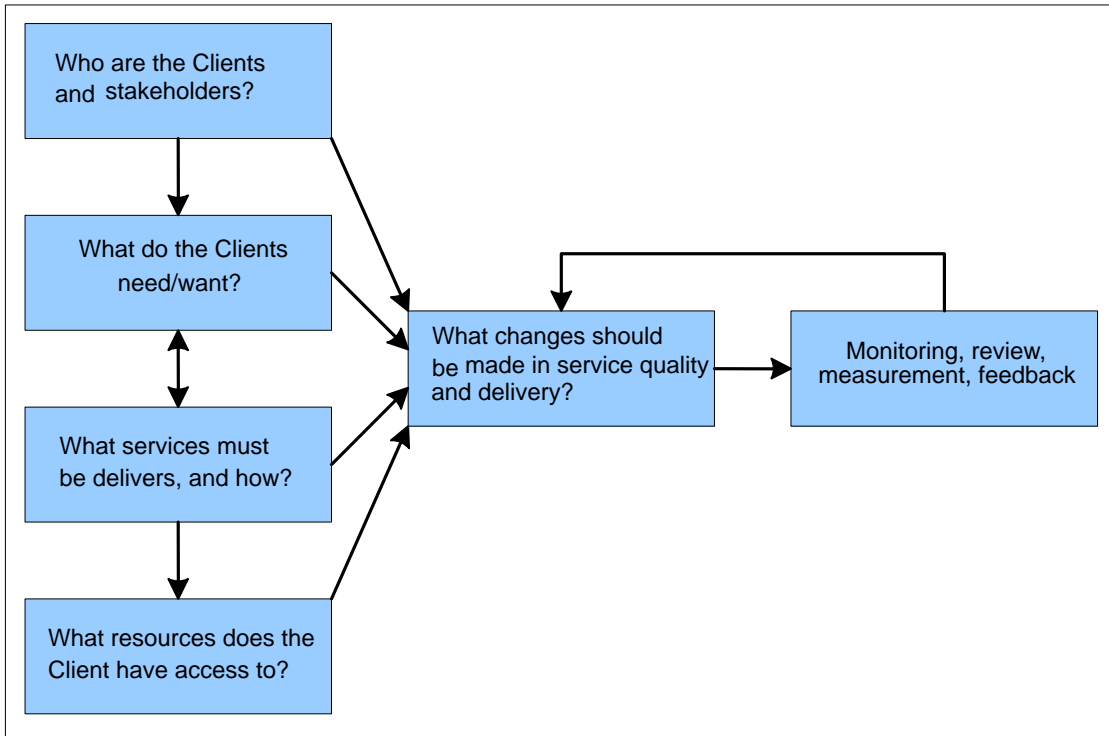
Interviews, discussions, and surveys are effective means of gaining further understanding of Clients' needs, goals, and strategies. In addition to these methods, performing research on the Client and its organization can help identify strategic plans, tactical and operational goals, programs and projects, capital budget projections, existing suppliers, and performance against financial plans.

#### **Client Focusing**

A good client relationship is based on understanding: what the Client values, what is important to its organization, and how Supply Management (SM) can help the Client meet its objectives.

Client focusing should be used to identify the products and services, quality characteristics, and performance measures that are most important to the Client's business. The main questions to be addressed and activities involved in developing client focusing exercises are depicted in Figure 1.1.

Figure 1.1  
**Client Focusing**



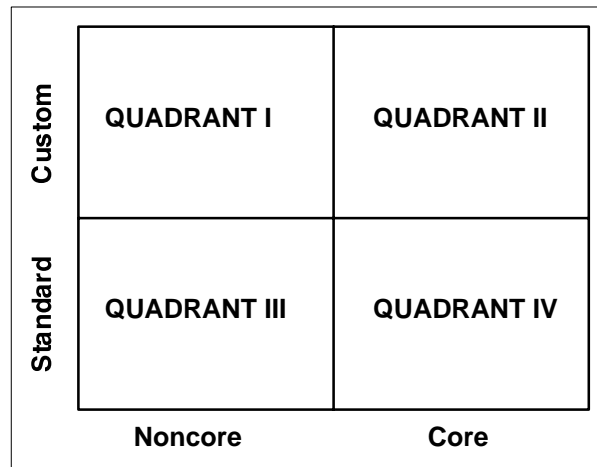
When Client needs, goals, and strategies have been identified, SM must continue to work with the client to define requirements. Requirements are categorized into groups, so clients with similar needs can be targeted simultaneously. There may be occasions when it is not possible to reconcile all requirements and Client expectations; in this case, as appropriate, SM must work with the clients to resolve any outstanding issues.



## Quadrant Approach

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). The level and depth of understanding of Client needs, goals, and strategies will vary depending on the complexity and criticality of the purchase. Approaches to defining and understanding Client needs, goals, and strategies will have to be aligned to the applicable quadrant, illustrated in Figure 1.2.

Figure 1.2  
Four Quadrants



### Quadrant I: Noncore/Customized Purchases

Products and services in this quadrant do not provide direct value to the end Client, but contribute significantly to the supporting capability function. Clients' goals and strategies must be understood because they are customized to the business function.

### Quadrant II: Core/Customized Purchases

Products and services in this quadrant create direct value for the end Client; there should be continuous work with these Clients to understand their needs, goals, and strategies.

### Quadrant III: Noncore/Standard Purchases

Products and services in this quadrant are essential to support the business infrastructure, but do not relate or provide value to the end Client. These Clients' objectives should be understood, but it is not necessary to spend inordinate amounts of time conducting research or interviewing Clients in this quadrant.

### Quadrant IV: Core/Standard Purchases

Products and services in this quadrant create value for the end Client and may require leading-edge market solutions that do not need to be customized

exclusively to the business. Understanding Clients' expectations and needs in this quadrant is important; therefore, a continuous communication plan should be implemented.

## Form Purchase/SCM Team

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Purchase/SCM Teams play a critical role in the supply chain management (SCM) process throughout the SCM life cycle. A Purchase/SCM Team is formed when the Client organization determines that a need exists, and the need is communicated to the Contracting Officer. The mission of the Purchase/SCM Team is to provide overall guidance, direction, and oversight for a given purchase or series of purchases. Assigning roles and responsibilities (and, for complex purchases, establishing team charters) and conducting project plan kickoff meetings are critical activities during the formation of a Purchase/SCM Team.

### Assigning Roles and Responsibilities

Because teams have different requirements, roles and responsibilities should be agreed upon when the Team is formed. Functional roles need not necessarily correspond to a single individual, job title, or organization in the Team. While a task may be assigned to a specific individual (e.g., Contracting Officer, Client, or Item Manager), responsibility for a task may also be given to a group of individuals capable of performing the work within the Team.

### Team Charters

Depending on the complexity of the purchase, a team charter can be very helpful for defining roles and responsibilities. The team charter sets the ground rules for the operation of the Purchase/SCM Team, and joining the Team implies its acceptance. The charter is developed and agreed to by the Team at the beginning of the project, sometimes during what is informally called the "kickoff meeting," or when a person joins the Team. It contains the following information:

- Project objectives
- Expectations of team behavior
- Key roles and responsibilities
- Authority
- Team structure
- Decision-making methodology
- Risks

### Project Kickoff Meetings

The project kickoff meeting serves as a vehicle to discuss the project scope and objectives. It is used to educate the Purchase/SCM Team about the Client and to reveal the Client's strategy and goals. The project kickoff

meeting transfers information on how the project will be conducted from a process and procedural standpoint. Generally, the Client and the Contracting Officer collaborate on scheduling the kickoff meeting. The objectives of the project kickoff meeting are to:

- Provide an overview of the Client's environment, problems, and goals
- Achieve consensus on the project scope
- Describe the roles and responsibilities of Purchase/SCM Team members
- Review the high-level project timeline
- Review project deliverables
- Review key work products for the different phases
- Review tracking processes and deadlines

## **Members and Types of Purchase/SCM Teams**

Supply chain management (SCM) is a team effort. At a minimum, the Team comprises the Contracting Officer and a representative from the Client organization. Where assistance from Legal Counsel and/or Finance is required, these members serve as business advisers. The makeup of a Purchase/SCM Team may change as it moves through the six SCM process steps, and the roles, responsibilities, and business skills necessary to success may change accordingly.

Generally, Purchase/SCM Team functional roles include:

- Client
- Contracting Officer
- Market Analyst
- Pricing Analyst
- Item Manager

In complex purchase situations, multifunctional teams should be created. Multifunctional teams are made up of representatives from all appropriate functional disciplines working together to provide the best service to the Client. Teams may include selected suppliers or consultants.

## **Identify Key Stakeholders**

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Stakeholders are individuals or groups that are affected by, or able to influence, the supply chain management (SCM) business practices employed.

It is imperative that the key stakeholders are identified during the preliminary stages of the purchase process. Stakeholder opinions and attitudes are formulated in the Conceptualize Need task of Process Step 1: Identify Needs. It is important to collect and assess the interests of all stakeholders, who may represent different Client groups, and to resolve conflicting needs.

Failure to identify key stakeholders early in the supply process can create additional risks to the success of the project.

The first step in identifying key stakeholders is to brainstorm. Consider everyone affected by the supply decision, those who have influence or power over it, and those who have an interest in its outcome. One of the best ways to identify stakeholders is to plot them on an Influence/Impact Matrix. The next step is to prioritize stakeholders by influence and impact and to plot this on an Influence/Impact Matrix (illustrated below). The final step is to understand what motivates the stakeholders and how to gain their confidence with the eventual results.

### Prioritize and Understand Stakeholders

After identifying the key stakeholders, perform a stakeholder-mapping exercise, using the Influence/Impact Matrix illustrated in Figure 1.3.

Figure 1.3  
**Influence/Impact Matrix for Stakeholder Prioritization**

Influence	High	<b>Keep Satisfied</b>	<b>Manage Closely</b>
	Low	<b>Monitor</b>	<b>Keep Informed</b>
		Low	High
		<b>Interest/Impact</b>	

Classify key stakeholders by the extent to which they can influence the project and the degree to which it will/may affect them. A stakeholder’s position on the grid illustrates particular actions that may be taken when interacting with him or her:

- High-influence, high-impact individuals: significant efforts should be made to satisfy this group.
- High-influence, low-impact individuals: Effort should be made to keep this group satisfied, but on a more limited basis than the high-impact group.
- Low-influence, high-impact individuals: This group is adequately informed, and close communication is stressed to ensure that major issues are addressed.

- Low-influence, low-impact individuals: Monitor members of this group for consideration and consultation.

Stakeholder Analysis will be critical in communicating with key stakeholders throughout the project life cycle. It will also be the foundation for developing the communication plan, which is discussed in the Prepare Project task of Process Step 2: Evaluate Sources.

## Prepare Preliminary Business Justification for the Need

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A preliminary business justification is created to assess the likely costs and potential benefits associated with an identified need. Preparing a preliminary business justification at the beginning of the supply process is essential to project success.

The purpose of a business justification is to:

- Provide a framework for informed decision making, from planning through managing the supply decision to recognition of subsequent benefits
- Obtain management commitment and approval

The decision for the need is justified against the following factors:

- Strategic fit
- Achievability
- Affordability
- Business Options
- Commercial availability

### Strategic Fit

This aspect of the business justification explains how the scope of the proposed project fits within the existing business strategies of the Client organization, as well as those of the Postal Service as a whole. The need must support Postal Service objectives and current priorities. The strategic fit discussion includes:

- Description of the business need (including the need[s]) that will be met by the project and why it is needed now)
- Key benefits to be realized
- Key risks associated with the project/decision
- Critical success factors (how success will be constituted and measured)
- Key stakeholder analysis (stakeholders and their contribution to the project)

A detailed discussion of risks can be found in the Manage Risks topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## **Achievability**

The Client must determine that the project can be achieved within the current capability and capacity of the organization and the Postal Service. Clients and Supply Management (SM) (when applicable) should demonstrate that they fully understand the implications of such supplying activity and can support the activity with appropriate risk management and quality plans. It is also important to ensure that sufficient resources and funding exist to achieve the need, which is discussed in detail in the Assess Resources topic of the Conceptualize Need task of Process Step 1: Identify Needs.

## **Affordability**

Sufficient funding must be available to fulfill the identified requirement. Cost estimates must consider not only all relevant costs at the preliminary stage, but should also consider possible cost changes over the life of the project. The Develop Preliminary Total Cost of Ownership (TCO) Estimate activity of the Conceptualize Need task of Process Step 1: Identify Needs will provide the methodology for calculating these estimates. There should also be continuing confirmation from within the organization that funds are available, which is discussed in detail in the Assess Resources topic of the Conceptualize Need task of Process Step 1: Identify Needs.

## **Business Options**

This component of the business justification identifies a wide range of potential options for meeting the need with the highest ratio of benefits to cost.

## **Commercial Availability**

Clients and SM (when applicable) must begin the process of analyzing whether a certain product or service can be obtained from current suppliers or whether new suppliers need to be identified.

## **Other Topics Considered**

Assess Resources topic, Conceptualize Need task, Process Step 1: Identify Needs

Develop Preliminary Total Cost of Ownership (TCO) Estimate topic, Conceptualize Need task, Process Step 1: Identify Needs

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

# **Assess Resources**

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Resource assessment is used to determine whether sufficient resources, including funding, have been assessed and budgeted for a project. A resource assessment should be performed at the beginning of the supply

chain management (SCM) process to determine whether sufficient resources or funding have been assessed and budgeted for the project.

## Resources

There are five categories of resources that need to be assessed:

- Funding — assess the current funding availability and compare it with the funding required to accomplish the project
- People — ensure that there is sufficient human capital to develop, manage, and operate the project
- Facilities — ensure that existing facilities can accommodate the project
- Technology — analyze the organization's current state of technology, and determine what will be required to enable effective operation of the proposed project
- Other resources — analyze other resources that the organization has, and determine which additional resources may be needed to carry out the project

During this stage, the Purchase/SCM Team will evaluate the need and determine the relative impact on available resources. The following should be reviewed at this stage in the process:

- Ensure that total cost of ownership (TCO) is documented and that the likelihood of significant cost changes over the life of the project is explored.
- Ensure that resources are available to carry out the project.
- Ascertain whether the effort will/can be fully or incrementally funded (i.e., the budget for a given fiscal year is exhausted; must allocate funds from the following year's budget).

The resources available are organized to deliver objectives in the most economical, efficient, and effective way possible.

In the early stages of a project, costs are generally estimated. The three most common methods of cost estimation are:

- Expert opinion — an estimate based on the personal experience of a subject matter expert (SME)
- Analogy — a more formal approach to expert opinion, using direct comparison with one or more past projects
- Rough order of magnitude (ROM) — an approximation of the project cost when high-level requirements are available, but not detailed data

The nearest calculation of real costs will be determined when calculating the TCO; the total cost incurred over the life cycle of a product or service. Requirements for funding must be revisited at this stage, to ensure that adequate funds will be available and realistically estimated. The organization's ability to fund a purchase is derived from the annual budget.

## Other Topics Considered

Develop Total Cost of Ownership (TCO) Estimate topic, Conceptualize Need task, Process Step 1: Identify Needs

## Involve Suppliers Early

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Involving suppliers early (ISE) is the process of assessing the reaction of potential suppliers to an identified need. ISE can reveal the prevailing attitudes and solutions in the market as a whole and contribute to a more effective requirement that is well aligned with the market, improving the likelihood that the desired outcome will be achieved, and can also elicit alternative approaches and innovative solutions.

ISE provides supplier perspectives at the earliest stage of the purchasing process. While it ordinarily is directed at groups of suppliers to get a variety of inputs, individual suppliers can also be targeted for input. This process is for information gathering exclusively; it is not used for supplier selection or proposal evaluation, and there are no commitments made on either side.

### Recommended Procedures

There is no set process for ISE; the nature of the purchase will affect the process in each case. The following are some suggested basic steps:

First, the Purchase/SCM Team should attain knowledge of the market as a whole. The Team should have a thorough and accurate picture of the market when preparing to talk to suppliers. When deciding on which suppliers to initiate communications with, the Purchase/SCM Team should seek to identify industry leaders in the relevant marketplace, as well as incumbent Postal Service suppliers if available. The key areas of focus are:

- Feasibility — whether what is sought is feasible or has ever been done
- Capability — the ability of the market to provide what is required
- Maturity — whether there is an established market and whether there are enough suppliers in existence to provide competition
- Capacity — whether the market can provide what is required on a large-enough scale and in a timely manner

After identifying key focus areas of the market, communications focus on important factors such as the likely level of market interest, the technical or business feasibility of what is proposed, best value, supply cycle time, and whether unexamined business options exist. Additionally, the following should be examined:

- What capabilities exist in the marketplace to fulfill this need?
- Are there other, better approaches or solutions that have not been considered?
- What other technologies are available?



- What are the main concerns? Are there issues that have been missed?
- Extent to which subcontracting will be necessary

## **Communication**

Effective, two-way communication is essential to ISE. Postal Service needs must be defined in enough detail that suppliers can respond effectively, but needs should also be general enough to allow suppliers to propose alternative solutions. The following will help foster the necessary business relationship:

- Work with suppliers as equals and stakeholders
- Avoid an “us vs. them” mentality
- When necessary, provide a guarantee of confidentiality
- Speak in terms of what the Postal Service and the supplier can achieve together, rather than what the supplier can do for the Postal Service
- Maintain flexibility and openness about new approaches

## **Postal Service Benefits**

ISE can provide numerous benefits, and as a result the purchase/SCM Team can:

- Establish that there is a market for the requirement
- Confirm that the scope and objectives of the purchase are sound and achievable
- Discover new, innovative, or alternative solutions
- Underscore potential issues or problems with the project
- Gain real-world, first-hand knowledge of what suppliers can and cannot do
- Package the need in a way so that the market is encouraged to respond and that real competition is stimulated
- Create a requirement that is well framed, focused, feasible, and likely to interest the market
- Identify potential market areas
- Manage supplier expectations
- Manage Postal Service expectations
- Lay useful foundations for contract and relationship management by considering how the arrangement may work, including whether multi-supplier groups may respond to the requirement

## **Supplier Benefits**

Suppliers may also derive benefits from ISE. Suppliers can:

- Assess whether the opportunity will be suitable when it is solicited
- Reduce overhead in researching new business avenues

- Contribute to market-focused specifications
- Raise issues and questions about the opportunity and the purchasing process options at an early stage
- Gain a valuable insight into Postal Service working practices, requirements, and priorities

## Develop Preliminary Total Cost of Ownership Estimates

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Once the Postal Service has assessed resources, the next step is to gain an understanding of the total life-cycle cost of a product or service. Total cost of ownership (TCO) refers to the total cost incurred over the useful life of an item, encompassing development, purchase, use, maintenance, support, and disposal. A TCO analysis will assist the identification of costs and risks associated with each life-cycle stage, their relationships, possible cost-reduction levers, and alternative products or services. A TCO analysis is especially helpful for more complex purchases; it does not need to be performed for every purchase.

Cross-functional collaboration is especially important to ensure that the TCO accurately reflects all costs at each life-cycle stage. The Pricing Analyst will work closely with the Item Manager, and with representatives from responsible Postal Service organizations, as appropriate, to complete the initial TCO analysis. Collaboration should continue for subsequent updates to the TCO, as more information becomes available. The representatives will share specific knowledge of the subject under analysis and provide input to the cost-modeling process.

A TCO analysis exposes the hidden costs that may be overlooked during budget planning or when making purchase decisions. As a result, it becomes possible to yield higher savings by optimizing relevant cost elements throughout the entire project life cycle. A preliminary estimate of TCO will emerge during Process Step 1: Identify Needs; a more robust TCO estimate will be conducted during the Update/Refine Total Cost of Ownership (TCO) Analysis topic of the Prepare Project task of Process Step 2: Evaluate Sources.

When using TCO analysis for budget-planning purposes, it is important to keep in mind that the cost values are based on historical costs, planned operating factors, and cost projections adjusted for future conditions (using mail volume projections, inflation factors, and other adjustment tools).

When using TCO analysis to make purchase decisions, it should be noted that the analysis focuses on cost exclusively. There are three major implications:

- Qualitative factors, such as organizational need and product performance, must be examined closely. Planned organizational growth, reductions, and skill changes should be identified and factored into the cost models, as should product performance,

- which is a direct driver of many other factors such as labor, materials, output, and liability.
- TCO excludes business benefits other than cost savings. However, identification of Client goals and strategies will clarify these benefits and their relative value. Concerns like environmental cleanliness can drive costs up, but recognition and incorporation of that cost can be reasonably quantified and included in the TCO model. This inclusion has the benefit of ensuring that decision relationships are understood and supplier actions are identified.
  - The cost model(s) should contain considerations for performance, speed, and reliability associated with each of the life-cycle cost elements illustrated in Figure 1.4. For example:
    - Purchase costs should reflect a short requisition lead time and conformance with Client requirements.
    - Operating costs should account for the swift and dependable execution of the product or service.
    - Training costs should reflect timely and relevant training, given the customer service level under the contract.
    - Maintenance costs should anticipate quick responses to problems and minimization of return rates, damage rates, rework rates, etc.
    - Warehousing and distribution costs should reflect fast and accurate transportation to destinations and a high order-fulfillment rate.
    - Environmental costs should account for prompt and responsible treatment of environmental standards.
    - Salvage value should account for timely asset disposal and realistic recapture of value.

While the TCO analysis is a valuable tool for decision support on a wide range of purchases, it is most applicable to strategic purchases (with a focus on continuous improvement) and to critical projects (with an emphasis on life-cycle cost). The TCO analysis can be used to compare costs incurred under various scenarios and to assist the selection of the most cost-effective approach to obtain the desired product or service.

The basic process for developing a preliminary TCO estimate includes:

1. Identify major TCO cost elements that are applicable to the life-cycle of the product or service.
2. Design cost models that estimate each cost element.
3. Calculate the preliminary TCO, using results from the cost model(s).

Figure 1.4  
**Life-Cycle Cost Elements**

<b>Life-cycle cost elements:</b>	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>
Purchase costs			
Operating costs			
Training costs			
Maintenance costs			
Warehousing and distribution costs			
Environmental costs			
Salvage value			

These cost elements are defined as:

- Purchase costs — purchase price of a product or service
- Operating costs — costs of operating the product or service
- Training costs — costs of training users on the use of the product or service
- Maintenance costs — costs of maintaining the product or supporting the service
- Warehousing and distribution costs — costs of storing and distributing the product
- Environmental costs — costs of maintaining the product or service to environmentally friendly standards
- Salvage value (or the net salvage value) — the market value of an asset less the costs associated with its disposal

## **Design Cost Model(s)**

Cost models exist to estimate each of the cost elements in the TCO equation. The Distribution Cost Analysis Tool (DCAT) Model, for example, is a cost estimation tool that can be used to evaluate post-purchase warehousing and distribution costs. The Pricing Analyst will work with the cross-functional representatives to determine the appropriate cost model(s) to use and perform the analysis.

## **Calculate the Preliminary TCO**

Estimates of each of the cost elements in the product or service life cycle will feed into an equation that calculates the preliminary TCO. Not all of the cost elements in the standard TCO equation will necessarily be relevant to a given product or service. For example, most services do not incur any warehousing and distribution cost, which means “W” will be equal to zero in the resulting TCO calculation.

The following formula is a simplified approach to calculating TCO:

$$\text{TCO} = \text{P} + \text{Present Value of (O + T + M + W + E - S)}$$

Where:

P = Purchase costs

O = Operating costs

T = Training costs

M = Maintenance costs

W = Warehousing and distribution costs

E = Environmental costs

S = Salvage value

When evaluating competing alternatives, the scenario with the lowest TCO will be the best choice from a cost standpoint, subject to further strategic and Client evaluations.

## Other Topics Considered

Develop Logistics Support Strategy topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs.

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Evaluate and Analyze Actual Total Cost of Ownership (TCO) topic, Investment Recovery task, Process Step 6: End of Life

## Identify Cost Reduction Levers

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Cost reduction levers lower the total cost of a purchase. It is imperative to identify them during the Conceptualize Need task to ensure that cost reduction levers are implemented. These levers will aid in the creation of a more effective, efficient, and innovative supply chain process.

Cost reductions can be attained through supplier consolidation (e.g., leveraging volume and choosing “best suppliers”), continual improvement (e.g., improving operational efficiencies, changing usage patterns, and eliminating inventories), and innovations. Analyzing the preliminary total cost of ownership (TCO) and then performing in-depth analysis of the relevant cost component area(s) will lead to identification of the appropriate cost reduction levers. Additional information on cost avoidance and SCM Impact can be found in the Formulate Project Budget and Request Funding topic of the Prepare Project task of Process Step 2: Evaluate Sources.

The factors involved in identifying cost reduction levers include:

- Determine possible levers
- Develop preliminary TCO

- Perform relevant cost component area(s) analysis

### **Determine Possible Levers**

The lever(s) selected should be the most effective and nondisruptive in reducing costs for the particular need. Examples of levers include:

- Address learning curves
- Consortium buying
- Demand management
- Distribution alternatives
- E-commerce and technology possibilities
- Equipment availability
- Innovations
- Inventory reduction
- Lead-time and cycle-time reduction
- Partnering, forming alliances with suppliers
- Reliability and maintainability
- Supplier consolidation
- Substitutes
- Sourcing methods
- Standardization

### **Develop Preliminary Total Cost of Ownership (TCO)**

Once the preliminary cost of the need is defined, opportunities for improvement can be identified.

$$\text{TCO} = \text{P} + \text{Present Value of } (\text{O} + \text{T} + \text{M} + \text{W} + \text{E} - \text{S})$$

Where:

P = Purchase costs

O = Operating costs

T = Training costs

M = Maintenance costs

W = Warehousing and distribution costs

E = Environmental costs

S = Salvage value

TCO is broken down by its component costs, which provide a basis for prioritizing improvement areas. For example, if a major portion of the TCO is the purchase of the need, sourcing or substitution may be the lever implemented to reduce costs. If warehousing is a major cost driver, reducing cycle time may be the most effective lever to implement cost reductions. Additional discussions of TCO can be found in the Develop Preliminary Total Cost of Ownership (TCO) Estimate topic of the Conceptualize Need task of Process Step 1: Identify Needs; the Update/Refine Total Cost of Ownership

(TCO) Analysis topic of the Prepare Project task of Process Step 2: Evaluate Sources; and the Evaluate and Analyze Actual Total Cost of Ownership (TCO) topic of the Investment Recovery task of Process Step 6: End of Life.

## **Example of Relevant Cost Component Areas Analysis**

Lowering the purchase cost can be achieved by performing a market analysis. The analysis helps to illustrate:

- Trends
- Competitive frameworks
- Substitutes
- Possible suppliers
- Strategies for success

A relevant cost component areas analysis can include:

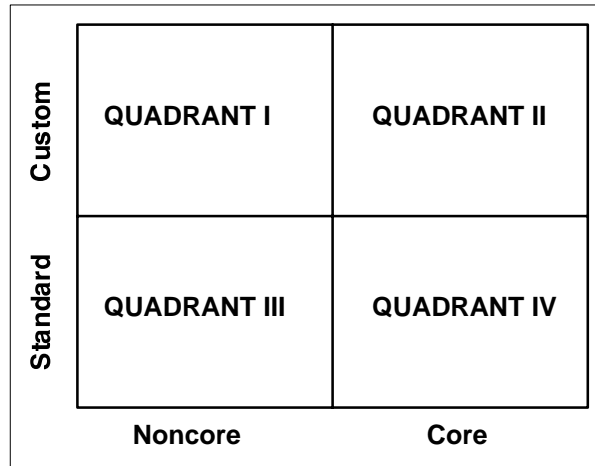
- Market cycle studies and/or business cycles studies
- Early supplier involvement
- Products or services examination from multiple perspectives
- Porter's 5 Forces
- SWOT Analysis

Additional information on conducting early supplier involvement can be found in the Early Supplier Involvement topic of the Conceptualize Need task of Process Step 1: Identify Needs.

## **Quadrant Approach**

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Some levers are not quadrant-specific, such as reduction of lead time and cycle time. Other cost reduction options may be dependent on the quadrant into which the need falls, as illustrated in Figure 1.5:

Figure 1.5  
**Quadrant Approach**



### **Quadrant I: Custom/Noncore Purchase**

Possible levers will focus on examining other marketplace alternatives and securing the lowest total cost. A lever may include outsourcing or using the organization's own resources.

### **Quadrant II: Custom/Core Purchase**

Possible levers will focus on continual improvements and innovations. Partnering with suppliers may be a lever.

### **Quadrant III: Standard/Noncore Purchase**

Possible levers will focus on attaining the lowest total cost and the simplest access and usage process. Vendor-managed inventory, which reduces inventory and the chance an item will run out of stock, may be a lever.

### **Quadrant IV: Standard/Core Purchase**

Possible levers will focus on achieving innovations and cost reductions. A lever may be optimizing order quantity.

## **Other Topics Considered**

Develop Preliminary Total Cost of Ownership (TCO) Estimate topic,  
 Conceptualize Need task, Process Step 1: Identify Needs

Involve Suppliers Early topic, Conceptualize Need task, Process Step 1:  
 Identify Needs

Develop Demand Management Strategy topic, Conceptualize Need task,  
 Process Step 1: Identify Needs

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project  
 task, Process Step 2: Evaluate Sources



Formulate Project Budget and Request Funding topic, Prepare Project task,  
Process Step 2: Evaluate Sources

Evaluate and Analyze Actual Total Cost of Ownership (TCO) topic,  
Investment Recovery task, Process Step 6: End of Life

## Develop Demand Management Strategy

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Demand management is the function of recognizing and managing all organizational demand for products or services. Developing a demand management strategy optimizes the organization's ability to make the supply chain management (SCM) process more effective and efficient and is intended to bring demand and supply into convergence. The level of strategy and its complexity will vary depending on the purchase, but should reflect the determination of whether existing assets within the Postal Service will meet the identified need. Category Management Centers (CMCs) must continually work with their clients to reduce both the types and quantities of goods and services that they purchase to reduce costs on existing and future contracts. Excess is the first source of supply.

When developing a demand management strategy, the preliminary focus must be on cost reduction, revenue enhancement, and streamlining operations. Once these issues are addressed, a demand management strategy can be developed by examining the following topics:

- Independent and dependent demand analysis
- Internal and external factor analysis
- Usage and product trends
- Inventory management
- Forecasting

### Independent and Dependent Demand

Demand is independent if it is unrelated to demand for any other product or service. Demand is dependent if it is derived from the demand for another product or service. Independent demand needs to be forecast; however, requirements for dependent demand are calculated from the independent items. A given inventory item may have both dependent and independent demand at any given time. For example, a part may simultaneously be the component of an assembly and sold as a service part.

### Internal and External Factors

It is not possible to recognize all the demand drivers or their effect on demand; below are some of the major factors:

- External factors:
  - Market and economic conditions (e.g., strikes, recessions, new advances in technology, or present and future expectations of land value and interest rates)

- Competitor actions (e.g., new products or services)
- Regulations (e.g., EPA)
- Seasonality (e.g., weather and holidays)
- Trends (e.g., market and consumer)
- Internal factors:
  - Maintenance concepts
  - Pricing strategies
  - Product change or innovation
  - Changes in usage factors
  - Promotions and advertising for products or services

## Usage and Product Trends

The demand management strategy should be based on the continual examination of usage and product trends. Market demand will determine the price, quantity, and quality of the need. A better price can be negotiated with suppliers through economies of scale (the increase in efficiency when the number of goods or services being produced increases), if demand for the need is comparatively high. The purchase price of the need will have to be lower than the value it creates. The level of quality of the need will dictate the specifications and requirements passed on to the supplier. The specifications and requirements will affect the need's price and delivery time. Lastly, projected product usage factors, reallocation of products between facilities, and any changes in the maintenance concept(s) will impact the demand patterns.

## Inventory Management

A particular inventory type will be selected based on the particular need. Examples of inventory types include:

- Insurance items — inventory stockpiled in anticipation of future demand, such as internal and external factors like seasonality or economic conditions; also covers end-of-life requirements when a manufacturer or industry will no longer be producing the product.
- Safety stock — fluctuation inventory that covers unpredictable fluctuations in demand or lead time.
- Economic order quantities — lot-size inventory created when purchases are greater than needed; takes advantage of quantity discounts, reduced shipping costs, and opportunities to make purchases at the same rate as usage.
- Other examples — transportation; hedging; and maintenance, repair, and overhaul inventories.

Operational availability requirements, maintenance concepts, demand patterns (location, quantity, and frequency), and distribution options will determine how inventory is positioned. Secondary considerations for

positioning include type of good stored, any special handling requirements, and the cost of the product.

## Forecasting

Forecasting is used to estimate the conditions that will exist over a future period. There are long-, medium-, and short-term forecasts:

- The long-term, strategic business forecast focuses on the overall market. The level of detail is not in depth, and it provides for long-range planning, with an outlook that spans years.
- The medium-term, tactical forecast accounts for budgets, market planning, long lead time, purchase items, and inventory levels. The midrange outlook is for 12–26 months.
- The operational forecast is for the short term. The perspective is of individual products and services, and the outlook is on a monthly or quarterly basis.

Historical data are widely used to forecast, based on the assumption that what has happened in the past will happen again in the future. Similarly, demand from January can be used to forecast demand in February; if it is assumed that demand varies little from month to month. This assumption is realistic if demand is seasonal and trends vary nominally; however, such forecasts do not take into account random fluctuation. Common forecasting techniques that average historical demand, including moving averages, exponential smoothing, and seasonal forecasts, diminish some effects of random variation and, in combination with other techniques, are used to establish replenishment and repair plans.

## Conduct Market Research and Benchmarking Analysis

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### Market Research

Market research is the continuous process of gathering data on product and service characteristics, suppliers' capabilities, and the business practices that surround the purchase and use of products and services. Market research is an essential component in the determination of whether to acquire or manufacture a product or service and can be used to:

- Determine elements of requirements
- Evaluate price realism and cost realism
- Shape the commodity strategy
- Develop the support strategy, the terms and conditions included in the contract, and the proposal evaluation factors used for source selection
- Evaluate innovations/trends in the market that will offer savings or impact total cost of ownership (TCO)

Market research and benchmarking analysis differ from issuing and analyzing responses to a Request for Information (RFI), which is covered in the Develop, Issue, and Analyze Responses from Request for Information (RFI) topic in Process Step 1: Identify Needs. There are two types of market research: primary and secondary. Primary research attempts to collect original information, usually through focus groups, surveys, field tests, interviews, or observation, and provides a direct understanding of the target market. Secondary research leverages previously collected information, often in the form of demographic information, prior surveys completed by others, industry trade information, reports and studies, publications, and other preexisting media. Primary research allows the organization to customize the study, but is also more complex, time consuming, and expensive than secondary research. Secondary research requires fewer resources than primary research; however, it tends to produce generalized results. An accurate analysis of the target market often requires use of both methods. Figure 1.6 provides sample market research activities and their intended purpose.

Figure 1.6

**Sample Market Research Activities**

<b>Activity</b>	<b>Purpose</b>
Hold industry briefings or presolicitation conferences (primary research)	Discuss needs and obtain recommendations for request for proposals (RFP)
Attend conferences, and research commercially available products, industry trends, product availability, reliability, and prices (primary and secondary research)	Assess whether commercial products and services meet (or are adaptable to) Postal Service needs
Test and evaluate commercially available products in a Postal Service operating environment, and collect reliable performance data (primary research)	Determine whether modifications are necessary, and develop operational cost information
Analyze the purchase history of an item or service (secondary research)	Determine the level of competition, prices, and performance results

**Benchmarking Analysis**

Benchmarking Analysis is a specific type of market research that allows organizations to compare their existing performance against others and adopt improvements that fit their overall approach to continuous improvement and culture.

Many types of benchmarking exist; the most commonly recognized are:

- **Process** — evaluates specific business processes (e.g., purchase planning, e-procurement, service delivery). Process maps are used to facilitate benchmarking.
- **Performance** — compares product and service as a way to assess the organization's competitive position against same-sector peers. Focuses on costs, technical quality, ancillary service features, and performance characteristics (also called competitive benchmarking).

- Strategic — seeks to evaluate the organization's strategic maturity against others across various sectors. Focuses on general approach to the development and management of core competencies, innovations, and change strategies.

Benchmarking analyses often rely on both quantitative and qualitative measures to generate meaningful results. Quantitative analysis can provide metric-based outcomes, while qualitative comparisons often reveal best practices. The benchmarking process usually encompasses four steps:

1. Planning
2. Analysis
3. Action
4. Review

### **Step 1: Planning**

- Determine the broad business process and tasks to benchmark
- Identify the resources required for the study
- Confirm the key activity performance measures or indicators
- Document the existing process for conducting the activity
- Identify appropriate reference models as a starting point for your assessment

### **Step 2: Analysis**

- Collect information to identify the scope for improvement
- Compare the existing process with that of appropriate reference models to identify differences and innovations
- Agree on expected targets for improvement

### **Step 3: Action**

- Communicate the results of the study to key stakeholders
- Develop an improvement plan to implement changes
- Implement the improvement plan, monitoring progress and reviewing as necessary

### **Step 4: Review**

- Review performance when the changes have been implemented; identify and rectify bottlenecks
- Communicate the results of the implemented changes
- Schedule future benchmarking activities to continue the improvement process

## **Benchmarking Benefits**

Organizations that successfully utilize benchmarking report that the associated costs are repaid at least tenfold. Benchmarking can be used to help identify not only which processes to improve but also the gaps between

existing processes and the best practices of other organizations. It also supplements a number of performance improvement techniques, such as business analysis and the redesign of business processes.

## Define Requirements

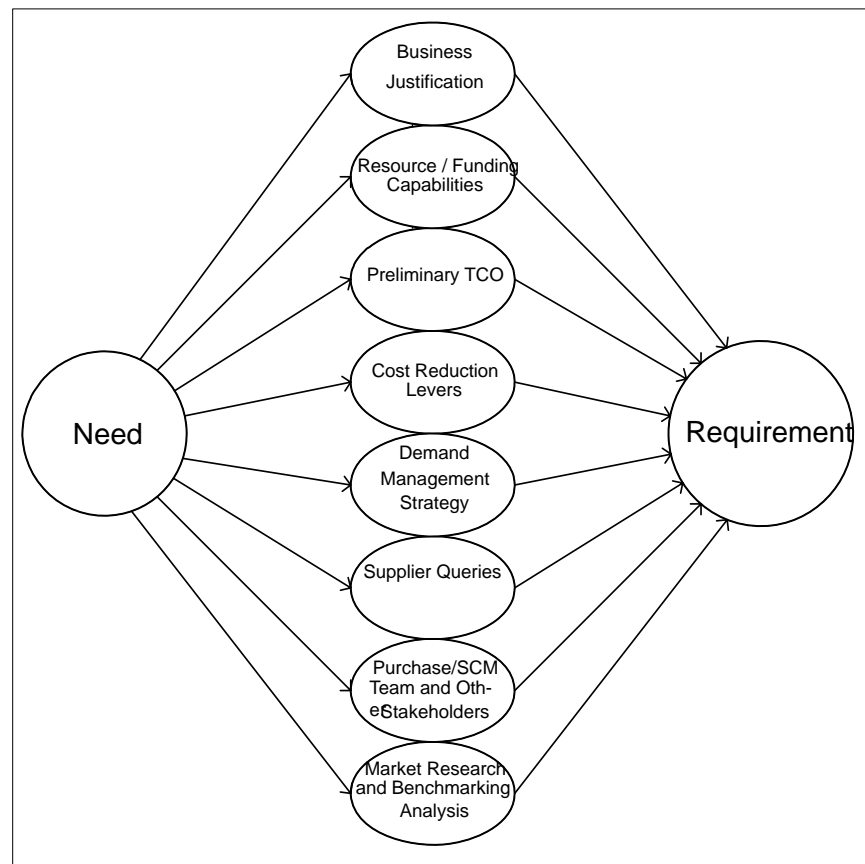
Requirements form the basis for the entire supply chain process. They provide the necessary detail to understand what is required and to develop a solution to meet the need. If there is a buy decision, the requirements contribute to the specification, statement of objectives (SOO), or statement of work (SOW), as well as to the evaluation of suppliers.

The complexity of a need will determine the extent to which requirements must be defined. For example, buying a single stapler does not require a formal requirement definition, but the purchase of new automation equipment for a facility will require detailed requirement definition.

### Methodologies

Figure 1.7 illustrates the methodologies that transform a need into a requirement. The requirement begins to be defined by drawing on the outputs from these methodologies.

Figure 1.7  
Requirement Inputs Diagram



## Determine Requirements

There are several types of requirements:

- Quality requirements
- Delivery requirements
- Process requirements
- Pricing requirements
- Volume requirements
- Technical requirements
- Location requirements
- Marketing requirements
- Frequency requirements
- Lead-time requirements

## Requirement Specifications

The requirement comprises specifications that are used as its description, including:

- Performance specification (what the product/service is required to do)
- Functional specification (*what* is to be achieved, rather than *how* it will be done)
- Brand or trade names
- Samples
- Market grades
- Qualified products
- Commercial standards
- Design specifications
- Engineering drawings
- Material and method of manufacture
- Resources
- Warranty support

Specifications should be clear and nonrestrictive. Lack of clarity can be misleading and result in poor proposals or a more expensive solution than is necessary. To enhance competition and invite innovation, specifications should be nonrestrictive, mirror what is in the market, and, whenever possible, recommend purchasing commercially.

## Analyze State of Technology

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Analyzing the state of technology is the examination of the condition of existing technology in the Postal Service and externally in the market. It determines whether the technology can be leveraged from within or needs to

be purchased externally. Information technology (IT) is most relevant to this discussion, but the IT needs of other functional areas are also addressed.

Technology is complex, and a specialized knowledge of technology in the applicable area is required. Selecting the correct technology requires an in-depth understanding of the Postal Service's business objectives, products, and the probable evolution of technology. The product or solution must be evaluated on its ability to integrate with other internally developed or third-party tools. Whether the technology can be integrated with the current environment, including legacy software, hardware, and operating systems, must be determined before selection.

Analysis of technology is conducted on both the market and the specific need. Once a technology need is identified, the following ordered preference for fulfillment is considered:

- Leverage existing assets/capabilities
- Buy or purchase a commercial solution
- Make or build a custom solution

## **Analysis of Technology**

The Purchase/SCM Team performs two types of analysis: a general analysis of technology and a specific analysis of available products. The general analysis examines general market and technology trends. The analysis of the specific need helps select the appropriate method for purchasing and, if a buy decision is made, the appropriate suppliers.

Sources for the analysis include:

- Books (regarding networks, operating systems, enterprise, and certifications)
- Subject matter experts from the Postal Service, other public agencies, and private industry
- The Internet (search engines and websites)
- Journals
- Trade magazines
- Marketplace
- Demonstrations

Examples of the different types of information available from suppliers include:

- Webcasts — industry experts demonstrate, discuss, and answer questions about their latest software and solutions
- Seminars and conferences — provide insight to businesses and show how technology enhances enterprises
- Technical chat rooms
- Company-specific training classes or technical education — events that cover the technology behind business solutions,



- packaged composite applications, and integration and other applications, offered as hands-on or self-paced online training
- Forums — show attendees how their businesses can adapt to, and profit from, changes in their industry
- Other events — designed to educate company members, facilitate networking among colleagues and company representatives, and influence future company product releases and direction

Market analysis can also include visits to sites, interviews with potential suppliers, and attendance at trade shows. All of these sources provide guidance in the selection of technology by providing the information useful in determining how, and with what, the Postal Service will satisfy its need.

The information that is gained through research and analysis should be collected, organized, and communicated throughout the Postal Service. Time and resources spent on analyzing technology will be reduced when completed or ongoing analysis is shared. The Postal Service uses various research services and other means to track and communicate key technology changes with the appropriate Postal Service personnel.

### **Leverage Existing Assets/Capabilities**

Before purchasing new supplies or services, the Purchase/SCM Team must consider existing assets. These are supplies, equipment, software, or services owned by the Postal Service. Information on existing assets is provided in:

- Capacity documents
- Planning documents
- Master software inventory lists
- Client hardware asset inventory system
- eBuy

Analyzing the state of technology will determine whether existing assets are feasible for the fulfillment of the need. Existing assets include:

- Reutilization of surplus materials, when economically practical
- Supplies within existing inventories
- Orders against existing contracts

### **Buy or Purchase a Commercial Solution**

The Postal Service prefers to buy commercial off-the-shelf (COTS) technology rather than make or develop its own unique, custom-designed solutions. Occasionally, however, the Postal Service needs to accommodate a unique process or nonstandard need. Whenever possible, the Purchase/SCM Team should reevaluate Client requirements to ensure conformity with existing technology and to minimize customization of COTS products and the time and expense of programming and maintenance associated with this customization.

## Make or Build a Custom Solution

The least preferred solution for the Postal Service is to make or build a technology solution. If the Postal Service does not have internal resources to develop the solution, contractors with the skills necessary to build the technology are identified. Development can cost the Postal Service extra time, money, and resources. Below are possible costs associated with the “make” option:

- Initial investigation (technical aspects, the marketplace, and future expectations of technology must be addressed)
- Technical development (including specification, hardware, firmware, and software design)
- Testing and certification (legal requirements and market demands)
- Maintaining the product (including product updates, maintenance costs, and the costs of keeping the product up-to-date with evolving technology)

## Make vs. Buy

A multitude of factors encompass the decision to make vs. buy in the technological arena. The total cost of ownership (TCO) is a primary factor, as are supplier capability and past performance, quality, and risk. Considerations that favor buying technology are suppliers' research and specialized know-how or supplier after-sale service and support, maintenance, and upgrades. Considerations that favor a decision to make a technological solution to meet a Client or IT need are protection of Postal Service intellectual property, or special needs for software, hardware, parts, or other components.

## Revisit/Update Resource Assessment

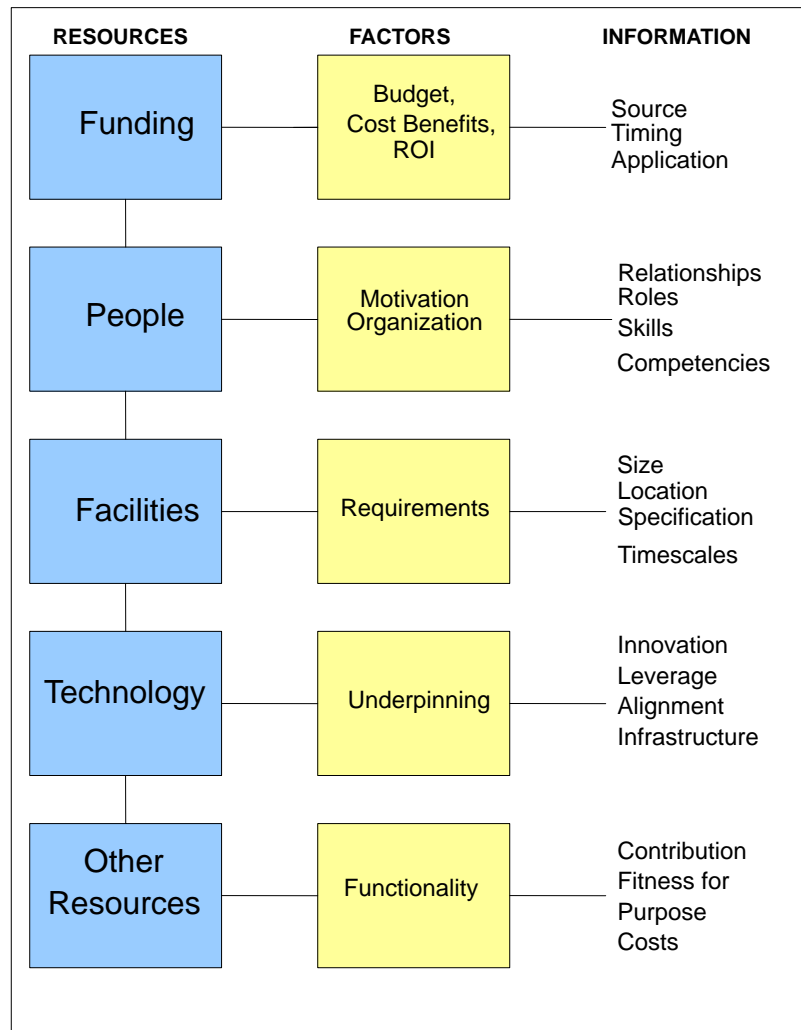
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Resource assessment is used to determine whether sufficient resources, including funding, have been assessed and budgeted for a project. Previously, resources were preliminarily assessed in the context of the Conceptualize Need task of Process Step 1: Identify Needs. In the context of the Decide on Make vs. Buy task, revisiting or updating the resource assessment confirms cost estimates in the relevant sections of the business justification document. Comparing validated costs with the original estimates is a crucial activity of this task.

During this stage, the Client must continue to evaluate the need and determine its relative impact on available resources. When planning the delivery of a new project, the Client organization needs to consider the resources required, whether they are from its own organization, a different organization in the Postal Service, Supply Management, partners, or suppliers. Purchase/SCM Teams should also be aware of the impact that these decisions and actions will have on the Client's budget. See Handbook F-66, *General Investment Policies and Procedures* for more information.

## Resource Planning

Figure 1.8  
Resource Planning Diagram



All five resource categories should be carefully analyzed during the resource planning stage because they are primary resources that help facilitate project success. Figure 1.8 summarizes the required resources, the factors to be considered when planning, and the information that will be needed for the resource in question.

### Funding

Funding is a particularly important consideration of resource planning. Factors for analysis will include budget/budget cycle, cost benefits, and return on investment (ROI). Information that will be needed include source, timing, and how the funds will be applied.

In addition to examining the budget, a cost/benefit analysis should be conducted to assess whether the initiative will have an ROI. It will then be necessary to identify all sources of funding, the timing of the funds (how

much, and when, funding is required), and how these funds are to be applied. Funding arrangements provide the basis for financial management and control throughout the project life cycle.

## Other Topics Considered

Assess Resources topic, Conceptualize Need task, Process Step 1: Identify Needs

# Develop, Issue, and Analyze Responses from Request for Information (RFI)

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A request for information (RFI) is an invitation for potential suppliers to register interest in providing a product or service. Potential suppliers submit responses that provide information about their companies and the proposed products or services to be provided to meet the requirement. This process identifies what is in the marketplace and provides an opportunity to prequalify suppliers. Unlike a request for proposals (RFP), an RFI does not imply a commitment to acquire the product or service identified in the RFI from any responding supplier.

An RFI provides the Postal Service with useful information to further assess whether a make decision is feasible and may lead to innovative solutions and a better understanding of how the requirement(s) can be met, fueling the make vs. buy decision, . If a buy decision is later chosen, the most suitable potential suppliers identified at this stage are logical sources to fill the requirement.

RFIs can be used to:

- Identify candidates with whom there are no past contracts
- Identify opportunities for supplier teaming
- Obtain goods or services with which the Postal Service has had limited experience
- Obtain general information about products, services, or suppliers
- Obtain market information when other, more efficient means are not possible

The components that make up the RFI process are its development and issuance and analysis of responses to it.

## Develop RFI

Development of the RFI is contingent on the factors surrounding the requirement. It comprises Postal Service information and questions for suppliers to answer. The following areas are addressed:

Postal Service Information:

- Postal Service background
- Scope and objectives of RFI

## USPS Supplying Practices Process Step 1: Identify Needs

- RFI process synopsis (e.g., how questions will be answered)
- Instructions to suppliers for filling out RFI (format and templates for certain information)
- Schedule of RFI
- How to submit responses
- Contact information for questions
- Other relevant information (e.g., confidentiality matters, and any necessary disclaimers or limitations of liability)

### **Issue RFI**

Because an RFI is issued when the need is for information or planning purposes, it must include Provision A-2: Solicitation for Information or Planning Purposes. RFIs may be publicized via the Government-wide Point of Entry (GPE), the single point where most government purchasing opportunities and contract awards can be accessed electronically by the public on the Internet: <http://www.fedbizopps.gov>. Publicizing is discussed in detail in the Issue Request for Proposals (RFP) and Publicize topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

### **Analyze Responses to RFI**

In addition to the specific requirement, supplier responses to a request for information should address topics such as the following:

- Company overview
- Subsidiaries or associated companies
- Affiliations/accreditations/certifications
- Market intelligence
- Competitive positioning
- Supplier capabilities
- Summary of services or products pertaining to RFI requirement
- TCO
- Cost summary
- Organizational chart, annual report, or financial information
- References and qualifications

The Purchase/SCM Team will analyze submitted responses to the RFI. Following the review of the responses, the Purchase/SCM Team may consider holding a question and answer (Q&A) session with the individual suppliers. Questions for the suppliers should be sent in advance of the Q&A session. The instructions will ensure a consistent format for all RFI responses. The Purchase/SCM Team should carefully evaluate RFI responses to determine the best solutions to fulfill the need.

## Other Issues

As noted above, an RFI is used when no firm intent to purchase has been established. Once a decision has been made to purchase a particular requirement, a request for proposals (RFP) is required. An RFP documents and fully informs potential suppliers of the Postal Service's requirements for the particular purchase, including proposal expectations and identification of best value criteria. The finalized RFP is used to generate competitive proposals from potential suppliers. Additional information on RFPs can be found in the Develop Preliminary Request for Proposals (RFP) topic of the Prepare Project task of Process Step 2: Evaluate Sources.

## Other Topics Considered

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Issue Request for Proposals (RFP) and Publicize topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Clauses & Provisions

Provision A-2: Solicitation for Information or Planning Purposes

## Manage Risks

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The purpose of risk management is to examine and control relevant risks, to ensure successful delivery of the project. It is essential that risk management begin early in the SCM process. High-value purchases and complex projects of lesser value require the preparation of a specific risk management plan and ongoing risk assessment throughout the project's entire life cycle; however, in less complex and lesser value projects, a plan to deal with risk should be an element of the Individual Purchase Plan. During Process Step 1: Identify Needs, due attention must be paid to identifying risks, their impact, and possible Postal Service response to the risks. This stage is part of the larger risk management process, which evolves throughout the supply chain, and ensures that risks are understood and mitigated to the greatest extent possible.

A risk is a potential event or future situation that may adversely affect the project. Identifiable risk factors contribute to a potential risk. If a risk occurs, there will be consequences that may significantly impact the project. For example:

- Risk factor — a new technology is being used for the first time
- Risk — adoption of the technology is more difficult than anticipated
- Consequence — the delivery of a project is late.

A risk may be caused by more than one risk factor, and, conversely, a risk factor may result in more than one risk.

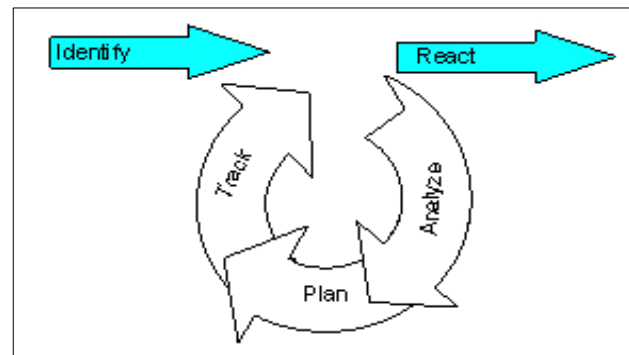
## Risk Management Process

Risk management comprises five steps:

1. Identification — search for and locate risks
2. Analysis — transform risk data into decision-making information
3. Response planning — translate risk information into executable plans and actions
4. Tracking and control — monitor risk indicators and take corrective actions
5. Reaction — implement risk actions in response to actual risk occurrence

Analysis, response planning, and tracking are performed iteratively throughout the execution of the project, as illustrated in Figure 1.9.

Figure 1.9  
**Risk Management Process**



## Benefits of Risk Taking

A certain amount of risk taking is inevitable to achieve objectives. Continuous risk management provides a disciplined environment for proactive decision making to:

- Continuously assess what can go wrong (risks)
- Determine which risks are important to deal with
- Define and implement strategies and plans to deal with those risks

Continuous risk management requires that risks be identified throughout the project, not as a one-time-only activity during project planning. Risks must be analyzed on an ongoing basis to address changing project conditions and priorities. As new risks are identified, strategies and plans to deal with them must be developed. The Client and Supply Management may make the decision to stop the project, based on an unacceptable level of risk.

## Risk Identification

Risk Identification is a systematic attempt to specify threats to the project (estimates, schedule, resource loading, etc.). By identifying known and predictable risks, the Client and Contracting Officer take the first step toward avoiding them when possible and controlling them when necessary.

While it would be impossible to anticipate the complete universe of risks, the aim is to clearly identify the 20 percent of risks that would have 80 percent of the potential impact (Pareto Principle [80/20 Rule]). The following activities are useful for clarifying and identifying risks:

- At the initial stage of risk identification, convene a brainstorming session of the Purchase/SCM Team, during which each member has an opportunity to identify a few project risks.
- Interview stakeholders responsible for ongoing programs and projects, and consider the opportunities/impact of the current activity.
- Check with suppliers regarding their plans for delivering the desired outcome.
- Discuss with all parties involved their understanding of the mission, aims and objectives, and plans for delivery of project results.
- For repeating projects, create a risk checklist that focuses on a subset of known and predictable risks.
- Ask “so what?” after each potential risk is identified, until a clear cost or consequence of the potential effects of a risk, or an issue that needs resolution, is identified. For example:
  - *Statement:* “Project duration will be greater than 36 months.”
  - *Question:* “So what?”
  - *Answer:* “Project staff may be unwilling to work on the project for all 36 months.”
  - *Question:* “So what?”
  - *Answer:* “The risk is that the project will take 10 percent more time than currently budgeted, to allow for the learning curve as new personnel join the project. There is also an issue that staff changes in mid-project are not acceptable to the Client.”

## Risk Analysis

Risk analysis involves the following major activities:

1. Evaluate the properties of a risk to determine the expected impact and probability of the risk’s occurrence. Each risk is categorized as high, medium, or low, based on the impact of the risk on the various project elements (e.g., cost, schedule, and quality).



- High risk — a major problem exists with definite, serious financial exposure and/or customer dissatisfaction. Failure to manage the risk would result in project failure. Aggressive management action is required to bring the project under control.
  - Medium risk — a significant problem currently exists that requires corrective planning. A probability exists for exceeding estimates or budgets, customer dissatisfaction, and/or limited financial exposure. Failure to manage the risk would result in degradation of the project performance. Management action is required to bring the project under control.
  - Low risk —the project is currently under control. However, existing or potential problems have been identified that will require positive management attention to maintain stability.
1. Determine the likely time frame during which the risk can be expected to occur.
  2. Determine the probability of risk occurrence. Probability is categorized as high, medium, or low, based on the likelihood that the risk will occur.
  3. Based on risk impact, probability, and time frame, determine critical risks and those of the highest priority. It is important to note that priorities change throughout project execution, and it is critical to continually review risks and prioritization.

Analysis of risk factors continues throughout the execution of the project as conditions change. Issues, changes, schedule delays, defects, and staffing anomalies are a few examples of the conditions that may arise that could affect risk.

## **Risk Response Planning**

Once a risk is identified and analyzed, risk response planning is the function of deciding what, if anything, should be done with a risk. The Purchase/SCM Team should consider the following approaches when responding to the risk:

- Acceptance — accepting the consequences of a risk occurrence without further action, but continuing to observe for increased likelihood of occurrence.
- Risk transfer — transferring some or all of the responsibility for dealing with a risk to the supplier.
- Risk reserve — deciding to use monies set aside as a risk management reserve or risk contingency reserve. As a whole, a risk reserve should be comparable to the probability of costs related to accepted risks and contingency plans that would be implemented, should the risk occur.
- Risk containment — two types of risk containment:
- Risk mitigation — taking steps to affect risk factors to lessen risk by lowering the probability of a risk occurrence or reducing its effect should it occur.

- Risk contingency planning — the development of a risk contingency plan for a particular risk or for multiple risks.

It is important to emphasize that the Postal Service will not be able to control or transfer every risk. On a high level, a risk will fall into one of these three categories, which will affect the Postal Service's ability to respond:

- Business risk — whatever affects the Postal Service's ability to meet business objectives. These risks are managed by the Postal Service and cannot be transferred.
- Service/operational risk — includes design/build/finance/operate project risk. These risks are managed by the party best placed to do so. Suppliers and Clients share detailed plans for managing risks.
- External risk — beyond your control, such as legislation, changes in marketplace, etc. Suppliers and Clients produce and maintain plans for mitigating these risks.

## Liquidated Damages

Liquidated damages are a contractual remedy the Postal Service may use when there are delays in delivery or performance. Liquidated damages are based on an estimate of daily losses that would result directly from a delay in delivery or performance. Generally, liquidated damages are included in all construction contracts.

It is important to remember that providing for liquidated damages usually increases the contract price as suppliers typically factor them into their pricing; therefore, their use should be carefully considered. Liquidated damages may not be used as a penalty for failure to deliver or perform on time. The use of liquidated damages should be included in contracts only when:

- Delivery or performance is so critical, and the failure to deliver on time or perform will result in such extensive damage in the form of additional costs or loss of potential savings, that the probable increase in contract price is warranted; and
- The amount of actual damages would be difficult or impossible to prove

The rate of liquidated damages must represent the best estimate of the actual daily damages that will result from delay in delivery or performance. A rate lower than the actual estimated rate may be used to avoid excessive price contingencies in proposals. The Contracting Officer must determine and document in each case that the rate is reasonable and not punitive. The rate should, at a minimum, cover the estimated cost of inspection and supervision for each day of delay. Whenever the Postal Service will suffer other specific damages due to a supplier's delay, the rate should also include an amount for these damages. Examples of specific damages are:

- The cost of substitute facilities
- The cost of lost workhours/productivity

- Rental of buildings or equipment
- The cost of additional inspection

If appropriate to reflect the probable damages, considering that the Postal Service may terminate for default or take other action, the assessment of liquidated damages may be in two or more increments with a declining rate as the delay continues. To prevent an unreasonable assessment of liquidated damages, the contract may also include an overall maximum dollar amount, a period of time during which liquidated damages may be assessed, or both.

Whenever liquidated damages will be assessed for a supplier's delay, the contract must include Clause 2-10: Liquidated Damages, modified as necessary.

## **Risk Tracking and Control**

Risks are reassessed every month to confirm their status. As a consequence, new risks may be identified, the impact of the existing risk may be changed, or the risk may no longer have any impact and is removed.

## **Risk Reaction**

In this step, a risk has occurred, action is taken to correct the risk, and the contingency plan is launched (if necessary). Risks are considered closed when they are no longer considered threats to the project.

When the number of risks is small on a project, the Risk Management Plan may be limited to one section of the overall project plan, without details of evaluation and prioritization.

## **Conduct Make vs. Buy Decision Analysis**

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Once the Postal Service has produced an internal cost estimate and suppliers have shared their cost estimates in response to the request for information (RFI), the Postal Service is able to determine whether to make or buy the given requirement. This decision is reached by conducting a Make vs. Buy Decision Analysis. In some cases, specifically those involving contracting out services currently performed by Postal Service bargaining unit employees, the make vs. buy decision is made following the receipt and review of proposals. Such make vs. buy decisions require coordination between the Client, Legal Counsel, Labor Relations, Supply Management (SM), and potentially the Strategic Initiatives Action Group (SIAG).

A make vs. buy decision analysis should cover both strategic and operating considerations. The strategic aspect is centered on protecting the Postal Service's competitive advantage, while the operating aspect is concerned with tactical and cost-related issues. If the strategic decision conflicts with the tactical decision, the former takes precedence over the latter.

## Strategic Considerations

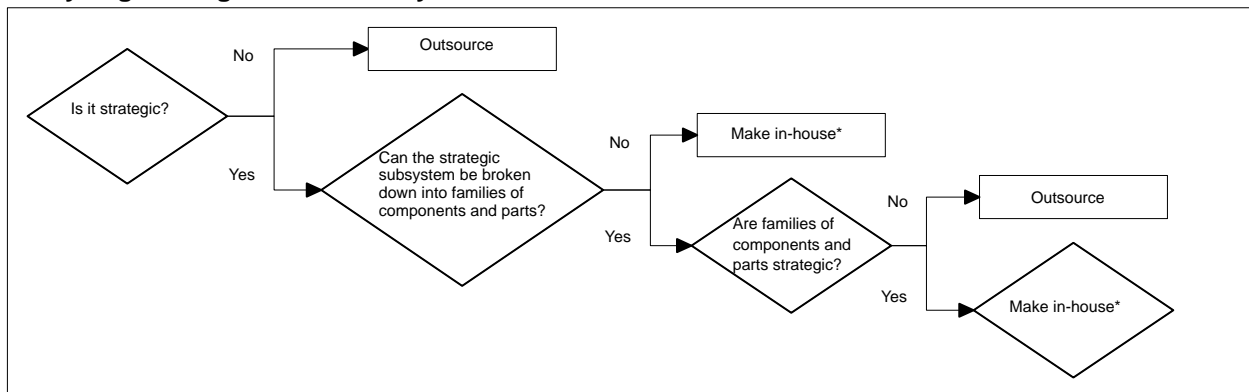
A product or service meeting the following conditions is considered strategic:

- It is critical to customer satisfaction.
- It requires specialized design and manufacturing skills or equipment, and the number of capable and reliable suppliers is extremely limited.
- It falls under existing Postal Service core competencies or within those that must be developed to fulfill future plans.

Products/services that do not meet these conditions are considered nonstrategic and should always be outsourced unless compelling tactical reasons indicate that outsourcing would compromise best value to the Postal Service.

A strategic product/service requires further analysis before one can decide whether to make or buy from a strategic standpoint. Specifically, if the strategic product/service can be broken down into families of components and parts that are also strategic, it should be made in-house. On the contrary, if it is not divisible or its components or parts are not strategic, it should be outsourced.

Figure 1.10  
Analyzing Strategic Make vs. Buy Decisions



\* Note: In some cases, it is not possible to make an item in-house in the short term. This may be the result of budget constraints, capability problems, capacity limitations, etc. In these cases, the item must be outsourced.

## Operating Considerations

The following considerations can help the Purchase/SCM Team consider relevant tactical factors affecting the make vs. buy decision:

Considerations that favor a “make decision” include:

- Cost considerations (less expensive to make)
- Desire to integrate plant operations
- Productive use of excess plant capacity to help absorb fixed overhead
- Need to exert direct control over production and ensure supply continuity

## USPS Supplying Practices Process Step 1: Identify Needs

- Need to exert direct control over quality
- Design secrecy required
- Unreliable suppliers
- Desire to maintain a stable workforce (in periods of declining sales)

Considerations that favor a “buy decision” include:

- Limited production facilities
- Limited internal labor/resources
- Cost concerns (less expensive to buy)
- Small volume requirements
- Suppliers’ research and specialized know-how
- Desire to maintain a stable workforce (in periods of rising sales)
- Desire to maintain a multiple-source policy
- Indirect managerial control considerations
- Purchasing and inventory considerations

## Cost Considerations

Cost is a crucial tactical consideration. An estimate of the cost for the requirement must be developed based on a detailed analysis of the costs expected to be generated by performing the work in-house or through a supplier. The following costs should be major elements in a make vs. buy cost estimate.

To Make:

- Delivered purchased material costs
- Direct labor costs
- Any follow-on costs stemming from quality and related problems
- Incremental inventory carrying costs
- Incremental factory overhead costs
- Incremental managerial costs
- Incremental purchasing costs
- Incremental costs of capital
- Environmental costs
- Disposal costs

To Buy:

- Purchase price of the part
- Transportation costs
- Receiving and inspection costs
- Incremental purchasing costs
- Any follow-on costs related to quality or service

## Justify Postal Service Investment

Whether the decision is to make or buy, all investment projects must be justified either as an economic opportunity or as a means of sustaining existing Postal Service operations into the future by correcting or eliminating a problem. The Decision Analysis Report (DAR) is a document prepared by the requiring organization to recommend an investment for approval, and it is used for decisions regarding high-dollar-value projects. For sample DARs and specific DAR requirements, including dollar-value thresholds for investments requiring Headquarters approvals and DARs, refer to Handbook F-66, *General Investment Policies and Procedures*.

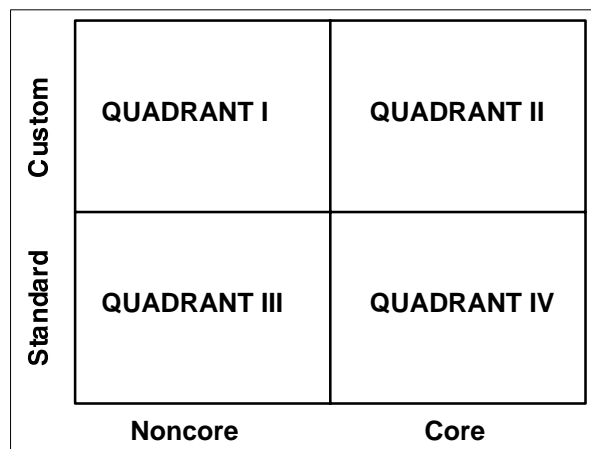
The Justification of Expenditure (JOE) is a one-page document used to request approval for small field projects that do not require a more formal DAR. Although not required, Headquarters organizational units may use JOEs to justify small investment expenditures within their approval authority. For a more detailed discussion of JOEs, including samples in the recommended format, refer to Handbook F-66C, *Field Investment Policies and Procedures*.

All investment projects that require Headquarters review and approval must follow the instructions detailed in Handbook F-66, including validation, before being forwarded to the appropriate official for final approval. Capital items that are centrally purchased by Headquarters, but are locally funded (such as administrative or non-mail-hauling vehicles), must be justified by the responsible Headquarters organization. This also applies to other nationally mandated programs.

## Quadrant Approach

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service's core competencies (noncore versus core) and complexities (standard versus custom). Attributes of certain quadrants may cause a propensity for outsourcing over making in-house or vice versa.

Figure 1.11  
**Four Quadrants**



### **Quadrant I: Noncore/Customized Purchases**

Products and services in this quadrant require customized attention, but do not provide direct value to the end Client. A potential opportunity exists to take advantage of suppliers' specialized knowledge and research.

### **Quadrant II: Core/Customized Purchases**

Products and services in this quadrant are highly unique and specialized. External suppliers may face challenges in meeting quality specifications on a consistent basis; making the item in-house would seem to assure quality and lower risk. However, strategic concerns and resource limitations may justify buying from established and innovative suppliers. Further cost/benefit analysis is recommended to finalize the make vs. buy decision for products and services of Quadrant II.

### **Quadrant III: Noncore/Standard Purchases**

Products and services in Quadrant III are fairly standardized and available from a wide pool of suppliers. Suppliers may have a more effective and reliable process for producing the requirement than the Postal Service.

### **Quadrant IV: Core/Standard Purchases**

Products and services in this quadrant are central to Postal Service operations and fairly uniform in their makeup. They often have significant impact on reducing cycle time, a key strategy for gaining competitive advantage. The impact on cycle time and business continuity is an important consideration of the make vs. buy decision. Further cost/benefit analysis is recommended to finalize the make vs. buy decision for products and services of Quadrant IV.

## **Analyze Unsolicited Proposals**

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An unsolicited proposal is the offer to sell to the Postal Service the rights to ideas, concepts, products, processes, or technology. It is considered unsolicited because it is not submitted in response to a solicitation, request for proposals (RFP), or any other Postal Service-initiated solicitation or program.

Unsolicited proposals must include enough technical and cost information to allow an effective initial evaluation of what is being proposed and its potential benefits to the Postal Service. Unsolicited proposals are only accepted for initial evaluation when they do not contain confidential or proprietary information not protected by copyright or patent. Therefore, a signed copy of the Confidential Disclosure Disclaimer must be included when submitting the proposal to certify that it does not contain any confidential or proprietary information not protected by copyright or patent. Unsolicited proposals that do not contain a signed copy of the disclaimer will be returned to the submitter unreviewed.

## Receipt of Unsolicited Proposals

Each Supply Management (SM) Portfolio has a designated Unsolicited Proposal Coordinator. After the unsolicited proposal undergoes an initial consideration, this individual will respond to the submitter, generally within seven business days of receipt of the proposal, advising that its unsolicited proposal(s) was received and the date of such receipt. When appropriate, the letter will include the specific person and/or organization that the proposal was forwarded to for review. The letter should state that the submitter will be notified of the results of the review as soon as it is completed.

Supply Management serves as the primary clearinghouse or facilitator until a decision is made whether to pursue an unsolicited proposal. The Unsolicited Proposal Coordinator will follow up if proposal reviews are not completed in a reasonable time, generally 30 calendar days. A follow-up letter to the submitter will be issued providing an update on the status of the proposal.

Electronic records will be maintained by the Unsolicited Proposal Coordinator for each unsolicited proposal received and will include:

- Date received
- Name of the submitter and the basic idea of the proposal
- Whether the associated correspondence was Postmaster General (PMG)-/Vice President (VP)-controlled (assigned control #)
- Reviewing organization sent to for review and when
- Review due date (generally 30 calendar days)
- Any subsequent follow-up correspondence
- Disposition and date of notification to the submitter of the disposition

## The Unsolicited Proposal Program Process

The Unsolicited Proposal Program (UPP) ensures that the business interests of both parties are fully protected and acknowledged. The UPP process has been developed based on three steps:

- Initial consideration
- Discussion and evaluation
- Acceptance or denial

## Initial Consideration

A preliminary review of each unsolicited proposal is performed to determine whether:

- It meets the definition of an unsolicited proposal and is not a marketing initiative.
- It offers potential benefit to the business and competitive objectives of the Postal Service and is not already under consideration by the organization.



- It does not contain confidential or proprietary information not protected by a copyright or patent.

Unsolicited proposals must offer innovative ideas and concepts related to a Postal Service line of business. Submittals that meet this standard are forwarded to the organization within the Postal Service that is responsible for the operation potentially affected by the proposal.

If the unsolicited proposal is determined to be incomplete, the responsible Unsolicited Proposal Coordinator will send a letter to the submitter. The letter will advise that the proposal is incomplete, specify what is missing, and request the necessary information.

## **Discussion and Evaluation**

After the organization conducts its initial review, and, if the unsolicited proposal is deemed innovative and potentially beneficial to business objectives, the submitter will be asked to provide either a more complete written proposal and/or an oral presentation to a Purchase/SCM Team within the Postal Service. Confidential or proprietary information should not be presented at this stage of review.

If a more thorough evaluation of the proposal can be gained only by the review of confidential or proprietary information, the Postal Service will consider entering into a Nondisclosure Agreement (NDA) with the submitter which ensures privacy and confidentiality and the Postal Service's protection of information. NDAs are available from Legal Counsel and may not be entered into before consultation with assigned counsel.

The submitter will be notified if the Postal Service determines that the unsolicited proposal is not potentially beneficial.

## **Acceptance**

Following the discussion and evaluation stage, if the Postal Service accepts an unsolicited proposal, the Contracting Officer will start to negotiate a contract with the submitter. Terms of the contract will control rights to use the idea or concept. However, entering into discussions and negotiations does not guarantee that a contract will be entered into.

## **Denial**

The Postal Service may determine at any point in the process that further pursuit of the unsolicited proposal is not in its business interests and that both parties should discontinue further discussions. Contents of discussions, evaluations, and negotiations will not constitute any binding obligation on the part of either party until a contract is executed.

## Develop Logistics Support Strategy

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Logistics is defined as that part of the supply chain process that plans, implements, and controls the efficient, effective forward and reverse flow and storage of goods, services, and related information between the point of origin and the point of consumption to meet Client needs. Some supply chains include return processes, or the reverse flow of goods, in addition to outbound delivery (e.g., the return and replacement of reparable, packing materials, or damaged goods). Logistics planning will address these considerations.

The Postal Service encourages the practice of results-based logistics to optimize the flow of materials through the supply stream. Results-based logistics stresses speed and reliability over quantity. Because of the expense associated with managing large quantities of material, Supply Management focuses on the swift and reliable supply and maintenance of material essential to proper operation of a product or service, as opposed to managing large quantities of inventory on its own.

The Item Manager is responsible for developing, implementing, and monitoring the performance of a logistics strategy for the product(s) required by the Client. The Client and the Purchase/SCM Team will support the development of the strategy, with the Client having approval authority. While a number of Postal Service organizations, systems, and processes exist for logistics support, the common factors are:

- Operating concept, including operational availability requirements
- Product description
- Development and deployment schedules
- Maintenance concepts
- Current and projected demand patterns
- Supply concepts
- Data requirements
- End-of-life management
- Risk analysis

### Operating Concept

Logistics is required to ensure continuous support of a Client's operational needs, which are defined in the Define and Understand Client Needs, Goals, and Strategies topic of the Conceptualize Need task of Process Step 1: Identify Needs. This information should include how reliable the Client expects the product to be and how quickly it needs to be available from the time the need is identified. This information drives what types of support must be acquired, in what quantities, and where it must be positioned to meet the needs.

## **Product Description**

What the product is will also drive what type of support is required. Commodities will have unique characteristics that will influence the logistics required. For example, mail processing equipment will require major transportation to get to installation sites, trained technicians to install and maintain, tools and test equipment for diagnostics and repair, and spare components and supplies to keep the equipment operational.

## **Development and Deployment Schedules**

This factor comprises two elements — time and location. Time determines how quickly logistics solutions have to be in place and can be broken down into further elements such as research and development (R&D), production, testing, and deployment. Sufficient allocation of time for the Item Manager to perform reliability and maintainability analysis, comparative analysis with existing products or systems, and coordination of the distribution and information networks will create opportunities for major total cost of ownership (TCO) savings throughout the rest of the operational life cycle. Additional information on TCO can be found in the Develop Preliminary Total Cost of Ownership (TCO) Estimate topic of the Conceptualize Need task of Process Step 1: Identify Needs.

Location can be broken down into production and operational locations. If a supplier has multiple potential production locations, there are opportunities for reducing distribution costs by analyzing routing costs between the production locations and operational sites. For example, if a supplier has production capabilities in New Jersey, Illinois, and California and the major operational sites are on the West Coast, production in California would be encouraged to reduce transportation costs. Matching this knowledge with the expected demand patterns for replacement or sustaining products (parts or consumables) enables a distribution plan to be developed — direct from supplier or to one or more distribution facilities.

## **Maintenance Concepts**

Maintenance concepts are based on the product, its complexity, and how it will be used. The goal of the maintenance concept or strategy is to assure the operational availability specified by the Client. A wide variety of support options are available to the maintenance planners, ranging from 100 percent supplier support to 100 percent Postal Service support. Product reliability, availability, and maintainability factors will drive determinations of levels of maintenance, skill sets, staffing, diagnostic equipment, tools, parts, consumables, and quantities.

A key factor often overlooked when developing a maintenance concept is that many products also use related consumables or supplies, such as cleaning supplies and computers. Demand analysis to establish sourcing, quantities, and storage location decisions must also be performed for these products. The maintenance concept will be formalized into a maintenance plan and documented in a joint Integrated Logistics Support Plan (ILSP), in

accordance with Management Instruction AS-520-2004-10, *Integrated Logistics Support for Capital Equipment*.

## Current and Projected Demand Patterns

To determine current and projected demand patterns, two elements must be considered: the use of standardized products already in use by the Postal Service and the use of current or similar demand information as the basis for projecting future needs. The use of standardized products, already in use by the Postal Service, will allow for optimizing strategic sourcing, consolidation and synergy of demand, and simplification of ordering. The Item Manager will assure that suppliers have access to the listings of standard products for use in the development phase of any new products or equipment. Publication 112, Spares, Parts, and Equipment Catalog (SPEC) lists all stocked parts and is available to suppliers by subscription from Material Management Technical Data. If it is determined that a purchase should be made, the contract should call out the use of these items and ask for explanations if the items are not used.

The second element is using current or similar demand information as the basis for projecting future needs. Existing items may or may not be used on the new product or equipment. If they are being used, then the Item Manager will analyze whether the new product or equipment will influence the demand utilization patterns. User or maintenance data should be reviewed to understand what the demand drivers are for this item and what opportunities exist to change the drivers to reduce overall demand and TCO. For example, moving to a better-quality item may cost slightly more, but significantly reduce demand over the life of the product. Once this is done, the Item Manager must fold in the projected usage for the new product or equipment into the existing item forecasts and adjust the replenishment schedules accordingly. If the product or equipment is not in the existing catalogs, then a provisioning analysis needs to be done (see below).

A slight variation of these techniques can be used when the Postal Service does not currently supply the exact item being proposed, but has similar items being used in similar situations. In these instances, the Item Manager can use comparative analysis to extrapolate the existing demand into future projections. This can be carried one step further and consideration given to simply adding the new item and its demand to an existing strategic sourcing contract.

## Supply Concepts

From the operating and maintenance concepts, an approach can be developed on how the product or equipment can be sustained over its life cycle with parts and supplies (aka a supply concept). This concept addresses what needs to be supplied, where, when, by whom, and how. Some of the common elements are:

- Provisioning Analysis
- Consumables

- Test equipment
- Quality
- Distribution plan
- Customer service
- Process improvement
- Data requirements
- End-of-life management
- Risk analysis (the Postal Service logistics philosophy is to manage risk through speed and reliability, not quantity)

## **Provisioning Analysis**

Provisioning is the process of deciding what parts and supplies will need to be replenished, at what organizational level, and in what quantities. Some of the tools used are work breakdown structure, mean-time-between-failure (MTBF) rates, reliability analysis, and allocated supply cycle times. MTBF calculates the average amount of time a component or part takes to fail.

## **Consumables**

Consumables are often required in daily operations and to sustain the product or equipment. They may comprise such things as cleaning solutions and swabs or the paper and labels required by printers associated with the end items. Frequently, different consumables are managed by different Category Management Centers (CMCs) other than the one acquiring the item. The Client and Item Manager must assure that these other offices are brought into the process early in the development cycle and are kept fully involved throughout the life cycle. The CMC with the primary purchasing responsibility should lead the coordination effort.

## **Test Equipment**

Test equipment is equipment classified as required to diagnose product or equipment deficiencies or to test that adjustments or repairs have been successful. Test equipment can be as simple as templates or jigs or as complex as extensive computer equipment. Test equipment must also be analyzed for support requirements such as operating concepts, maintenance concepts, and individual supply concepts.

## **Quality**

Quality should be considered at the beginning of the design process. Use of suppliers with demonstrated high-quality standards and programs can greatly enhance on-time deployment and reduce the risk of early failures. Reliability and maintainability are part of the integrated logistics support plan (ILSP) developed by Maintenance, but must be sustained by the Item Manager throughout the life cycle.

## Distribution Plan

When making distribution decisions for a single item, there must be a systematic approach to determining the most cost-effective and efficient means of distribution. Three common options of warehousing and distribution are:

- Supplier provides storage and distribution, or direct vendor delivery (DVD) and manufacturer delivery — after the item is purchased, the supplier is responsible for storing the item and distributing it to the Postal Service Client destination. The costs associated with storage and distribution are built into the purchase price for the item.
- Postal Service-provided storage and distribution, through Material Distribution Centers (MDCs) or other Postal Service facilities — the Postal Service assumes responsibility for the item once it is purchased, provides storage and distribution of the item, and incurs the associated costs directly.
- Logistics service providers — third-party logistics (3PL) providers, Critical Parts Centers (CPCs), fourth-party logistics (4PL) providers, and virtual service providers. 3PLs provide logistics services under contract. 4PLs manage other logistics providers under contract. A virtual service provider assembles a number of physical logistics providers into strategic alliances that encourage sharing of their facilities to achieve the pooling of warehousing and transportation over a wide geographical area. It is possible to have a virtual purchase, a virtual transportation provider, and an integrated extended logistics enterprise hub. The Postal Service may contract with commercial logistics providers to store and/or distribute the item after purchase and then pay the providers for their services.

The storage and distribution costs associated with each of these options may differ from each other and may vary depending on the specific item. In addition, some items could potentially use a combination of these options. As a result, when purchasing an item, it is critical to evaluate the different viable storage and distribution alternatives and select the one that is most cost-effective and efficient. Cost-modeling tools are effective in this evaluation and selection. The Postal Service uses the Distribution Cost Analysis Tool (DCAT) for making storage and distribution decisions in cooperation with Postal Service and 3PL transportation providers. The DCAT is a cost estimation tool that can be used to evaluate postpurchase warehousing and distribution costs. Transportation allocations are addressed by the Transportation Solution Determination Process.

## Customer Service

Customer service is an integral part of customer satisfaction that provides the customer with the ability to know where to go with questions and to resolve problems. Customer service can be internal to the Postal Service or provided by a supplier or through a third-party provider. The Purchase/SCM Team, in

coordination with the Client, needs to assess what types of questions the customers may have, what data they may need, how to capture and resolve problem calls, and what reports need to be provided to the Item Manager and Contracting Officer. Reports should provide insight into the types and frequency of calls, as well as the supplier's performance. National Materials Customer Service provides help-desk support for parts, supplies, and equipment.

## **Process Improvement**

Process improvement is a formal process for the Postal Service and its suppliers to understand support processes, monitor execution, and identify opportunities to reduce the TCO. While this may appear to be counter to a supplier's maximization of profit, performance improvement goals and incentives should be considered to provide opportunities for shared benefits. Some examples of where improvements can be found are:

- Failure analysis — examining why failures occur and under what circumstances. Reduction or elimination of failure will increase the availability of product, reduce usage, and reduce the maintenance and replenishment costs.
- Cycle-time analysis — documenting the time processes in the supply chain and the wait time between processes. Reduction in cycle times can reduce the time in production, time to the customer, and the amount of inventory required.
- Cost analysis — understanding what drives the costs or the use of the products. Cost drivers can arise at any point in the supply chain, from raw materials through manufacture to use by the ultimate customer.

## **Data Requirements**

Certain types of information are required from the supplier and should be defined up front during this phase. Data requirements are the information needs of the Client, the Supplier, the Purchase/SCM Team, and the supporting Postal Service infrastructures. Requirements should be defined for information flows that are necessary (input and output) and the data systems that will be used to manage the product. This is especially critical for any information technology needs.

## **Investment Recovery**

Opportunities for investment recovery need to be identified for the existing product that is being replaced and, during preplanning, for when the new products are to be replaced. In the former, the issues include, but are not limited to, what to do with the displaced product, how to write off any remaining depreciation value, and how to phase out the supporting assets (parts, test equipment, supplies, etc.) while the old product is being phased out. For investment recovery of new equipment, potential disposal issues and opportunities for recouping any of the Postal Service costs need to be

identified. Additional information on investment recovery can be found in the Develop Preliminary Investment Recovery Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## **Risk Analysis**

Risk analysis should be performed in conjunction with the development of the logistics support strategy. Additional information can be found in the Manage Risks topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## **Other Topics Considered**

Develop Preliminary Total Cost of Ownership (TCO) Estimates topic, Conceptualize Need task, Process Step 1: Identify Needs

Develop Demand Management Strategy topic, Conceptualize Need task, Process Step 1: Identify Needs

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## **Update Business Justification**

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A preliminary business justification was developed during the Prepare Preliminary Business Justification for the Need topic of the Conceptualize Need task of Process Step 1: Identify Needs. It is updated during the Decide on Make vs. Buy task. This phase focuses on assessing whether the preliminary business justification was realistic. The updated business justification should be accurate and complete and must provide all the information required for senior management to make an informed investment decision.

The aims of updating a business justification are to:

- Establish that the preferred option (make vs. buy) meets the business need
- Justify the need for investment
- Produce an effective supplying strategy
- Demonstrate that the preferred solution represents value
- Confirm that the planned investment is affordable

When updating a business justification, it is necessary to build on the factors of strategic fit, achievability, affordability, business options, and commercial availability.



## **Strategic Fit**

Strategic fit explains not only how the scope of the proposed project fits within the existing business strategies of the Client organization but also the compelling case for change in terms of the existing and future operational needs of the organization. Contents within the strategic fit category help answer the questions of “why must this be done?” and “what are the objectives that this project will support?” The following should be analyzed during this stage:

- Business need — reexamine the business need that will be met by the project and further explain why the project is needed at the present time.
- Key benefits to be realized — should be realistic and align to the Client organization’s strategic objectives.
- Key risks — outline the main business risks such as continuing need for the project and changes in the business direction; service risks such as the lack of internal skills to implement the required projects; and external risks such as changes in the supplier market.
- Critical success factors — determine what will constitute success for the project.
- Key stakeholders — reexamine the key stakeholders and their contribution to the project. Identify any potential conflicts between different stakeholders and their concerns.

Detailed assessments should include reviews to ensure that objectives are specific, measurable, achievable, and realistic.

A detailed discussion of Manage Risks can be found in the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## **Achievability**

Achievability is concerned with the capability of both the Client and other Postal Service organizations to manage a successful business project. This section presents the actions that will be taken to support the achievement of intended outcomes mentioned in the preliminary business justification document. Detailed assessment within this aspect should include project planning, risk management, benefit realization, purchase strategy, and training strategy.

## **Affordability**

Affordability confirms whether the planned investment is affordable. Revision of estimates is based on information provided during the Decide on Make-vs.-Buy task, taking into account any changes in requirements for internal costs in light of different solutions.

Estimates of the projected total cost of ownership (TCO) should be considered when analyzing the topic of affordability, including:

- What are the expected costs
- When costs will be incurred
- How costs will be monitored
- Who will be responsible for each cost

## **Business Option Appraisal**

This component of the business case investigates business options for meeting the need with the highest ratio of benefits to cost, combined with appraisal of risk. Key selection criteria for a particular option include:

- Meeting the investment objectives
- Aligning with the business strategy
- Achieving a return on investment in terms of economy, efficiency, and effectiveness
- Making best use of both Client and Postal Service organizational capabilities and capacities
- Matching resource and funding capabilities

## **Commercial Availability**

Commercial availability carefully reexamines options for sources to meet the business need (i.e., partnerships, existing supplier arrangement, or recruiting new suppliers).

## **Other Topics Considered**

Prepare Preliminary Business Justification for the Need topic, Conceptualize Need task, Process Step 1: Identify Needs

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

# USPS Supplying Practices Process

## Step 2: Evaluate Sources

### Develop Purchase Plan and Best Value Parameters

A purchase plan provides the overall strategy for accomplishing and managing a purchase and is usually prepared under the general direction of the Commodity Sourcing Strategy Plan (CSSP). Information regarding the CSSP can be found in the Develop Commodity Strategy topic of the General Topics. The purchase plan helps define the type, size, and phasing of the purchase to comply with the Postal Service's Supply Management Principles, after having made a decision on the most-appropriate sourcing option. The complexity of the purchase plan depends on the nature of the purchase and its effect on the Postal Service's business and competitive objectives. A purchase plan should set forth the Postal Service's objectives and tactics to obtain the best value in a specific purchase. Purchase planning also focuses the Purchase/SCM team on aspects of best value that the Postal Service is seeking.

Developing the purchase plan is an ongoing process, and therefore the components of the purchase plan are discussed throughout Process Step 2: Evaluate Sources. The purchase plan will be considered complete when all applicable tasks of Process Step 2: Evaluate Sources have been addressed.

The purchase plan is designed as a stand-alone document that provides sufficient information so that someone unfamiliar with the project can understand what is being proposed. Depending on the nature of the purchase, the purchase plan does not need to be lengthy; a concise, clear statement of the facts, the best value the Postal Service is seeking, and rationale supporting the proposed purchase are all that is necessary.

The purchase plan should be general enough to allow some project management flexibility, but be specific enough to give coordinating and approving officials adequate information with which to base their decisions on the technical and business merits of the purchase. The plan should be viewed as a living document subject to periodical updating and revision during the course of the purchase. It should keep the Purchase/SCM Team focused on the process and to communicate the status to management and other internal stakeholders. It should also reflect the relevant Commodity Sourcing Strategy Plan (CSSP).

## Best Value

Defining best value is the process of comparing quality, prices, and availability to provide an overall benefit to the Postal Service. Obtaining best value is the goal of every Postal Service supplying activity and the basis for award of Postal Service contracts. To develop the parameters for evaluation, what will constitute best value is defined before the solicitation process. Customer satisfaction and business success are equally important for the Postal Service and will help define best value. A best value definition is made by the Purchase/SCM Team.

## Preliminary Sourcing Strategy

Determining a preliminary sourcing strategy - that is determining whether the purchase should be made through multiple sourcing, single sourcing, or sole sourcing - is another basic component of the purchase plan. The complexity of the sourcing strategy will depend on the size and scope of the purchase, but at this point in the process, the Purchase/SCM Team should make a preliminary decision regarding which type of sourcing strategy will in fact provide the Postal Service with the best value. In doing so, the Purchase/SCM Team must specifically consider whether any sourcing strategy may potentially negatively impact the Postal Service's commitment to establish a strong and competitive supplier base by putting small, minority or women-owned businesses at a competitive disadvantage. In these instances, the purchase/SCM team should gather and analyze the pertinent data supporting the preliminary sourcing strategy and make a preliminary determination that the strategy is justified. Depending on the nature of the purchase, the proper data and analysis to determine the appropriate strategy may be obtained through:

- Conducting spend analysis
- Market research
- Determining the extent of competition in the market place

Again, this is only a preliminary determination. Further analysis and justification for a particular strategy may be necessary when the Purchase/SCM Team makes its final sourcing decision, especially if the decision is to go with a single source. More information on this subject is contained in the Develop and Finalize Sourcing Strategy in Process Step 2, Evaluate Sources.

## Components of a Purchase Plan

A purchase plan should include the following:

- Purpose of the purchase
- Statement of objectives (SOO), statement of work (SOW), specifications, or product descriptions
- Item purchase history
- Special considerations (e.g., compatibility with other equipment; cost, schedule, or performance constraints; compatibility or

- conformance with Postal Service—approved items; environmental issues; or security requirements)
- Resource availability (including funding)
- Preliminary total cost of ownership (TCO) estimate
- Delivery schedule or period of performance requirements
- Risk management
- Preliminary sourcing strategy
- Contract type
- Supplier prequalification plans
- Any proposal-specific performance evaluation factors that will help determine best value
- Proposal evaluation strategy, if proposal evaluation factors will be used
- A written description of the purchase method to be used; whether the purchase will be competitive or noncompetitive (if noncompetitive, the business case for this decision must be included in the plan)
- Quality assurance plan (QAP)
- Supplier reporting requirements
- Clarification of data rights and intellectual property issues
- Life cycle support plan overview
- Supplier diversity considerations
- Postal Service property or facilities that will be furnished to the supplier
- Possible conflicts of interest

In addition to the elements above, and depending on the complexity of the purchase, the purchase plan must include a project plan that clearly identifies significant key milestones critical to the success of the purchase (e.g., publicizing the purchase, issuing the request for proposals [RFP], receiving proposals, evaluation, discussions, and any reviews or approvals needed), schedule, and resources required. The Purchase/SCM Team is responsible for developing the project plan, as well as development and finalization of the purchase plan.

## **Other Topics Considered**

Develop Commodity Strategy topic, General Practices

Develop Preliminary Total Cost of Ownership (TCO) Estimate topic, Conceptualize Need task, Process Step 1: Identify Needs

Revisit/Update Resource Assessment topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop and Finalize Sourcing Strategy topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Conduct Spend Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Develop Life Cycle Support Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Select Contract Type topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Start Request for Proposals (RFP) Development

Once a decision has been made to purchase the requirement, a request for proposals (RFP) is required. Well-written requirements documentation clarifies expectations, establishes the ground rules, and is a prerequisite to successful purchasing and contract performance. Adequate time must be allowed to ensure that the RFP properly describes the requirement and conditions, without being so prescriptive that opportunities to achieve best value are lost. A preliminary RFP will be developed at this stage; Review and Finalize Request for Proposals (RFP) activities will be conducted during the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

The Purchase/SCM Team is responsible for developing the RFP. Approval requirements are further outlined in the Review and Finalize Request for Proposals (RFP) topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. The Contracting Officer, in consultation with the Client, will determine whether to solicit prequalified suppliers and/or other suppliers. The latter is preferred when:

- A list of prequalified suppliers does not exist, and no suitable sources of supply can be identified (Prequalify Suppliers topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources)
- Sources of supply have been identified as insufficient (Develop, Issue, and Analyze Responses from RFI topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs)

When doing so will further the competitive interest of the Postal Service, the Contracting Officer may decide that overall demand for a type (or types) of goods or services makes it more effective to issue an RFP for an expanded list of requirements, rather than for a specific Client need. In these situations, the Contracting Officer and the Purchase/SCM Team should consider the

Conduct Spend Analysis and Develop and Finalize Sourcing Strategy or Production Plan topics of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

Once it has been determined that an RFP is appropriate, a statement of objectives (SOO), statement of work (SOW), specification, or product description must be developed before issuance, because these solicitation documents guide the content for the RFP.

## **Request for Proposals (RFP)**

The RFP package falls broadly into two parts: the formal and procedural requirements, which should be standardized as much as possible, and the less-formal statement of objectives (SOO), statement of work (SOW), specifications, or product descriptions that is unique to each purchase.

When drafting RFP documentation, it is important to keep cost and technical requirements separate, because these may be evaluated separately by different evaluation teams. The formal and procedural part of the RFP may also require suppliers to provide necessary cost or pricing data to support a determination of price reasonableness or cost realism.

The RFP outlines qualitative and quantitative project expectations, as well as project assumptions. These will dictate the amount of oversight and administrative management required of the Purchase/SCM Team over the life of the contract. It is therefore critical that developers of the RFP discuss its content with stakeholders during preparation to ensure that foreseeable factors affecting contract performance are addressed.

## **Statement of Objectives (SOO)**

The statement of objectives (SOO) is a brief document incorporated into the RFP that describes the basic, high-level objectives of the purchase that potential suppliers are required to support. It is used in lieu of a formal statement of work (SOW) to provide potential suppliers the flexibility to develop cost-effective solutions and the opportunity to propose innovative alternatives to meet Postal Service objectives. Because of its nature, the SOO is often used in performance-based contracting, which emphasizes *what* will be performed as opposed to *how* it will be performed.

The SOO establishes the basic needs of the Postal Service, including performance, price, and quality. The language of the SOO must be streamlined to avoid “how to” direction while clearly stating all essential operational requirements. It may be broad and flexible with respect to deliverable material and certain procedures and specifications, to the extent that it protects Client interests.

The SOO is the common basis for detailed responses submitted as a part of a proposal. The use of an SOO over an SOW should be strongly considered when appropriate, because the SOO provides the opportunity for the potential supplier to leverage its expertise in the determination of the best solution for meeting the Client's needs.

## Statement of Work (SOW)

The statement of work (SOW) should be provided in the RFP when purchasing a service, rather than an end product, because an SOW typically illustrates the characteristics of how a deliverable-oriented project will be conducted. SOWs may include specifications or product descriptions; whenever standard or modified commercial products will meet Postal Service requirements, product descriptions must be used instead of specifications. SOWs must describe the work as precisely as possible and in enough detail to allow a best value decision and effective contract performance.

An SOW typically comprises:

- Project scope
- Key assumptions
- Postal Service responsibilities
- Supplier responsibilities
- Deliverable materials
- Completion criteria
- Estimated schedule
- Additional requirements (specific to a particular offering or transaction)
- Deliverable materials guidelines
- Project procedures (such as the change control procedure, deliverable materials acceptance procedure, and escalation procedure)

After determination of award, SOWs are the standard for measuring performance and are used by both parties to determine rights and obligations under the contract.

## Performance Work Statement (PWS)

The performance-based statement of work, often referred to as the performance work statement (PWS), is the foundation of a performance-based contract. It is more broad and less precise than an SOW, and describes the effort in terms of measurable performance standards. These standards should include such elements as “what, when, where, how many, and how well” the work is to be performed.

## Specifications

Specifications are generally used when purchasing an end item rather than a service. Specifications must state the identified needs completely, considering the nature of the commodities being purchased. Whenever standard or modified commercial products will meet these requirements, product descriptions should be used instead of specifications.

Specifications may be stated in terms of:

- Function — so a variety of commodities may be considered



- Performance — including the range of acceptable characteristics or the minimum acceptable standards
- Design requirements — provide exact dimensions, materials, or characteristics

## Product Descriptions

Whenever standard or modified commercial products will meet the Client's needs, product descriptions should be used instead of specifications. Product descriptions should include:

- A common generic identification of the item
- Known acceptable brand-name products, identified by model or catalog number, and the commercial catalogs in which they appear
- The name and address of the manufacturer or distributor of each brand-name product referenced
- The application or use of the product
- A description of any required modification

## Other Topics Considered

Develop, Issue, and Analyze Responses from RFI topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Spend Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Develop and Finalize Sourcing Strategy or Production Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Update/Refine Total Cost of Ownership (TCO) Analysis

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Total cost of ownership (TCO) refers to the total cost incurred over the life cycle of an item, encompassing purchase, use, maintenance, support, and disposal. A TCO analysis exposes the hidden costs easily overlooked during budget planning or when making purchase decisions. As a result, it becomes possible to yield higher savings by optimizing relevant cost elements.

Estimating the TCO is not a one-time event; accuracy and inclusion must be maintained throughout the life cycle. Preliminary estimates are required when determining whether a project is feasible in terms of a make vs. buy decision analysis. However, preliminary estimates are the most difficult to obtain and the least accurate because very little detail is known in the early stages of the

life cycle. A preliminary estimate of TCO took place during Process Step 1: Identify Needs. A more complete TCO estimate must be calculated in Process Step 2: Evaluate Sources.

The TCO estimate should be at or below the funding objective established during Assess Resources activities of the Conceptualize Need task of Process Step 1: Identify Needs for the project to be sustainable. Otherwise, the Purchase/SCM Team should revisit the requirement and the request for proposals (RFP) documentation to make appropriate adjustments.

When adjusting cost estimates, prior activities provide valuable input for cost estimation. Prior activities may exhibit cost needs across business areas and functions and may also identify external costs that may have a bearing on the TCO. The quality and detail of the input have a significant bearing on the resultant quality of the TCO estimate.

The TCO formula laid out in Process Step 1: Identify Needs still applies:

$$TCO = P + \text{Present Value of } (O + T + M + W + E - S)$$

Where:

- A = Purchase costs; purchase price of a product or service
- O = Operating costs; costs to run a product or service
- T = Training costs; costs to train users
- M = Maintenance costs; costs to maintain the product or support the service
- W = Warehousing and distribution costs
- E = Environmental costs; costs to upgrade to environmentally friendly standards
- S = Salvage value; costs to scrap the product or service at the end of its useful life

During the Prepare Project task of Process Step 2: Evaluate Sources, it is essential to analyze and adjust the cost element against newly acquired information since the development of the preliminary TCO estimate.

Figure 2.1 summarizes the possible cost elements and potential sources:

Figure 2.1  
**Cost Elements and Potential Sources**

Cost	Source of Reference							
	RFI	Unsolicited Proposal	Item Purchase History	RFP, SOO, SOW, Specifications, and Product Description	Project Plan	Resource Assessment	Logistics Support Plan	Business Justification
Purchase	✓	✓	✓	✓	✓			
Operating	✓			✓		✓	✓	✓
Training	✓			✓		✓		✓
Maintenance	✓			✓		✓	✓	✓
Warehousing and Distribution	✓			✓			✓	✓
Environmental	✓			✓				✓
Salvage				✓			✓	✓

If the updated TCO exceeds funding objectives, the Purchase/SCM Team should adjust the requirement or obtain additional funding from the Client to ensure that objectives become financially feasible. Such analysis and adjustment should take place before proceeding to the Formulate Project Budget and Request Funding topic of the Prepare Project task of Process Step 2: Evaluate Sources.

### **Other Topics Considered**

Determine Preliminary Total Cost of Ownership (TCO) Estimate topic, Conceptualize Need task, Process Step 1: Identify Needs

Assess Resources topic, Conceptualize Need task, Process Step 1: Identify Needs

Revisit/Update Resource Assessment topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Formulate Project Budget and Request Funding topic, Prepare Project task, Process Step 2: Evaluate Sources

## **Formulate Project Budget and Request Funding**

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A project's budget evolves from the Prepare Preliminary Business Justification for the Need and the Assess Resources topics of the Conceptualize Need task of Process Step 1: Identify Needs. For project management purposes, the project manager appointed by the Client organization must analyze the budget in further detail and with greater structure to support subsequent control and reporting. Once the budget has been determined, appropriate funding is requested.

All projects follow the procedures outlined in Handbook F-66, *General Investment Policies and Procedures*. For projects specifically related to supply chain management (SCM), additional procedures must be followed (as outlined in the SCM Impact section below).

### **Budget**

A project budget is the estimated financial plan for a project for which funding is required. The budget document includes the expenses that the Client organization anticipates to incur for a specified period of time, as well as earned income that will be generated during the course of the project. Every project, no matter how simple, needs to have a budget that sets limits on how much money is spent on each activity. A budget is a pivotal tool that is used by many project teams within the Postal Service as a baseline to determine whether the project is on track. For the Client, the budget correlates directly to the success of the effort.

Budgets are usually set and managed for the duration of the project. In some cases, the Client might prefer to work with a separate budget at each stage or phase of the project.

## Request Funding

A preliminary funding assessment was conducted during the Assess Resources activities of the Conceptualize Needs task and was updated during the Revisit/Update Resource Assessment topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

A business justification, which contains a discussion of the Postal Service's business needs and an assessment of the likely costs and potential benefits of such needs, must be completed and submitted to begin the request for funding process. The business justification is developed during the Prepare Preliminary Business Justification for the Need topic of the Conceptualize Need task and revisited in the Update Business Justification topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## Supply Chain Management (SCM) Impact

For some Supply Management (SM) projects, additional steps must be taken to formulate the appropriate budget.

When the Client begins to assemble the budget, it is helpful to prepare a budget worksheet that includes the following:

- Categories of cost
- Specific types of cost
- The costs incurred each month
- Total costs per category and type
- Total spend per month
- Overall project cost

A typical SCM project budget will show the various types of expenditure and when they will be incurred, which subsequently allows the Client to track costs against the plan.

Most commonly, the Client will prepare an SCM project budget in a spreadsheet format; an example is illustrated in Figure 2.2 below:

A budget worksheet typically includes a list of all personnel and nonpersonnel expenses related to the operation of the project. The Client should anticipate costs that may be incurred once the project begins, as well as any ongoing expenses for items that will be allocated to the project. Nonpersonnel costs are considered indirect costs, which include items such as travel, equipment, office supplies, and postage.

The list of budget items and applicable calculations should be summarized on a worksheet. These worksheets can be essential to track whether the project is on budget.

In addition, a tactical opportunity form must be completed to request funding.

Figure 2.2  
Budget Worksheet

WCPM Project Budget Worksheet		Project R										17-Feb-02						
Ref	Type	Description	Monthly Breakdown												Sub-Totals	Total		
			Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov							
	<b>Staff costs</b>																	
		Project Team	30,000	60,000	60,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	30,000	30,000	555,000	555,000	
		IT Department				40,000	40,000	40,000	40,000	40,000	40,000	40,000	20,000	20,000	200,000	200,000		
		Contractors				20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	60,000	60,000		
		BU Participants	10,000	20,000	20,000	20,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000	20,000	200,000	260,000	260,000	
		Training deployment					10,000	10,000	10,000	10,000	10,000	10,000	50,000		70,000	70,000		
			40,000	80,000	80,000	135,000	145,000	155,000	195,000	245,000	245,000	245,000	70,000	70,000	1,145,000	1,145,000		
		<b>Consultancy fees</b>																
		WCPM Consultants	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	180,000	180,000		
		WCPM Expense	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	18,000	18,000		
		Change Management specialist		5,000			10,000	10,000	10,000	10,000	10,000	10,000	10,000		45,000	45,000		
			22,000	27,000	22,000	22,000	32,000	32,000	32,000	32,000	32,000	32,000	22,000		243,000	243,000		
		<b>Staff expenses</b>																
		Travel & subsistence	5,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	5,000		20,000	20,000		
			5,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	5,000		20,000	20,000		
		<b>Capital</b>																
		Development Platform		350,000											350,000	350,000		
		Production Platform											850,000		850,000	850,000		
				350,000									850,000		1,200,000	1,200,000		
		<b>Direct Costs (Non-capital)</b>																
		Development s/v		50,000											50,000	50,000		
		Development PCs		300,000											300,000	300,000		
		Users PC upgrade											100,000		100,000	100,000		
		Users PC s/v											50,000		50,000	50,000		
		Hire of training facilities		80,000									5,000		10,000	10,000		
				80,000									155,000		240,000	240,000		
		<b>Central costs</b>																
		Accommodation	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	90,000	90,000		
		HR services	4,000				4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	20,000	20,000		
			14,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	14,000	14,000	110,000	110,000		
		<b>TOTAL COSTS</b>	81,000	548,000	113,000	168,000	188,000	202,000	1,251,000	301,000	301,000	301,000	1,066,000	1,066,000	2,958,000	2,958,000		

## Other Topics Considered

Prepare Preliminary Business Justification for the Need topic, Conceptualize Need task, Process Step 1: Identify Needs

Assess Resources topic, Conceptualize Need task, Process Step 1: Identify Needs

Revisit/Update Resource Assessment topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

## Perform Value Chain Mapping and Analysis

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Recognizing value in an organization or industry is a core competency for successful management. “Value chain” is a term that denotes a process comprising a number of related steps, with each step adding value to the total outcome. Value chain analysis combines activity-based costing (ABC), key performance indicators, and maturity profiles to evaluate performance and identify areas for improvement and priority setting. Value chain analysis helps set the strategic direction for implementation of those elements of supply chain management (SCM) that are most important. For example:

- Which product categories should the Postal Service produce, improve, and/or focus on?
- Which distribution network should the Postal Service consider?
- Which improvement concepts should the Postal Service consider or set as the priority?

Four primary tasks are involved in any value chain analysis:

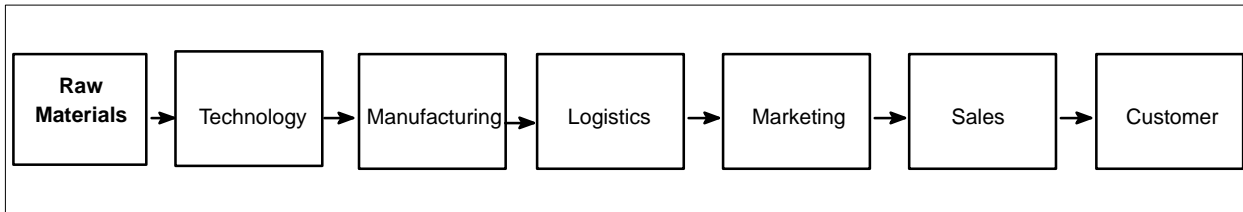
- Interview key individuals in each product category to identify and acknowledge future plans
- Baseline current costs, using ABC to provide a standard format
- Collect key performance indicators from interviews or from historical data in existing reports
- Prepare maturity scorecards for each product category/improvement concept

The analysis results drive the estimation of costs and potential savings that can be achieved if investments are made in particular processes.

When analyzing the specific activities through which organizations can create a competitive advantage, it is beneficial to view a model of the organization as a chain of value-creating activities. It is important to note that the perspective will differ based on the viewer’s position in the value chain.

Figure 2.3 illustrates a typical value chain.

Figure 2.3  
**Example of a Business Value Chain**



The value chain of a business process often begins with raw materials, to which a business adds its particular technology. This could be process technology, formula or packaging, ease of use, or some way of transforming the raw materials into useful resources of benefit to the Postal Service. Manufacturing follows technology; it adds value to technology, to generate units for sale. The units for sale proceed through a logistics step, which makes them available to the customer, either directly or indirectly through distribution networks. Marketing is the next step; it adds the value of positioning, advertising, image, and all that is necessary to enhance the features and product benefits. The sales channel is leveraged for making the units available to the customer. Finally, the customer's needs are met when they purchase the product and/or service.

The business value chain illustrates how each step adds discrete value to the business process output. Having maximum process effectiveness, then, is defined as having every task and function in the process as productive as possible. Tasks or functions are productive only if they directly add value to the outcome. For example, securing the right raw material with the right qualities and delivering it to the point of use clearly adds value to the business process. However, actually filling out a purchase order, securing approvals, transmitting requisitions, etc., creates no value to the outcome. Thus, value chain mapping is an analysis that identifies the underlying activity structure and enables better understanding of the value added (or not) by each activity. Value chain mapping enables the organization to map its value chain and recognize value sources or lack of value sources. It allows the key player in the organization to identify areas of opportunity for value optimization, as well as areas of potential risk.

### **Importance of Value Chain Mapping and Analysis**

Value chain mapping and analysis are the keys to unlocking process gridlock and achieving maximum process effectiveness. To begin, the Item Manager and the selected suppliers map the complete steps of providing a material or service, proceeding from the supplier to the end user, including the delivery and use of the material or service. What emerges is a picture of the intricate interlocking steps that span the supplier/purchaser relationship. The opportunities for change emerge from seeking three goals:

- Achieving the best/lowest total costs, including all process, transactional, and handling costs for the entire supply chain
- Pursuing the fastest cycle time performance

- Identifying and implementing “best-in-class” practices for each core activity, subprocess, or process

The main purpose of value chain mapping and analysis is to create value that exceeds the cost of providing the product or service and generates a profit margin. The benefits of implementing various SCM improvements are quantified; bottlenecks and high-/low-cost value processes are isolated. Value chain mapping and analysis also provide an assessment of competency in core areas. Key performance indicators for each category are used to identify efficiency and effectiveness.

## Constructing a Value Chain Map

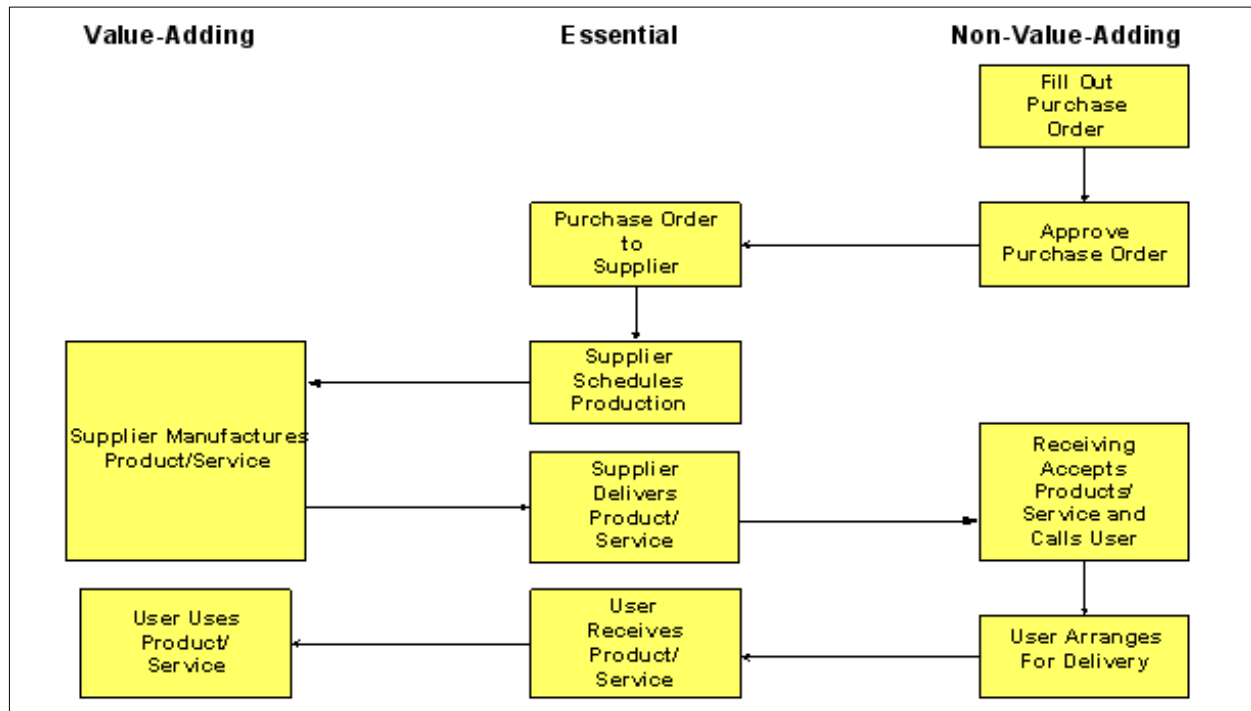
The Postal Service can create a value chain map by interviewing key individuals within each product category to construct a detailed representation of all steps involved in the process or flow of a product or service, from raw material/creation to end-user consumption/use. Current costs are then baselined, using ABC to identify the cost pools, or activity centers, in an organization. Costs are assigned to products and services based on the number of events or transactions involved in the process of providing a product or service. ABC helps managers determine which steps of a particular process are creating or eliminating value. This is similar to process flowcharts; the only difference is that each step is then categorized into three types of work.

Figure 2.4 shows ten steps in a typical purchase process. Of these ten steps, two are value-adding, four are essential, and four are non-value-adding.

- Value-adding — tasks or work steps directly required to create the product or service
- Essential — tasks or work steps necessary to support a function, but in and of themselves adding no direct value to the finished product or service
- Non-value-adding — tasks or work steps neither necessary nor required to meet cost or quality standards for a given product or service



Figure 2.4  
**Example of a Value Chain Map**



### Activity-Based Costing (ABC)

Once the value chain map of the process is finalized, the following tasks should be performed to conclude the activity-based costing (ABC) analysis:

- Identify relevant costs and highlight cost drivers — ABC goes beyond identifying and allocating supplier’s indirect costs to products and services by identifying the drivers of such costs. Examples of cost drivers are the number of orders, length of setups, specifications, engineering changes, and liaison trips required. This identification allows management to identify and implement cost-saving opportunities.
- Analyze and produce activity costs (as-is) — ABC allocates as-is costs to specific activities rather than departments or functions. These costs may include as-is labor costs, material costs, overhead, etc. Therefore, it is the activity that drives the cost, and not the reverse.
- Analyze and produce activity costs (to-be) — ABC allocates to-be costs to specific activities. To-be costs are costs that are associated with the proposed project or purchase that the Postal Service would like to invest in.
- Assess the implications of potential changes — review all costs, and determine whether the changes will have any effect on the organization.

All steps in the process must be carefully reexamined to determine whether each step is value-adding, essential, or non-value-adding. Detailed attention should be given to value-adding and essential, rather than non-value-adding activities. Non-value-adding activities should be considered for removal if it is determined that performing the activities would increase cost and time to adhere to the Client's need.

## Key Performance Indicators

Value chain mapping and analysis help identify key performance indicators (KPIs) for each category in the process. KPIs are directly measurable, process-oriented assessments of performance that drive financial results. KPIs provide continuous feedback on current performance and are measures of the effectiveness and efficiency of the primary processes being performed to serve Clients and end customers.

## Involve Suppliers in Planning

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Supplier involvement can be a key element to successful supply chain management. During the Conceptualize Need task in Process Step 1: Identify Needs, the Purchase/SCM Team assessed the supplier community's perspectives on whether and how an outcome can be achieved. Maintaining supplier involvement furthers Postal Service by reducing costs and time to market, increasing quality, and creating stronger ties with suppliers. The difference between Early Supplier Involvement (ESI) and Involving Suppliers in Planning is in focus. In the earlier practice the Postal Service sought the marketplace's insight and opinions on whether a requirement was feasible; during this task, the Postal Service seeks the marketplace's insight in obtaining best value.

Supplier involvement during planning aids the determination of the type and content of the product or service sought and how the need can best be communicated to the supplier community (statement of objectives [SOO]), statement of work [SOW]), specifications, product descriptions). The elements necessary to successfully involving suppliers during planning are:

- Identification of the right suppliers
- Communication
- Purchase/SCM Team project-level expertise
- Well-documented and understood guidelines

## Identification of the Right Suppliers

The first step in supplier involvement is identifying suppliers that can contribute to planning. Numerous methods are available for identifying the pool of possible suppliers, most of which are chosen based on the Postal Service's history with existing suppliers. Information generated from participation in early supplier involvement, responses to requests for

information (RFIs), past performance, and market research can be particularly useful to the identification.

The suppliers involved should have the most up-to-date expertise/capabilities with regard to the purchase. The depth of the suppliers' knowledge of products or services will vary, so proper identification is crucial.

## **Communication**

Care must be taken to ensure that these conversations are not perceived to be the promise of a future contract. Effective communication is required among the Purchase/SCM Team, suppliers, and any other members of the Postal Service involved. Communication is imperative for the suppliers to effectively contribute; it enables the Purchase/SCM Team to:

- Understand, collate, and analyze what is heard from suppliers
- Engage with suppliers as equals and partners, taking their thoughts and advice into consideration while retaining authority over the process as a whole
- Impart the results of supplier involvement to others clearly and effectively
- Share information among the project's participants

## **Purchase/SCM Team Project-Level Expertise**

Once capable suppliers are chosen to participate in planning activities, the goal is for them to validate the feasibility of the purchase and to generate quality, cost, and cycle time improvements. To achieve success, the Purchase/SCM Team must:

- Welcome and listen to suppliers' ideas
- Compare and contrast the information received from the suppliers to form an accurate overall impression
- Translate outcomes into requirements in a way that is meaningful
- Maintain good working relationships with other departments
- Demonstrate strong interpersonal and leadership skills
- Cultivate a working knowledge of technology and processes
- Understand existing and potential suppliers
- Understand which aspects of the requirement are variable and which are fixed

The Purchase/SCM Team's knowledge of the requirement drives supplier influence. It is crucial to understand the implications of supplier feedback, and the Purchase/SCM Team must develop an adequate level of expertise to enable an effective working relationship with suppliers and internal cross-functional team members. Members must have enough expertise to ensure that suppliers' proprietary solutions do not become central to the success of the purchase if doing so will harm the Postal Service's business and competitive interests.

As a result of involving suppliers in planning, a supplier's ideas may be incorporated into the designing, testing, engineering, manufacturing, and implementation of the purchase, and may result in inviting suppliers' engineers into the Postal Service's own engineering departments. Successful supplier involvement may lead to:

- Developing new custom items with benefits of cost, quality, functionality, and cycle times
- Developing partnerships and long-term agreements with suppliers
- Designing out any waste and unnecessary features and functions (value engineering)
- Substitutions based on what the Postal Service is currently using
- Substitutions of standard items for parts/material/services with unique specifications

## **Well-Documented and Understood Guidelines**

It is essential that the Purchase/SCM Team understands its roles and responsibilities when suppliers are involved in planning. The Purchase/SCM Team should prepare for the involvement by discussing and documenting the guidelines it will follow throughout its interaction with the supplier community, and the Team must be aware of the Postal Service's strategies and objectives when deciding what information suppliers will be provided with, and the information that will be sought from them. In addition, procedures for the interaction should be documented and well understood among the team members. The following should be considered:

- The desired outcome and its strategic importance
- Techniques for handling any initial and follow-up queries
- Awareness of precisely what suppliers can provide
- Understanding of what changes mean to project and/or program

Information from suppliers will be generated during this task, so it is also essential that all team members realize that, as a good business practice and as required by law, it is imperative to ensure that suppliers' business-sensitive or proprietary data is not divulged to a third party or to Postal Service employees outside of the Purchase/SCM Team. Additional information can be found in the Clarify Data Rights and Intellectual Property Issues topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources and the Privacy Considerations (e.g., FOIA) topic of the General Practices.

## **Other Topics Considered**

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop, Issue, and Analyze Responses from RFI topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Involve Suppliers Early topic, Conceptualize Need task, Process Step 1: Identify Needs

Start Preliminary Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Privacy Considerations topic, General Practices

## Conduct Should-Cost Analysis

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Should-cost analysis reveals the cost at which a supplier should furnish an item or service to the Postal Service, given reasonable economy and efficiency of operations. It should not be confused with the cost analysis of a proposal. Should-cost analysis focuses on continuously improving processes and practices to meet or exceed supply chain requirements. The should-cost analysis breaks down the component costs of a purchase, which give insight into the ideal cost target. The analysis also helps define purchase costs, leads to further refinement of the total cost of ownership (TCO), and helps ensure that the purchase will be conducted with sufficient information.

The following areas are applicable to conducting a should-cost analysis:

- When to conduct
- Sources for analysis
- Possible results

### When to Conduct

A should-cost analysis can be complex and time consuming. It can be conducted for large programs or individual projects and can result in substantial savings to the Postal Service. The following circumstances are conducive to conducting a should-cost analysis:

- Client or Purchase/SCM Team has little or no previous knowledge of costs
- Inadequate competition in the marketplace
- Price analysis cannot determine whether a supplier's price is fair and reasonable
- Item acquired has a history of increasing costs
- The purchase is at the point in the supply chain process when it is defined and major changes are unlikely
- Sufficient time and personnel are available to conduct the analysis
- Objective of driving cost reductions in the early stages of new product development by challenging requirements, specifications, and services

- Current contracts with suppliers where any of the above criteria is met

## Sources for Analysis

Individuals involved in a Should-Cost Analysis should include analysts from the Purchase/SCM Team, as well as representatives from Finance, Engineering, and other relevant technical specialists. They will draw from public sources that include:

- Industry benchmarks
- Commodity market movements (show historical costs of commodities so cost elements can be correctly calculated by taking into account price fluctuations)
- U.S. Census data (e.g., statistics on manufacturers; ratios such as material to labor, or labor costs based on percentage of sales)
- Dun & Bradstreet reports (list cost data such as net income based on sales percentage and supplier's SIC)
- United Nations Standard Products and Services Code (UNSPSC) (allows analysts to work backward to determine costs, based on industry data)
- Current business and financial ratios (e.g., materials to sales ratio)
- Annual reports
- Other financial information (e.g., Securities and Exchange Commission (SEC) filings for publicly traded companies, market trends, Institute for Supply Management (ISM) reports and forecasts)

These sources are combined with Client or Purchase/SCM Team estimates and any supplier-provided information. Purchase/SCM Team estimates incorporate commodity expertise and previous experience. Supplier information can consist of cost breakdowns from previous proposals, bills of materials (BOMs), and any other insights into supplier depreciation, labor, materials, and overhead. The analysts use these combined sources to determine which cost elements are out of line in comparison with industry benchmarks, as well as the total price.

## Possible Results

The should-cost analysis determines the major cost drivers (e.g., unit volume can be a cost driver when increasing the unit volume produces lower costs because fewer setups are needed). The results of the analysis may lead to:

- Exploring alternative ways of making products
- Engineers choosing the most cost-effective processes and considering how individual part features might be modified to optimize manufacturing costs
- Reducing products' costs and cycle times

- Suppliers unbundling cost elements of the purchase so cost reductions can be worked on together
- A benchmark for whether a supplier quotation/offer is reasonable

The should-cost analysis does not guarantee that costs will be reduced. Once completed, the analysis allows the Postal Service to work with suppliers to lower costs, when possible. Should-cost-analysis is relevant when like cost components are compared (e.g., comparing apples to apples). The final Postal Service specifications or terms and conditions may not allow for exact comparisons from the should-cost analysis. There may also be fluctuations in prices for components resulting from external or internal factors that will have to be accounted for when comparing costs.

### Components of a Should-Cost Analysis

As shown in Figure 2.5, the following cost components are included in a should-cost analysis:

- Sales order processing
- Inventories (e.g., raw materials, work in process, finished goods)
- Packing/assembly
- Loading
- Transportation
- Delivery to customer
- Other costs (e.g., general and administrative [G&A], customer service charges, training costs)

Figure 2.5  
**Summary of Should-Cost Model**

Cost Elements	Companies		
	ABC	XYZ	DEF
Sales order processing	\$80	\$50	\$50
Holding inventory	\$312	\$210	\$216
Packaging/assembly	\$325	\$301	\$294
Loading	\$34	\$32	\$35
Transportation	\$185	\$175	\$184
Delivery at customer	\$300	\$274	\$445
Total other costs	\$566	\$545	\$637
<b>Total costs</b>	<b>\$1,802</b>	<b>\$1,587</b>	<b>\$1,861</b>

### Other Topics Considered

Develop Preliminary Total Cost of Ownership (TCO) Estimates topic, Conceptualize Need task, Process Step 1: Identify Needs

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

## Conduct Spend Analysis

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Spend analysis is the process of collecting, refining, and analyzing spend data. The purpose of a spend analysis is to identify:

- How much the Postal Service/Client is spending
- Category of spend
- Potential savings

Spend analyses are used to support a wide range of activities, from strategic sourcing to budgeting and planning. Sufficient visibility and analysis of spending information broaden the Postal Service's ability to:

- Understand spending patterns
- Maximize buying leverage
- Execute informed sourcing and supply management decisions
- Optimize budgeting and planning
- Measure the impact of changes in cost, inflation, economic conditions, etc.

An initial estimate of how much the Client organization is spending and how much spending is planned to take place must be made before the spend analysis process can begin. This can help in the development of opportunity assessments for future projects or investments.

When spend analysis is overlooked or executed on an ad hoc basis, it can result not only in highly fragmented buying strategies that fail to fully leverage the Postal Service's purchasing power, but also in misguided purchase decisions and missed opportunities for cost savings.

### Spend Analysis Process

The historical spend analysis provides an effective tool for consolidating enterprise-wide data, establishing baselines, and anchoring strategic sourcing decisions. The five processes required for effective spend analysis are represented in Figure 2.6.

Figure 2.6

#### Spend Analysis Process



### Define and Extract Data

Spend information from the Client organization needs to be defined and gathered to begin the spend analysis process. Data collection can be a large effort, depending on the level of sophistication, usage, and degree of integration of the back-office systems.



Typical data elements required to understand the spend analysis include:

- Purchasing organization
- Supplier name and number
- Category name and code
- Commodity name and code
- Spend amount
- Quantity
- Number of purchase orders, deliveries, and invoices
- Contract number
- Purchase and invoice transaction types

Typical sources of spend data include:

- Relevant information systems (e.g., Finance, including accounts payable, supplier master file; Purchasing, such as Corporate Supply Management Open Strategy [COSMOS]; and Supply Management [SM] Operations, such as Material Distribution Inventory Management System [MDIMS])
- Purchase card management reports
- Manual systems (e.g., spreadsheets)
- Hard-copy invoices, purchase orders, and contracts
- Stakeholder interviews
- Supplier interviews

## **Review Item Purchase History**

Reviewing an item's purchase history is another sound source of previous spending data. Purchase histories contribute to the development of a clear understanding of the existing purchasing process while providing an opportunity to determine whether any steps require modification or elimination. Some benefits of reviewing purchase histories include:

- Tracking orders from point of sale to delivery
- Controlling inventory discrepancies and late orders
- Determining the extent to which suppliers can lower prices
- Improving the quality and timeliness of the delivered product or service

When reviewing item purchase histories, it is also important to consider:

- Market research
- Product description
- Order tracking

The primary objectives of reviewing the item's purchase history are:

- Determine whether to renew contract(s) with an existing supplier or switch to a new supplier

- Evaluate whether products or services that were purchased met specific Postal Service needs

Use of purchase history data is as simple as obtaining them, because the information can be found anywhere from contract files to reports of contract awards. The Purchase/SCM Team can look back at products and services purchased in the past from a given supplier, review the terms and conditions of previous contracts awarded, and compare pricing information to determine whether any changes or modifications need to be made in the future.

## Validation

The Purchase/SCM Team must ensure that data files are accurate and complete before classifying or analyzing spend information. Validation is performed by checking results with relevant stakeholders and suppliers. Comparing historical spend by purchasing organization to current year spend budgets provides an excellent check of analysis integrity. As necessary, Purchase/SCM Teams can adjust data, fill in gaps, and agree on priorities for further investigation. The ability to reconcile the spend analysis with the current budget is critical to building credibility with customers and measuring results.

## Refine and Classify

Because data are typically collected from multiple sources, they must be reviewed to eliminate duplicates. To this end, the Postal Service rationalizes and classifies spending data elements and attributes.

Typical cleansing needs that should be noted include:

- Supplier names are spelled differently and thus treated as different suppliers (e.g., GE, G.E., Gen. Elec., and General Electric)
- Parent-subsidiary relationships are not captured, and the company is treated as different companies (e.g., Time Warner vs. America Online, Inc. vs. Netscape)
- Recent mergers or acquisitions among suppliers or company name changes are not captured and thus treated separately (e.g., Southern Bell Company vs. GTE)

Tasks that are evident in this process include compiling data into database tools, categorizing purchased items, identifying gaps and inconsistencies, and producing high-level spend baseline and priority listings.

Each system containing purchasing data likely uses different data structures and nomenclature by item, commodity, category, and supplier. As a result, after the data are refined, they should then be classified to remove errors and inconsistencies and to create a standard language for useful analysis.

Examples of classification schemes include:

- Aligning the dates of spend data
- Converting to common currency

- Assigning and/or correcting common category classifications and associated commodity names
- Accounting for divested or discontinued businesses
- Accounting for future capital expenditures and other investments

This analysis requires consolidation of data from multiple sources and varied formats into structured and manageable database(s).

## Analyze Data

Data must be analyzed across each dimension (e.g., product, supplier, location). Spend data is analyzed to help understand:

- What is the baseline for the entire Postal Service or Category Management Center (CMC)?
- What proportion of spend is within the scope of the particular purchase being considered?
- Are there components of spend that can be targeted for price reduction or savings?
- What portions of spend are for direct, indirect, and capital purposes?

To make effective use of spend information, various employees within the Postal Service, from commodity managers to financial managers, must be able to access and analyze the information, using advanced reporting and analytical tools.

## Identify Opportunities

Based on validated spend analysis, the Purchase/SCM Team should compare findings against initial estimates and refine the opportunity assessment. Doing so may reveal opportunities to:

- Rationalize suppliers and items
- Consolidate spending across business units and geography
- Identify purchase price variances (PPVs)
- Improve contract compliance
- Increase diversity expenditure

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

## Perform Switching-Cost Analysis

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Switching costs are incurred when the purchasing organization changes suppliers. These costs affect the Postal Service decision of whether to consolidate suppliers as part of its sourcing strategy and will also influence supplier development activities.

The exercise of evaluating the extent of competition in the market, combined with internal research, can lead to new findings on market dynamics, such as:

- There are new suppliers who are worth investigating for relationship development.
- Another supplier is expanding its expertise or product offering to include those offered by other suppliers, and the Postal Service can exploit its volume more effectively through fewer suppliers.
- The Postal Service is sourcing similar products or services from relatively generic suppliers.
- The Postal Service is losing bargaining power with certain suppliers because of the reduced degree of competition in those markets and must consider exploring backup suppliers as contingencies should the relationship with the current supplier prove no longer fruitful.
- Another supplier is offering a new product or service that can meet Postal Service demand more efficiently than the current supplier.

While those observations need confirmation under a host of other operational and organizational factors, they warrant consideration to switch suppliers or consolidate them to reap better terms for the Postal Service. From a purchasing perspective, the Purchase/SCM Team needs to recognize how switching costs arise and how to minimize them in the purchasing process, specifically in its decision to consolidate suppliers or develop new ones.

### Types of Switching Costs

There are three common types of switching costs:

- Procedural — the loss of time and effort resulting from training, service interruptions, troubleshooting, transportation, etc.
- Financial — the loss of money, such as replacement.
- Relational — discomfort experienced by customers of a new supplier when adapting to the change (this is an unquantifiable cost that requires the estimator's best judgment). While this is an important factor, it must not be overemphasized.

These costs exist to various degrees when an organization switches suppliers. For example, when the organization switches from using an existing computer equipment provider to a new one, the change can introduce many time-consuming and costly activities, as well as personal stress.

- Procedural — the new system requires users to learn new routines, to reconfigure hardware and software to be compatible, and to reestablish communication networks with other users
- Financial — there is the cost of moving parts or changing tooling from the incumbent supplier to the new supplier
- Relational — because people tend to resist change, there will also be reluctance against adapting to the new routine

Switching costs are significant in a highly competitive market with a high level of consolidation; however, they are relatively low in a fragmented market with no dominant players. A market that consists of suppliers with specialized products and few substitutes would incur higher switching costs than a market with undifferentiated products and many substitutes.

Because switching costs are inevitable and can figure substantially, the rule of thumb is to resist switching or consolidating suppliers unless the cost savings from the alternative supplier are greater than the cost of switching. A total cost of ownership (TCO) analysis can be leveraged when making this comparison.

The Postal Service can reduce or eliminate future switching costs early in the purchasing process through sourcing and supplier selection decisions. The Postal Service should not only invest in acquiring skilled suppliers, but also focus on retaining them through partnerships and alliances when appropriate. Standardization and compatibility of inputs and selection of flexible technologies that are easy to adapt, given that they best meet Postal Service needs, are also encouraged. Anticipating the potential exit strategy with each supplier and preparing for a possible termination in relationship far in advance will also reap considerable savings for the Postal Service.

### **Questions for Consideration**

- Is market highly competitive, with a high level of consolidation, or is it fragmented, with no dominant players?
- Does the market consist of suppliers with specialized products and few substitutes or suppliers with undifferentiated products and many substitutes?
- What are the specific plans to minimize switching costs?
- What is the exit strategy regarding the selected suppliers?

## Determine Extent of Competition

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The goal of Postal Service supplying activities is the achievement of best value for the Postal Service, and sourcing and material management decisions are made on this basis. Best value is defined in the Best Value Supplying Principle as “the outcome that provides the optimal combination of elements such as lowest total cost of ownership, technology, innovation and efficiency, assurance of supply, and quality consistent with the Postal Service’s needs and market strategy.” In the sourcing area, best value is generally achieved through competition because competition brings market forces to bear and helps Purchase/SCM teams compare the relative value of proposals and prices.

### Market Surveillance

Market surveillance is the continuous process of updating market research. It includes activities designed to keep supply chain professionals abreast of current technology, product development, and innovative services when buying is anticipated. Market surveillance is relied on to provide a sense of the products and services available in the market and their characteristics and capabilities. Market surveillance is performed by focusing on industry trends, technological change, and economic conditions. Attending conferences or trade shows also provides the opportunity to become familiar with the marketplace, products, pricing, and companies that are new to the industry. Awareness of the competitive landscape through market surveillance gives the Postal Service the information necessary to maximize the opportunity for competition, thus increasing the likelihood of achieving best value.

### Competitive Purchases

Competitive purchases should be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation of a sufficient number of the best qualified suppliers to ensure that the required quality and quantity of goods and services are obtained when needed and that the price is fair and reasonable. Competition allows the Purchase/SCM Team to compare the relative value of proposals and prices to determine the best value for the Postal Service.

### Noncompetitive Purchases

In some circumstances, Postal Service business and competitive objectives may be met most effectively through a noncompetitive purchase. The following five scenarios discuss the instances when it is appropriate to use the noncompetitive method:

- Sole Source — only one supplier exists capable of satisfying a requirement

- Single Source — selection of a strategic source from a number of possible sources to fulfill all Postal Service requirements for a particular class of goods or services
- Compelling business interests — a specific supplier or source can meet Postal Service needs quickly and efficiently, and the benefits of doing so outweigh those that may be realized through competition, as when the need is so urgent that the competitive method cannot add value
- Industry structure or practice — the industry producing or supplying the required goods or services is structured in a manner that renders competition ineffective (e.g., when purchasing goods or services that are regulated, such as utilities, or when purchasing from nonprofit or educational institutions that do not compete in the market place)
- Superior Performance — a supplier's superior performance and its contributions to the Postal Service's business and competitive objectives merit award of a particular purchase (e.g., extending the term or expanding the scope of a contract when a supplier has performed at such a high level that the extension or expansion is well deserved, or when a supplier's superior performance has made such performance beneficial to Postal Service operations).

Switching costs should also be considered. More information on switching costs and the associated risks can be found in the Perform Switching Cost Analysis topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

The Vice President, Supply Management (VP, SM) must review and approve all noncompetitive purchases valued at more than \$10 million. The VP, SM has delegated noncompetitive review and approval authority for contracts up to and including \$10 million, by letter of delegation, to portfolio managers.

These individuals may, consistent with those delegations, redelegate, by letter of delegation, some of that authority to subordinate managers and Contracting Officers. If the estimated value of the noncompetitive purchase is expected to exceed \$10 million, the VP, SM must give prior review and approval of either the purchase plan or proposed contract award.

If the estimated value of the noncompetitive purchase is expected to exceed \$250,000, the Vice President of the organization requesting the purchase must endorse the request.

Additional information on sole sourcing and other sourcing strategies can be found in the Develop and Finalize Sourcing Strategy topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## **Other Topics Considered**

Develop and Finalize Sourcing Strategy topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## Develop Life Cycle Support Plan

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Typically, life cycle support plans are used when the Postal Service purchases products, not services, with the life cycle spanning the time from product conception to product retirement, with more than 80 percent of the total cost of ownership being in the postpurchase phases. The life cycle support plan is a component of the purchase plan, and is a dynamic document that guides the project throughout its entire duration and is revised as more detailed information becomes available. The Purchase/SCM Team determines which products call for the development of a life cycle support plan. It is essential to note that a life cycle support plan is not appropriate to all purchases, but should be developed for products of considerable nature, scope, and complexity (e.g., for high value and high complex products). Whether such a product is purchased from a supplier or made by the Postal Service, during its life cycle development, quality, cost, schedule, and user requirements must be considered at all phases. What follows is a comprehensive view of a life cycle support plan, but the plan developed by the Purchase/SCM Team should reflect the complexity of the particular purchase being considered.

A life cycle support plan clarifies the project lifespan of the product. An effective life cycle support plan enables the Postal Service to reduce complexity and decrease life cycle costs and allows for the focusing of all efforts toward providing best value to the Client. The plan is instrumental in the development of the statement of objectives (SOO), statement of work (SOW), specification, or product description, and, if applicable, the Decision Analysis Report (DAR). The life cycle support plan serves as a guide to the future and a record of the past.

At this stage in the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, the Client's strategy, and how best to meet this strategy, are nearly defined. The elements to support the product are defined; the organizations that participate in the life cycle process is identified; and the life cycle phases of the specific product or service are known and in the process of being defined.

The three critical components needed to develop the life cycle support plan are:

- Component categories and supporting elements
- Life Cycle Management Team
- Life cycle phases

The life cycle support plan developed by the Purchase/SCM Team will be implemented in the Implement Life Cycle Support Team topic of the Manage Demand task of Process Step 5: Measure and Manage Supply.



## Component Categories and Supporting Elements

The component categories and their supporting elements make up a product's life cycle, and they must be defined to develop a support plan. This includes identifying:

- The component services and information that the user needs to maintain the product, beyond the hardware and software itself
- Operator skills required to use and service the product
- The combination of skills, tools, documentation, test equipment, and repair parts to maintain the product

## Life Cycle Management Team

The Life Cycle Management Team is a cross-functional team (comprising members of the Purchase/SCM Team and members of the areas appropriate to the product) that supports the development of the life cycle support plan. The Life Cycle Management Team must be identified in all phases to support the effort and development of the support plan. The team consists of the Client and about 5–10 members and typically includes:

- Market Analysts
- Pricing Analysts
- Item Managers
- Individuals from Quality Assurance, Finance, Sales, Supply Management, and Engineering (whose functions include hardware/software design, configuration management, maintenance, acceptance and performance testing, and process development)

Degrees of management and responsibility for the plan will transfer to these different members, depending upon the phase of the process.

## Life Cycle Phases

The life of a product can comprise various life cycle phases. To develop a life cycle support plan, the phases pertaining to the product and each phase's composite must be determined.

The life cycle plan will be revised throughout the product life cycle, as more detailed information becomes available. When developing a life cycle support plan, the following phased structure and composition will be used:

- Concept Development (the life cycle plan is initiated during this phase)
- Planning and Specification
- Purchase
- Production and Deployment
- Operations (Use) and Support
- Relocation and Disposal

## Concept Development Phase

During the Concept Development phase:

- An idea is analyzed for economic and technical feasibility
- Planning is initiated if the idea is determined to be feasible
- Management structure is established to provide program controls and direction
- Existing products and technology are explored to determine whether any meet the framework of the idea and could be implemented in the Postal Service environment
- A plan of actions and milestones is developed

The life cycle support plan at this phase should contain the following information:

- Statement of need
- System description
- Milestones
- Roles and responsibilities of activities and organizations
- Strategy to achieve objectives and implement training requirements (including risk mitigation and purchase alternatives)
- Planning and budgeting
- Program interdependencies
- Opportunities for standardization
- Logistics support
- Investment recovery

## Planning and Specification Phase

During the Planning and Specification phase, evaluations are made to see whether the product is available for purchase. The evaluations compare the products against the requirement to determine whether they meet the required performance parameters. The results are used to refine the requirements, and (if applicable) develop a Decision Analysis Report (DAR).

All technical information obtained during the planning and specification phase should be evaluated in terms of the life cycle support plan. Updates include adjustments to the schedules, historical information, and status of the plan. During the planning phase, the life cycle support plan will be updated to reflect the purchase plan and DAR.

At this point in the development of the life cycle support plan, the information included in the following sections of the plan should be updated:

- Statement of need
- System description
- Milestones
- Roles and responsibilities of activities and organizations

- Strategy to achieve objectives and implement training requirements
- Planning and budgeting
- Program interdependencies
- Opportunities for standardization
- Logistics support
- Purchase plan (new information that is added during this phase)
- Investment recovery
- DAR (new information that is added during this phase)

## **Purchase Phase**

During the Purchase phase:

- Requirements for the product are determined
- The final request for proposals (RFP) is prepared and issued to the potential suppliers
- The Proposal Evaluation Team is assembled
- Proposals are received, processed, evaluated, and ranked
- Final negotiations are completed
- Contract is awarded

Following contract award, the life cycle support plan is updated to reflect the finalized project information. All members of the team developing the life cycle support plan participate in this effort to update their various parts of the plan.

## **Production and Deployment Phase**

Activities in this phase are directed toward achieving an integrated, well-planned deployment of the product that can be economically and efficiently supported throughout its life cycle. During this phase, the plan is revised to reflect actual operational experience.

Detailed maintenance support plans are prepared during the production and deployment phase. As information becomes available from the testing and operation of the product, the life cycle plan is validated and revised to reflect the most effective operation and support. All members of the team developing the life cycle support plan participate in this effort to ensure an integrated approach to issue resolution.

## **Operations (Use) and Support Phase**

The Operations (Use) and Support Phase consists of the collection of data on the asset's performance; improvements are suggested, made, and managed; and new operational data are collected. This phase continues until a decision is made to redeploy or dispose of the product. If the product is modified or overhauled, life cycle support planning reenters the planning cycle in the Concept and Development phase, and the plan is updated to include

overhaul or modification schedules. If there are plans to retire or relocate the asset, the asset's life cycle enters the Relocation and Disposal Planning phase.

Information gained during the deployment of an asset or from a modification is analyzed, and required changes are made to the existing plan, specifically information relating to maintenance, reliability, parts provisioning, and training. Actual performance data are used to assist in the process and planning of future purchases. These data are compiled and included to modify the appropriate sections of the life cycle plan.

## **Relocation and Disposal Phase**

### **Relocation**

As technology changes, a decision is made regarding the disposition of products at the end of the life cycle. This decision is made based on economic and operational considerations.

When an asset is replaced by a more cost-effective asset, it may be determined that it still has operational value and continues to provide a benefit for service use. In this case, the asset may be relocated to other sites or be used as a backup; the original support plan will also have to be considered.

If the decision is made to relocate or continue operation of the asset, the plan will be revised to reflect any variances in support strategies. Repositioning or the purchase of spare parts must be considered, as well as additional training to support operation and maintenance of the relocated product.

### **Disposal**

Disposal is the final phase of the life cycle and can pose significant economic and social risk to the Postal Service. Assets, especially physical assets, can still offer value from resale, selling back to the supplier, or even donation to social organizations or international postal partners.

The risk arises from several sources, among which are:

- Many assets contain materials that are considered hazardous and require special steps for approved disposal. The Postal Service, as the original asset owner, can be sued for improper disposal of these assets.
- Computer-based assets can contain either information that is of proprietary value to the Postal Service or privacy information on Postal Service employees, Clients, and customers. These assets require special processing to preclude incidental release of this information.
- Assets seen by the public have the Postal Service name or logo on them. These symbols must be removed to prevent misuse or misrepresentation of the Postal Service brand.

- A number of assets now contain devices designed to provide integrity or security of the mail, Postal Service employees, and customers. These devices must be removed before disposal.
- Mail processing and other equipment have licensed software systems that must be removed at the time of disposal.

The Life Cycle Management Team will meet to develop a disposal plan that will be added to the overarching life cycle plan. There are a number of ways for the Postal Service to dispose of assets, which are summarized in the Develop Preliminary Investment Recovery Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. When the Purchase/SCM Team determines when the supplier will manage the investment recovery, solicitations must include Provision 2-8: Investment Recovery, under which the supplier must provide, within its response to the request for proposals (RFP), an investment recovery plan to reuse the equipment or to eliminate or reduce final disposal costs. Final disposition must be environmentally responsible; eliminate or reduce landfill; and comply with all Federal, state, and local laws and regulations. Proposals must address the complete life cycle, including the final disposition of the items being purchased. Disposition alternatives include take-back, repair, refurbishment, and disposal. The supplier is required to design and describe additional innovative, value-added, end-of-life disposition opportunities for the items being purchased.

The Postal Service environmental policy, as stated in Handbook AS-550, *Recycling Guide*, and Handbook AS-552, *Pollution Prevention Guide*, must be incorporated into the life cycle support plan and any other procedures governing material redistribution, recycling, and disposal.

## Other Topics Considered

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## Clauses & Provisions

Provision 2-8: Investment Recovery

## Develop Preliminary Investment Recovery Plan

Investment recovery is the identification, reuse, sale, or disposal of surplus or idle assets. Investment recovery can generate significant revenue and create cost savings, allowing the Postal Service to reduce waste and increase revenue. It can also protect the Postal Service from social and economic impacts associated with improper direct or secondary disposal of Postal Service property. The preliminary investment recovery plan proactively outlines future actions, preidentifies potential surplus and idle assets, and (based on

the product) decides what will be done with those assets. It is a dynamic document that is revised and updated throughout the project life cycle.

The Client is responsible for developing the preliminary investment recovery plan, which must illustrate how the surplus or idle assets will be addressed. While investment recovery activities are not carried out until the Perform and Manage Investment Recovery Activities task of Process Step 6: End of Life, it is important to develop a preliminary investment recovery plan during Process Step 2: Evaluate Sources, because recovery must be addressed in conjunction with Develop Life Cycle Support Plan and must be addressed in the request for proposals (RFP), when it will play a significant role in the overall success of the purchase or have a large impact on the costs associated with the project. Investment recovery should be addressed by potential suppliers in proposals submitted in response to RFPs.

The Client, working with the Purchase/SCM Team develops the preliminary investment recovery plan following specific steps:

- Identify surplus
- Assess potential environmental impacts
- Make preliminary decision

## Identify Surplus

Surplus is any supply that will be:

- Discontinued
- No longer used
- No longer operating
- Excess inventory

Surplus results in or creates the following:

- Poor space utilization
- Tracking expenses
- Maintenance costs
- Insurance costs
- Inventory costs (in excess of regular extra inventory necessary to have on hand to meet demand)

When a project enters into the final phase of its life cycle, these economic and operational considerations are used to identify when the equipment no longer effectively supports the original project or need. Because the identification process requires an estimate, the Client must rely on professional expertise and experience, as well as the professional expertise, experiences, and advice of the entire Purchase/SCM Team.

## Supplier Responsibilities

When solicitations include Provision 2-8: Investment Recovery, proposals must include an investment recovery plan to reuse the equipment or to eliminate or reduce final disposal costs. Final disposition must be

environmentally responsible, eliminate or reduce landfill, and comply with all Federal, state, and local laws and regulations. Proposals must address the complete life cycle, including final disposition of the items being purchased.

## **Make Preliminary Decision**

The preliminary decision in the development of an investment recovery plan is the determination of how to eliminate identified surplus materials at the conclusion of the asset's useful life:

- Recycle (scrap)
- Reallocate (relocate and redeploy)
- Resell
- Remarket (reselling to the supplier)
- Return
- Remanufacture
- Remove

## **Recycle (Scrap)**

Recycling surplus reduces the impact of Postal Service operations on the environment. The Client and Purchase/SCM Team will decide to recycle (scrap) an asset when it can no longer perform its intended function, cannot or should not be repaired, and cannot be sold as surplus. The value of the scrap material collected is determined by the material itself, its volume, and the geographical location of the scrap (relative to the proximity of dealers and the ease and efficiency of the collection process). The following five factors will determine the degree of success of a recycling (scrap) management program:

- Current market for the particular material being scrapped and recycled
- Type of scrap material (e.g., ferrous or nonferrous)
- Condition of the materials (e.g., whether it is mixed, sorted, or clean)
- Quantity of the material
- Involvement of a knowledgeable process manager

The Postal Service will benefit from the expertise of the Supplier in the decision of whether to recycle an asset; however, the plan to recycle does not need to be incorporated into the RFP.

## **Reallocate (Relocate and Redeploy)**

Reallocating identified surplus is the actual relocation and redeployment of a material. Reallocating puts the material to work as part of its lifespan and avoids the cost of purchasing. For example, Postal Service trucks that sit idle in a warehouse in Arizona would be transferred to a California facility that can use them immediately. Although a material may no longer fulfill the purpose for which it was purchased, it still may fulfill other purposes pertinent to the

Postal Service. The Purchase/SCM Team will determine when and where specific materials are fruitful to more than one project or use and convey this information to the Client. For reallocation to become a successful reality, the Purchase/SCM Team must communicate closely with any potentially concerned parties. However, the plan to reallocate does not need to be incorporated into the RFP.

## **Resell**

Reselling surplus materials is the financial transaction of selling a material on the open market. Reselling generates revenue that improves short-term cash flow. Potential revenue will be determined through market research. Reselling is also appropriate for a forward auction, the traditional auction used when organizations want to sell off excess inventory, machinery, or equipment that is no longer in use to maximize revenue, which is discussed in the Auction topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. The plan to resell does not involve the supplier and does not need to be included in the RFP. Data rights and intellectual property issues may need to be considered in the resale of property such as computer software. Additional information on data rights can be found in the Clarify Data Rights and Intellectual Property Issues topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## **Remarket (Resell to the Supplier)**

Remarketing is the selling of surplus material back to the supplier. Suppliers frequently buy back used equipment to protect proprietary technology and prevent competition from being able to sell identical material. Potential revenue realized by remarketing will be compared with potential revenue realized by reselling. After a Price Analysis has been conducted, the results will be communicated to the Client, and a plan will be selected. When remarketing is part of the preliminary plan, Purchase/SCM teams must ensure that Provision 2-8: Investment Recovery is included in the solicitation.

## **Return**

Returning identified surplus is a nonfinancial transaction of providing surplus material (e.g., delivery and industrial equipment) to the supplier for a credit. Provision 2-8: Investment Recovery requires suppliers to provide an investment recovery plan in their proposals, therefore Purchase/SCM Teams should include Provision 2-8 when an investment recovery plan is required.

## **Remanufacture**

Remanufacturing identified surplus is the use of components of a material alone or combined with others to create a new material or product (e.g., mail transportation equipment and spare parts). Except for locks, manufacturing is not a core competency of the Postal Service, so remanufacture may be a rare solution for the disposal of surplus and idle assets. Remanufacture would be appropriate when an internal Postal Service project that has



decided to make a product has been identified by the Purchase/SCM Team, and these surplus or idle assets can be leveraged to reduce the costs associated with the new product or service. Because the decision to remanufacture will lead to the utilization of surplus to strategically make in-house another product at the Postal Service, as outlined in Conduct Make vs. Buy Decision Analysis, it does not require supplier involvement and should not be in the RFP.

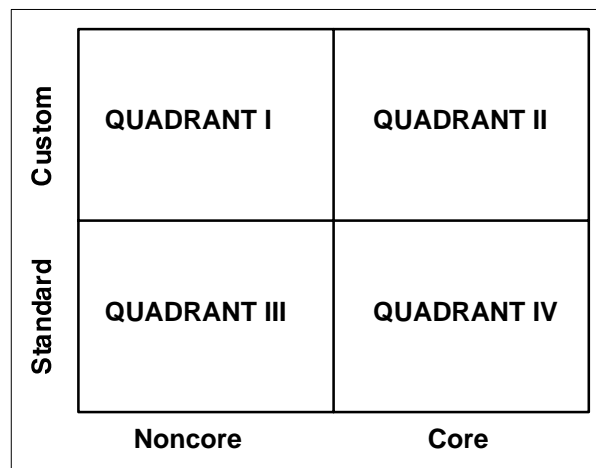
## Remove

Removal is the process of disposing of surplus material (e.g., old office furniture). Disposal is often costly, but by giving the item away (to free space, save on depreciation and tracking expenses, and cut maintenance and insurance costs), the costs of disposal in the long run can be reduced or negated. The Purchase/SCM Team should research whether such actions would indeed negate disposal costs. Because removal by the Postal Service is potentially costly and may require supplier involvement, solicitations for contracts that contemplate removal must contain Provision 2-8: Investment Recovery.

## Quadrant Approach

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Because a preliminary investment recovery plan outlines what to do at the end of the project lifespan and is developed before the completion of a purchase, the Quadrant Approach should be leveraged by the Client to guide the decision to recycle, reallocate, resell, remarket, return, remanufacture, or remove, as shown in Figure 2.7.

Figure 2.7  
**Four Quadrants**



### **Quadrant I: Noncore/Customized Purchases**

Surplus and idle items in this quadrant will be recycled or reallocated and do not need to be addressed by proposals because both are in-house activities. The strategic approach regarding Quadrant I calls for supply continuity, and these items should be used multiple times.

### **Quadrant II: Core/Customized Purchases**

Surplus and idle items from Quadrant II will be recycled, reallocated, resold, remarketed, or returned. Remarketing and return require supplier collaboration and should be addressed by proposals. These items are vital to the Postal Service's operations and therefore may necessitate recycling or reallocation. They are also vital in the market, are of high value, and therefore can warrant reselling, remarketing, or return. Note: These items are specific to the Client's goals and strategies, but have been customized to the Client's business function, so reselling or remarketing may be compromised.

### **Quadrant III: Noncore/Standard Purchases**

Surplus and idle items in Quadrant III will be recycled, reallocated, resold, or removed. Removal requires supplier collaboration and therefore should be addressed by proposals. These items have many sources and many options and provide low value to the end Client. Most of these items (e.g., office supplies) should be recycled, reallocated, or removed. However, certain items are desired by external organizations, have a resale value, and should be resold (e.g., information technology).

### **Quadrant IV: Core/Standard Purchases**

Surplus and idle items in Quadrant IV have many alternatives and many sources and are readily available in the marketplace. Items of this standard nature can have various functions and therefore can be useful both internally and externally. These items will be recycled, reallocated, resold, remarketed, returned, remanufactured, or removed and should be addressed by proposals because these disposal options require supplier collaboration.

## **Other Topics Considered**

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Management task, Process Step 3: Select Suppliers

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

## **Clauses & Provisions**

Provision 2-8: Investment Recovery

## Purchase From Mandatory Sources

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The Postal Service is required to comply with laws that outline mandatory sources for particular purchases. These include:

- Javits-Wagner-O'Day Act (41 U.S.C. 46–48c)
- Randolph-Sheppard Act (20 U.S.C. 107 et seq.)

In addition, under the terms of an interagency agreement with the Defense Energy Support Center, purchases of certain fuel requirements must follow mandatory procedures.

### **Javits-Wagner-O'Day Act (41 U.S.C. 46–48c)**

The Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) requires that the Postal Service and other Federal agencies purchase certain supplies and services from qualified workshops that employ people who are blind or severely disabled. The Committee for Purchase from People Who Are Blind or Severely Disabled determines which supplies and services must be purchased and their price. Supplies and services provided by people who are blind or severely disabled are listed in the Committee's Procurement List, available at the Committee's website ([www.jwod.gov](http://www.jwod.gov)). Additions and deletions are published in the Federal Register as they occur.

Supplies and services must be ordered from the central nonprofit agency designated on the Procurement List or from the workshops concerned and may not be purchased from commercial sources unless authorized by the agency or the Committee for Purchase from People Who Are Blind or Severely Disabled, which is authorized to grant an exception based on time and volume requirements.

### **Randolph-Sheppard Act (20 U.S.C. 107 et seq.)**

Under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.), people who are blind and licensed by a state licensing agency must be given priority for the operation of food vending services in Postal Service facilities. See Handbook AS-707H, *Contracting for Food Services*, and Handbook EL-602, *Food Service Operations*.

### **Defense Energy Support Center (DESC)**

Under an interagency agreement with the Defense Energy Support Center (DESC), Postal Service facilities whose fuel requirement is 20,000 gallons or more per product (gasoline, gasohol, diesel fuel, heating fuel or kerosene) at any given location must purchase fuel from DESC suppliers. See Administrative Support Manual, sections 543 and 544.

See also the discussion of additional laws and regulations in the Laws topic of the General Practices.

## Other Topics Considered

Laws topic, General Practices

## Clarify Data Rights and Intellectual Property Issues

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Data rights are the rights the Postal Service obtains for technical data or computer software that suppliers deliver after completion of a project. Data are recorded information, regardless of form or the medium on which they are recorded. Data in this regard include technical data and computer software, but do not include information incidental to contract management, such as financial, administrative, cost, pricing, or management information.

Intellectual property is the ownership of ideas and control over the tangible or virtual representation of those ideas. It is a product of the intellect that has commercial value, including copyrighted property (such as computer software) and ideational property (such as patents, business methods, and industrial processes). Data rights are intellectual property.

### The Postal Service's Motivation on Data Rights and Intellectual Property

The following are reasons for the Postal Service's purchase of intellectual property:

- Enhance the competitive purchasing process
- Ensure the ability to use, maintain, repair, and modify equipment or products procured under Postal Service contracts
- Recoup development costs of, and fund improvements in, Postal Service products and equipment
- Develop or enhance products and equipment for Postal Service use
- Protect its position in the competitive marketplace
- Ensure competition for spare parts

The main motivation of the Purchase/SCM Team when dealing with data rights and intellectual property is to yield a net benefit to the Postal Service. The Purchase/SCM Team must give full consideration to the costs and benefits of the chosen approach. For example, decisions to acquire Postal Service title to patents or unlimited rights to technical data developed by the supplier at private expense must take into account the potential impact on the cost of the contract and the extent to which prospective providers may not wish to part with such rights. Conversely, the Purchase/SCM Team's determinations to take lesser rights must consider the effect on the Postal Service of the exploitation of those rights by the supplier or others. As stated in Provision 8-1: Alternate Intellectual Property Rights Proposals, the Contracting Officer will consider alternate intellectual property rights proposals when determining which supplier's proposal is most favorable to

the Postal Service, in accordance with the solicitation's evaluation and award section.

Pursuant to Provision 8-1: Alternate Intellectual Property Rights Proposals, the supplier may propose alternate intellectual property rights arrangements (including licensing arrangements for commercial exploitation of intellectual property developed under the contract), provided that it follows guidelines addressed in the provision.

The Postal Service acquires patent rights, rights in data, and rights in software to the degree necessary to protect its interests. Those rights can include:

- Title
- Nonexclusive licenses
- Unlimited rights or title to technical data and software
- Limited rights to technical data and restricted rights in software (may be exclusive or nonexclusive)

Clarifying data rights and intellectual property informs the Postal Service of which suppliers can and will comply with their policies. It also allows the Purchase/SCM Team to start a dialogue with possible suppliers to negotiate acceptable terms in regard to proprietary information. This will allow the contract to be negotiated in a timely manner.

## **Defining Data Rights and Intellectual Property**

Data rights can be:

- Unlimited — possess right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- Limited — technical data developed at private expense; license rights restrict use or disclosure by the Postal Service.
- Restricted — computer or licensed software developed at private expense if the Postal Service chooses not to pay for title. License rights restrict disclosure by the Postal Service; however, may be copied to transfer computer; copied or transferred for archiving backup; may be modified, adapted, or combined with other computer software (new software then subject to restricted right limitations), disclosed to support services suppliers to prepare modifications (must agree not to disclose to others), and may be transferred to a replacement computer.

Other intellectual property includes:

- Copyright — an entity has exclusive rights to reproduce, publish, or sell its original work or authorship (e.g., scripts are protected by copyrights)

- Patent — available for the invention or discovery of any new and useful process, machine, manufacture, composition of matter, or any new and useful improvement of them (e.g., a product is protected by a patent).
- Trademark — a name, symbol, or other device identifying a product, officially registered, and legally restricted to the use of the owner or manufacturer (e.g., protects the name of a company).
- Trade secret — any formula, pattern, device, or compilation of information that is used in a business and that gives it an opportunity to obtain an advantage over competitors who do not know or use it (e.g., protects the Coca-Cola syrup formula)

## Technical Data Rights

Clause 8-6: Rights in Technical Data addresses the Postal Service's rights regarding any data other than computer data. The allocation of rights in any computer programs, databases, and documentation will be determined by Clause 8-9: Rights in Computer Software, except that limited rights data, formatted as computer databases for delivery to the Postal Service, are to be treated as limited rights data under Clause 8-6.

## Computer Software Rights

Clause 8-9: Rights in Computer Software addresses the Postal Service's rights regarding computer programs, computer databases, and their documentation. Clause 8-7: Withholding Payment (Technical Data and Computer Software) discusses payment to the supplier by the Postal Service and is used in contracts for both technical data and computer software rights. If the data requirements are not adequately fixed and specified at the time of contracting, Clause 8-8: Additional Data Requirements must also be included in the contract.

## Special Works

Special works are literary works, including technical reports, studies, and similar documents; music and dramatic works; and recorded information, regardless of the form or medium on which it may be recorded. Special works can include:

- The production of audiovisual works (including motion pictures and television recordings or the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, etc.)
- Histories of the Postal Service
- Works pertaining to recruiting, morale, training, or career guidance
- Surveys of facilities

- Works pertaining to the instruction or guidance of Postal Service employees in the discharge of their official duties
- Production of technical reports, studies, or similar documents not otherwise covered

A contract for special works must enable the Postal Service to obtain ownership of the copyright for certain works. This is accomplished by contract provisions requiring the supplier to assign copyrights to the Postal Service in those works in which the Postal Service would not otherwise be considered the author. These rights and other related issues are addressed in Clause 8-10: Rights in Data — Special Works.

## Existing Works

Contracts for the purchase of existing works (other than computer programs and audiovisual works), such as books and periodicals, generally require no specific contract coverage for data rights. When reproduction rights are required in such works, specific contract coverage is needed. These issues are addressed in Clause 8-11: Rights in Data — Existing Works.

## Patent Rights

With respect to subject inventions (any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under a contract), the supplier, in accordance with Clause 8-1: Patent Rights, must furnish the Contracting Officer certain items. Other patent issues (including payment) are also addressed in Clause 8-1.

In accordance with Clause 8-2: Authorization and Consent, the liability of the Postal Service for patent infringement or for the unauthorized use of any patent will be determined by the provisions of any patent indemnity clause included in the contract or in any subcontract under the contract (at any tier) and by any indemnification or warranty (express or implied) otherwise provided by the supplier or subcontractor for similar products or services when supplied to commercial buyers. Clause 8-2: Authorization and Consent also deals with research and development work, supplies and construction, and subcontracts expected to exceed \$50,000.

Patent infringements are addressed in Clause 8-3: Notice and Assistance Regarding Patent and Copyright Infringement. Other patent rights are stated in Clause 8-15: Patent Rights Supplier Retention.

## Indemnity

In accordance with Clause 4-1: General Terms and Conditions, paragraph h, Patent Indemnity, the supplier will indemnify (protect against damage, loss, or injury; insure) the Postal Service and its officers, employees, and agents against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of a contract, provided the supplier is reasonably notified of such claims and proceedings. In addition, Clause 8-4: Patent Indemnity, which may be used in place of

paragraph h, requires the supplier to indemnify the Postal Service, its employees, and its agents against liability, including costs and fees, for patent infringement (or unauthorized use) arising from the manufacture, use, or delivery of supplies, the performance of service, the construction or alteration of real property, or the disposal of property by or for the Postal Service, if the supplies, service, or property (with or without relatively minor modifications) have been or are being offered for sale or use in the commercial marketplace by the supplier, except in certain situations. These situations and patent indemnity is further addressed in Clause 8-4.

Indemnification by the supplier solely with respect to certain patents can be waived when these patents are listed in Clause 8-5: Waiver of Indemnity.

## Limited and Restricted Rights

The use of private funds for development affects the classification of data rights. If private funds were used, technical data may have to be acquired with limited rights, and computer software may have to be acquired with restricted rights.

In accordance with Provision 8-2: Representation of Rights in Data, the supplier must identify in its proposal the data (including subcontractor-furnished data) that it intends to identify as “limited rights data” or “restricted computer software,” or that it does not intend to provide as required. When the data are delivered to the Postal Service, the supplier places on the data the limited rights legend required by Provision 8-2: Representation of Rights in Data. The Postal Service has strict policies on keeping the limited and restricted classification, which include:

- Proof that private funds were used
- Only certain portions of a product once modified or enhanced are deemed still made from private expense
- Submitting correct markings (addressed in Clause 8-16: Postal Service Title in Technical Data and Computer Software)

If these policies are not followed, it is possible for the Postal Service to change the classification to “unlimited.” Clause 8-14: Acquisition of Additional Rights in Data addresses unlimited rights, direct license rights, and other rights.

## Royalties and License Fees

Any request for proposals (RFP) that may result in a contract other than a firm-fixed-price contract must include Provision 8-4: Royalty Report with regard to any royalties or license fees that would be paid in connection with the performance of any resulting contract. The Contracting Officer must consult Legal Counsel regarding any royalties or license fees that are excessive or that the Postal Service may not be obligated to pay. When the price of a contract is based in part on a contingency for patent royalties or license fees to be paid by the supplier that the supplier may not actually have to pay, Clause 8-12: Refund of Royalties must be included in the contract.



## **Repair Parts**

As stated in Provision 8-3: Use of Limited Rights Data for Purchasing of Repair Parts and Clause 8-18: Manufacture of Repair Parts, the Postal Service has the unilateral right to use competitive procedures to procure repair parts or assemblies for the equipment or supply items being developed under a contract. If the repair parts or assemblies have been identified as being subject to protection under Provision 8-3: Use of Limited Data Rights for Purchasing of Repair Parts or Clause 8-17: Delivery of Limited Rights and Restricted Computer Software, the Postal Service will obtain a nondisclosure agreement from interested suppliers before releasing any drawings, specifications, or other descriptive documentation suitable for manufacturing or reproducing such repair parts of assemblies.

## **Professional Services**

Contracts for professional consulting, research, technical development, or other specialized support services may require access to Postal Service information. The products of such contracts may not otherwise be covered by other policies and generally have unknown long-term implications; therefore, they require that broad rights in intellectual property flow to the Postal Service. Clause 8-13: Intellectual Property Rights must be included in such contracts; this clause addresses what the supplier agrees to.

## **Purchase/SCM Team**

The Contracting Officer is the lead on clarifying data rights and intellectual property issues. The Market Analyst and Pricing Analyst aid in determining best value, which dictates certain decisions with data rights and intellectual property. The Law Department's Intellectual Property Law organization, which is responsible for intellectual property matters, must concur (or at least be notified) in most situations when the Contracting Officer chooses alternatives to the Postal Service's standard policies. In addition, the Contracting Officer needs concurrence from the Intellectual Property Counsel when:

- Choosing an alternative arrangement to acquire a title to an invention
- Soliciting alternate agreements for the purchase of patent rights
- Waiving or modifying the right to patent indemnification (indemnification is used to protect against damage or loss)

The Postal Service will protect proprietary business information to the extent required by law and good business practice. The Purchase/SCM Team must understand what data rights and intellectual property are, as well as the Postal Service's authority, responsibility, and policies regarding them. Issues in question must be identified and communicated to the supplier, who will then know which policies, provisions, or clauses will affect them. One issue that must be identified for the suppliers is their responsibility to protect the Postal Service against claims resulting from suppliers' use of data not supplied by the Postal Service.

Before the Postal Service and individual supplier can openly discuss proprietary information, a nondisclosure agreement (NDA), which protects both parties from the loss of intellectual properties and rights, may be necessary. Purchase/SCM Teams must work with the Legal Counsel to draft the NDA. The NDA will require that certain information not be disclosed, except under the terms as described in the NDA, and spells out exactly the information that is deemed proprietary.

Pursuant to Provision 8-2: Representation of Rights in Data, technical data that are limited rights data and restricted computer software that has been identified must be brought to the attention of the Postal Service in the supplier's proposal. Any subsequent supplier claim that further data or software have been identified or developed at private expense must be supported by clear and convincing evidence. Limited rights data and restricted computer software that are properly identified are recognized by the Postal Service, and related language is incorporated into the contract, using Clause 8-17: Delivery of Limited Rights Data and Restricted Computer Software. Once the contract is signed, limited rights data and restricted computer software can be delivered to the Postal Service and will be designated and recognized by a specific legend placed on them.

## Consider Auctions

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During the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, there is an opportunity for the Postal Service to examine whether an auction would be an appropriate method for purchasing a good or service. Auctions are not stand-alone events; they are an integral part of the overall purchasing process, so it is critical that any electronic auction process fit within an overall purchasing strategy. Successful auctions require careful planning. The Postal Service must ensure that spend, market, and business analyses have been completed to have a successful auction experience.

### Forward Auction

The most traditional auction to consider is the forward auction. A forward auction is usually referred to simply as an "auction." During a forward auction, the supplier (auctioneer) is the host in the transactions, and buyers (bidders) are invited to bid for the purchase of a product or products from the seller. The auction usually starts with a low price that the buyers will bid up until a set time has expired or no other buyer wishes to place a higher bid. Forward auctions are most typically used when organizations would like to sell off excess inventory, machinery, or equipment that is no longer in use to maximize revenue.

### Reverse Auctions

From a purchasing perspective, the most common type of auction is the reverse auction. In a reverse auction, the buyer (auctioneer) is the host of the auction and is the party soliciting bids for goods or services that it wishes to purchase from a supplier (bidder). The auction process is an important factor

in the determination of best value. Some auctions, such as those hosted by reverse auction service providers, can support very complex auctions that enable businesses to better align auctions with their business practices.

## **Postal Service Benefits**

Reverse auctions benefit the Postal Service in three ways:

- Price benefits
- Process benefits
- Precision benefits

The most obvious benefit is the price savings that can be achieved by using the online reverse auction process. This ensures that the price paid is the best available in the market and that there are savings in comparison with current contracts. Price savings achieved through reverse auctions often exceed the estimated savings predicted before the commencement of the reverse auction.

Process savings come by way of the streamlined purchase process employed during the auction process. By reducing the cycle time and effort involved, the time-efficiency savings alone can be dramatic. The Postal Service has been using reverse auctions for several years and turns to it as a dynamic means of receiving prices for performing best value purchases.

Precision benefits involve the capabilities to electronically track information involved with the purchasing cycle. By having the electronic record of who bid, what the bid was, when the bid was placed, and where the bid was placed from, the Postal Service has a greater assurance of consistency and validity of the process. In addition, the auction framework provides an assurance that the playing field is level and that everyone has the same access to the same information throughout the process, which reduces the potential for challenges of the award.

## **State of the Marketplace**

An examination of the marketplace should be conducted, which will determine whether conditions favor the use of a reverse auction. Factors for consideration include:

- Number of qualified suppliers
- Commodity vs. specialized product
- Buyer's importance to suppliers
- Excess capacity in industry
- Price
- Award
- Flexibility

## **Number of Qualified Suppliers**

Reverse auctions identify materials, equipment, or services required and request carefully prequalified suppliers to submit bids. More qualified suppliers participating are better than fewer, but, the fewer the number of qualified suppliers the less chance the Postal Service has of selecting the best supplier. However, the total number of suppliers should be manageable.

## **Commodity Product**

These are purchases of commercial commodities that have well-defined specifications and universally accepted standards. For example, a specialty chemical company used an electronic reverse auction to buy packaging material. The product was considered a commodity, and the need was not urgent. The supply base included many suppliers; some were prequalified and some were not. Two suppliers won the reverse auction, one of which was prequalified and the other was not. The prequalified supplier was awarded 100 percent of the business, while the other was offered the opportunity to become qualified. A purchase price decrease of 20 percent was achieved, plus one new supplier was later qualified.

Specialized products have requirements that may not be accurately specified and do not have universally accepted standards. A reverse auction would not be the best sourcing strategy for the purchase of a specialized good because the market is not competitive. A proprietary good or service would not be appropriate for reverse auction, because there may be only one potential supplier that holds a trademark/copyright/patent.

## **Buyer's Important to Potential Suppliers**

A buyer being important to the supplier implies that the potential supplier values the relationship with the buyer and thus will participate in reverse auctions. The Center for Advanced Purchasing Studies research has shown that there is a 2 to 1 ratio of buyers who feel that reverse auctions have improved their supplier relationships. Relationships have improved based on an increase in trust, greater access to supplier data, and greater amount of business for suppliers.

Suppliers generally prefer to maintain a close relationship with large companies well known in the market, rather than with smaller companies. As a result, suppliers tend to value the relationship with a smaller company less and may not participate in reverse auctions hosted by smaller companies.

## **Excess Capacity in Industry**

Excess capacity in industry implies that there is a large supply, which is inverse to demand, and will result in potentially lower price options.

## Price

If price is the key selection criteria for the buyer, then conducting a reverse auction may be the right strategy to implement. In a reverse auction, multiple sellers of products or services are competing for the business of a single buyer, driving the price down. The supplier with the lowest bid in a reverse auction typically wins the auction.

Conversely, if the buyer is focused on the total life cycle cost and not just on the cost of a particular good or service itself, a reverse auction would not be the appropriate sourcing method, because price is not the driving factor.

## Flexibility

In a flexible environment, innovation is preferred over the predetermined or standardized product/service. Therefore, a reverse auction would not be a good fit for this situation because a reverse auction caters to predetermined products/services.

## Award

Additional information on conducting reverse auctions can be found in the Conduct Reverse Auctions Where Appropriate topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. Additional information on awarding contracts can be found in the Produce Contract Award Recommendation topic of the Perform Preaward Activities task of Process Step 2: Evaluate Sources and the Award Contract and Notify Suppliers topic of the Make Final Decisions task of Process Step 3: Select Suppliers.

## Supplier Perspective

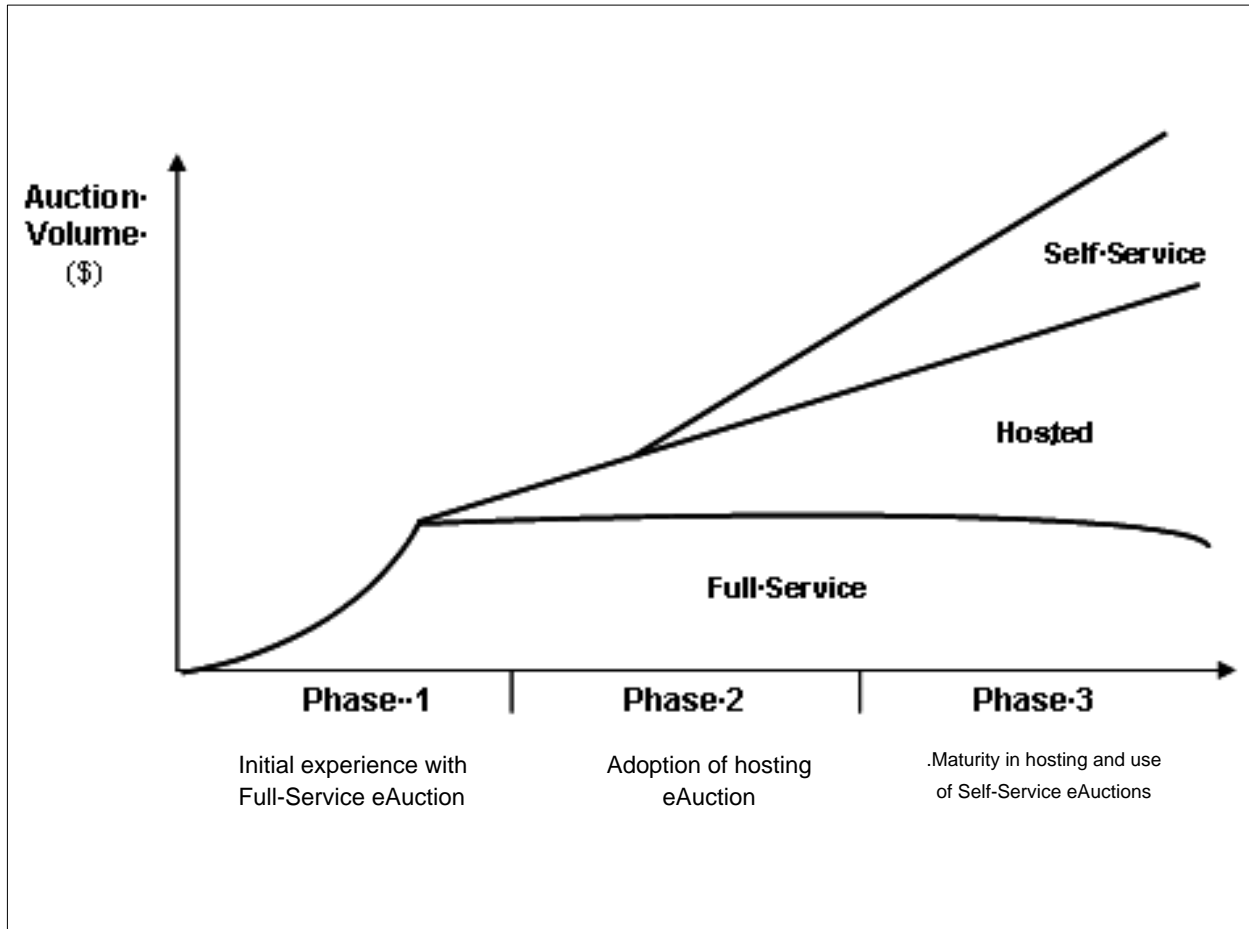
One of the strongest ways to obtain supplier support of the process is to ensure that price is not the only driver for the contract award. Because the model is built upon competition, a lack thereof could lead to even higher prices or to alienating or harming relationships with current suppliers. It is important to remember that for a new process or technology to be successful, all parties must benefit from their participation.

## Auction Services and Technology

Commercial off-the-shelf (COTS) auction software packages are readily available for purchase. There are three levels of auction technology available, and the level of investment is up to the Postal Service:

- Full-Service — a full-service provider hosts the auction process from start to finish
- Hosted — the technology is hosted by a third party, but the auction is organized and run internally by the user
- Self-Service — the user oversees all aspects of the auction, including implementing the auction technology internally

Figure 2.8  
**Auction Technology**



As Figure 2.8 illustrates, the level of investment and value obtained from an auction solution is generally related to the amount of purchasing forecast through the reverse auction process over time. The following analogies illustrate the differences between the three models:

- Full-Service model — when a person needs to drive infrequently or is unsure of how to get to a certain location, he or she can hire a taxicab. The customer needs to know only the origin and destination. The taxi company provides the driver, the car, and even the directions on how to get from the origin to the destination. The customer needs only to make the initial phone call. This works well for infrequent purchases, or while a person is learning his or her way around town.
- Hosted model — although less costly early on, the more the customer relies on the taxi, the more that the customer realizes that he or she knows his or her way around town and that it is cost-prohibitive to continue traveling by taxi. The person realizes that he or she can drive himself or herself to work, the grocery store, etc. However, the person is not prepared to purchase a car, because the total cost includes having to pay full insurance premiums, car payments, maintenance, and generally ensuring

that the car is in working order. Because the person really needs the car only on weekends, it makes better sense to rent the car; now the person is paying only to use the service and can drive the car where and when he or she wants.

- Self-Service model — once the person realizes that he or she is driving the car every day and that it is becoming expensive to consistently rent a car to drive around town (yet less expensive and with more control than using a taxicab service), the person decides to purchase the car. This involves a larger initial outlay of cash to pay for the car and its maintenance, but because the person now owns the car, he or she has the ability to drive it when and where he or she wants and no longer has to pay for added services and overhead for others to take care of the car for him or her. Because the person is using the car frequently and driving many miles, over the long term, the costs of ownership are much lower than the alternatives.

## Key Considerations

### Full-Service:

- This model provides a low cost in the short run.
- There are few barriers to entry because the technology is hosted off-site and the service provider assists with all aspects of running the actual auction — from setting up the auction rules and timeline, training bidders (suppliers), monitoring the event, etc.
- With more time on hand, the Postal Service is able to focus its attention on other aspects of the SCM process and award the contract.

### Hosted Service:

- Auction logistics are left to the third party.
- The model works for those looking to handle additional logistics, but not wanting the technology within their environment.

### Self-Service:

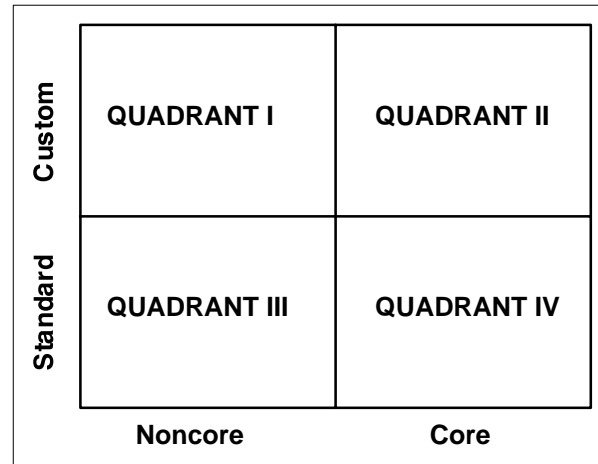
- This model works best if the Postal Service purchases frequently and has the information technology (IT) infrastructure available to implement and support the application.
- The model provides the lowest total cost of ownership (TCO) over the long term, although the initial investment is much higher than that of the other options.

## Quadrant Approach

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Reverse auctions rely on competition driving prices down, so the less complex or specialized the good or service to be purchased, the greater the chance for a

successful auction. Simple commodity items or services that can be clearly defined and have a wide range of potential suppliers will be best suited to the auction process. Reverse auction suitability may be dependent on the quadrant the need falls into, illustrated in Figure 2.9.

Figure 2.9  
**Quadrant Approach**



### **Quadrant I: Custom/Noncore Purchase**

Reverse auctions would be less suitable for these purchases because the supply market is very restricted. To have an effective reverse auction, a large supplier base is preferred.

### **Quadrant II: Custom/Core Purchase**

Reverse auctions would be less suitable for these purchases because the products and services are complex and specialized. Reverse auctions rely on competition driving prices down, so the less complex or specialized the good or service to be purchased, the greater the chance for a successful reverse auction.

### **Quadrant III: Standard/Noncore Purchase**

Reverse auctions would be less suitable for these purchases because the focus is on reducing purchase effort and associated costs.

### **Quadrant IV: Standard/Core Purchase**

Reverse auctions are suitable for purchases in Quadrant IV because there are many supply market options.

## **Other Topics Considered**

Develop Preliminary Total Cost of Ownership (TCO) Estimate topic,  
Conceptualize Need task, Process Step 1: Identify Needs

Conduct Reverse Auctions Where Appropriate topic, Perform  
Solicitation-Related Activities task, Process Step 2: Evaluate Sources



Produce Contract Award Recommendation topic, Perform Preaward Activities task, Process Step 2: Evaluate Sources

Award Contract and Notify Suppliers topic, Make Final Decisions task, Process Step 3: Select Suppliers

## Consider Performance-Based Contracting Arrangements

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In a performance-based contract, the supplier provides the Postal Service with specific benefits, such as cost reductions or revenue generation, and in return, the supplier shares in the value created. A portion of the price of the contract is linked to a series of key performance indicators that the supplier is responsible for meeting and to business benefits achieved by the Postal Service through the fulfillment of the contract. The Postal Service shares risks with suppliers in a performance-based contract and allows them to define the methods of performance, thus differing from traditional contracts.

Performance-based contracting agreements create an incentive for the supplier to control its costs. In some contract types, the Postal Service and supplier have conflicting motivations (e.g., the Postal Service wants to minimize costs, but the supplier is motivated to increase its revenue); however, performance-based contracts align the interests of both parties. Performance-based contracts tend to encourage closer relationships with suppliers. The Purchase/SCM Team specifies the outcome or result it desires and leaves it up to the supplier to decide how to best achieve the desired outcome. This can include what to do, when to do it, how to do it, where to do it, or whether to subcontract out (if restrictions do not exist).

### **Appropriate Circumstances for Use of Performance-Based Contracts**

Performance-based contracts should be implemented for projects with outcomes that can be measured objectively (e.g., grounds maintenance, security, computer maintenance, network operations). Performance-based contracts can be used for any contract, including small-dollar-value contracts, but are generally most appropriate when:

- Projects are large, have new technology, or have high risks
- Existing contracts can be converted to define as much of the requirements in performance-based terms as possible
- Large umbrella contracts are experiencing cost overruns or performance problems
- Contract is awarded competitively for task order contracts
- Benefits contributed by suppliers can be quantified
- Project implementation and production time need to be reduced

Postal Service suppliers that are strategic or key should be considered for performance-based contracting. Performance-based contracting allows for the resolution of payment or other issues more quickly and efficiently because of the nature of the shared-risk relationship. In a performance-based contract, the Postal Service must be committed to supplier support because it may have to address issues outside the contract that limit supplier success on the current project.

## Different Types of Performance-Based Contracts

The contract type selected should motivate suppliers to perform as well as possible. To do this, the Client must specify what it wants and know what the project will do for it. The two most frequently used are fixed-price incentive contracts and cost-plus-incentive-fee contracts.

The two constants are that a portion of supplier payment is based on performance and that the supplier shares some degree of risk on the contract. Possibilities for the structure of a performance-based contract include:

- The supplier receives a share of any increased revenue generation in return for risking a share of its profits to pay for overruns
- The supplier's profits are contingent on meeting explicit performance measures of the indicators
- The supplier is required to make a substantial up-front investment and assume most of the project risk

Additional information on contract types can be found in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## Key Elements of Performance-Based Contracts

Client objectives and goals must be clear to ensure the success of the contract. Indicators are specified to monitor performance of the requirements. Requirements should be clearly defined and stated in terms of results required, rather than the method of performing the work. A work breakdown structure (WBS) can be utilized to assign requirements to tasks.

Target performance measures are assigned for each indicator and are the basis to financially reward or sanction suppliers. Incentives should be put in place to motivate the supplier's performance. The performance work statement (PWS) or statement of objectives (SOO) describes the effort in terms of measurable performance standards (outputs). Additional information on PWS and SOO can be found in the Start Request for Proposals (RFP) Development topic of the Prepare Project task of Process Step 2: Evaluate Sources. A quality assurance plan (QAP) determines whether supplier services meet the applicable statements' contract requirements.

## **Indicators and Performance Measures**

Performance standards establish the performance level required by the Postal Service. Correspondingly, the target measure establishes a maximum allowable error rate or variation from the standard. These measures tie supplier payment to performance. Failure to perform within this target results in a contract price reduction. Examples of standards include quality of work, productivity, and cost-efficiency. The Purchase/SCM Team should ensure that each standard is necessary, carefully chosen, and not unduly burdensome. For example, in a requirement for airline services, the performance standard might be “arrival within 15 minutes of an agreed-upon time.” The target performance measure might be 10 percent; the airline can be more than 15 minutes late no more than 10 percent of the time. Indicators and performance measures will be customized based on the nature of the purchase.

## **Incentives**

Incentives are employed to induce better performance and may be positive, negative, or a combination of both. They are applied selectively to motivate suppliers and to discourage inefficiency. Incentives apply to the most important aspects of the work, rather than each individual task.

Incentives will vary from contract to contract and are subject to discussion during source selection and negotiations. The incentive structure should reflect both value to the Postal Service for the various performance levels and a meaningful incentive to the supplier. Effective performance incentives reward suppliers for outstanding work, but do not penalize them for fully satisfactory (but less-than-outstanding) work.

## **Quality Assurance Plan (QAP) and Examination**

A quality assurance plan (QAP) is a component of the purchase plan and describes the strategy and methods deployed to ensure that the purchase and its deliverables are on track to meet Client expectations. In the case of performance-based contracts, it directly corresponds to the performance standards, and it measures supplier performance. The QAP ensures that the Client receives the quality called for in the contract and pays for only what is received. The QAP should include a surveillance schedule and clearly stated surveillance method(s). Surveillance can range from a one-time inspection of a product or service to periodic in-process inspections of ongoing product or service delivery. Additional discussion can be found in the Execute Quality Assurance Plan topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

## **Considerations for Using a Performance-Based Contract**

Performance-based contracts require more interaction with suppliers than traditional contracts do. The Contracting Officer works with the supplier to determine the monitoring methods, appropriate incentives, risk sharing, payment options, and methods for reporting performance against metrics.

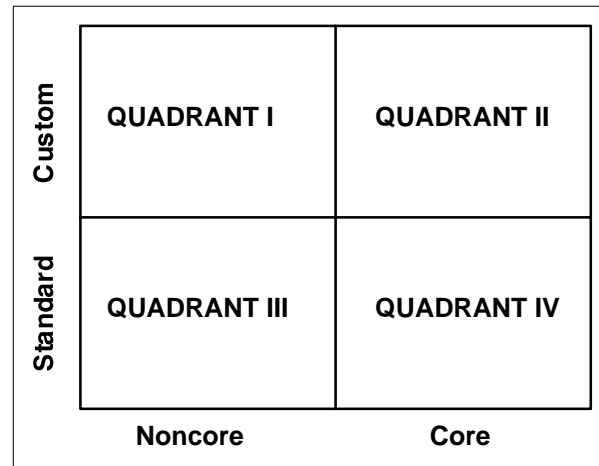
Other considerations that may need to be addressed when using this type of contract:

- Increased initial up-front costs (e.g., more time and resources to be allocated by Postal Service and suppliers to set up a contract, possibility of a delay to the start of the project, or converting from a traditional statement of work [SOW] to a PWS or SOO)
- Payments need to be tied to concrete milestones and deliverables and not necessarily set dates
- Data rights and intellectual property issues should be clearly identified
- Method to resolve failures is defined; acceptance criterion and a method to inspect are needed

### Quadrant Approach

A quadrant approach classifies Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Depending on the quadrant, performance-based contracts will be structured differently; examples of this are illustrated in Figure 2.10.

Figure 2.10  
**Quadrant Approach**



#### Quadrant I: Custom/Noncore Purchase

Custodial — Performance-based contracts are appropriate. The standards identified are desired quality levels. The supplier’s technical proposals identify only the frequency and methods to be employed to meet the quality standard. The result is maximum flexibility for the suppliers.

#### Quadrant II: Custom/Core Purchase

Mail Transport Equipment (MTE) — Performance-based contracts are appropriate. The supplier is held to a standard of performance and is empowered to use best commercial practices and management innovation in performance. The contract does not specify how many supervisors,

mechanics, or other members are required to be in a crew or on the job for servicing and maintenance of mail transport equipment.

### **Quadrant III: Standard/Noncore Purchase**

Information Technology (IT) — Performance-based contracts have limited appropriateness. When developing a new system, the contract is for delivery of a working solution. Acceptance occurs only when the solution is successful, and payments are provided only when (and if) the solution delivers sufficient benefits to cover costs.

### **Quadrant IV: Standard/Core Purchase**

Transportation — Performance-based contracts are appropriate. For example, a supplier may be held to performance standards of on-time delivery, accuracy, and quality.

### **Other Topics Considered**

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Select Contract Type topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Execute Quality Assurance Plan topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## **Determine Need for Progress or Advance Payment**

Usually, the Postal Service pays for supplies and services after delivery or performance. However, for some purchases, sources may be unavailable or competition too limited without the availability of advance payments or progress payments.

### **Advance Payments**

Approval to make advance payments must be obtained as required by Management Instruction FM-610-2003-1, *Advance Payments*.

### **Progress Payments**

If the dollar value of a prospective contract is within the Contracting Officer's delegated contracting authority, he or she may approve the use of progress payments for the particular contract. For contracts over \$1,000,000 (excluding construction, architect/engineer and construction management contracts), progress payments must also be approved by the VP, Finance.

Before approving progress payments, the Contracting Officer must make a written determination establishing that:

- Progress payments are in the Postal Service's best interests.

- The Supplier's accounting system and controls are adequate for proper administration of progress payments, or their adequacy will be ascertained before contract award.
- Monthly progress reports will be obtained from the Supplier, showing progress of the work as related to progress payments made.

Any contract providing for advance payments must include Clause 1-2, Advance Payments. Any contract, other than a construction contract, providing for progress payments must include Clause 1-3, Progress Payments. (For construction contracts, see Clause B-48, Payment (Construction).)

## Other Topics Considered

Conduct Should-Cost Analysis topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Develop, Finalize, and Implement Cost Management Plan topic, Manage Demand task, Process Step 5: Manage and Measure Supply

## Select Contract Type

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Selecting the most effective contract type for a purchase is an important element of purchase planning and must be considered along with price, risk, uncertainty, and responsibility for costs. The nature of a purchase will determine the appropriate contract type. The type of contract selected should reflect the appropriate risk and responsibility that will be assumed by the Supplier. For example, full cost responsibility is assumed under a firm-fixed-price contract, while there is minimal cost responsibility under a cost-reimbursement contract. The selected contract type determines how the Supplier will be paid; it drives the Supplier's fee or profit amount. Purchase/SCM Teams may decide to use a type of contract not described in this Process Step subject to the approval of a Portfolio manager. Cost-plus-a-percentage-of-cost contracts may not be used.

The contract is also a driver of supplier performance. An inappropriate contract type (e.g., supplier's risk is too high) can lead to the supplier delivering sub par work, renegotiations, or a unsuccessful relationship with a supplier. A wide selection of contract types is necessary to provide the flexibility needed for the purchase of a large variety of products and services.

## Contract Selection Factors

Numerous factors guide the selection of the best contract type for a given purchase. Factors to be considered when determining the contract type include:

- Realism of cost estimate (either through price or cost analysis)
- Extent of competition (results in realistic pricing)
- Risks and uncertainties

- Type and complexity of the requirement(s)
- Adequacy and firmness of specifications
- Likelihood of changes
- Past experience with industry, suppliers, and requirements
- Extent of subcontracting
- Adequacy of the supplier's estimating and accounting system
- Urgency of the requirement
- Volatility of cost factors (e.g., unstable labor or market conditions)
- Period of performance or length of production run
- Business practices in industries, trades, or professions
- Concurrent contracts (if performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts should be considered)

## Contract Types

The contract types below are frequently used for purchasing by the Postal Service. Provision 4-1: Standard Solicitation Provision (paragraph F, type of contract) and Clause B-3: Contract Type state which type of contract is issued. The Contracting Officer, working with the Purchase/SCM Team, may decide to use other types of contracts, or hybrids/variations of the existing contract types. Traditional types of contracts include:

- Firm-Fixed-Price
- Fixed-Price Incentive
- Fixed-Price with Economic Price Adjustment
- Cost-Plus-Incentive-Fee
- Cost-Plus-Fixed-Fee
- Cost-Plus-Award-Fee
- Time-and-Materials
- Indefinite-Delivery
- Requirements

The Purchase/SCM Team chooses the contract type in accordance with Provision 4-1: Standard Solicitation Provisions. Once determined, potential suppliers must be informed of the contract type, and proposals must be submitted on this basis. The Postal Service must inform potential suppliers if alternate proposals based on other contract types will or will not be considered.

## Firm-Fixed-Price Contract

A firm-fixed-price (FFP) contract obligates the supplier to deliver the product or service specified by the contract for a fixed price; the amount of profit the supplier receives will depend on the actual cost outcome. Clause 2-26: Payment — Fixed Price stipulates payment terms for suppliers when this contract type is used and is to be included in all FFP contracts.

An FFP contract places full responsibility on the supplier for all costs and the resulting profit or loss. It maximizes suppliers' incentive to control costs and perform effectively. The FFP is the least burdensome type of contract for the Postal Service to administer if the requirements are stable; if frequent changes are made, administration becomes difficult.

FFP contracts are appropriate when specifications are definite, there is little cost or no scheduled risk, and competition has established best value. There are also mechanisms built into an FFP contract to anticipate instances when the supplier can request additional funds. For example, if the Postal Service does not deliver a specification to a supplier by the agreed-upon date, this may cause the supplier's schedule to slip, which may result in higher costs.

## Fixed-Price Incentive Contract

A fixed-price incentive (FPI) contract provides for adjusting profit and establishing the final price by applying a formula based on the relationship between the total final negotiated cost and total target cost. An FPI contract specifies:

- Target cost
- Target profit
- Target price
- Price ceiling
- Share ratio

The price ceiling is the maximum that may be paid to the supplier, excluding adjustments specifically provided for under contract clauses. When performance is completed, the final cost is redetermined by applying the final negotiated rates to the incurred costs. When the final cost is less than the target cost, applying the formula results in a profit greater than the target profit; when the final cost is more than the target cost, applying the formula results in a profit less than the target profit. If the final redetermined cost exceeds the ceiling, the supplier absorbs the difference. The profit varies inversely with the cost, so this type of contract provides a positive, calculable profit incentive for the supplier to control costs.

FPI contracts should be used when:

- The Postal Service wishes to incentivize performance
- A firm-fixed-price contract is not suitable



- The parties can establish an initial target cost, target profit, and profit-adjustment formula that will provide a fair and reasonable incentive, as well as a ceiling that provides for the supplier to assume an appropriate share of the risk
- The supplier's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision

All FPI contracts must include Clause 2-27: Incentive Price Revision.

## **Fixed-Price Contract with Economic Price Adjustment**

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. This type of contract establishes a basis for measuring fluctuations so that price adjustments are limited to contingencies beyond the supplier's control and reflect actual market fluctuations. Upward adjustments are limited by establishing a reasonable ceiling, and provisions are included for downward adjustments when prices or rates fall below base levels established in the contract.

There are two types of economic price adjustments:

- Adjustments based on actual costs of labor or materials — price adjustments based on actual increases or decreases in the costs of specified labor or materials during performance
- Adjustments based on cost indexes of labor or materials — price adjustments based on increases or decreases in labor or material cost standards or indexes specifically identified in the contract

Fixed-price contracts with economic price adjustment are appropriate when there is serious doubt about the stability of market or labor conditions during an extended period of performance and when contingencies that would otherwise be included in a firm-fixed-price contract are identifiable and can be covered separately in the contract. Their usefulness is limited by the difficulties of administering them.

Fixed-price contracts providing for an economic price adjustment based on actual costs of labor or materials must include Clause 2-28: Economic Price Adjustment — Labor and Materials, and fixed-price contracts providing for an economic price adjustment based on cost indexes of labor or materials must include Clause 2-29: Economic Price Adjustment (Index Method).

## **Cost-Reimbursement Contracts**

Cost-reimbursement contracts provide for paying allowable, incurred costs. They establish an estimate of total cost so that funds may be committed, and they establish a ceiling that the supplier may not exceed (except at its own risk) without the approval of the Contracting Officer. Cost-reimbursement contracts are suitable when uncertainties about contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

*Limitations.* A cost-reimbursement contract may be used only when:

- The supplier's accounting system can determine the costs that apply to the contract and
- Postal Service monitoring during performance will assure that efficient methods and effective cost controls are used.

*Cost Contract.* A cost contract is a cost-reimbursement contract under which the supplier receives no fee. A cost contract may be appropriate for research and development, particularly with nonprofit educational institutions or other nonprofit organizations.

*Cost-Sharing Contract.* A cost-sharing contract is a cost-reimbursement contract under which the Supplier receives no fee and is reimbursed only a portion of its allowable costs, as stated in the contract. It is suitable when there is a high probability that the Supplier will receive substantial commercial benefits as a result of performance.

### **Cost-Plus-Incentive-Fee Contract**

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the fee initially negotiated to be adjusted later by a formula based on the relationship of total allowable costs to target cost. This type of contract specifies a target cost, a target fee, minimum and maximum fees, and a fee-adjustment formula. After performance, the fee is determined by the formula. The formula provides, within limits, for increases in the fee above the target when total allowable costs are less than target cost and for decreases in the fee below the target when total allowable costs exceed the target cost. This increase or decrease provides an incentive for the supplier to manage the contract effectively. When total allowable costs are greater than or less than the range of costs in the fee-adjustment formula, the Supplier is paid total allowable costs, plus the minimum or maximum fee.

A cost-plus-incentive-fee contract is suitable when a cost-reimbursement contract is appropriate and a target cost and fee-adjustment formula can be negotiated that will motivate the supplier to manage the contract effectively. The fee-adjustment formula should provide an incentive that covers the full range of reasonably foreseeable variations from the target cost. The supplier's share of the difference between target cost and actual cost will usually be in the range of 15–30 percent. If a high maximum fee is negotiated, the contract must provide for a low minimum fee—or even a zero or negative fee. The maximum fee will usually not exceed 10 percent of the contract's target cost (or 15 percent for research and development).

### **Cost-Plus-Fixed-Fee Contract**

A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for paying the supplier a negotiated, fixed fee. The fixed fee does not vary with actual costs, but may be adjusted as a result of changes to the contract. This type of contract gives the Supplier only a minimal incentive to control costs.

A cost-plus-fixed-fee contract is suitable when a cost-reimbursement contract is necessary, but the uncertainties and risks for the supplier are too great to permit negotiating a reasonable cost-plus-incentive-fee arrangement.

There are two forms of cost-plus-fixed-fee contracts

*Completion form.* A completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form generally requires the supplier to complete and deliver the end product within the estimated cost, if possible, as a condition for paying the entire fixed fee. If the work cannot be completed within the estimated cost, the Postal Service may require more effort without increasing the fee, but the estimated cost must be increased.

*Level-of-effort form.* A level-of-effort form describes the scope of work in general terms and requires the supplier to devote a specified level of effort for a stated period. Under this form, if performance is satisfactory, the fixed fee is payable when the period ends and the supplier certifies that the level of effort specified in the contract has been expended. Renewal for further periods of performance requires new cost and fee arrangements and is treated as a new purchase.

Because of the greater obligation assumed by the Supplier, the completion form is preferred over the level-of-effort form whenever the work can be defined well enough to permit a reasonable cost estimate within which the Supplier can complete the work.

### **Cost-Plus-Award-Fee Contract**

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of a base amount fixed at the beginning of the contract and an award amount that the Supplier may earn in whole or in part during performance. The award amount must be sufficient to motivate excellence in areas such as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee is determined by the Postal Service's evaluation of the Supplier's performance according to criteria stated in the contract. This determination is made unilaterally by the Postal Service and is not subject to Clause B-9: Claims and Disputes.

The cost-plus-award-fee contract is particularly suitable for buying services. The likelihood of meeting purchasing objectives and achieving exceptional performance is enhanced under this type of contract. It provides the flexibility to evaluate subjectively, at defined intervals, both actual performance and the conditions under which performance was achieved. The additional administrative effort, contract amount, performance period, and cost required to monitor and evaluate performance must be justified by the expected benefits to warrant using this type of contract.

Cost-plus-award-fee contracts provide for evaluation at stated intervals during performance, so that the Supplier is periodically informed of the quality of performance and areas for improvement. Evaluation criteria and a rating plan should be prepared for each purchase to motivate the Supplier to improve in areas important enough to be rated, but not to the detriment of overall performance. Requirements will vary widely among contracts, so

Contracting Officers must customize evaluation criteria, rating plan, and even Clause 2-37: Award Fee, seeking advice from the Purchase/SCM Team and Legal Counsel, as needed. The partial payment of the award fee will usually correspond to the evaluation periods to provide incentive. If a high award fee is negotiated, the contract may provide for a low base fee (or even a zero base). The maximum fee, comprising the base fee plus the highest potential award fee, will usually not exceed 10 percent (or 15 percent for research and development).

### **Provision**

All solicitations for cost-reimbursement contracts—the estimated value of which is \$100,000 or more—must contain Provision 2-9: Accounting System Guidelines — Cost Type Contracts. This provision requires preaward review and approval of the potential supplier’s cost accounting system by the Inspector General or a representative and delineates the elements required in such accounting systems.

### **Clauses**

All cost-reimbursement contracts must include the following clauses:

- Clause 2-30: Allowable Cost and Payment
- Either Clause 2-31: Limitation of Cost (if the contract is fully funded) or Clause 2-32: Limitation of Funds (if the contract is funded in increments)

Cost contracts must include Clause 2-33: Cost Contract — No Fee.

Cost-sharing contracts must include Clause 2-34: Cost-Sharing Contract — No Fee.

Cost-plus-incentive-fee contracts must include Clause 2-35: Incentive Fee.

Cost-plus-fixed-fee contracts must include Clause 2-36: Fixed Fee.

Cost-plus-award-fee contracts must include Clause 2-37: Award Fee.

### **Time-and-Materials Contracts**

In a time-and-materials (T&M) contract, the Postal Service and supplier agree on an hourly fixed rate for each labor category which includes overhead and profit. Materials are supplied at cost, if appropriate, and material-handling costs may be included with the material costs.

A T&M contract is most commonly used when the exact work to be done cannot be predicted in advance, such as in repair or warranty work or in the case of a long-term services contract.

T&M contracts may be used only if no other type of contract will do. The contract must establish a ceiling price that the supplier exceeds at its own risk. The Contracting Officer must document the contract file to show the basis for any change in the ceiling.

A labor-hour contract is a variant of the time-and-materials contract, differing only in that materials are not supplied by the Supplier. Time-and-materials and labor-hour contracts must include Clause 2-38: Payment (Time-and-Materials and Labor-Hour Contracts).

## **Indefinite-Delivery Contracts**

Indefinite-delivery contracts are used when the desired period of performance is known, but the exact time of delivery is unknown at the time of award.

These contracts establish:

- Supplies or scope of services that can be ordered
- Terms and conditions
- Maximum liability of the Postal Service
- Prices

Indefinite-delivery contracts typically apply to contracts for products. For example, if the Postal Service purchases a high-resolution printer, it may establish an indefinite-delivery contract for future toner purchases for the printer from the Supplier to reduce administrative lead time and inventory investment.

Indefinite-delivery contracts may provide for delivery of a definite quantity, an indefinite quantity within a minimum and maximum, or the Postal Service's requirements. During the contract term, delivery orders are issued by purchasing organizations or orderers.

The pricing structure of any normal contract type can be used for orders against indefinite-delivery contracts. Fixed-price orders are preferred unless the orders cannot be accurately priced before issuing each order. In that case, time-and-materials or labor-hour orders are preferred. The pricing mechanism may be the judgment of the Contracting Officer at the time of issuing each order. The Contracting Officer, in that case, must ensure that the contract clearly provides for each type of pricing. In addition, if so desired by the Purchase/SCM Team, the contract may provide for alternative pricing for each order (e.g., an order may be placed at a fixed price or at a time-and-materials rate).

*Definite-quantity contract.* A definite-quantity contract provides for a definite quantity of specific supplies or services during the contract period, with deliveries to designated locations when ordered. All definite-quantity contracts must include Clause 2-41: Definite Quantity.

*Indefinite-quantity contract.* An indefinite-quantity contract provides for an indefinite quantity of specific supplies or services, within a stated minimum (must not exceed known requirements) and maximum (must be realistic) quantity, to be delivered during the contract period to designated locations when ordered. It is used when precise requirements for supplies or services ordered over the term of the contract, above known minimums, cannot be determined. The minimum and maximum are provided to limit the pricing risk to the supplier. Contract maximums may be exceeded upon the mutual agreement of the Postal Service and the supplier. All indefinite-quantity contracts must include Clause 2-42: Indefinite-Quantity.

*Requirements contract.* A requirements contract provides for filling all (or specified portions) of actual purchase requirements of designated activities for specific supplies and services to be delivered as ordered over the term of the contract. It is used:

- For recurring requirements anticipated during the contract period, where precise quantities cannot be determined
- To obtain supplies and services in excess of quantities that activities themselves can furnish within their own capabilities

A requirements contract is preferred when the Purchase/SCM Team decides to award a requirements contract to only one source and requirements can be estimated with reasonable accuracy. The solicitation and contract must state an estimated total quantity and, if feasible, the maximum limit of the supplier's obligation to deliver and the Postal Service's obligation to order. The total-quantity estimate must be as realistic as possible, based on records of previous requirements and current information. The contract may specify minimum or maximum quantities for individual delivery orders and a maximum that may be ordered during a specified time.

When a requirements contract is for repair, modification, or overhaul of Postal Service property, the solicitation must state that failure of the Postal Service to furnish such items in the amounts described as "estimated" or "maximum" will not entitle the Supplier to any price adjustment under the Postal Service Property clause. All requirements contracts must include Clause 2-43: Requirements.

All delivery-order, task-order, and definite-order contracts must include Clause 2-39: Ordering and Clause 2-40: Delivery-Order Limitations.

## Performance-Based Contracts

Performance-based contracting arrangements and partnerships should also be considered when selecting a contract type. Performance-based contracting is focused on the results instead of the process. The supplier provides the Postal Service with specific benefits, such as cost reductions or revenue generation, and in return the supplier shares in the value created. Performance-based contracting creates an incentive for the supplier to control its costs. Partnering allows the Postal Service and supplier to control costs, resolve differences through negotiations, and transform into a professional relationship built on trust and cooperation. The partnership will develop throughout the process of the contract. This will lead to payment or other issues being resolved economically and efficiently. Additional information can be found in the Consider Performance-Based Contracting Arrangements topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## Letter Contracts

A letter contract is a written preliminary contractual instrument that authorizes the supplier to begin work immediately, before a definitive contract is negotiated. Each letter contract must be as complete and definitive as

possible under the circumstances. The maximum liability of the Postal Service must be stated (this is the amount estimated to be needed to cover performance before definitization).

A letter contract is used when:

- The requirement demands that the supplier be given a binding commitment so that work can begin immediately
- Negotiating a definitive contract in time to satisfy the requirement is impossible
- No other type of contract is suitable

The use of a letter contract must be approved by a Portfolio manager.

Each letter contract must contain a negotiated definitization schedule, including a:

- Date for submission of the Supplier's price proposal
- Date for the start of negotiation
- Target date for definitization, which must be the earliest practical date

The definitization schedule must provide for definitizing the contract. Because an undefinitized letter contract is, in effect, a cost-reimbursement contract, it is not in the Postal Service's interest to allow it to continue longer than necessary. Therefore, if after exhausting all reasonable efforts, the Contracting Officer and the Supplier fail to reach an agreement on price or fee, Clause 2-44: Contract Definitization requires the Supplier to proceed with the work and provides that the Contracting Officer may determine a reasonable price or fee, subject to appeal as provided in Clause B-9: Claims and Disputes.

A letter contract must not:

- Commit the Postal Service to a definitive contract in excess of the funds available at the time the letter contract is executed
- Be modified to add work unless the added work is inseparable from the work being performed under the letter contract

A letter contract must include clauses required for the type of definitive contract contemplated, as well as any additional clauses known to be appropriate. All letter contracts must include the following clauses:

- Clause 2-44: Contract Definitization
- Clause 2-45: Execution and Commencement of Work
- Clause 2-46: Limitation of Postal Service Liability (the maximum liability, the amount necessary to cover the Supplier's performance before definitization)
- Clause 2-47: Payment of Allowable Costs Before Definitization (used if a cost-reimbursement definitive contract is contemplated)

## Ordering Agreements

An agreement that may be used between the Postal Service and a supplier that is not a contract is an ordering agreement. It is a negotiated written agreement that contains terms and conditions applying to future contracts between the parties. A contract comes into being between the parties to an ordering agreement only when orders are issued and accepted by the parties. Ordering agreements include basic pricing agreements (BPAs), which are ordering agreements that permit individuals designated by name or title to place orders by telephone, over the counter, or in writing. Although there may be a price ceiling for individual orders, there is no limit on the aggregate value of orders and no commitment to purchase.

An ordering agreement is useful for expediting contracting for uncertain requirements of supplies or services when specific quantities and prices are not known at the time the agreement is signed, but substantial quantities of the supplies or services are expected to be purchased. Ordering agreements reduce administrative lead time and inventory investment. Ordering agreements typically apply to contracts for services.

Task orders are principally placed against an ordering agreement. It is the responsibility of the Contracting Officer to issue the task order; the Client will issue task descriptions, as its needs arise; and the Supplier will estimate the cost, based on the labor rates and other applicable costs that are established in the ordering agreement. The Contracting Officer may accept the estimate of costs and schedule or negotiate with the supplier to reach agreement.

## Other Topics Considered

Consider Performance-Based Contracting Arrangements topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## Consider Use of Renewals and Options

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When contract performance has met or exceeded requirements, and the Purchase/SCM Team anticipates a future need, the Purchase/SCM Team should consider renewing the contract or exercising options to ensure a supplier's continued performance. Renewing a contract and exercising an option are not the same thing. Renewing a contract takes place by mutual agreement between the Postal Service and the supplier; exercising an option can be a unilateral action on the part of the Postal Service or through mutual agreement. For a contract to be renewed or an option to be exercised, the contract must include the applicable clauses.

The Purchase/SCM Team should consider the use of renewals and exercise of options for the following reasons:

- Preservation of operational continuity
- Supplier will have already developed knowledge of product or service



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- Realization of time efficiency from the Postal Service's perspective, because the activities associated with the Perform Solicitation-Related Activities and Evaluate Proposals tasks of Process Step 2: Evaluate Sources will be avoided
- Realization of time efficiency from the potential supplier's perspective, because the learning curve will be reduced
- Switching costs and risks will be avoided
- Successful contract performance will be more stable
- Supplier will be rewarded for successful, high-quality performance levels
- Technical support capabilities will have already been established

Option provisions and clauses should not be included in contracts, and should not be exercised, when:

- The supplier would be required to incur undue risks (as when the price or availability of necessary materials or labor is not reasonably foreseeable) which endanger performance and lead to unfair prices
- An indefinite-quantity or requirements contract is appropriate, except that options for continuing performance may be used
- Market prices for the supplies or services involved are likely to change substantially
- The option quantities represent known firm requirements for which funds have been budgeted and approved, unless:
  - the basic quantity is a learning or testing quantity
  - there is some uncertainty as to supplier or equipment performance
  - realistic competition for the option quantity is impracticable once the initial contract is awarded

Renewals of mail transportation highway contracts are discussed in the Mail Transportation Purchasing commodity specific practice.

### Renewals

The renewal of a contract is the extension of contract performance by the mutual agreement of the parties for a specific period beyond that of the original contract term. When the Purchase/SCM Team foresees the potential need for such an extension, for example, when there is a continuing need for a service (e.g. cleaning, technical) or an ongoing need for a certain type of supply, renewals should be considered and Clause B-78: Renewal should be included in the contract. If, within a reasonable time before the contract expires (six months, for example), the Purchase/SCM Team decides that an extension is needed, discussions and negotiations should be opened with the supplier to determine whether both parties can agree upon the renewal. During these discussions, the scope of the original contract should not be significantly changed; if the Postal Service's needs have changed, a new contract should be solicited. The renewal price must be negotiated and

adjusted as necessary during the discussions to reflect current market pricing. If the parties agree upon the renewal, the contract is modified to reflect the new agreement. The term of any renewal may not exceed four (4) years, and no contract may be renewed more than once.

## Options

The exercise of an option is the Postal Service's decision to use the clauses present in the current contract to continue the supplier's performance. Options allow the Purchase/SCM Team to purchase additional amounts of items or services than those required initially or to extend contract performance past the original period. Options are either priced or unpriced at the time of contract award. If they are unpriced, price must be agreed to via discussions and negotiations before the option can be exercised.

## Consideration of Options

Options need not be evaluated to award a contract when:

- The option would have no effect on the outcome of the evaluation (when the option quantity must be offered at the same price as the basic quantity, the option is for a time extension only, or the option is unpriced); or
- When there is a reasonable certainty that funds will not be available to exercise the option

When options will not be evaluated, the contract file must contain the rationale for the decision. When the Purchase/SCM Team decides before issuing the solicitation that options will not be evaluated, the solicitation must include Provision 2-4: Evaluation Exclusive of Options, or Provision 2-5: Evaluation Exclusive of Unpriced Options. In all other cases, the Purchase/SCM Team must follow the instructions in paragraph b of Provision 4-2: Evaluation, or include Provision 2-3: Evaluation of Options, in the request for proposals (RFP).

## Options in Solicitation-Related and Contractual Documents

Option clauses may be included in contracts when increased requirements are foreseeable during the contract period or when continuing performance past the original period is in the best interest of the Postal Service. Option clauses may require that additional quantities be priced the same as the basic quantities or at a different price. The clauses may also allow for unpriced options at the time of award. The price for these options is subject to discussions and negotiations when the option is exercised. Priced options may require suppliers to guarantee prices for definite time periods, with no guarantee that the option will be exercised. Their improper use may result in unfair prices to the Postal Service or an unfair financial burden on the Supplier. When additional requirements are foreseeable and subsequent competition would be impracticable because of factors such as production lead time and delivery requirements, the use of priced options may be

preferable to negotiating a price later when the Supplier is the only practicable source. Contracts containing priced options that exceed five years must include an economic price adjustment clause (such as 2-28: Economic Price Adjustment Labor and Materials or 2-29: Economic Price Adjustment Index Method).

The contract must limit the additional quantities of supplies or services that may be purchased or the duration of the period for which performance of the contract may be extended under the option, and it must fix the period within which the option may be exercised. This period should be set to give the Supplier adequate notice for performance under the option. In fixing the period, consider the lead time needed to ensure continuous production and the time required for additional funding and other approvals. The period for exercising the option should always be kept to a minimum. When a solicitation contains an option for additional quantities of supplies at prices no higher than those for the initial quantities, care should be taken to ensure that the option quantities are reasonable and do not cause the Supplier financial hardship. The quantities or the period under option and the period during which the option may be exercised must be justified and documented in the contract file by the Contracting Officer.

The solicitation may allow varying prices to be offered for the option quantities, depending on the quantities actually ordered and the dates when ordered. If so, the solicitation must specify the price at which the options will be evaluated (e.g., highest option price offered or option price for specified quantities or dates).

An option for increased quantities may be expressed as a percentage of specific line items, a number of additional units of specific line items, or additional numbered line items (identified as the option quantity) with the same name as the items initially included in the contract. An option for increased services (including construction) may similarly be expressed in terms of percentages, increases in specific line items, or additional numbered line items expressed in the units of work initially used in the contract (e.g., labor hours, square feet, or pounds or tons handled). When exercising the option would result in extending the duration of the contract, the option may be expressed in terms of an extended completion date or an additional time period.

## **Other Topics Considered**

Perform Switching-Cost Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Evaluate Contract Effectiveness topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Decide to Renew a Contract or Exercise Options topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## Develop and Finalize Sourcing Strategy

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Sourcing is the process of identifying suppliers capable of meeting particular requirements. The sourcing strategy establishes the objectives and priorities of the purchase and an assessment of risk. It serves as the crucial link between category strategy and sourcing activities. In the Develop Purchase Plan and Best Value Parameters stage, a preliminary sourcing strategy was developed; in this stage, the sourcing strategy is finalized.

### Select a Sourcing Type

Supply Management (SM) should work together with the Client to select the type of sourcing that will best meet the requirement and the Postal Service's best interest. Sourcing can go through one of the following venues:

- Multiple sourcing
- Single sourcing
- Sole sourcing

### Multiple Sourcing

Multiple sourcing is the decision to utilize two or more suppliers to satisfy a requirement. Generally, multiple sourcing may be appropriate to:

- Ensure supply continuity
- Ensure and potentially enhance competition
- Meet Client volume requirements
- Select the best suppliers in those markets with rapid technology advancement and changing market leaders
- Support supplier diversity initiatives

### Single Sourcing

Single sourcing is the selection of a strategic source from a number of possible sources to fulfill all Postal Service requirements for a particular class of goods or services. Single sourcing should be considered when there is a strategic or key supplier among the pool of potential suppliers. Single sourcing is to be distinguished from sole sourcing, which occurs when there is genuinely only one supplier that can meet the requirement. Single sourcing is justified for:

- Obtaining priority service from the supplier in times of shortage
- Ensuring just-in-time manufacturing, which may require a single source for quality, control, and coordination
- Maintaining lower total cost on high volume
- Reducing total system inventory, freight cost, and costs associated with special tooling
- Obtaining more clout with one supplier
- Meeting time-to-market window

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- Responding to emergency situations whereby response time is critical
- Rewarding supplier's superior performance
- Achieving overall best value for the Postal Service

When single sourcing is determined to be the strategic approach for a particular purchase, the Purchase/SCM Team should be prepared to develop a business justification validating that the single sourcing approach, as opposed to multiple sourcing, does in fact provide the Postal Service with the best overall value. As it did when the preliminary sourcing strategy was developed, the Purchase/SCM Team must also consider whether the single source strategy may potentially negatively impact the Postal Service's commitment to establish and maintain a strong competitive supplier base by putting Small-, Minority-, and Women-Owned Businesses at a competitive disadvantage, and whether, among other things the single source strategy is justified in light of these other considerations. In these instances, it will be important for the Purchase/SCM Team to gather and analyze the pertinent data that supports the single sourcing approach. The proper analysis and data to support and build a business justification for a single source strategy can be obtained through:

- Conducting spend analysis
- Market research
- Determining the extent of competition

### **Sole Sourcing**

Sole Sourcing describes the situation in which there is only one available supplier that can fulfill the requirement, given time and other constraints (e.g., joint research and development [R&D] or an investment that effectively makes that supplier the only practicable source for the future).

Sole sourcing may be the result of a monopoly, where only one supplier exists capable of satisfying a requirement. Situations involving a monopoly must be fed back into the purchase planning process so that the Postal Service can take steps to either widen the requirement or stimulate competitive suppliers in the future. Sole sourcing may also be imposed by the Client's insistence on a specific source for a material or service or as a requirement of other stakeholders. In either case, the Purchase/SCM Team must ensure that those making the requirement are cognizant of the future risks of sole sourcing. Such risks may include greater vulnerability to rising prices and greater exposure to interrupted supply continuity.

Although sole sourcing implies an absence of competition, the procedures discussed in the Perform Solicitation-Related Activities and Evaluate Proposals tasks of Process Step 2: Evaluate Sources must be followed, because they form the basis both for negotiation and for the formal contract.

At this stage, the Purchase/SCM Team should check that all authorizations and approvals required to proceed to solicitation-related activities, especially financial, are in place.

## Sourcing Strategy

A sourcing strategy will be devised in conjunction with the Client. The category strategy provides the general direction for the drafting of the sourcing strategy.

The Purchase/SCM Team should consider the following questions before embarking on the solicitation process. If the answer is “no” for all of the above, a solicitation is required. If some, but not all, of the above scenarios apply, the Purchase/SCM Team should use its best business judgment on how to proceed.

- Can the requirement be satisfied most readily and effectively through comparison of published price lists or through a simple request for quotations (RFQ), with additional negotiation as appropriate?
- Would a solicitation exercise be unjustified? Namely, is the proposed purchase of significantly low volume? Is the possible economic advantage relative to the cost of a solicitation process too small?
- Can the requirement be added to an existing contract satisfactorily or sourced through an existing broad-range agreement?
- Is there realistically only one potential supplier (sole sourcing)?

Purchase/SCM Teams may decide to use the noncompetitive purchasing method when it is deemed the most effective business practice for the given purchase. The rationale for the decision must be documented in a business case and included in the contract file. The extent and detail of the business case will depend on the particular purchase, its complexity, and its potential dollar value, but in all cases the following must be addressed:

- The business scenario justifying the decision, and why it is appropriate
- The extent and result of market research performed to ensure that a noncompetitive purchase is the most effective business practice
- If applicable, whether the Purchase/SCM Team believes that future purchases of the goods or services should be made noncompetitively, and why
- Any other issues that should be considered in the interest of sound and effective purchasing (e.g., subcontracting plans, upcoming changes in market conditions)

If a noncompetitive purchasing method is used, the business case must be approved according to the following guidelines:

- The VP, SM has delegated noncompetitive review and approval authority for contracts up to and including \$10 million, by letter of delegation to Portfolio managers, who may, consistent with those delegations, redelegate, by letter of delegation, some of that authority to subordinate managers and contracting officers.

- If the estimated value of the noncompetitive purchase is expected to exceed \$10 million, the VP, SM must give prior review and approval of either the purchase plan or proposed contract award.

The Purchase/SCM Team will decide whether to solicit for the requirement among prequalified suppliers unless suppliers have not been prequalified or such suppliers have been identified as insufficient for some reason.

Additionally, at this point the Purchase/SCM Team should decide:

- The relevant time frame
- The need for auction (Consider Auctions topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources)
- The sourcing type

The decisions derived are documented in the sourcing strategy.

## **Other Topics Considered**

Develop Commodity Strategy general topic

Prepare Preliminary Business Justification for the Need topic, Conceptualize Need task, Process Step 1: Identify Needs

Conduct Make vs. Buy Decision Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Consider Auctions topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## **Define Supplier Diversity Objectives**

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The Postal Service's Supplier Relations Principle aims to establish and maintain a strong, competitive supplier base that reflects the diversity of the supplier community and provides suppliers with access to purchasing opportunities. The Postal Service understands that a diverse supplier base is important from both a performance and public policy standpoint. Supplier diversity translates into conducting business with small, minority-, and woman-owned businesses (SMWOBs), as well as other suppliers. The Postal Service strives to be a world-class leader in supplier diversity.

Supplier diversity enables the Postal Service to take full advantage of the entrepreneurial spirit, capabilities, competitive pricing, new processes, products, services, and innovations offered by diverse suppliers. Diverse suppliers are essential to the Postal Service's continuing objective of being a market-driven organization. Postal Service suppliers are also Postal Service customers, so the value of cultivating a diverse supplier base is good business practice. The Postal Service has established programs and teams to ensure its full commitment to supplier diversity.

## Definitions

1. *Small business.* A business, including an affiliate (see # 2 below), that is independently owned and operated, is not dominant in producing or performing the supplies or services being purchased, and has no more than 500 employees, unless a different size standard has been established by the Small Business Administration (see 13 CFR 121, particularly for different size standards for airline, railroad, and construction companies). For subcontracts of \$50,000 or less, a subcontractor having no more than 500 employees qualifies as a small business without regard to other factors.
2. *Affiliates.* Businesses connected by the fact that one controls or has the power to control the other, or a third party controls or has the power to control both. Factors such as common ownership, common management, and contractual relationships must be considered. Franchise agreements are not considered evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.
3. *Dominant.* Being a controlling or major influence in a market in which a number of businesses are primarily engaged. Factors such as business volume; number of employees; financial resources; competitiveness; ownership or control of materials, processes, patents, and license agreements; facilities; sales territory; and nature of the business must be considered.
4. *Minority business.* A minority business is a concern that is at least 51 percent owned by, and whose management and daily business operations are controlled by, one or more members of a socially and economically disadvantaged minority group, namely U.S. citizens who are Black Americans, Hispanic Americans, Native Americans, or Asian Americans. (Native Americans are American Indians, Eskimos, Aleuts, and Native Hawaiians. Asian Americans are U.S. citizens whose origins are Japanese, Chinese, Filipino, Vietnamese, Korean, Samoan, Laotian, Kampuchea (Cambodian), Taiwanese, in the U.S. Trust Territories of the Pacific Islands or in the Indian subcontinent.)
5. *Woman-owned business.* A concern at least 51 percent of which is owned by a woman (or women) who is a U.S. citizen, controls the firm by exercising the power to make policy decisions, and operates the business by being actively involved in day-to-day management.
6. *Number of employees.* Average employment (including domestic and foreign affiliates), based on the number of people employed (whether full-time, part-time, or temporary), during each pay period of the preceding 12 months, or, if the business has been in existence less than 12 months, during each pay period of its existence.



## Supplier Diversity Objectives

Supplier diversity is the proactive business process that seeks to provide suppliers with access to purchasing and business opportunities. Supplier diversity is defined by:

- Enterprise and Supply Management (SM) policies and objectives
- The purchasing process
- Continuous improvement and monitoring

Supplier diversity objectives include:

- Continuous improvement of supplier diversity and in relationships with SMWOBs
- Continued broad market research analysis of the supplier community to identify and select the best suppliers
- Process improvements that promote opportunities for all suppliers to provide value-added products and services
- Awareness and information — making all Postal Service personnel responsible for supplier diversity

The supplier diversity objectives are aligned with Postal Service and SM objectives, which is a top-down approach. Laws, regulations, clauses, and provisions also contribute to shaping supplier diversity objectives. The Postmaster General and Vice President, Supply Management (VP, SM) convey the importance of supplier diversity. The Postal Service's website, [www.usps.com](http://www.usps.com), includes a supplier diversity section, which contains information on supplier diversity, goals, processes, frequently asked questions (FAQs), and a stated commitment to supplier diversity by the Postmaster General and VP, SM.

Supplier diversity objectives are universal to all Postal Service purchases; however, certain objectives may be more pertinent to specific types of purchases. The purchase's progression through the Process Steps defines the diversity objectives for each purchase. For example, the Postal Service diversity objective of continuing to perform broad market analysis to identify other possible suppliers is more pertinent to the purchase if a noncompetitive sourcing method is to be used. The business case for a noncompetitive purchase must address the extent and result of the market research.

The Postal Service continually monitors supplier diversity objectives and results, and by doing so, further refines the determination and definition of those objectives, which is in line with the supplier diversity objective of continuous improvement. This refinement is conducted through meetings, reviews, data gathering, and other methods of examination.

## Supporting Supplier Diversity

The following sections of the supplier diversity corporate plan contribute to defining the supplier diversity objectives. Each area directly or indirectly influences at least one of the activities that define supplier diversity objectives, the activities of the purchasing process, continuous improvement

and monitoring, and defining supplier diversity for the enterprise and suppliers. The areas are:

- Management involvement
- Communication/outreach
- Sourcing
- Subcontracting
- Innovative initiatives
- Training and development
- Tracking progress
- Performance indicators
- Recognition

## **Management Involvement**

The VP, SM and SM management, meet quarterly to review supply strategies to ensure that the Postal Service is taking full advantage of the capabilities, competitive pricing, new processes and products, and innovations offered by SMWOBs.

The Supplier Diversity Team in Supply Management carries out continual assessments of supplier diversity business process applications, and provides related updates and briefings on best practices. The Supplier Diversity Team also serves as an information source to the SMWOB community.

## **Communication/Outreach**

The Postal Service works closely with trade and industry associations, government agencies, and business development and purchasing organizations to exchange information on methods, initiatives, and processes to identify sources of supply. This enables contracting professionals, as well as credit cardholders and other Postal Service personnel to more effectively identify potential suppliers to meet Postal Service needs.

The Postal Service will:

- Conduct supplier forums to share information on Postal Service corporate business goals and objectives
- Conduct and participate in surveys and benchmarking studies for continuous improvement of supplier diversity processes
- Maintain intranet and Internet sites with supplier diversity policy, procedures, points of contact, and other resource information for various Purchase/SCM Teams, Clients, and suppliers
- Attend and participate in business opportunities and trade fairs promoting SMWOBs
- Continue to foster the development of mutually beneficial business relationships between internal clients and the supplier community

- Publicize purchasing and business opportunities in print or electronic media as appropriate to enhance competition
- Provide internal and external stakeholders with timely updates on the positive contributions of supplier diversity processes
- Continue to make available a formal registration process for potential suppliers

## **Sourcing Considerations**

Purchase/SCM Teams should ensure that individual purchase plans and plans for prequalification demonstrate active sourcing efforts for diverse suppliers. Prequalification is further addressed in the Prequalify Suppliers topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. Specific methodologies should be included for including SMWOBs in the purchasing process. Also, it must be ensured that each Purchase/SCM Team's market research includes specific efforts to identify SMWOBs capable of prequalification criteria and that these firms are encouraged to compete.

Market research is performed by continuously assessing the marketplace for drivers of market segments, industry trends, impact of new technology, competitive dynamics, supplier characteristics, and number of suppliers (national or regional) in a market. Market research is further addressed in the Conduct Market Research and Benchmarking Analysis topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## **Subcontracting**

The Postal Service encourages subcontracting with SMWOBs. Subcontracting with SMWOBs is further discussed in the Subcontracting with Small, Minority, and Women Owned Businesses topic of the Evaluate Proposals task off Process Step 2: Evaluate Proposals.

## **Training and Development**

All employees in SM functions should annually participate in training related to supplier diversity.

The Postal Service, in collaboration with suppliers, will:

- Conduct roundtable discussions to share information on Postal Service corporate business goals and objectives
- Work together to develop better proposals
- Conduct sessions aimed at innovation and improvement
- Work to leverage benchmarking and best practices in the supply chain

## **Tracking Progress**

The Postal Service strives for continuous improvement by performing quarterly monitoring of all effort-based indicators and year-end results. The

Postal Service will periodically reposition supply strategies to adopt leading practices identified in the purchasing process.

All suppliers are classified to identify prime and subcontracting (second-tier) spend within each socioeconomic category. The Postal Service will continue to collect and report results through the tracking of:

- Total number of transactions (contract award and modifications)
- Total dollar amount of transactions
- Number of transactions with SMWOBs
- Prime Supplier SMWOBs spend
- Subcontracting (second-tier) spend with SMWOBs
- Total credit card expenditures
- Number and value of credit card expenditures with SMWOBs

## Performance Indicators

The Postal Service strives for continuous improvement by establishing effort-based indicators in such areas as:

- Sourcing Plans — ensuring that SMWOBs are considered in the sourcing process, including consideration for prequalification and subcontracting opportunities
- Attending and participating in business opportunity and trade fairs promoting SMWOBs
- Holding advisory and debriefing sessions with SMWOBs
- Participating in and sponsoring forums that provide suppliers an opportunity to obtain additional guidance on processes within a commodity area
- Tracking types and numbers of source files and related resources used to identify qualified suppliers
- Tracking the number of opportunities offered within an industry category
- Developing, implementing, and maintaining purchasing and sourcing strategies that include SMWOBs
- Understanding the current diversity of each category supplier base and taking specific steps to ensure the continued effectiveness of that base
- Benchmarking results with other public and private sector organizations

## Recognition

Recognition of supplier diversity efforts of both Postal Service personnel and suppliers will further promote the defined supplier diversity objectives. The Postal Service will celebrate successes by:

- Publishing both quantitative and qualitative results by each buying category on a quarterly basis

- Publishing supplier successes on a periodic basis
- Recognizing and publicizing outstanding SCM performance and best-practice successes by both clients and suppliers
- Recognizing extraordinary individual performance
- Recognizing substantive team or category performance, using current Postal Service recognition processes each year

## Other Topics Considered

Analyze Unsolicited Proposals topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Subcontracting with Small, Minority, and Women Owned Businesses topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Develop and Finalize Sourcing Strategy topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Issue Request for Proposals (RFP) and Publicize Requirements topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Announce Award topic, Make Final Decisions task, Process Step 3: Select Suppliers

## Prequalify Suppliers

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Prequalification is the process of up-front identification of top-quality suppliers able to compete for specific types of contract opportunities. Prequalified suppliers are those whose record of performance in the marketplace, whether commercial or governmental, demonstrates their ability to perform to consistently high standards of quality and reliability.

Selection of the right suppliers is critical to the Postal Service's success. Having the right suppliers augments the Postal Service's ability to deliver high-quality and innovative services to its customers and reduces operational risks. Prequalifying suppliers enhances competition, ensures quality performance, and can also shorten cycle time and strengthen relationships between the Postal Service and its suppliers.

Suppliers benefit from having a more comprehensive opportunity to familiarize themselves with the Postal Service's requirements before a request for proposals (RFP) is issued, which in turns yields lower proposal preparation costs.

Prequalification may be used:

- On an ongoing basis for commercially available goods or services purchased routinely
- For an individual purchase or for a series of purchases

## Evaluation Factors

The supplier evaluation process is a key means of achieving competitive advantage and maximum value for money. Supplier-specific performance evaluation factors such as past performance and supplier capability are carefully evaluated to determine which suppliers to include on the prequalified list.

### Past Performance

A company or individual that has performed well on previous contracts and has shown proven results in using supply chain management (SCM) business practices is likely to do the same on similar contracts in the future. Including past performance as an evaluation factor helps ensure quality suppliers. Past performance evaluations should include the following factors:

- Quality — a record of conformance to contract requirements and standards of good workmanship
- Timeliness of performance — adherence to contract schedules, including the administrative aspects of performance
- Business relations — a history of being reasonable and cooperative with customers, a commitment to customer satisfaction, and of integrity and ethics
- Cost control — a record of forecasting and containing costs on changes and cost-reimbursement contracts

Emphasis should be placed on comparison with similar contracts held by the Postal Service when evaluating past performance. If a newly established supplier cannot provide past performance information, past performance of the supplier's key personnel on similar projects may be evaluated.

### Supplier Capability

Supplier capability is evaluated to determine a supplier's ability to perform upon award of a contract. It should be used as a snapshot of the quality and reliability of that performance. Certain key areas must be considered when determining a supplier's capability. To be deemed capable, the supplier must:

- Have, or have the ability to obtain, adequate resources to perform the work (e.g., financial, technical)
- Be able to meet the required or proposed delivery schedule, considering all existing commitments, including awards pending
- Have a good record of integrity and business ethics
- Have a good quality control program that complies with RFP requirements

## USPS Supplying Practices Process Step 2: Evaluate Sources

- Have the necessary organization, experience, accounting and operational controls, technical skills, and production and property controls
- Have, or have the ability to obtain, the necessary production, construction, and technical equipment and facilities
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations

Certain business information must be obtained to determine that a supplier is capable. Sources of such information include:

- The Postal Service list of debarred and suspended suppliers and the General Services Administration (GSA) consolidated list of suppliers debarred, suspended, or declared ineligible
- Whether the Postal Service has decided to decline to accept or consider proposals from the supplier (see CFR 601.108)
- Records and experience data, including the knowledge of other Contracting Officers, purchasing specialists, and audit personnel
- The supplier's proposal information, business profile, financial data, information on production equipment, production data, questionnaire replies, and personnel information
- Subcontractors, customers, financial institutions, and government agencies that have done business with the supplier
- Business and trade associations

### **Preliminary Prequalification Survey**

If the required information and discussions do not provide an adequate basis for determining capability, the Purchase/SCM Team may conduct a preliminary prequalification survey. The extent of the survey must be consistent with the dollar value, complexity, or sensitivity of the purchase and may include any of the following:

- Data on hand or from other government or commercial sources
- Examination of financial statements and records
- On-site assessment of plant, facilities, workforce, subcontractors, and other resources to be used in contract performance

Results of the preliminary prequalification survey must be in writing and included with the capability determination and attached to the contract file.

### **Selecting Suppliers**

After the evaluation team has reviewed and analyzed the supplier-specific information, the best qualified suppliers are placed on the prequalified list. Some suppliers are considerably more qualified than others, so the Purchase/SCM Team should prequalify the best suppliers available.

During this phase of the prequalification process, the Contracting Officer must ensure that:

- The inclusion or exclusion of a particular supplier is based strictly on business reasons
- Enough suppliers are placed on the list to ensure adequate competition for subsequent purchases
- Any sensitive business information provided by a supplier is sufficiently protected from disclosure

## **Notification**

All suppliers who responded to the prequalification announcement must be notified of whether they were included or excluded from the prequalification list. Debriefings will be available upon request to suppliers who have not been selected for the list, so they may better prepare for future prequalification opportunities.

## **Reassessment**

The Purchase/SCM Team should reassess the suppliers included on the prequalified list periodically to ensure that they remain qualified and reliable. The Purchase/SCM Team may remove a supplier from the prequalified list only if the decision is based on good business reasons. The supplier must be informed of the removal and provided an explanation for the decision.

The Purchase/SCM Team should also consider whether new suppliers should be included on the list.

# **Define Contract Management Metrics**

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Contract management is the process of ensuring that the intent, requirements, and terms and conditions of a contract are met from inception to end of life. Successful contract management requires the establishment of meaningful and effective metrics.

In instances when metrics have not been established in the request for proposals (RFP), the Contracting Officer will work with the Client to define contract management metrics.

## **Measurable Performance Elements**

Measuring performance requires the creation and use of performance metrics that allow the quality of a service to be measured. Elements of contract performance that can be assessed include:

- Completeness
- Cost
- Availability
- Capacity



- Reliability
- Flexibility
- Timeliness
- Responsiveness
- Security
- Standards
- Usability
- Accuracy
- Risk
- Safety
- Auditability/clear documentation
- Satisfaction

There may be a need to modify, add, or remove performance metrics during the lifetime of the contract. It may be too expensive or time-consuming to measure a given element; time and resource implications must be considered. If a metric requires specialized Client knowledge, it is imperative to devote the time of an individual or team to the task.

## **Aspects of Performance Metrics**

The performance metrics selected must offer clear and demonstrable evidence of the success of each of the following aspects, even in areas where a metric is hard to quantify:

- Quality — conformance to contract requirements and standards of good workmanship
- Timeliness of performance — adherence to contract schedules, including the administrative aspects of performance
- Client-Supplier relationship — being reasonable and cooperative; commitment to customer satisfaction; integrity and ethics
- Cost control — forecasting and containing costs on changes and cost-reimbursement contracts

There should be at least one metric in each category above. The intention is to form the most comprehensive view possible of the performance of the Supplier, the Postal Service, and any subcontractors involved. All Purchase/SCM Team members with contract management responsibilities are required to ensure that a formal feedback process is in place with suppliers that covers these key criteria.

## **Risk Management**

Managing risk is an important aspect of managing service delivery and must be reflected in the design of performance metrics. The fulfillment of the contract may be endangered by several kinds of risk, some within the Supplier's control and some beyond it. Identifying and controlling (by avoiding or minimizing) risks is a vital part of managing a contract. Business continuity

plans and contingency plans provide backup strategies and actions to recreate/restore/relocate a business or project and are used to help prepare the Client for possible situations where the Supplier is unable to deliver contractual requirements. Guidance on risk management activities at the project level are discussed in the Manage Risks topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs. Performance metrics should reflect risk management objectives.

## Sources for Metrics

Client requirements are the primary focus of contract management and must underpin the selected performance metrics. Performance metrics must also align with:

- Client strategies
- Postal Service strategies
- Most recent business justification
- Demand management strategy
- Logistics support plan
- Project plan
- Value chain map and analysis (performance metrics should support a focus on value-added activities away from non-value-added activities)
- Life-cycle support plan
- Investment recovery plan
- Performance-based contracting agreement
- Industry benchmarks

## Metrics Design

Metrics should be S.M.A.R.T.:

- Specific — clear and focused to avoid misinterpretation. Should include metric assumptions and definitions and be easily interpreted.
- Measurable — can be quantified and compared with other data. It should allow for meaningful statistical analysis. Avoid “yes/no” measures except in limited cases, such as start-up or systems-in-place situations.
- Attainable — achievable, reasonable, and credible under conditions expected.
- Realistic — fits into the organization’s constraints and is cost-effective.
- Time Bound — states the time period in which each metric will be accomplished.

## **Defining the Baseline**

Before the defined metrics can be applied to a supplier's performance, the Client must identify a baseline or level against which to measure service and improvements for each of the metrics. This activity must be completed before the contract commences. A benchmark analysis or a performance comparison across different suppliers, in the case of multi-source contracts is another useful way to gauge improvements. Some industry benchmarks can also give rise to useful performance metrics.

## **Other Topics Considered**

Develop Commodity Strategy topic, General Practices

Define and Understand Client Needs, Goals, and Strategies topic,  
Conceptualize Need task, Process Step 1: Identify Needs

Prepare Preliminary Business Justification for the Need topic, Conceptualize  
Need task, Process Step 1: Identify Needs

Develop Demand Management Strategy topic, Conceptualize Need task,  
Process Step 1: Identify Needs

Conduct Market Research and Benchmarking Analysis topic, Decide on  
Make vs. Buy task, Process Step 1: Identify Needs

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify  
Needs

Develop Logistics Support Strategy topic, Decide on Make vs. Buy task,  
Process Step 1: Identify Needs

Update Business Justification topic, Decide on Make vs. Buy task, Process  
Step 1: Identify Needs

Develop Purchase Plan and Best Value Parameters topic, Prepare Project  
task, Process Step 2: Evaluate Sources

Perform Value Chain Mapping and Analysis topic, Prepare Project task,  
Process Step 2: Evaluate Sources

Develop Life-Cycle Support Plan topic, Develop Sourcing Strategy task,  
Process Step 2: Evaluate Sources

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing  
Strategy task, Process Step 2: Evaluate Sources

Consider Performance-Based Contracting Arrangements topic, Develop  
Sourcing Strategy task, Process Step 2: Evaluate Sources

Define and Initiate Contract Management Activities topic, Plan for Contract  
Management task, Process Step 3: Select Suppliers

Evaluate Contract Effectiveness topic, Manage Delivery and Contract  
Performance task, Process Step 5: Measure and Manage Supply

## Review and Finalize Request for Proposals (RFP)

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The preliminary request for proposals (RFP), which was developed during the Start Request for Proposals (RFP) Development topic of the Prepare Project task of Process Step 2: Evaluate Sources, outlines Client requirements and contract expectations. After the Purchase/SCM Team has conducted activities relating to the Collect Ideas and Build Fact Base and Develop Sourcing Strategy tasks of Process Step 2: Evaluate Sources, the RFP must be revisited (including statement of objectives (SOO), statement of work (SOW), specifications, and product descriptions) to ensure that the document is clear of loopholes and addresses all the necessary requirements and conditions of the purchase. RFPs must be amended when changes such as quantity, specifications, delivery schedule, date of receipt of proposals, or changes to clarify or correct solicitation ambiguities or defects must be made. Such amendments are made by the Contracting Officer and are referenced in the Issue Amendments topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. The Contracting Officer is responsible for finalizing the RFP in working with the Client.

A review of the preliminary RFP must ensure the following:

- RFP and supporting documents abide by the relevant statutes and regulations (or must be adjusted)
- Requirements are altered to comply with the industry's and/or suppliers' capabilities
- RFP is free of non-value-added process steps, in accordance with the value chain analysis
- Assumptions supporting the RFP are still valid (if not, new assumptions should be spelled out and the RFP adjusted accordingly)
- RFP promotes Postal Service best value
- RFP describes how proposals will be evaluated
- RFP is compatible with schedule or performance constraints
- Risk mitigation criteria are built into the RFP
- RFP states the Postal Service's expectation regarding data rights and intellectual property
- RFP correctly and clearly describes Postal Service expectations regarding contract performance, especially in performance-based contracting
- RFP requires suppliers to provide necessary cost or pricing data to support a determination of price reasonableness or cost realism
- RFP requires proposals to include both free on board (f.o.b.) origin and destination prices for transportation analysis, when appropriate (additional information on f.o.b. origin and destination prices can be found in the Shipping topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements)

- RFP describes any applicable security considerations
- RFP defines the type of proposal

## Types of Proposals

Proposals may be made in writing or orally:

- Written proposal — provides a clearer understanding of the requirement and should be used whenever practicable.
- Oral proposal — used when the written proposal is impracticable (e.g., processing a written solicitation would cause a delay detrimental to the Postal Service or a standing price quotation is being verified). Oral presentations may speed up the evaluation process and provide a better picture of both the supplier's understanding of the proposal's requirements and its proposed approach to meeting the Postal Service's needs.
- Standing price quotations — if the practice is for suppliers to furnish standing price quotations on supplies or services required on a recurring basis, then this information may be used instead of issuing a written proposal for each purchase. The Contracting Officer must ensure that the price information is current and that the Postal Service obtains the benefit of the suppliers' trade discounts.

## Presolicitation Workshops

Presolicitation workshops are held to inform interested suppliers about the upcoming opportunity, in an effort to generate their input for the final RFP. These workshops help establish early and open dialogue with prospective suppliers to ensure their understanding of the Postal Service's needs and obtain recommendations for solutions.

The Contracting Officer prepares the agenda and assigns responsibilities for the presolicitation workshop; briefings include a discussion of all pertinent information related to the activity associated with the proposed need or project. During this workshop, suppliers have the opportunity to comment on the proposed RFP. Suppliers' comments can be provided orally during the workshop or in writing. Written comments can be submitted before or after the workshop.

To attract and retain quality suppliers, develop true strategic relationships, and spur communication of innovative solutions without the fear of suppliers' capabilities and ideas becoming known to competitors, the Postal Service will protect proprietary business information to the extent required by law and good business practice. The Contracting Officer analyzes suppliers' verbal and written inputs for incorporation into the relevant portions of the RFP.

## Verify Available Resources

Total cost of ownership (TCO) estimates should be reviewed to confirm that they remain at or below the funding objective, established in the Assess

Resources discussion of the Conceptualize Need task of Process Step 1: Identify Needs, for the project to be sustainable. Otherwise, the Purchase/SCM Team should revisit the requirement and RFP documentation to make appropriate adjustments. If the TCO estimate exceeds the funding objective, the RFP must be adjusted to reflect accurate project scope, schedule, prices, and other criteria accordingly, so the expected cost falls within requested funding levels.

## **Draft Request for Proposals (RFP) Review**

RFP drafts should be circulated to, and reviewed by, any organization that will be involved in the project.

## **Contract Types**

The RFP should specify a particular type of contract to provide a basis for comparing proposals, in accordance with Provision 4-1: Standard Solicitation Provisions. Potential suppliers should submit proposals in response to the contract type specified. The RFP should state whether alternate proposals containing a different contract type will be accepted. Clause B-3: Contract Type must be included in all contracts awarded without issuing a written solicitation.

## **Approval Authorities**

If a proposed contract award or modification will exceed \$10 million, the Vice President, Supply Management (VP, SM) must give prior written approval to the individual purchase plan and the proposed contract award or modification. Written approval of the proposed contract award or modification from the VP, SM serves as the delegation of authority required if the proposed award or modification exceeds the Contracting Officer's delegated authority.

## **Actions Exceeding a Contracting Officer's Delegated Authority**

A Contracting Officer may take a contractual action (a purchase, modification, or termination) exceeding his or her authority after receiving a written delegation of authority from a Contracting Officer having and authorized to redelegate the required authority. The redelegation must be placed in the contract file. When determining the appropriate redelegation authority, Contracting Officers must consider the anticipated total dollar value of the action

## **Other Topics Considered**

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Develop and Finalize Sourcing Strategy topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Issue Amendments topic, Perform Solicitation-Related Activities task,  
Process Step 2: Evaluate Sources

Shipping topic, Complete Delivery task, Process Step 4: Deliver and Receive  
Requirements

## Form Proposal Evaluation Team

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The Proposal Evaluation Team is responsible for evaluating and comparing the responses to the proposal in accordance with the proposal evaluation strategy developed for the purchase. Other responsibilities of the Proposal Evaluation Team include:

- Participating in applicable oral presentations, interviews, and site surveys
- Scoring and ranking proposals based on established proposal evaluation factors

Forming the Proposal Evaluation Team, performing the evaluation, and awarding the contract are the links between a successful request for proposals (RFP) effort and a successful project. Effective planning during Process Step 2: Evaluate Sources will lead to the selection of the optimal supplier and achievement of best value. Supplier selection is a strategic process that directly affects the Postal Service's competitive advantage; forming the Proposal Evaluation Team is part of this process and includes:

- Identifying the required team member skills
- Identifying and selecting members
- Identifying and selecting functions

Some of these decisions are dictated by the proposal's complexity and scope, and others are standard considerations that are made for each evaluation, disregarding the type of purchase.

### Identification of Proposal Evaluation Team Member Skills

The Proposal Evaluation Team should include experienced professionals with an appropriate level of market knowledge to assist in the evaluation. Depending on the Purchase/SCM Team's assessment of the business situation, a Proposal Evaluation Team chairperson may be appointed. Ideally, those involved will have previous experience working on purchases of a similar nature, scale, and complexity. Specifically, those involved (or the Proposal Evaluation Team as a whole) will require skills that include:

- Market knowledge — understand suppliers' responses in context (e.g., market-specific terms and conventions, commercial pressures on suppliers)
- Business knowledge — relate the responses received to the wider organizational picture (e.g., relation between this

- requirement and strategic aims or other relevant contracts, projects, or requirements)
- Purchasing skills — knowledge of procedures to be followed and deliverables required; understanding of the scope and aims of the proposal evaluation strategy and its context in the wider purchase process
  - Understanding of the requirements — assess the responses to the requirements (e.g., in terms of business processes involved, likely transaction volumes/service levels required, relevant technical aspects)

## Identifying and Selecting Members

Members can be from the Purchase/SCM Team, other Postal Service specialists (e.g., Finance or Legal Counsel) or external experts (care must be taken to ensure that there are no organizational conflicts of interest if an outside representative is selected). Individuals selected for the Proposal Evaluation Team must have the proper skills and the ability to support the evaluation. Each member will bring something unique to the team; his or her individuality helps make the team process powerful. The most important characteristics for consideration in member selection include:

- Availability, interest, and willingness to participate on the Proposal Evaluation Team
- Chemistry with other team members
- Familiarity with all the different parts of the proposal evaluation process (each part of the process must be known by at least one team member)
- Skills
- Relevant organizational representation

Other important Proposal Evaluation Team formation issues are:

- Level and type of authority to grant the team
- Use of full-time versus part-time members
- Decisions about collocating team personnel
- Team effectiveness
- Team size (larger teams are generally more difficult to manage and coordinate and can create role confusion among members)

The Contracting Officer is responsible for forming the Proposal Evaluation Team and will work with the Purchase/SCM Team to identify internal and external candidates. Depending on the complexity and importance of the RFP, the Proposal Evaluation Team may comprise the writers of the RFP, subject matter specialists, and outside consultants; it should include only those members and functions that directly support the evaluation.



## Identifying and Selecting Functions

A Proposal Evaluation Team should include only those functions that are critical to the support of the evaluation. Selected members from the Purchase/SCM Team (including the Contracting Officer and others, if warranted) make up the Proposal Evaluation Team. Non-Postal Service members may be included on the Proposal Evaluation Team or as advisors if Postal Service members are not available to fill the functions needed on the team.

Other members of the Proposal Evaluation Team from the Postal Service may include:

- Purchasing specialists, Pricing Analysts, and other specialists to evaluate a proposal's price and cost aspects
- Engineers, architects, and technical specialists to make technical judgments on the submitted proposals

## Other Topics Considered

Start Request for Proposals (RFP) Development topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

# Develop Proposal Evaluation Strategy

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The proposal evaluation strategy defines the overall approach for evaluating submitted responses to the request for proposals (RFP). The proposal evaluation strategy:

- Forms the general framework to establish the value sought in the purchase
- Sets the direction for the overall evaluation process
- Specifies the priorities for the project and its critical success factors
- Defines the processes and proposal evaluation factors used to assess supplier proposals

The proposal evaluation strategy shapes the project; it sets the direction of supplier selection and the subsequent contract. Supplier proposals are rejected or selected based on the evaluation. A detailed evaluation strategy, based on relevant key proposal evaluation factors, is needed to understand a supplier's proposal and assess what the impact would be on the Postal Service if the supplier is awarded a contract. Including inappropriate proposal evaluation factors in the proposal evaluation strategy will cause problems during actual proposal evaluation.

The Client and Contracting Officer develop the proposal evaluation strategy, which should include the following:

- Best value definition
- Proposal evaluation factors

- Proposal evaluation process

## Best Value Definition

Defining best value is the process of establishing quality, prices, and availability that provide the best overall benefit to the Postal Service. Obtaining best value is the goal of every Postal Service supplying activity and the basis for award of Postal Service contracts. In order to develop the proposal evaluation factors, a definition of best value for a particular purchase should be established before the solicitation process.

A best value definition is made by the Purchase/SCM Team, subject to applicable review and approval by the Client and the Contracting Officer, and considers market research, purchase planning, and price analysis.

## Proposal Evaluation Factors

It is essential to determine the measures of comparison that will be used for the proposal. The proposal evaluation factors include:

- Objectives
- Critical success factors
- Priorities of the requirements

The proposal evaluation strategy must be consistent with the objectives (e.g., best value, supply base optimization) of the Postal Service, the critical success factors (e.g., technical factors, timing, and resources) of the project, and the sourcing strategy. The proposal evaluation strategy must also reflect the priorities of the requirements.

The list of relevant proposal evaluation factors, and the associated weighting factors, will vary by product or service and must address all areas that will be considered in determining best value. Proposal evaluation factors must be determined by the Purchase/SCM Team before issuing the request for proposals (RFP). Risk of successful performance should almost always be considered as a performance evaluation factor. It may be included as a separate proposal evaluation factor or as an element of other factors. The Proposal Evaluation Team uses the evaluation factors to evaluate proposals.

Proposal evaluation factors may include:

- Supplier's understanding of the requirement
- Supplier's superiority of technical approach
- Supplier's assumptions
- Supplier's managerial and organizational descriptions (including, where appropriate, its subcontractor plans)
- Supplier's personnel and resources available for the project
- Supplier's delivery and scheduling
- Supplier's experience (i.e., relevant past performance) and capabilities (includes scope of services, maintenance, ability/experience of supplier's organization with similar agreements, customer liaison, financial)

- Supplier's financial information
- Other supplier information, such as information attained in a supplier survey that contains referral list of customers, number of employees, credit references, and compliance violation history (if any).

RFPs must include a description of the proposal evaluation factors, how they will be evaluated, and the relevant importance of price or total cost to the factors. Suppliers must also be made aware that best value to the Postal Service will be the basis for selection. Proposal evaluation factors play two roles: 1) They help clarify the Postal Service's objectives for a particular purchase; and 2) They help suppliers develop their proposals.

The proper weighting of the proposal evaluation factors is essential to effective evaluation; proposal evaluation factors should represent the elements that are critical to the purchase's success. Using too many proposal evaluation factors should be avoided because it can unintentionally level evaluation scores (as when high scores for less significant proposal evaluation factors offset low scores for more important proposal evaluation factors).

Many forms of scoring systems, from qualitative to quantitative, are suitable for proposal evaluation; however, some are more suitable than others, depending on the situation. The selected scoring system should be simple and practical.

When developing the proposal evaluation strategy, the following activities must be completed:

- Identify the stakeholders (Purchase/SCM Team, Proposal Evaluation Team members)
- Define roles (who determines proposal evaluation factors, who performs evaluation)
- Define guidance for evaluators evaluating the proposal (weighting factors, scoring system)
- Define process for communications with potential suppliers, including briefing and debriefing

## **Proposal Evaluation Process**

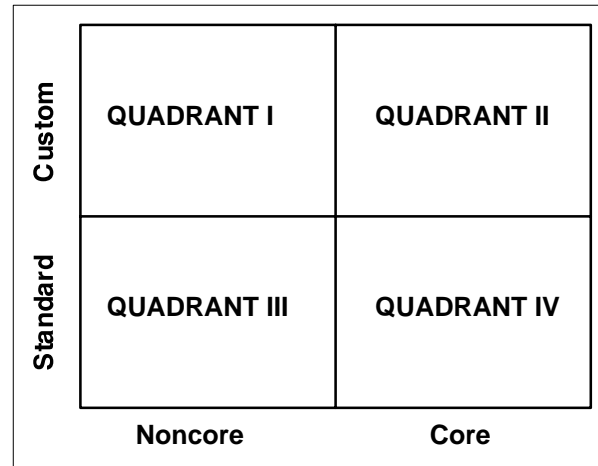
The proposal evaluation process depends on the scope and complexity of the project; large-scale projects may require an in-depth strategy range, whereas smaller projects may need less. The following will have to be established to develop the proposal evaluation strategy:

- Decision-making process
- Financial, quality, risk assessments
- How supplier assessment will be conducted
- How supplier will present proposal (oral or written)
- Procedures to be adopted for the proposal evaluation
- Schedule for evaluation

## Quadrant Approach

A quadrant approach classifies Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Depending on the quadrant, the proposal evaluation strategy will be structured differently (examples of this are illustrated in Figure 2.11).

Figure 2.11  
**Quadrant Approach**



### Quadrant I: Custom/Noncore Purchase

The strategic approach regarding Quadrant I requires supply continuity, which can be achieved through managing the supply base and standardization. Proposal evaluation factors and weighting factors should emphasize selecting standard products and low-cost providers.

### Quadrant II: Custom/Core Purchase

The strategic approach for Quadrant II is striving for high-value-added relationships with suppliers, which can be achieved by increasing the role of selected suppliers in supply chain activities. Proposal evaluation factors and their relative importance should emphasize the suppliers' commitment to innovation (processes, features, and/or attributes) and market leaders with established positions and demonstrated competitive advantages in their products and services, because these are differentiating aspects.

### Quadrant III: Standard/Noncore Purchase

The strategic approach regarding Quadrant III requires simplifying the purchase process, achieved by reducing effort and associated costs. Proposal evaluation factors and weighting factors should emphasize lowest-cost solutions, because the Postal Service will have little brand preference for the products and services in this quadrant and can choose from many options and many sources.

### **Quadrant IV: Standard/Core Purchase**

The strategic approach regarding Quadrant IV calls for maximizing commercial advantage. This can be achieved by concentrating and centralizing business by aggregating organizational spend. The emphasis of the proposal evaluation factors and weighting factors should be on products or services at the leading edge of capabilities and innovation.

### **Other Topics Considered**

Form Proposal Evaluation Team topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Implement Proposal Evaluation Strategy topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

## **Issue Request for Proposals (RFP) and Publicize Requirements**

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Once the proposal evaluation strategy has been developed, the request for proposals (RFP) is issued. Publicizing purchasing opportunities (including RFPs and prequalification opportunities) is the process of publicly announcing a request for proposals (RFP). Purchasing opportunities are publicized to create, promote, and ensure adequate competition. In addition, publicizing purchase opportunities is an effective way of communicating Postal Service requirements to small, minority, women-owned businesses (SMWOBs).

### **Publicizing Requirements**

The Purchase/SCM Team should use market knowledge to determine whether purchase, subcontracting, and prequalification opportunities should be publicized and, if so, by what means and to what extent. If there is any doubt that an identified pool of sources for any proposal represents the most capable suppliers in the marketplace or will lead to adequate competition, the Purchase/SCM Team should publicize. Although publicizing requirements is a matter of judgment, purchase opportunities should be publicized if:

- Best value could be realized from candidates not previously identified as potential suppliers
- Competitive or noncompetitive awards offer significant subcontracting opportunities
- Publicizing will further the Postal Service's supplier diversity objectives
- The announcement of such an award may enhance future competition
- Publicizing will further the business and competitive interests of the Postal Service

The Contracting Officer is responsible for publicizing requirements. Methods for publicizing include:

- Announcement in the Government-wide Point of Entry (GPE)
- Announcement in other media
- Presolicitation notices

## **Availability of the Request for Proposals (RFP)**

When the competitive purchase method will be used, enough suppliers should be solicited to ensure adequate competition. In addition, the Contracting Officer should make a reasonable effort to provide copies of the request for proposals (RFP) to any supplier requesting one. If the requirement is being competed among prequalified suppliers, suppliers not on the prequalification list may be provided a copy of the RFP, but they must be told that the Postal Service plans to award the resulting contract to a supplier on the prequalification list. Requests for copies may be denied once a reasonable number of copies have been distributed to the solicited suppliers and others who have requested them. The Contracting Officer should fully explain to suppliers the unavailability of RFPs.

Alternatively, the Contracting Officer may make available through FedBizOpps ([www.fedbizopps.gov](http://www.fedbizopps.gov)), the Government-wide Point of Entry (GPE), RFPs publicized through the GPE, including specifications and other pertinent information determined necessary by the Contracting Officer. When practicable and cost-effective, the Contracting Officer may make additional solicitation-related information accessible through the GPE.

When an RFP or solicitation package is so voluminous that it is impracticable to reproduce a reasonable number of copies for those requesting them, a limited number of copies should be made available for sale; the cost should include the cost of reproduction and postage.

## **Government-wide Point of Entry (GPE)**

The Government-wide Point of Entry (GPE) will be used when publicizing requirements because it is recognized by the supplier community as an excellent source for information regarding purchase opportunities and RFPs. The Contracting Officer will publicize requirements by posting the finalized RFP to the GPE, known as FedBizOpps, at [www.fedbizopps.gov](http://www.fedbizopps.gov). The GPE can also be accessed electronically by the public. If using the GPE, publicizing must not occur later than issue of the RFP.

## **Other Media**

In situations where the GPE does not provide the most effective communications channel, requirements may also be publicized via other media, including newspapers, trade journals, and electronic media. The Contracting Officer, in conjunction with the Purchase/SCM Team, must consider:

- Conditions of the current marketplace

- Postal Service business needs
- Postal Service competitive needs
- Subcontracting opportunities that would follow contract award

As another premier business publication regarding solicitation announcements, the *Journal of Commerce* allows the Postal Service a media venue that can be accessed by any supplier. Available online, the *Journal of Commerce* can be viewed at [www.joc.com/](http://www.joc.com/).

Announcements of RFPs made available to newspapers, other news media, and trade journals may be made when there is no cost to the Postal Service. However, paid commercial announcements or advertisements may also be used when doing so is determined to be appropriate to stimulate supplier competition. In addition, Purchase/SCM Teams should consider the use of media to further the Postal Service's supplier diversity objectives in relation to prime or subcontracting opportunities. The Contracting Officer must choose the most cost-effective method and which newspapers, trade journals, or other news media will promote the Postal Service's interests.

## Presolicitation Notices

If the Purchase/SCM Team wishes to identify suppliers, it may do so by issuing a presolicitation notice (also called a "sources sought" notice) before issuing the RFP. The notice should:

- Describe the upcoming Postal Service requirement and any applicable qualification requirements
- Announce any planned presolicitation conferences
- Specify a date by which the supplier must respond to the notice to ensure inclusion on the request for proposals mailing list

## Preproposal Conference

Whenever circumstances suggest that it would add to the success of the purchase, such as when a solicitation contains complicated specifications or statements of work, a preproposal conference may be held to brief suppliers. Notice of the preproposal conference should be contained in the solicitation. If time allows, suppliers should be allowed to submit written questions in advance, so that prepared answers may be distributed at the conference.

The entire Purchase/SCM Team should attend the conference. The Contracting Officer or a designated representative must conduct the conference, with the assistance of the Purchase/SCM Team and assigned counsel, as appropriate.

A record of the conference must be furnished to all of the suppliers who received the solicitation. Because the role of that record is to ensure that all prospective suppliers fully understand the Postal Service's intent with respect to the purchase, and not necessarily to provide a verbatim reconstruction of the conference, the record may be edited for clarity and brevity and corrected where necessary.

## Other Topics Considered

Define Supplier Diversity Objectives topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Conduct Reverse Auctions Where Appropriate

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Whether to conduct a reverse auction for the purchase of goods or services was determined during the Consider Auctions topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. If determined appropriate, a reverse auction is conducted between a buying organization and a group of suppliers who compete against each other to supply goods or services. Such goods and services must have clearly defined specifications for design, quantity, quality, delivery, and related terms and conditions.

Reverse auctions rely on competition driving prices down, which means a greater likelihood of success when purchasing less complex or specialized goods or services. Simple commodity items or services, which can be clearly defined and often have a wide range of potential suppliers, will be best suited to the auction process. Although, in some circumstances, there may be only a few eligible suppliers, their market share tends to be great enough to make an auction a viable purchasing option.

In a reverse auction, participating suppliers bid against each other, via specialized Internet software, by submitting successively lower prices during a scheduled time period. Typically, the lowest bid wins in a reverse auction; however, some full-service auction providers can support very complex auctions to better align the auction with an organization's business practices. Bidders are able to introduce new or improved values to their bids in a visible and competitive environment. The procedure and duration of the event will be defined before the reverse auction commences, and a starting value that suppliers will bid against until the competition closes will be determined in advance. When used, the auction will be a key stage of the purchasing process.

The five steps involved in conducting a reverse auction are illustrated in Figure 2.12.

Figure 2.12  
Reverse Auction Process





## **Plan and Define Auction Requirements**

Having a clear purchase specification is critical, and should be evident in all sourcing decisions. The better the purchasing description (e.g., consisting of clear specifications for products or statement of work [SOW] for services), the better the sourcing results. A well-planned buy will always provide better sourcing results.

Generally, in a reverse auction, the buying organization should set a dollar amount higher than the desired final cost for the initial bid. A high dollar amount usually leads to a more favorable outcome for the buying organization in a reverse auction because suppliers bid against each other and drive the price of the product or service down. If the Item Manager(s) decide to source enough of the organization's requirements to attract suppliers, the requirements must be robust enough so that the volume can be managed and leveraged by the supply base to drive savings and efficiencies. However, the dollar amount should not be so high as to create potential risks for the organization. The key deciding principle for the appropriate level of a starting bid is the return on investment (ROI), and it is easier to gain a larger ROI on a larger purchase. In some cases, the suppliers may provide something innovative; therefore, they may have some input into setting the preliminary price.

## **Determine Software Platform/Service Provider**

The second step in the reverse auction process is to determine the software platform or reverse auction service provider to run the auction. As mentioned earlier in the Consider Auctions topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, the three levels of auction technology available are:

- Full-Service — a full-service provider hosts the auction process from start to finish
- Hosted — the technology is hosted by a third party, but the auctions are organized and run by the buying organization
- Self-Service — buying organization oversees all aspects of the auction, including implementing the auction technology internally

Many companies specialize in reverse auctions. It is critical to choose a Reverse Auction Service Provider with a good reputation and experience in the business. Item Managers should examine each firm's functionality by mandating demonstrations of past auctions run for other companies over a wide range of goods and services.

Once selected, the Reverse Auction Service Provider should also aid the Client and Purchase/SCM Team in the establishment of auction parameters. For example, the Item Manager decides the duration of the auction, the level of visibility given to suppliers, and establishes bid increments. Reverse Auction Service Providers can support the Item Manager in these decisions, even if the purchase is only for reverse auction software.

## Communication and Training

The preauction communication and training process between the Postal Service and its suppliers is the key success factor to launching an effective reverse auction. A clear strategy for communicating the purpose, rules, and award criteria to suppliers is imperative. To clarify any misconceptions, suppliers must have the opportunity to ask questions regarding the reverse auction process before the actual auction takes place. Daily communication must be maintained with the suppliers to ensure their continued participation in the auction.

Training is a key enabler for the successful implementation of reverse auctions. This includes training for both Postal Service employees and suppliers participating in the auction. Participating suppliers should be adequately trained in both the use of the software and the rules in place to run the auction. Training can be conducted either by the Purchase/SCM Team within the Postal Service or by contracting it to a Reverse Auction Service Provider. During training, employees learn how to use the software and the rules associated with running a reverse auction. Hands-on training for Postal Service employees, including conducting mock auctions under various scenarios, is necessary to generate familiarity with the reverse auction process.

## Conduct Auction

Reverse auctions are conducted online with a starting value that suppliers bid against until the competition closes. A reverse auction is open for bidding for a fixed duration of time that should reflect the value of the purchase (i.e., the greater the value of the purchase, the greater the duration of the auction). Each successive quote must differ from the previous quote by an amount known as the “minimum quotation increment,” which is predetermined by the Item Manager and will be different for each auction, depending on what is being auctioned.

Primary reverse auction activities of the Purchase/SCM Team include:

- Participate in the reverse auction system at the scheduled time
- Verify that the product specifications meet expectations
- Discuss appropriate adjustments with the suppliers
- Evaluate new bids versus the project costs, and rerun costs with new supplier data, if available
- Capture the screens through the operating system to document the pricing
- Conclude auction when a bid posted by a competitor falls below the lowest price the Item Manager determined to be fair before the auction

During this stage, the Contracting Officer would assess any issues that might arise and define next steps in completing the reverse auction. When the Contracting Officer is satisfied with the most advantageous bid to the Postal Service and when all business conditions are met, he or she then considers

awarding the contract to the supplier who placed the winning bid. Discussions or negotiations may be entered into following the acceptance of a winning bid to ensure that the Postal Service receives best value. Additional information on conducting discussions and negotiations can be found in the Hold Discussions topic of the Evaluate Proposals task and the Negotiate With Suppliers topic of the Perform Preaward Activities task of Process Step 2: Evaluate Sources.

## **Award**

For further information on awarding contracts, see the Produce Contract Award Recommendation topic of the Perform Preaward task of Process Step 2: Evaluate Sources and the Award Contract and Notify Suppliers topic of the Make Final Decisions task of Process Step 3: Select Suppliers.

## **Other Topics Considered**

Consider Auctions topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Hold Discussions topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Negotiate With Suppliers topic, Perform Preaward Activities task, Process Step 2: Evaluate Sources

Produce Contract Award Recommendation topic, Perform Preaward task, Process Step 2: Evaluate Sources

Award Contract and Notify Suppliers topic, Make Final Decisions task, Process Step 3: Select Suppliers

## **Issue Amendments**

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Once the request for proposals (RFP) has been issued, any agreed-upon changes are reflected in amendments to the RFP. Amendments to an RFP are adjustments to requirements or other parts of the solicitation package after issuance of the RFP. The purpose of amendments is to incorporate agreed-upon changes that occur as the purchase proceeds. Once an amendment is approved, it becomes an integral part of the RFP.

RFPs must be amended when changes such as quantity, specifications, delivery schedule, wage determination, date of receipt of proposals, or changes to clarify or correct solicitation ambiguities or defects must be made. Based on the complexity of the proposed amendment, the Purchase/SCM Team will determine whether to proceed with amending the RFP, cancel the RFP and resolicit the requirement, or take other appropriate actions. When RFPs are amended, suppliers must be provided sufficient time to consider the amendment and revise their proposals. If notification of a change must be conveyed by telephone or some other oral (verbal) means, confirmation by written amendment must follow.

RFPs may also be amended if, during the purchasing process, the Contracting Officer determines that dissemination of information is necessary to enhance competition or otherwise improve the effectiveness of the purchase. Depending on the nature of the information, it may be released as an amendment to the RFP or as general information provided for the purpose of clarification. The Contracting Officer must consider the stage of the purchase and the potential for compromising the integrity of the purchasing process before deciding to disclose additional information after the release of the RFP. Amendments must be provided to all suppliers that received a copy of the RFP.

## **Amendment Content**

The following are suggestions for the typical content of an amendment:

- Solicitation number
- Name of project/purchase
- Name of Contracting Officer
- Amendment identifier (e.g., serial number, index number)
- Effective date of amendment
- Description of amendment

## **Validation and Verification**

Simple changes are often approved by the Contracting Officer. More complex changes or those that exceed a defined cost threshold may require the approval of the Purchase/SCM Team.

## **Failure to Acknowledge Amendments**

If a supplier fails to acknowledge an RFP amendment or if a proposal fails to respond to the requirement as amended, the Contracting Officer should inform the supplier of the matter. In such cases, suppliers should be granted the opportunity to address amendments or correct mistakes if doing so will enhance competition and not otherwise compromise the integrity of the purchasing process.

## **Other Topics Considered**

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

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# **Receive and Record Proposals**

The purpose of receiving and recording proposals is to provide safekeeping for those proposals that are received in response to request for proposals (RFP). The Contracting Officer is responsible for receiving and recording proposals.

## **Modification and Withdrawal**

Proposals may be modified or withdrawn by written or electronic notice before the specific contract is awarded.

## **Late Proposals and Modifications**

Proposals and modifications of proposals are late if received after the date and time established in the solicitation for receipt of proposals. This does not include the normal revisions of proposals made by a supplier during discussions.

Late proposals and modifications may be considered in accordance with paragraph e of Provision 4-1, Standard Solicitation Provisions. It is normally in the interest of the Postal Service to consider a late proposal when doing so would not cause a delay in the evaluation process, or the proposal was late because of mishandling after receipt, or the proposal offers a significant cost, quality, or technical benefit. It is not in the interest of the Postal Service to consider any proposal received so late that its consideration would jeopardize, or give the appearance of jeopardizing, the integrity of the purchasing process.

When a late proposal or modification is not considered, the Supplier must be given written notification that its proposal or modification was received late and was not considered. Each late proposal must be retained in the solicitation file with a statement as to whether it was considered, and the rationale as to why or why not.

## **Other Topics Considered**

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

# **Implement Proposal Evaluation Strategy**

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This topic implements the proposal evaluation strategy developed in the Proposal Evaluation Strategy topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

## **Proposal Evaluation**

The evaluation of proposals is a two-step process:

- Individual proposal evaluation in relation to the proposal evaluation factors
- Individual proposal evaluation in relation to the other proposals, so the relative value of the proposals can be judged

Once the deadline for proposal submission has lapsed, the Proposal Evaluation Team records the proposals received and reviews each proposal to determine whether it meets the requirements that the Postal Service outlined in the RFP. Additional information on the Proposal Evaluation Team

can be found in the Form Proposal Evaluation Team topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

The Contracting Officer will question the supplier in regard to a failure to acknowledge an amendment to the proposal or if the proposal contains a suspected mistake. Suppliers should be granted the opportunity to address amendments or correct mistakes if doing so will enhance competition and not otherwise compromise the integrity of the purchasing process.

## Individual Evaluation

The Proposal Evaluation Team analyzes the individual proposal's strengths, weaknesses, and risks and documents conclusions reached regarding the proposal. This narrative is prepared simultaneously with the scoring of the proposal. The Proposal Evaluation Team must provide its rationale for a particular supplier's score and must arrive at a consensus decision for each proposal as soon as possible after review and evaluation.

The Proposal Evaluation Team evaluates the proposals using the proposal evaluation factors as the basis for the evaluation. There are two types of proposal evaluation factors:

- Proposal-specific, which address aspects of a particular purchase (based on RFP requirements)
- Supplier-specific, which address aspects central to the supplier being evaluated

The proposal evaluation factors represent the elements of the purchase critical to its success, and they are tailored to, and consistent with, the purchase. The appropriateness and proper weighting of proposal-specific factors are essential to effective performance evaluation. The number of proposal evaluation factors is intentionally limited so evaluation scores are not leveled by insignificant factors. The proposal evaluation factors may comprise:

- Supplier's understanding of the requirement
- Supplier's superiority of technical approach
- Supplier's cost or price of proposal
- Supplier's assumptions
- Supplier's managerial and organizational descriptions (including, where appropriate, its subcontractor plans)
- Supplier's personnel and resources available for the project
- Supplier's delivery and scheduling
- Supplier's experience (i.e., relevant past performance) and capabilities (includes scope of services, maintenance, ability/experience of supplier's organization with similar agreements, customer liaison)
- Supplier's financial information
- Other supplier information, such as information attained in a supplier survey that contains referral list of customers, number of

employees, credit references, and compliance violation history (if any).

The following methods and tools are used to perform proposal evaluations; they are used throughout the topics of the Evaluate Proposals task of Process Step 2: Evaluate Sources:

- Product life cycle
- Total cost of ownership (TCO) analysis
- Pareto Principle (80/20 Rule)
- Risk definition template
- Weighted decision matrix
- Cost-realism analysis
- Should-cost analysis
- Site visits
- Supplier financial capability analysis
- Review of item purchase history
- Supplier survey
- Market research (Conduct Market Research and Benchmarking Analysis topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs)

## **Comparative Evaluation**

The Proposal Evaluation Team compares the relative value offered by each proposal to the competition. This comparison of proposals is extremely important. It must describe the differences between proposals and assess the value of the differences or the impact the differences will have on the Postal Service.

The Proposal Evaluation Team scores and ranks the proposals by the value they offer the Postal Service, using the scoring system selected. The score is derived from the established proposal evaluation factors and weights. The selected scoring system should be simple and practical.

The Proposal Evaluation Team presents its findings to the Purchase/SCM Team in a written report with narrative statements identifying the major strengths and weaknesses of the various proposals. The report will be used to help the Purchase/SCM Team conduct discussions and potential negotiations so that the supplier offering the best value to the Postal Service is selected.

## **Communications with Potential Suppliers**

The Postal Service establishes what it may transmit and discuss with suppliers. Technical or other information, such as general information that will not harm the integrity of the purchasing process, may be furnished upon request. Information may not be furnished to any supplier if, alone or together with other information, it may afford that supplier an advantage over other suppliers. The Contracting Officer must ensure that no leveling or technical

transfusion occurs. For additional information on discussions, see the Hold Discussions topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Spend Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Form Proposal Evaluation Team topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Assess Technology Implications topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Perform Risk Analysis on Supplier Proposals topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Conduct Price/Cost Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Conduct Supplier Capability (Technical and Financial) Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Hold Discussions topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

## Assess Technology Implications

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Technology implications of proposals are inspected before award to ascertain how the solutions proposed by potential suppliers may affect Postal Service projects or programs.

The technology implications of a solution can have immediate and long-term effects on the Postal Service. The solution can lead the Postal Service to start using different applications, servers, or particular companies for supplies. Purchases for the remainder of a program may be affected by the solution.

The complexity and size of the purchase will dictate the time and effort spent checking the technology implications. To perform this check, the following areas must be considered:

- The Postal Service personnel checking technical implications
- Personnel's knowledge of the Postal Service
- Feasibility of the supplier solution
- Effect of the solution on the Postal Service
- Viability of the solution and emerging technology



## **Personnel Checking the Technology Implications**

The Purchase/SCM Team is responsible for the overall direction of the purchase. If appropriate, Postal Service technological resources (e.g., information technology [IT] personnel, engineers) should be included on this team, because the evaluation involves a highly technical product or service. The selected personnel should have the expertise to make technical judgments on the adequacy and relative value of the submitted proposals.

## **Knowledge of the Postal Service**

The success of the project should be defined in business terms, not in technical terms. When the Purchase/SCM Team checks the technology implications of the proposal, they must possess a thorough knowledge of the products or services the Postal Service plans to purchase. Such knowledge includes product features, especially those characteristics that are critical to the product's success or failure. Performing these checks will clearly identify technical implications in proposals.

The Postal Service staff should also know about the relevant projects, programs, and infrastructure that pertain to the solution.

## **Feasibility of the Supplier Solution**

The proposal should be subject to rigorous checks to confirm that the solution complies with the Postal Service's technological standards and guidance. The potential supplier's proposal must demonstrate an understanding of the requirements and outline an approach to performing the work, as reflected in its:

- Knowledge of the Postal Service mission and purchase objectives
- Awareness of the environment in which the product will operate or the work will be done
- Stated comprehension of work tasks
- Proposed innovative solutions
- Use of current technology and methodologies
- Awareness of potential problem areas
- Overall feasibility of the approach

Numerous questions will need to be asked. The Proposal Evaluation Team's knowledge of the solution is paramount to the success of the evaluation. It is important that the solution matches the needs of the Postal Service.

Questions must be applicable to the purchase and can include:

- Does the vision of the potential supplier's solution match the vision of the Postal Service?
- What skills and resources does the potential supplier intend to employ?
- Does the potential supplier rely heavily upon a labor-intensive process or operate at a level of automation that does not truly benefit the Postal Service?

- Are the supplier's configuration management processes underpinned by a suitable configuration management tool?
- Does the proposed infrastructure adhere to defined standards, including those for interoperability?

As necessary, the Contracting Officer is responsible for conducting any necessary discussions between the Postal Service and potential suppliers during the evaluation.

## **Effect of the Solution on the Postal Service**

The technological implications of the purchase can be numerous. Each area of the technology solution contains ramifications to the Postal Service.

Questions that should be asked and answered to gauge the implications of the solutions include:

- Does the Postal Service have, or have access to, the necessary skills and competencies to support the intended technology-based solutions?
- Will the following be affected: software/system interfaces, software configuration, engineering process, training, reviews, maintainability, coding standards, compliance with the requisite software engineering standards, new technologies, and new process support systems and tools?
- What kind of technical support is needed to back up proposed services?
- What is the functional depth and flexibility for complex customer relationships and segmentation?
- What are the levels of skills and resources that have to be provided by the Postal Service to work with the supplier's development process?
- What is the timetable for the development stage? How does this impact on the availability of the Postal Service's resources?
- What is the suitability and extent of implementation work that will be required to deploy the software?
- Will spare parts and peripheral components like batteries and replacement drives need to be kept?
- What is the impact to the total cost of ownership (TCO) analysis?

## **Viability of the Solution and Emerging Technology**

When checking technical implications, the viability of the technology and emerging technologies should be considered (e.g., technical viability: a software product's architecture must be inherently flexible and able to keep pace with evolving technical standards). Suppliers that have stayed with proprietary and legacy technology are still in business today, but viability is questionable at best.

Emerging technology should also be a factor when selecting a solution. One common way to identify emerging technology trends is to follow the trails of strategic partnerships between companies. Analyzing the state of technology allows the Postal Service to be aware of implications of choosing a certain solution. Additional information appears in the Analyze State of Technology topic of the Decide on Make vs. Buy task of Process Step 2: Evaluate Sources.

### **Other Topics Considered**

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Analyze State of Technology topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Hold Discussions topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

## **Perform Risk Analysis on Supplier Proposals**

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The purpose of risk management is to examine and control relevant risks to ensure successful delivery of the project. During the Evaluate Proposals task of Process Step 2: Evaluate Sources, due attention must be paid to the risk impact of supplier proposals. This task is part of the larger risk management process and ensures that risks are understood and mitigated to the greatest extent possible.

A risk is a potential event or future situation that may adversely affect the project. Identifiable risk factors contribute to a potential risk. If a risk occurs, there will be consequences that may significantly impact the project. For example:

- Risk factor: a new technology is being used for the first time
- Risk: adoption of the technology is more difficult than anticipated
- Consequence: project delivery is delayed

A risk may be caused by more than one risk factor, and, conversely, a risk factor may result in more than one risk.

### **Risk Analysis Objective**

The objective of the risk analysis on the supplier's proposal is to assist the Proposal Evaluation Team in ensuring that the proposal meets Client requirements while identifying and mitigating risk to the Postal Service. The Proposal Evaluation Team considers the outcome of the risk assessment in the context of the overall evaluation.

## Proposal Risks Identification

“Proposal risk” refers to the risk associated with the potential supplier’s proposed approach to meeting the Client’s requirements. The evaluation of proposal risk includes an assessment of proposed time, resources, and recommended adjustments. This assessment should be performed according to the definitions and evaluation standards developed in the Develop Proposal Evaluation Strategy topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

Risk analysis will identify the following to assess the overall risks if the potential supplier is awarded the contract:

- Critical risk elements inherent in the proposal
- New risks resulting from inconsistencies and discrepancies between various suppliers’ proposals
- Risks signaled by any unsubstantiated representations made in any supplier’s proposal

Not all risks are equally important to the Postal Service; however, a given risk factor may pose such a threat to successful contract performance as to render the entire proposal as “high” risk.

## Proposal Risk Assessment

The Proposal Evaluation Team will assess each of the identified risks, together with the supplier’s proposal, to determine whether the supplier’s mitigation approach is viable. The risk assessment will consider:

- The supplier’s proposed risk management plan, which should be developed by the supplier. For example, does the proposed plan include documentation at a level that is adequate to identify risks, develop associated management activities that will be used throughout the contract, and integrate resources, technical performance measures, and schedule in the proposed risk management plan.
- Any potential for disruption of schedule, increased cost, degradation of performance, or the need for increased Postal Service oversight, as well as the likelihood of unsuccessful performance.
- Potential impact on overall contract performance, cost, and schedule resulting from those known and predictable risks initially identified during the Identify, Analyze, and Plan Responses to Risks topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

The following is a list of sample questions to facilitate the assessment of risks:

- What is the supplier’s policy with respect to product quality and quality control?

- How does the supplier intend to comply with the quality requirements of the purchase? How will quality standards be met consistently?
- Are there areas of overemphasis in the proposal that could result in excessive costs? (Results from the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources may be consulted for additional information.)
- If the proposal involves subcontracting, does subcontracting pose a risk?
- Does the proposal reflect clarity and completeness of what is being proposed (e.g., scope, roles, and responsibilities, including those of the Postal Service, suppliers, and subcontractors)?
- Is there a shared understanding of specific contract risk between the Postal Service and the supplier? What is the supplier's view of how those risks are to be allocated and managed?
- Does the proposal include all relevant costs, including the likelihood of significant cost changes over the life of the contract, and any proposed changes in pricing structure over the life of the contract?
- Does the proposal address every component of the requirement?

## **Risk Analysis Output**

The assessment will produce the following output for consideration by the Contracting Officer in making the award decision:

- An overall rating (high, medium, or low) of the degree of risk associated with award of a contract to each supplier
- A narrative evaluation reflecting the strengths, weaknesses, and deficiencies of the supplier's response to each proposal evaluation factor

Risk assessment ratings measure the likelihood of whether the potential supplier will provide quality services that meet the Client's cost, schedule, and performance requirements over the life of the contract, as shown in Figure 2.13.

Figure 2.13

**Risk Assessment Ratings on Supplier Proposals**

<b>Rating</b>	<b>Definition</b>
High	Proposal exhibits less-than-solid fit to Postal Service quality control standards and risk management plan; likely to cause significant disruption of schedule, increased cost, or degradation of performance. Risk may be unacceptable, even with special supplier effort and close Postal Service monitoring.
Medium	Proposal exhibits solid fit to Postal Service quality control standards and risk management plan; can potentially cause some disruption of schedule, increased costs, or degradation of performance. Special supplier effort and close Postal Service monitoring will probably be able to overcome difficulties.
Low	Proposal exhibits excellent fit to Postal Service quality control standards and risk management plan; has little potential to cause disruption of schedule, increased costs, or degradation of performance. Normal supplier effort and normal Postal Service monitoring will probably be able to overcome difficulties.

A risk assessment rating of “medium” or “high” may signal an overall lack of fit with Client requirements and can negatively impact the technical evaluation. Certain risk factors may lead to risks that may result in consequences that will affect the technical rating. For example, an unrealistically low staffing level for the project can mean work overload per resource assigned and consequently result in inferior quality of the end product(s).

**Other Topics Considered**

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Proposal Evaluation Strategy topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Conduct Price/Cost Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Conduct Supplier Capability (Technical and Financial) Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

**Conduct Price/Cost Analysis**

Price analysis is the process of examining and evaluating a proposed price against reasonable price benchmarks, without evaluating its separate cost elements and profit that make up the price. Some form of price analysis is required for every purchase; the dollar amount and characteristics of the

purchase determine the method and scope of analysis. Cost analysis is the process of examining the separate elements of cost and profit in a potential supplier's cost or pricing data. Additional information on the should-cost analysis can be found in the Conduct Should-Cost Analysis topic performed during the Collect Ideas and Build Fact Base task of Process Step 2: Evaluate Sources Process. The Pricing Analyst is responsible for determining the most appropriate technique for a given purchase.

One or more of the following techniques may be used when conducting a price analysis:

- Comparison of competitive offers
- Comparison with regulated, catalog, or market prices
- Comparison with historical prices
- Use of independent cost estimates (ICEs)

## **Comparison of Competitive Offers**

Comparing competitive offers involves comparing proposed prices received in response to the request for proposals (RFP). The Pricing Analyst may compare the current price with those proposed in competing offers or offers for the purchase if adequate price competition exists. To determine whether adequate price competition exists, the Pricing Analyst may examine the following:

- Proposed prices
- Range of prices offered by competing suppliers
- Production or performance experience of the suppliers
- Exceptions taken by any supplier to the specifications or delivery schedule

Generally, price competition exists if two or more independent and capable suppliers submit priced proposals meeting the RFP requirements. If price competition exists, it is presumed adequate, unless:

- The potential supplier offering the lowest price has such a decided market advantage that it is practically immune from competition
- The Purchase/SCM Team determines that the lowest price is not reasonable

Once adequate price competition is determined to exist, price comparison between proposals should be relatively easy.

When evaluating potential suppliers' proposals, the Pricing Analyst should compare not only the price, but also the terms and conditions of the proposal. Often, these terms and conditions will differ with regard to delivery schedule and upgraded technology to the point that a direct comparison between proposals cannot be made. Therefore, the Pricing Analyst must "level" the proposals to meet the basic requirements of the RFP to ensure that the price evaluation is performed on proposals with comparable terms and conditions. This may be accomplished by removing additional or upgraded services or

components from the overall proposal and proposed price so that the price evaluation can be made only with regard to the terms and conditions explicitly stated in the RFP.

## **Comparison with Regulated, Catalog, or Market Prices**

This technique allows the Postal Service to comply with the price as set by law or regulation and compares proposed prices with prices available in supplier's catalogs, market prices, indexes, and discount or rebate arrangements.

Regulated or legal prices are set when applicable laws or regulations specify the price and no potential supplier may charge anything other than this price.

Catalog prices are prices included in a catalog, price list, schedule, or other document that is regularly maintained by the manufacturer or supplier and is either published or otherwise available for inspection by customers. Before using catalog prices as a basis for comparison, the Pricing Analyst should ensure that:

- Significant quantities are sold to a significant number of customers at the indicated prices
- The complexity of the product is relatively low

Market prices are established by the interaction of market supply and demand and are usually published in trade publications or other news media.

## **Comparison with Historical Prices**

This price analysis technique involves comparing previously proposed and contract prices with current proposed prices for the same/similar items in comparable quantities. The Pricing Analyst should ensure that historical prices are still reasonable in the marketplace and serve as a valid basis for comparison. Just because a historical price exists does not mean that it is valid for comparison purposes. The following considerations apply to comparison with historical prices:

- How has the state of the market and competition changed?
- What are the fixed costs of the original prices that may no longer apply to the current purchase?
- How has inflation and/or deflation affected the price?
- Have the supplier's sources, quantities, production, start-up costs, or terms of purchase changed?
- What was the market demand/supply for the item/service at the time of previous purchase?
- Is the commercial item used for comparison similar?
- Was the historic purchase conducted as noncompetitive or competitive?
- Did the price include additional services?



The Pricing Analyst must adjust the historical price accordingly so that a direct comparison can be made with the proposed price.

## **Pricing Noncompetitive Offers**

Because of the lack of competition, any of the pricing techniques above—except the comparison of competitive offers—may be used when pricing noncompetitive proposals. If price analysis does not ensure that prices are fair and reasonable, then:

- A cost analysis is performed on the noncompetitive purchase
- Cost or pricing data must be obtained before awarding a noncompetitive contract or modification

(Cost analysis and cost and pricing data are discussed later in this topic in further detail.)

## **Use of Independent Cost Estimates (ICEs)**

Performing an independent cost estimate (ICE) allows the Purchase/SCM Team to compare proposed prices with independent Postal Service cost estimates to establish a reasonable price. An ICE should assess the total cost of ownership (TCO) to be incurred by the supplier if the contract is to be awarded. TCO refers to the total cost incurred over the life cycle of an item, encompassing purchase, use, maintenance, support, and disposal. Whenever adequate price competition has been obtained, comparing proposed prices with Postal Service ICEs may suffice to meet price-analysis requirements. These estimates can be a valid standard for comparison if they are based on a realistic analysis that accounts for past purchase prices, quantities, physical inspection of the product, and analysis of similar work. To determine whether the basis of the ICE is reliable and can be used as a standard for comparison, the Pricing Analyst must account for the following factors:

- What was the source of the information?
- What information and techniques were used?
- How reliable were earlier estimates?
- Is the ICE based upon the same technical approach as the current product or service?

The Pricing Analyst must consider whether the requirements or the assumptions of the RFP have changed since the ICE was performed. Often, an ICE is prepared early in the purchase process; by the time the RFP is issued and offers are received, specifications and requirements have changed. This may cause the price or the nature of the product or service to change significantly, rendering a direct comparison with the ICE invalid. A new ICE will have to be developed based on the new information.

## Cost Analysis

Cost analysis is appropriate when factors affecting the purchase will not ensure a reasonable price based on price analysis alone and/or the Postal Service needs an understanding of the cost buildup of the proposal to verify cost realism and reasonableness. Cost or pricing data must be obtained whenever price analysis is insufficient to determine reasonableness of price. Cost analysis should be limited to cost elements that need detailed analysis to protect the Postal Service's interest. When a limited number of cost elements will provide a reasonable analysis, the Contracting Officer should obtain only the data needed to support such an analysis. Cost analysis is generally most useful when purchasing nonstandard items and services.

Cost analysis involves, as appropriate:

- Verifying cost or pricing data and evaluating cost elements, including:
  - The necessity for, and reasonableness of, proposed costs, including allowances for contingencies
  - Projecting the potential supplier's cost trends on the basis of current and historical cost or pricing data
  - Performing a technical analysis of the estimated labor, material, tooling, and facilities required and the reasonableness of scrap and spoilage factors
  - Applying audited or negotiated indirect-cost rates and labor rates
  - Evaluating the effect of the supplier's current practices on future costs — the Purchase/SCM Team must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the Purchase/SCM Team should make a trend analysis of basic labor and materials, even in periods of relative price stability.
- Comparing costs proposed by the supplier for individual cost elements with:
  - Actual costs previously incurred by the same supplier
  - Previous cost estimates from the supplier or from other suppliers for the same or similar items
  - Independent Postal Service cost estimates
- Analyzing supplier's make-or-buy decisions in evaluating subcontract costs.
- Verifying that the supplier's cost submissions are in accordance with the cost principles below.
- Reviewing submissions to ensure that data needed to make the supplier's proposal accurate, complete, and current have been submitted or identified in writing. The Contracting Officer must attempt to obtain such data if they are available. If data cannot be obtained satisfactorily, allowance for the incomplete data must be negotiated.

- Utilizing audit services through the Office of the Inspector General (OIG) to validated cost or pricing data. More information on obtaining audit services through the OIG can be found at: [www.oig.hhs.gov](http://www.oig.hhs.gov).

## Cost or Pricing Data

Cost or pricing data include all the facts affecting cost estimates and costs incurred that can be expected to significantly affect price negotiations. Cost or pricing data may also include:

- Supplier quotations
- Nonrecurring costs
- Information on changes in production methods and in production or purchasing volume
- Data supporting business projections, objectives, and related operating costs
- Unit-cost trends, such as those associated with labor efficiency
- Make vs. buy decisions
- Resource estimates to meet business goals
- Information on management decisions that could have a significant bearing on costs
- Historical costs for the same or similar items

Whenever price analysis is insufficient to determine reasonableness of price, cost or pricing data must be obtained before awarding a noncompetitive contract or modification. Only the data needed to make the determination should be obtained. Before agreeing on price, the Contracting Officer must have the supplier update the data to the latest dates for which data are reasonably available.

The Contracting Officer must have suppliers obtain cost or pricing data for proposed subcontracts or subcontract modifications when needed to determine the reasonableness of a proposed contract or subcontract price (including negotiated final pricing actions such as termination settlements and total final price agreements for fixed-price-incentive contracts). The supplier is responsible for conducting the price or cost analysis for subcontracts and including the results as part of its cost or pricing data. In unusual circumstances, to ensure that analysis is adequate, the Contracting Officer may require the supplier to submit the subcontract data along with its own data. This does not reduce the supplier's responsibility to do the subcontract cost or price analysis and negotiate fair and reasonable subcontract prices.

If cost or pricing data are needed and the supplier refuses to provide the necessary data despite repeated requests, the Contracting Officer must withhold award or modification and refer the matter to the next higher level of contracting authority. The ultimate disposition must be documented.

Under Clause 2-30: Allowable Cost and Payment, suppliers must submit a final indirect-cost rate proposal to the Contracting Officer or Contracting Officer's Representative (COR) reflecting actual costs during the period, together with cost or pricing data.

Whenever cost or pricing data may be required when negotiating a contract or the subsequent modification of a contract, the contract must include:

- Clause 5-1: Price Reduction for Defective Cost or Pricing Data — lists the conditions under which the negotiated price that was increased significantly can be reduced
- Clause 5-2: Subcontractor Cost or Pricing Data — requires that before awarding any subcontract or pricing any subcontract modification, the supplier must require the subcontractor to submit cost or pricing data whenever cost or pricing data are required

## **Allowable Costs**

To be allowed, costs must be:

- Reasonable
- Allocable to the contract
- Consistent with generally accepted accounting principles
- Appropriate to the specific purchase
- Consistent with the requirements and terms and conditions of the contract
- Not unallowable

## **Reasonableness**

A cost is reasonable if it is a type of cost and amount that does not exceed what a prudent person would incur conducting competitive business. In determining the reasonableness of a specific cost, consider:

- Whether it is a type of cost generally recognized as ordinary and necessary for conducting business or performing the contract
- Restraints imposed by generally accepted business practices, arm's-length bargaining, and Federal and state laws and regulations
- What a prudent business person, considering his or her responsibilities to owners, employees, customers, the Postal Service, and the public at large, would do under the circumstances
- Any deviations from the supplier's established business practices that may unjustifiably increase costs

## Allocable to the Contract

A cost is allocable to a contract if it:

- Is incurred specifically for the contract
- Benefits both the contract and other work and can be distributed among them in reasonable proportion to the benefits received
- Is necessary to the overall operation of the business, although a direct relationship to the contract cannot be shown

## Unallowable Costs

Costs that are expressly or mutually agreed to be unallowable, including directly associated costs, must be excluded from any contract billing, claim, or proposal. A directly associated cost is a cost generated solely as a result of another cost, which would not have been incurred if the other cost had not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable. The following categories of costs are unallowable:

1. Public relations and advertising costs, except for costs of:
  - a. Responding to inquiries concerning company policies and activities;
  - b. Essential communication with the public, press, stockholders, creditors, and customers, including communications on matters of public concern;
  - c. Participating in community-service activities, such as blood-bank drives, charity drives, and disaster assistance (but not contributions to civil defense funds and projects);
  - d. Recruiting personnel needed to work under the contract;
  - e. Acquiring scarce items for contract performance; and
  - f. Disposing of scrap or surplus materials acquired for contract performance.
2. Bad debts, including actual or estimated losses arising from uncollectible accounts receivable from customers and other claims, and any costs directly associated with bad debts such as collection and legal costs.
3. Contributions or donations, including cash, property, and services, except as provided in 1(c).
4. Dividends or payments and distribution of profits.
5. Entertainment costs, including amusement, diversion, social activities, and costs directly associated with entertainment, such as tickets to shows or sporting events, meals, lodging, rentals, transportation, and gratuities. Entertainment costs include membership in social, dining, or country clubs or other organizations having the same purpose, regardless of whether the cost is reported as taxable income to the employees.

6. Fines and penalties resulting from violations of Federal, state, local, or foreign laws and regulations, except when incurred as a result of complying with specific terms and conditions of the contract or written instructions from the Contracting Officer.
7. Life insurance on the lives of officers, partners, or proprietors, unless the insurance represents additional compensation.
8. Interest on loans (however represented), bond discounts, costs of financing and refinancing capital, and the costs of preparing and issuing prospectuses and stock rights.
9. Lobbying cost:
  - a. including
    - (1) Attempts to influence the outcome of any Federal, state, or local election, referendum, initiative, or similar procedure through contributions, endorsements, publicity, or similar activities.
    - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections.
    - (3) Any attempt to influence the introduction of Federal or state legislation, or the enactment or modification of any pending Federal or state legislation through communication with any member or employee of Congress or a state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto legislation.
    - (4) Any attempt to influence the introduction of Federal or state legislation, or the enactment or modification of pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to, or participate in, any mass demonstration, march, rally, fund-raising drive, lobbying campaign, or letter-writing or telephone campaign.
    - (5) Legislation-liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when the activities are in support of, or in knowing preparation for, an effort to engage in unallowable activities.
  - b. But not including:
    - (1) Providing a technical and factual presentation of information on a topic directly related to performing the contract in a hearing testimony, statement, or letter to Congress or a state legislature, or subdivision, member, or staff member of either, in response to a documented request (including a *Congressional Record* notice requesting testimony or

- statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member. Costs for transportation, lodging, or meals associated with this exception are not allowed unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing in response to a written request made by the chair or ranking minority member of the committee or subcommittee conducting the hearing.
- (2) Any lobbying to influence state or Federal legislation to directly reduce contract cost, or to impair the supplier's obligation to perform the contract.
  - (3) Any activity specifically authorized by statute to be undertaken with funds from the contract.
10. Losses on other contracts (including the supplier's contribution under cost-sharing contracts).
11. Taxes:
- a. Federal income and excess-profits taxes.
  - b. Taxes in connection with financing, refinancing, refunding operations, or reorganizations.
  - c. Taxes from which exemptions are available to the supplier directly, or available to the supplier based on a Postal Service exemption, except when the Purchase/SCM team determines that the administrative burden of obtaining the exemption outweighs the benefits to the Postal Service. The term "exemption" means freedom from taxation in whole or in part, and includes a tax abatement or reduction resulting from the method of assessment, calculation, or other reason.
  - d. Special assessments on land that represent capital improvements.
  - e. Taxes (including excise taxes) on real or personal property, or on the value, use, possession, or sale of property, used solely in connection with work on contracts that are not with the Postal Service or the government.
  - f. Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans under section 4971 or 4975 of the Internal Revenue Code of 1954, as amended.
  - g. Income tax accruals designed to account for the tax effect of differences between taxable income and pretax income as reflected by the supplier's accounting and financial statements.
12. Costs incurred in defending against any combination of the actions below when brought by the government against a supplier, its agents, or employees, when the charges involve fraud or similar criminal offenses (including filing of a false certification) on the part of the supplier, its agents, or employees, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the

supplier, its agents, or employees, or a decision to debar or suspend, or are resolved by consent or compromise (when charges of fraud are resolved by consent or compromise, the parties may agree on the extent of allowability of defense costs as a part of the resolution). The actions include:

- a. Criminal or civil investigation, grand jury proceedings, or prosecution;
  - b. Civil litigation; or
  - c. Administrative proceedings such as suspension or debarment.
13. Costs incurred against Postal Service claims or appeals or the prosecution of claims or appeals against the Postal Service.

## Cost Realism

Cost realism means that the costs in a supplier's proposal:

- Are realistic for the work to be performed
- Reflect a clear understanding of the requirements
- Are consistent with the various elements of the supplier's technical proposal

The emphasis of a cost-realism analysis is to determine whether costs may be overstated or understated. Cost realism helps to ascertain the potential risk to the Postal Service as a result of the supplier being unable to meet contract requirements.

Cost-realism analysis is an objective process of identifying the specific elements of a cost estimate or a proposed price and comparing those elements against reliable and independent means of cost measurement, and is particularly useful in the evaluation of cost reimbursement contracts. This analysis determines whether the estimates under analysis are verifiable, complete, and accurate. It also shows whether the supplier's estimating methodology is logical, appropriate, and adequately explained. As a result, the analysis helps ensure that the cost or prices proposed fairly represent the costs likely to be incurred for the proposed services, given the supplier's technical and management approach.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Conduct Should-Cost Analysis topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Negotiate With Suppliers topic, Perform Preaward Activities task, Process Step 2: Evaluate Sources



## Conduct Supplier Capability (Technical and Financial) Analysis

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Selection of the right suppliers is critical to the Postal Service's success. The right suppliers augment the Postal Service's ability to deliver high-quality and innovative service to its customers and to reduce operational risks. Analysis of supplier capability is conducted before contract award to determine the supplier's performance ability throughout the life of the contract. Financial capability analysis aids in determining the supplier's ability to remain financially solvent, and technical capability analysis helps determine whether the supplier has the technical ability and capacity to perform the work.

Financial capability is essential for suppliers to assure continuity of supply and reliability of product quality. It is difficult for a:

- Financially weak supplier to maintain quality
- Supplier who does not have sufficient working capital to settle an expensive claim
- Financially unsound supplier to work overtime to meet a promised delivery date

Technical analysis confirms the reasonableness of the type and amount of resources proposed by the supplier. This analysis covers the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other factors set forth in the proposal.

### Supplier Capability

Supplier capability is evaluated to determine a supplier's ability to perform upon award of a contract. It should be used as a snapshot of the quality and reliability of that performance. Certain key areas must be considered when determining a supplier's capability. To be deemed capable, the supplier must:

- Have, or have the ability to obtain, as needed, adequate resources to perform the work (e.g., technical, financial)
- Be able to meet the required or proposed delivery schedule, considering all existing commitments, including awards pending
- Have a sound record of integrity and business ethics
- Have a good quality control program that complies with RFP requirements
- Have the necessary organization, experience, accounting and operational controls, technical skills, and production and property controls
- Have, or have the ability to obtain, the necessary production, construction, and technical equipment and facilities
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations

## Technical Capabilities

Technical analysis is performed on the following relevant areas:

- Business process changes
- Application development
- Software and systems engineering
- Development and maintenance
- Information technology (IT) service management
- Infrastructure design and planning
- Infrastructure and technology deployment
- Infrastructure management
- Operations management
- Technical support

## Financial Capabilities

Analysis can be performed on the following information and items so that an estimate of present supplier capacity can be known:

- A review of financial statements and credit ratings
- Copies of balance sheets and income statements
- Levels of turnover
- Liquidity measures, ratios
- Profitability measures, ratios
- Measures of long-term financial strength
- Leverage ratio

Certain business information must be obtained to determine that a potential supplier is capable. Sources of such information include:

- The Postal Service list of debarred and suspended suppliers and the General Services Administration's (GSA's) consolidated list of suppliers debarred, suspended, or declared ineligible (additional instruction can be found in Title 39 Code of Federal Regulations (CFR) 601.106.D)
- Records and experience data, including the knowledge of other Contracting Officers, purchasing specialists, and audit personnel
- The supplier's proposal information, business profile, financial data, information on production equipment, production data, questionnaire replies, and personnel information
- Subcontractors, customers, financial institutions, and government agencies that have done business with the supplier
- Business and trade associations

## Review Core Processes

For high dollar, highly complex, or sensitive purchases, a review of the supplier core process may be required. The review of core processes entails the thorough evaluation of a potential supplier's customer service infrastructure, transportation operations, logistics network, and inventory planning capabilities. A positive evaluation of these core processes will help to increase the overall evaluation of a proposal and make the potential supplier's offer more competitive. The Contracting Officer and/or Client will conduct the evaluation of core process descriptions and will determine how compatible the supplier's are with those of the Postal Service. In doing so, high-quality customer satisfaction, shorter lead times, and the use of more effective technological aids are all promoted. Market research and benchmarking analysis are used when evaluating core processes because they provide successful performance models for comparison. Additional information can be found in the Conduct Market Research and Benchmarking Analysis topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

For projects that are complex, high in dollar value, critical, or have high switching costs, site visits may be conducted to validate and supplement information provided by potential suppliers in proposals in response to RFPs. These visits enable face-to-face interaction and:

- Validate information already acquired
- Offer a first-hand view of the supplier's facilities, operations, and personnel
- Clarify points in supplier's offers or proposals
- Provide a better insight into the supplier's proposals and its capacity and capability to deliver (can include an in-depth demonstration of the supplier's proposed solution and presentations by the supplier's project team)
- Advance negotiations with supplier
- Ensure that both sides of the supply relationship have the same understanding and definition of various performance metrics, such as "on-time delivery" and "quality."
- Provide a great forum to discuss product specifications in depth
- Allow the Postal Service to assess supplier's dependability and total health

It is imperative that individuals involved in these visits do not divulge any supplier's proprietary business or trade secrets.

## Reference Checks

The Contracting Officer will perform reference checks on supplier qualifications cited in a proposal submission when it is determined necessary by the Contracting Officer to validate supplier past performance. Also, the Contracting Officer may choose to perform reference checks on specific resumes submitted for a role or a responsibility outlined in the proposal when

that role, and the relevant skills and experience needed for that role, is considered key to the successful performance of the contract. However, for other non-key personnel resumes, it is expected that the supplier will have conducted the appropriate reference checks.

RFP language will include instructions for the provision of the supplier's previous project experience qualification, which should include the name and contact information of the associated contract holder. Reference checks should be conducted for those proposals being considered if the Postal Service does not have previous experience with the particular supplier or if additional information regarding the success and/or details of the project are of interest.

Similarly, the RFP will instruct the potential supplier to include resumes of those employees it plans to staff on the project, if awarded. Additional information may be requested from the supplier if resumes do not include sufficient information. If there is not language in the RFP enforcing the guarantee of participation of all candidates proposed for a project, then resumes may also be solicited upon contract award if a candidate is replaced or added.

Reference checks performed during the Perform Preaward Activities task of Process Step 2: Evaluate Sources will provide additional familiarity with the supplier's work history. Additional clearances/background checks may be required for some product or service providers. See the Supply Chain Security general practice for more information.

Performing a reference check involves:

- Reviewing supplier performance with other/previous partners
- Control of internal and external supplier audit history

## **Performance with Previous Partners**

The first step of a reference check for a selected supplier is for the Contracting Officer to contact parties who hold/have held contracts with the supplier. Information generated from these parties will allow the Postal Service to better determine the performance to be expected from selected suppliers and thus judge the overall merit of a selected supplier. It is also important that the Postal Service learn about a supplier's organizational culture so that the two will be compatible. Strategic alliances can be formed only when the Postal Service and a selected supplier complement each other, not just by deciding to do business together.

## **Supplier Audit History**

The last step in checking a supplier's references is to examine the supplier's internal and external audits. Internal audits provide essential information regarding supplier methodology, which allows the Contracting Officer, guided by the financial expertise provided by the Pricing Analyst, to determine the financial stability of the supplier and to ensure that the supplier can fulfill the Postal Service's requirements in the case of an awarded contract. External audits provide essential objective information regarding the legal and

strategic legitimacy of supplier processes, staff, technology, facilities, and finances. A supplier must be free of “going concern” problems to be considered for a contract award.

## **Preaward Survey**

A preaward survey provides sufficient knowledge of the supplier to make a decision to include or exclude the supplier from further consideration. If the required information and discussions do not provide an adequate basis for determining capability, the Proposal Evaluation Team may conduct a preaward survey with the suppliers. The extent of the survey must be consistent with the dollar value, complexity, or sensitivity of the purchase and may include any of the following:

- Data on hand or from other government or commercial sources
- Examination of financial statements and records
- On-site assessment of plant, facilities, workforce, subcontractors, and other resources to be used in contract performance

The scoring of the survey can range from adjective ratings to numerical systems and will depend on the situation. Results of the preaward survey must be in writing and included with the capability determination.

## **Analysis**

The supplier capability analysis will typically consist of investigating the supplier’s proposal. The Proposal Evaluation Team members will perform the analysis in their respective areas. Facility visits may also need to be conducted to analyze the supplier. In performing the analysis, each evaluation factor and associated weighting factor will receive a score, which is how the most suitable supplier will be chosen.

## **Assessing Subcontractors**

Subcontracting takes place when a supplier contracts out the performance of a part of its business to another, referred to as a “subcontractor.” The subcontractor then uses its own employees and/or resources to undertake that portion of the business or project that the Supplier has contracted to it. As such, the subcontractor is a person or company that does part of a job that another supplier is responsible for.

The Purchase/SCM Team may require the Supplier to notify the Postal Service of its intent to subcontract. The notification should be in writing and provide the Purchase/SCM Team reasons for subcontracting, the desired effective date, and the identity and qualifications of the proposed subcontractor(s). The Purchase/SCM Team will review the notification and determine whether further examination of the subcontractor(s) is required.

Generally, suppliers are responsible for determining the capability of their subcontractors and are required to provide evidence of a subcontractor’s capability. In some cases however, the Purchase/SCM Team may decide to assess subcontractors for acceptability. In such cases, the subcontractor

capability may be determined using the same criteria used to determine primary supplier capability. Subcontractors must meet the same responsibility and qualification requirements as the Supplier.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Perform Switching-Cost Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## Evaluate Foreign and Domestic Proposals

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Proposals offering other than domestic end products or (subject to the eligibility thresholds set out below in Figure 2.14) end products mined, produced, or manufactured in (i) countries that have entered into World Trade Organization Government Procurement Agreement (WTO GPA) or (ii) a country that has entered into a Free Trade Agreement (FTA) with the United States covering government purchases, will be evaluated in one of two ways against proposals of relatively equal value offering domestic end products or eligible WTO GPA or FTA country end products. This evaluation will depend on whether contract award will be based on price or on evaluation factors other than price. When an award will be based on price, a six percent differential is applied to the proposed price of the non-qualifying end product, and this adjusted price is used by the Proposal Evaluation Team and the Contracting Officer in the course of evaluation. If proposal evaluation factors will have a significant weight in proposal evaluation, domestic and WTO GPA or FTA end products will receive a preference in the case of closely ranked proposals, but no price differential will be applied.

### Domestic End Products

A domestic end product is:

1. An unmanufactured end product mined or produced in the United States; or
2. An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent of the cost of all its components. Components (i.e., articles, materials, supply incorporated directly into an end product or construction material) of foreign origin of the same class or kind as those that the Postal Service determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. Cost of components refers to:
  - For components purchased by the Supplier, the purchase cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs

- are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- For components manufactured by the Supplier, all costs associated with the manufacture of the component, including transportation costs as described above, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

When a request for proposals (RFP) specifies that an award will be made on a group of line items, a domestic proposal means a proposal where the proposed price of the domestic end products exceeds fifty percent of the total proposed price of the group.

## **End Products from Designated WTO GPA and FTA Countries**

End products from a designated WTO GPA or FTA country are those articles, materials, and supplies that:

1. Are wholly the growth, product, or manufacture of producers in (i) countries that have entered into World Trade Organization Government Procurement Agreement (WTO GPA) or (ii) a country that has entered into a Free Trade Agreement (FTA) with the United States covering government purchasing; or
2. In the case of articles that consist in whole or in part of materials from another country, have been substantially transformed in a WTO GPA or FTA country into new and different articles of commerce with names, characters, or uses distinct from that of the article or articles from which they were transformed.

An end product refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services do not exceed that of the article itself.

## **Designated WTO GPA and FTA Countries**

The following are the designated WTO GPA and FTA countries:

- WTO GPA countries: Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom; construction materials and end products granted duty-free entry: Antigua and Barbuda, The Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Saint

- Christopher-Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and Virgin Islands (British)
- FTA countries: Australia, Canada, Chile, Israel, Mexico, Morocco, and Singapore

## WTO GPA and FTA Eligibility Thresholds

The value of the purchase and the type of commodity being purchased are determining factors as to whether the WTO GPA and FTA products may be considered domestic-source end products. The thresholds are summarized in the table below. Estimated contract value includes the value of any contemplated options.

Figure 2.14  
Eligibility Thresholds

Trade Agreement	Supply Contract (Equal to or Exceeding)	Service Contract (Equal to or Exceeding)	Construction Contract (Equal to or Exceeding)
WTO GPA	\$175,000	\$175,000	\$6,725,000
NAFTA — Canada	\$25,000	\$58,500	\$7,611,532
NAFTA — Mexico	\$58,500	\$58,500	\$7,611,532
Chile FTA	\$58,500	\$58,500	\$6,725,000
Singapore FTA	\$58,500	\$58,500	\$6,725,000
Australia FTA	\$58,500	\$58,500	\$6,725,000
Morocco FTA	\$175,000	\$175,000	\$6,725,000
Israeli Trade Act	\$50,000	—	—

When proposals contain end products produced in eligible designated WTO GPA and FTA countries, and the value of the purchase exceeds the amount shown above, the end products are considered as domestic-source end products.

## Lease, Rental, and Lease-Purchase Contracts

To determine whether the purchase of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated purchase value as follows:

- If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the purchase
- If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the purchase plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract
- If an indefinite delivery contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract (i.e., the initial ordering period plus any optional ordering periods)



- If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48

### WTO GPA and FTA Service Exceptions

Purchases of the following services are excluded from coverage as indicated in the table below:

Figure 2.15  
Excluded Purchases

	Service	WTO GPA	NAFTA (Mexico and Canada) and Chile FTA	Singapore FTA	Australia and Morocco FTA
(1i)	Automatic Data Processing (ADP) telecommunications and transmission services, except advanced (i.e., value-added) telecommunications services.	Excluded	Excluded	Excluded	Excluded
(1ii)	ADP teleprocessing and timesharing services, telecommunications network management services, automated news services, data services or other information services, and other ADP and telecommunications services	Excluded	Excluded		
(1iii)	Basic telecommunications network services (i.e., voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services as defined in 47 U.S.C. 153(20)).	Excluded (subset of services listed under (1i))	Excluded (subset of services listed under (1i))	Excluded	Excluded
(2)	Dredging	Excluded	Excluded	Excluded	Excluded
(3i)	Operation and management contracts of certain Government facilities and privately owned facilities for Government purposes, including Federally Funded Research and Development Centers.	Excluded		Excluded	
(3ii)	Operation of Government-owned research and development facilities or Government-owned environmental laboratories.	Excluded (subset of services listed under (3i))	Excluded	Excluded (subset of services listed under (3i))	Excluded
(4)	Research and development.	Excluded	Excluded	Excluded	Excluded
(5)	Transportation services (including launching services, but not including travel agent services).	Excluded	Excluded	Excluded	Excluded
(6)	Utility services.	Excluded	Excluded	Excluded	Excluded
(7)	Maintenance, repair, modification, rebuilding, and installation of equipment related to ships.		Excluded		
(8)	Non-nuclear ship repair.		Excluded		Excluded

## Construction Materials

The procedures in this part apply to all construction contracts. Deviations may be authorized by the Vice President, Supply Management (VP, SM). For the purposes of this practice, the following definitions apply:

- Construction material components are articles, materials, and supplies incorporated directly into construction materials.
- Construction materials are articles, materials, and supplies brought to the construction site for incorporation into the building or work.
- Domestic construction material is (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent of the cost of all its components. The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind as those listed in Non-Available Products (subsection to this practices) are treated as domestic.
- Foreign construction material is a construction material other than a domestic construction material.

Only domestic construction materials may be used in construction, except:

- When the Contracting Officer determines that use of a particular domestic construction material would be impracticable, or that its cost would be unreasonable, under guidelines established by the VP, Supply Management, in the relevant handbook
- When the VP, SM, determines that a construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of satisfactory quality (see Non-Available Products)

Provision 1-3: Domestic Source Certificate - Construction Materials is incorporated by reference in Provision 4-3, and must be checked-off by Contracting Officers when the request for proposals (RFP) calls for the purchase of construction materials. Clause 1-10: Preference for Domestic Construction Materials is incorporated by reference in Clause 4-2, and must be checked-off by Contracting Officers when the contract calls for the purchase of construction materials.

## Limitations

This practice does not apply to products set out in the list of Non-Available Products below or to purchases as to which the Vice President, Supply Management (VP, SM), has determined that the application of a domestic preference would be inconsistent with the public interest.

## **Non-Available Products**

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bamboo shoots.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

Brazil nuts, unroasted.

Cadmium, ores and flue dust.

Calcium cyanamide.

Capers.

Cashew nuts.

Castor beans and castor oil.

Chalk, English.

Chestnuts.

Chicle.

Chrome ore or chromite.

Cinchona bark.

Cobalt, in cathodes, rondelles, or other primary ore and metal forms.

Cocoa beans.

Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

Coffee, raw or green bean.

Colchicine alkaloid, raw.

Copra.

Cork, wood or bark and waste.

Cover glass, microscope slide.

Crane rail (85-pound per foot).

Cryolite, natural.

Dammar gum.

Diamonds, industrial, stones and abrasives.

Emetine, bulk.

Ergot, crude.

Erythrityl tetranitrate.

Fair linen, altar.

Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

Goat and kidskins.

Goat hair canvas.

Grapefruit sections, canned.

Graphite, natural, crystalline, crucible grade.

Hand file sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.

Manganese.

Menthol, natural bulk.

Mica.

Microprocessor chips (brought onto a government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Modacrylic fur ruff.

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

## USPS Supplying Practices Process Step 2: Evaluate Sources

Nitroguanidine (also known as picrite).  
Nux vomica, crude.  
Oiticica oil.  
Olive oil.  
Olives (green), pitted or unpitted, or stuffed, in bulk.  
Opium, crude.  
Oranges, mandarin, canned.  
Petroleum, crude oil, unfinished oils, and finished products.  
Pine needle oil.  
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.  
Pyrethrum flowers.  
Quartz crystals.  
Quebracho.  
Quinidine.  
Quinine.  
Rabbit fur felt.  
Radium salts, source and special nuclear materials.  
Rosettes.  
Rubber, crude and latex.  
Rutile.  
Santonin, crude.  
Secretin.  
Shellac.  
Silk, raw and unmanufactured.  
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.  
Spices and herbs, in bulk.  
Sugars, raw.  
Swords and scabbards.  
Talc, block, steatite.  
Tantalum.  
Tapioca flour and cassava.  
Tartar, crude; tartaric acid and cream of tartar in bulk.  
Tea in bulk.

Thread, metallic (gold).

Thyme oil.

Tin in bars, blocks, and pigs.

Triprolidine hydrochloride.

Tungsten.

Vanilla beans.

Venom, cobra.

Water chestnuts.

Wax, carnauba.

Wire glass.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Hold Discussions

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Discussions are communications between the Purchase/SCM Team and suppliers. Negotiations are held with a supplier or multiple suppliers after the Purchase/SCM Team has determined that their offers have the best chance of providing the Postal Service the best value. Additional information on negotiations can be found in the Negotiate With Suppliers topic of the Perform Pre-Award Activities task of Process Step 2: Evaluate Sources.

### Discussions

Discussions are held when the Purchase/SCM Team needs to generate further information and facts regarding proposed terms and conditions, and clarify any possible misunderstandings with a supplier. The Contracting Officer is responsible for leading discussions. Discussions during the implementation of the proposal evaluation strategy are held to:

- Allow for the clarification of matters contained in a proposal that raise questions regarding acceptability or proposal evaluation score
- Address suspected mistakes or questionable assumptions

During the evaluation process, including during oral presentations, discussions may be held with any supplier to clear up misunderstandings or uncertainties or to gain a better understanding of the supplier's proposal (including price) in order to obtain a more informed comparison of the relative value of individual proposals.

After proposal comparisons have been made, further discussions may be held to address any outstanding matters. Suppliers whose offers are the subject of discussion at any stage must be given sufficient time to revise their proposals in light of those discussions.

By this point in the Evaluate Proposals task of Process Step 2: Evaluate Sources, the Proposal Evaluation Team has determined and eliminated from consideration those suppliers that have submitted proposals with risks that cannot be mitigated and/or do not have the necessary technical and financial capabilities.

Before entering into discussions, the Purchase/SCM Team must:

- Have comprehensive knowledge of the Supplier
- Have thorough knowledge of the goods or services to be supplied
- Understand the Client's need and requirements
- Understand the Supplier's capabilities
- Analyze involved costs and prices

### **Process**

After proposal evaluation, the Proposal Evaluation Team informs the Contracting Officer and Purchase/SCM Team of the ranking of the proposals, potential points of conflict, and suggests with which suppliers discussions should be held. The Contracting Officer then leads the Purchase/SCM Team in conducting discussions.

### **Potential Points of Conflict**

Potential points of conflict are areas where the Postal Service would benefit from different contract terms and conditions than those proposed by the Supplier, or matters requiring clarification. Points of conflict can impede the Postal Service from receiving best value, and usually are centered around past performance, on-time delivery, product enhancements, product engineering, product quality, and, especially, price. The cost and price data and past performance considerations generated by consulting the results of the Implement Proposal Evaluation Strategy topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources are useful for generating the relevant information.

In the rare instance when a proposal has no points of conflict, pricing is at or below market price, and the proposal obviously offers the best value, neither discussions nor negotiations are necessary. However, Purchase/SCM Teams should always remember (1) that holding discussions for reasons of clarification is always prudent and (2) that negotiations normally should be held in order to improve the value received by the Postal Service. In cases

where neither discussions nor negotiations are necessary, the Purchase/SCM Team begins the activities associated with the Ensure Supplier Diversity Objectives are Considered topic of the Perform Pre-Award Activities task of Process Step 2: Evaluate Sources.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Implement Proposal Evaluation Strategy topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Perform Risk Analysis on Supplier Proposals topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Conduct Price Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Conduct Supplier Capability (Technical and Financial) Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Negotiate with Perspective Suppliers topic, Perform Pre-Award Activities task, Process Step 2: Evaluate Sources

## Negotiate with Suppliers

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Discussions and negotiations are not the same. Discussions are communications between the Purchase/SCM Team and offerors. Generally, negotiations are held with one or more suppliers after the Purchase/SCM Team has determined through either discussions or the Proposal Evaluation Team's recommendations, that the Supplier's (or Suppliers') proposal has the best chance of providing the Postal Service the best value. The goal of negotiations is to come to final agreement on contract terms and conditions, including contract type and price.

When negotiating, the Purchase/SCM Team must remember that the Client's needs, the purchase plan, and best value are the forces that drive all actions. The negotiation process will also be impacted by the establishment of detailed objectives regarding the aspects of contract performance, including:

- Technical implications
- Materials
- Logistics network
- Inventory management
- Warranties
- Payment terms
- Data and intellectual property rights
- Investment recovery and disposal
- Price



## Negotiation Considerations

The Contracting Officer leads negotiation planning and is responsible for the conduct of the negotiations, and will begin by attempting to resolve any points of conflict that remain after discussions. However, depending on the issues to be negotiated and the experience of the Purchase/SCM Team members, different team members may take the lead on negotiating specific issues in accordance with the negotiation plan. Before opening negotiations, the Contracting Officer and the Purchase/SCM Team must clearly categorize negotiation objectives that are either *must* points (terms and conditions essential to desired contract performance that the Postal Service must obtain), or *give* points (terms and conditions that are not central to the Postal Service obtaining best value). *Must* points and *give* points are determined by Client requirements, but the Contracting Officer will leverage past experiences and knowledge when negotiating these points. In order to avoid deadlock, the Contracting Officer will have to properly balance what is given and what is taken, especially as final agreement becomes more imminent, while focusing on obtaining the *must* points.

For example, negotiations are held with a Supplier that has a proven record of on-time delivery (a shared interest and a *must* point for the Postal Service), but is also proposing a price higher than the target price generated by the Pricing Analyst (a point of conflict but also a *give* point). In a compromise, the Postal Service would give the Supplier a higher price than the one recommended by the Pricing Analyst, but one lower than that offered in the original proposal, thereby obtaining the on-time delivery level determined essential to contract performance and improved price terms.

In the rare instance when a proposal has no points of conflict, pricing is at or below market price, and the proposal obviously offers the best value, neither discussions nor negotiations are necessary. However, Purchase/SCM Teams should always remember (1) that holding discussions for reasons of clarification is always prudent and (2) that negotiations normally should be held in order to improve the value received by the Postal Service. In cases where neither discussions nor negotiations are necessary, the Purchase/SCM Team begins the activities associated with the Ensure Supplier Diversity Objectives are Considered topic of the Perform Pre-Award Activities task of Process Step 2: Evaluate Sources.

It is important to note that negotiations are a complex process based on preparation, leveraging power, personal dynamics and compromises that vary from contract to contract. Negotiations are seldom predictable and are never a guaranteed success. Therefore, negotiations must always be rooted in facts generated during discussions, as well as market research and price analysis, and Postal Service objectives in order to maintain and avoid damaging historical working relationships with suppliers. Ultimately, the level of mutual dependency (the Postal Service need for a supply and the Supplier's need for clientele) is the greatest source of motivation for the two parties.

## Prepare for Negotiations

Almost all successful negotiations are the result of preparation. Before entering a negotiation, the Contracting Officer and Purchase/SCM Team should:

- Have comprehensive knowledge of the marketplace (generated by market research)
- Have comprehensive knowledge of the Supplier
- Have thorough knowledge of the goods or services to be supplied
- Have thorough knowledge of the price of goods or services to be supplied (generated through price analysis)
- Understand the Postal Service's leveraging power
- Understand the Supplier's leveraging power
- Analyze involved costs (generated in the Conduct Should-Cost Analysis topic of the Collect Ideas and Build Fact Base task of Process Step 2: Evaluate Sources)
- Understand the Supplier's capabilities (generated in the Conduct Supplier Capability (Technical and Financial) Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources)
- Understand the Total Cost of Ownership

The next step is to establish the Postal Service's negotiation strategy incorporating this information. A negotiation strategy is formally planned and requires the generation of all Postal Service objectives, any remaining points of conflict, their importance in determining best value, and the strategies that will be used to address them.

## Best Alternative to a Negotiated Agreement (BATNA)

In developing its negotiation strategy, the Postal Service should identify what is the Best Alternative to a Negotiated Agreement (BATNA). The BATNA is the next best alternative, or "walk away" alternative, should negotiations fail with the selected supplier. It is a key component of any negotiation strategy. Identifying the BATNA (e.g., an alternate supplier, manufacturing in-house, canceling the solicitation) will help determine the Postal Service's leveraging power depending on the desirability of its BATNA.

## Conducting Negotiations

During negotiations, the Contracting Officer must leverage the negotiation strategy, which defines the importance of each issue and ensures that interactions with the Supplier are confined to these issues. Each issue should be treated individually, usually in order of ease of resolution.

Depending on the complexity of the product or service to be purchased the Contracting Officer will involve the Client, Legal Counsel and other members of the Purchase/SCM Team in the negotiations with the Supplier. The negotiations strategy will identify which team members will take the lead role

in negotiating different aspects of the proposal. Outside expertise can be used during negotiations, but Contracting Officers must take steps to ensure that the potentiality for organizational conflicts of interest is minimized.

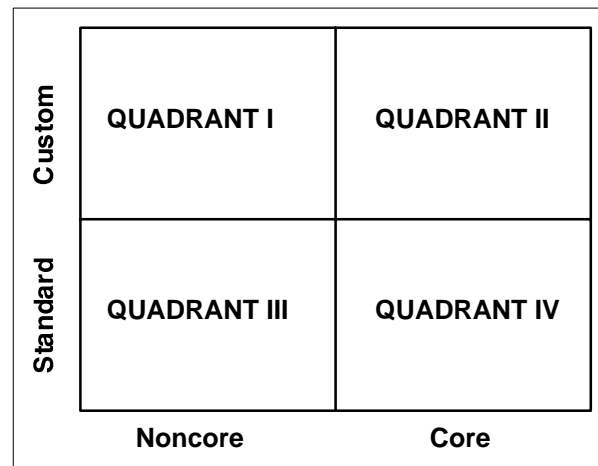
## Documenting Results

Once negotiations have concluded, the Contracting Officer is responsible for documenting their substance and the extent to which they were successful. The degree of success will depend on whether the negotiations fulfilled the intent of the negotiation strategy. Documentation must be in writing and included in the contract file.

## Quadrant Approach

A quadrant approach classifies all Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Negotiations can be prioritized based on the type of purchase, as well as its overall impact on the Postal Service.

Figure 2.16  
**Four Quadrants**



### Quadrant I: Noncore/Customized Purchases

Goods and services in Quadrant I do not provide direct value, and are therefore considered to be a lower priority for negotiations. Because these goods are more customized, and there may be a limited supplier base, negotiations can be beneficial in the achievement of best value, especially in a monopoly situation. When a contract to supply these goods or services is negotiated, the Contracting Officer may conduct them with some support from the Purchase/SCM Team and Legal Counsel.

### Quadrant II: Core/Customized Purchases

These products and services create direct value, and are therefore of high importance in negotiations. Negotiations pertaining to these products and

services require a team comprised of the Contracting Officer, supported by the Purchase/SCM Team and Legal Counsel.

### **Quadrant III: Noncore/Standard Purchases**

Products and services that fall into Quadrant III do not provide direct value, and are therefore a lower priority for negotiations. When a contract to supply these goods or services is negotiated, the Contracting Officer may conduct them with some support from the Purchase/SCM Team and Legal Counsel.

### **Quadrant IV: Core/Standard Purchases**

These products and services create direct value, and are therefore of high importance. Negotiations pertaining to these products and services require a team comprised of the Contracting Officer, supported by the Purchase/SCM Team, and Legal Counsel.

### **Other Topics Considered**

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Should-Cost Analysis topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Perform Proposal Evaluation Strategy topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Conduct Supplier Capability (Technical and Financial) Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Hold Discussions topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

## **Subcontracting with Small, Minority, and Women Owned Business**

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Suppliers are encouraged to use small, minority, and woman-owned businesses (SMWOBs) as subcontractors to the maximum extent consistent with effective contract performance.

Each supplier awarded a contract valued at \$500,000 or more must submit calendar-quarter reports (Purchase/SCM Teams may require more frequent submittals) on its subcontracting activity for that contract. Three types of reporting methods may be used: (1) reports showing direct subcontract awards awarded under the Postal Service contract; (2) reports showing subcontracting activity that is allocable to the Postal Service contract using generally accepted accounting practices; or (3) reports that are a combination of the two. During discussions, the Purchase/SCM Team and the Supplier must agree to which type of report will be used.

## **Subcontracting Plans**

Plans which specifically address subcontracting with SMWOBs are required for all contracts valued at \$1 million or more. Unless formally waived by the Contracting Officer for urgent and compelling business reasons, or for the reasons discussed below, suppliers must submit the plans with their proposals, and plans must be agreed to before award of the contract (small businesses are exempt from this requirement). Provision 3-1: Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements, which discusses the plan requirement and exempts small businesses from the requirement, is incorporated by reference in Provision 4-1: Standard Solicitation Provisions, and must be checked-off by Contracting Officers for all solicitations for contracts estimated to value \$1 million or more, except when an indefinite-delivery contract or ordering agreement will be used and the Purchase/SCM Team determines that requiring a plan would not be feasible.

## **Suppliers Use of Subcontractors**

In accordance with Clause 3-2: Participation of Small, Minority-, and Woman-Owned Businesses, the policy of the Postal Service is to encourage the participation of small, minority-, and woman-owned businesses in its purchases of supplies and services to the maximum extent practicable, consistent with efficient contract performance. The supplier agrees to follow the same policy in performing this contract and also agrees that any eventual subcontractors will also follow the same policy.

Clause 9-9: Equal Opportunity Preaward Compliance of Subcontracts states that a Prime Supplier may not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore eligible for award.

## **Other Topics Considered**

Involve Suppliers Early topic, Conceptualize Need task, Process Step 1: Identify Needs

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop, Issue, and Analyze Responses from RFI topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Purchase Plan and Best Value Parameters topic, Prepare Project task, Process Step 2: Evaluate Sources

Involve Suppliers in Planning topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Develop and Finalize Sourcing Strategy topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Define Supplier Diversity Objectives topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities, Process Step 2: Evaluate Sources

Issue Request for Proposals (RFP) and Publicize Requirements topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

## Produce Contract Award Recommendation

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After proposal evaluation, comparative analysis, and ranking of the proposals (including price proposals), and, after any final discussions and negotiations with selected suppliers, it must be determined which supplier (or suppliers) offer the best value to the Postal Service. The Contracting Officer makes a recommendation to the Purchase/SCM Team after consideration of the information provided by the Proposal Evaluation Team.

Information to be considered in the decision are:

- the trade-off judgment between price and the value offered in a supplier's proposal
- the relative value offered by a supplier or suppliers in relation to the competition
- whether a lower cost is worth the lesser technical value (and potentially higher risk), or whether a higher price is worth the increased technical/managerial capabilities (and potentially lower risk)

These judgments must be consistent with the relative significance of the identified performance evaluation factors and the relationship of those factors to cost/price factors as established in the proposal evaluation strategy and described in the request for proposals (RFP).

The Contracting Officer must present his or her recommendation accompanied by the findings of the Proposal Evaluation Team and other relevant facts to the Purchase/SCM Team. All procedures, evaluation techniques, Proposal Evaluation Team reports, record of negotiations, and the best value determination must be formally documented and maintained in the contract file. At a minimum, the contract file should include:

- Requirements Document
- Purchase plan
- Solicitation
- Proposals received in response to the solicitation
- Record of the discussions and negotiations held with the offerors
- Best value determination
- Supporting information such as past performance evaluation records

## USPS Supplying Practices Process Step 2: Evaluate Sources

- Contract award and notification to unsuccessful offerors
- Offerors documentation
- Any required reviews and approvals
- Any other documentation required by these Practices

The contract award recommendation is the determination of which supplier offers the Postal Service the best value, and therefore should be awarded the contract. The Contracting Officer is responsible for making the award recommendation after consulting with the Purchase/SCM Team, as necessary. The contract award recommendation is used as the basis for the Notifications of Award topic of the Make Final Decisions task of Process Step 3: Select Suppliers. When consensus cannot be reached, the Contracting Officer will make the best value decision.

Award documentation must be completed before notification of award.

### **Other Topics Considered**

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Assess Technology Implications topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Perform Risk Analysis on Supplier Proposals topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Award Contract and Notify Suppliers topic, Make Final Decisions task, Process Step 3: Select Suppliers

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# USPS Supplying Practices Process

## Step 3: Select Suppliers

### Award Contract and Notify Suppliers

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Once the Purchase/SCM Team has determined which supplier offers the Postal Service best value, the contract award is made by execution of a contract by both parties, or by written acceptance of, or performance against, a purchase order.

Once the contract is awarded, those suppliers that were not selected (“unsuccessful offerors”) must be sent written notification within three days. It is appropriate to provide feedback to the potential suppliers on the reasons the winning proposal was selected by using a standard Unsuccessful Offeror Notification Letter. The Contracting Officer also has the discretion to include information on how the unsuccessful offeror may improve proposals submitted in the future. The Unsuccessful Offeror Notification Letter can be transmitted electronically or by First Class mail.

### Announce Award

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The Purchase/SCM Team is responsible for preparing internal and external announcements of the contract award.

#### **Advance Announcement of Contract Award to Public Affairs and Communications**

The Vice President, Public Affairs and Communications (VP, PAC) plans, approves and manages the public affairs effort for the Postal Service. Contract awards that exceed \$5 million and contract awards of *any dollar value* that result from spend analysis, strategic sourcing and leveraging and that result in an exclusive or mandatory contract for the Postal Service may have significant media impact and/or may generate interest on the part of Congress. The following procedures apply to preparing and submitting advance announcement of contract awards to PAC. The Contracting Officer will:

- Determine whether the contract award exceeds \$5 million or otherwise requires announcement
- Prepare an announcement of award

- Submit notice to the Vice President, Supply Management (VP, SM) at least two business days before the anticipated date of award
- Issue/distribute the announcement at least one day before the anticipated date of award, as discussed in the Advance Announcement of Contract Award template
- Retain a copy of the announcement in the official contract file

The Public Relations unit of PAC will prepare a draft press release based on the information given in the announcement and will provide the draft to the Manager of the Category Management Center (CMC) for review. No information will be released to the media until the Manager of the CMC has approved the press release.

### **Announcement of Contract Award for Board of Governors' Approved Programs**

Award announcements must be prepared for all Board of Governors' approved programs. This requirement is in addition to the advance notice of award discussed above. The award announcement will be prepared by the Contracting Officer with the assistance of the Client, and is approved by the Manager of the CMC.

The award announcement will be sent to the VP, SM two days before actual contract award. On the day of award, the announcement will be delivered to the Postmaster General (PMG) for his or her signature. The Board of Governors must receive the announcement after the award, but before the award is made public. The Board of Governors Award Announcement Template provides instruction for preparation.

The VP, SM may determine at his or her discretion whether an announcement of an award that has not required previous Board of Governors' approval should be made.

The Contracting Officer is responsible for distributing the approved announcement on the day of award to:

- Deputy Postmaster General and Chief Operating Officer
- Senior Vice President, General Counsel
- Secretary to the Board of Governors
- Manager, Administration, Office of PMG
- Vice President for organization initiating the requirement

### **Publicizing Contract Awards**

To promote competition in subcontracting, the Postal Service publicizes contract awards, competitive or noncompetitive, having significant subcontracting opportunities. Such awards must be publicized in the Government-wide Point of Entry (GPE), which is accessible via the Internet at <http://www.fedbizopps.gov>.

Although a matter of judgment, these awards are normally valued over \$500,000 with individual subcontract opportunities over \$50,000. Contract awards may also be publicized in newspapers, trade journals, and magazines. Other awards may be publicized when, in the judgment of the Purchase/SCM Team, such publicizing will benefit future competition. All noncompetitive contract awards valued at more than \$1 million must be publicized in the GPE, and other media as appropriate, upon award.

Upon award of a contract, the Supplier may request that the Postal Service release a formal communication regarding the relationship. Although such publicity may be beneficial to the Supplier, in many cases it may potentially harm other Postal Service supplier relationships. For example, as soon as one supplier is effectively endorsed, it becomes difficult to justify why the Postal Service should not endorse another. As a result, Postal Service employees should not make any comments regarding the Postal Service's business performance or prospects (e.g., major contracts to be signed, financial outlook) unless carefully coordinated with Legal Counsel. Clause B-25: Advertising of Contract Awards is incorporated by reference in Clause 4-2: Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders.

### **Other Topics Considered**

Award Contract and Notify Suppliers topic, Make Final Decisions task, Process Step 3: Select Suppliers

### **Clauses & Provisions**

Clause B-25: Advertising of Contract Awards

## **Provide Feedback**

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Once the contract is awarded, all suppliers that submitted proposals or offers are entitled to feedback, upon request, from the Contracting Officer or his or her designated representative, with the assistance and participation of the members of the Proposal Evaluation Team and Purchase/SCM Team. Frequently, this delivery of feedback is referred to as "debriefing."

Unsuccessful suppliers should be debriefed upon request received by the Contracting Officer within three days of the Supplier's receipt of the award notification. When practicable, untimely briefing requests received beyond that time should be honored. To the maximum extent practicable, any debriefing should occur within five days of the receipt of the unsuccessful supplier's written request, because failing to debrief in a timely manner extends the period within which the Supplier can lodge a business disagreement concerning the award.

It is as important to understand why a proposal was selected for award as it is to understand why a proposal was not. Therefore, feedback, in general, is intended to:

- Explain how proposals were evaluated
- Provide constructive feedback on the reasons why a proposal was or was not selected
- Help the supplier improve submissions of future proposals

The Contracting Officer or a designee should explain the rationale for contract award, and, if necessary, use the delivery of feedback as a means of educating suppliers on the way the Postal Service conducts its purchases. A supplier may be informed of its proposal's relative strengths and weaknesses determined during the evaluation and, if proposals were ranked, its ranking. A supplier may also be informed of the rating its proposal earned; however, no point-by-point comparisons with other proposals or further breakdown of other evaluated scores may be made.

For the benefit of the Postal Service, this feedback should aim to accomplish the following:

- Identify ways of improving the solicitation process
- Identify ways of improving communications with potential suppliers
- Demonstrate commitment to good practice and openness; work toward establishing a reputation as an open and ethical buyer with whom suppliers will want to do business in the future
- Educate suppliers that the Postal Service is driven by best value and not solely by cost or price
- Document lessons learned

## **Suppliers' Perspective**

Providing feedback must be done in a way that is sensitive to the perspective of the unsuccessful offerors. A proposal is a speculative investment and may require a considerable amount of time and money. Feedback should describe the reasons why a proposal was not selected, in terms of the proposal's weaknesses. If such information is provided, the tone and language should be kept positive, describing how something should have been addressed, with a focus on suggestions for future improvement.

## **Medium and Documentation**

Feedback may be provided in person, in writing, by electronic means, or through any other method mutually acceptable to the Contracting Officer and supplier. Regardless of the chosen medium, the Contracting Officer must include a written summary of the feedback in the contract file, which is discussed in detail in the Produce Contract Award Recommendation topic of the Perform Preaward Activities task of Process Step 2: Evaluate Sources.

Information must not be disclosed to any supplier as to another's:

- Trade secrets
- Restricted data or privileged or confidential manufacturing processes or techniques
- Business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information

## Participants

The level of the supplier's representatives receiving feedback is important if the lessons learned are to be adopted organization-wide and if the supplier is serious about improving performance of future solicitations. Attendance by potential suppliers' top management, as well as (or, in some cases, instead of) the leader of its sales/purchasing team, is preferred.

Effective feedback reassures suppliers that the process has been carried out in a fair, objective, and business-like manner. However, business disagreements that require more devoted attention do arise; guidance and instructions for resolution can be found in the Supplier Disagreement Resolution topic of the General Practices.

## Other Topics Considered

Produce Contract Award Recommendation topic, Perform Preaward Activities task, Process Step 2: Evaluate Sources

Supplier Disagreement Resolution topic of General Practices

## Conduct Postaward Orientation Where Applicable

Effective relationships between the Postal Service and its suppliers are central to the success of any purchase. The relationship should be a partnership, with each party working together to achieve a mutual goal. A key element in establishing this relationship is conducting a postaward orientation, which brings the selected Supplier face to face with the Purchase/SCM Team to further clarify project requirements and objectives, introduce the Supplier to the Postal Service's project team, and provide a forum for resolution of possible issues or misunderstandings before project kickoff.

## Selecting Contracts for Postaward Orientation

The Purchase/SCM Team may decide that a postaward orientation is needed. The extent of the postaward orientation depends on several factors, including:

- The nature and extent of the preaward survey and any other prior discussions with the Supplier
- Contract type, value, and complexity

- Item purchase history
- Requirements for spare parts and related equipment
- Urgency of the delivery schedule and relationship of the supplies or services to critical programs
- Extent of subcontracting, including small business and diversity opportunities
- Supplier's past performance and experience
- Length of period of performance
- Safety precautions required for hazardous materials or operations
- Complex financing arrangements (e.g., progress payments, advance payments)

## **Postaward Orientation Arrangements**

Postaward orientations should be held promptly after a contract is awarded. The Contracting Officer should:

- Establish the time and place for the orientation
- Prepare the agenda
- Notify appropriate Purchase/SCM Team members
- Act as the chairperson
- Prepare a postaward orientation report

## **Postaward Orientation Procedures**

The Contracting Officer acts as the chairperson of the orientation and conducts the proceedings. The Contracting Officer must emphasize that it is not the purpose of the postaward orientation to change the contract. During the contract award orientation, the Contracting Officer will:

- Introduce all participants.
- Discuss any unusual or significant contract requirements.
- Identify and emphasize the role of the Contracting Officer's Representative (COR). Additional information on the COR can be found in the Appoint Contracting Officer's Representatives (CORs) topic of the Plan for Contract Management task of Process Step 3: Select Suppliers.
- Identify any items (e.g., security clearances, subcontracting plans) that the Supplier must obtain or provide before beginning work.
- Establish a plan for resolving any identified issues that cannot be resolved during the orientation.

At the conclusion of a successful postaward orientation, contract requirements are clarified, misunderstandings have been resolved, and the Postal Service and the Supplier are aware of, and prepared to fulfill, contract requirements. Decisions resulting from postaward orientations may result in a need to modify the contract, and this must be done by contract modification.

A contract modification is a written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other provision of an existing contract. Except for certain mail transportation contracts, only Contracting Officers may sign contract modifications.

## **Postaward Orientation Report**

The Contracting Officer or his or her designee prepares and signs a postaward orientation report that covers all items discussed, including:

- Areas requiring resolution
- Controversial matters
- Information provided by both parties
- Contract deliverables
- Names of participants assigned responsibility for further actions and the due dates for the actions

The report should also include the names and titles of all orientation participants. Copies of the report are distributed to the Purchase/SCM Team, the contract management office, the Supplier, and other key stakeholders within the Postal Service who require this information.

## **Other Topics Considered**

Appoint Contracting Officer's Representatives (CORs) topic, Plan for Contract Management task, Process Step 3: Select Suppliers

# **Appoint Contracting Officer's Representatives (CORs)**

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Contracting Officer's Representatives (CORs) represent the Contracting Officer in dealings with a supplier. A COR is delegated responsibilities and duties and is authorized to take action regarding the administration of the actual awarded contract, in accordance with Clause 6-1: Contracting Officer's Representative. COR duties and responsibilities are delineated in the Contracting Officer's Representative Letter of Appointment. It is the responsibility of the Contracting Officer to determine whether and when to appoint a COR regarding the planned administration of a contract.

In accordance with Clause 6-1: Contracting Officer's Representative, the Contracting Officer will appoint a COR, responsible for the day-to-day administration of the contract, who will serve as the Postal Service's point of contact with the Supplier on all routine matters. A copy of the notice of appointment defining the COR's authority will be furnished to the Supplier upon award of the contract.

The COR will:

- Act as a liaison between the Contracting Officer and the selected Supplier

- Oversee the receipt and/or return of products and services
- Oversee quality inspections
- Perform additional responsibilities as determined by the Contracting Officer

The COR will not:

- Perform any function not specifically delegated by the Contracting Officer
- Appoint other CORs without prior written approval of the Contracting Officer

The Supplier is responsible for the supervision, technical competency, and discipline of its personnel. When necessary, the Supplier may be assisted in understanding Postal Service-unique processes and procedures.

Except when required by the terms of the contract, members of the Purchase/SCM Team may not direct the Supplier's management activities or intervene to supervise, train, or discipline Supplier personnel. The Postal Service Purchase/SCM Team may change as each Process Step leads to the next, but the Contracting Officer remains business leader throughout the life cycle of the project and externally represents the Purchase/SCM Team in administrative dealings with the selected Supplier.

## **Appointing a Contracting Officer's Representative**

Appointing a COR involves the following steps, to be performed by the Contracting Officer:

- Evaluate background and training
- Formally designate COR

## **Evaluate Background and Training**

The potential COR must have the proper training and certifications required. Training and certifications are available through the Contracting Officer's Representative Program. All CORs must be familiar with Standards of Ethical Conduct for Employees of the Executive Branch.

Certain contracts require full-time CORs. It is essential to verify that the COR is able to devote time to necessary contract management duties, in addition to the individual's regular Postal Service employment obligations. The Contracting Officer will evaluate the scheduling capabilities of the nominee, evaluate his or her training and certification history, and determine his or her eligibility.

## **Formally Designate COR**

The Contracting Officer will prepare a detailed Contracting Officer's Representative Letter of Appointment that contains, at minimum, the following key information for each appointee:

- Contract identification



- Roles and responsibilities
- Record-keeping duties
- Delegated contract management duties

The appointment is made official when the letter of appointment is signed by the Contracting Officer and countersigned by the COR, ensuring full understanding and acceptance of the position.

Suppliers are responsible for notifying the Contracting Officer when they believe that the COR is not acting within the meaning of established responsibilities, duties, and limitations.

Appointments remain in effect until:

- Contract is completed or Contracting Officer revokes the appointment
- COR resigns from the Postal Service
- COR is reassigned to a new position

## **Clauses & Provisions**

Clause 6-1: Contracting Officer's Representative

## **Laws & Regulations**

Standards of Conduct for Employees of the Executive Branch, 5 CFR Part 2635

# **Define and Initiate Contract Management Activities**

Contract management is the process of ensuring that the intent, requirements, and terms and conditions of a contract are met from inception to end of life. Administrative procedures must be clearly outlined to ensure compliance by the parties to the agreement. While contract management varies from contract to contract, the importance of these activities to the success of the contract and to the relationship between the Postal Service and the Supplier should not be underestimated.

The focus of contract management is on obtaining high-quality products and services on time and within budget. Contract management activities must be accurately and frequently performed to keep contract documentation up to date, which ensures that all documents pertaining to the contract are consistent and that all parties to the agreement have the correct version of the contract. Ongoing contract management and administration are imperative to ensure that the Supplier consistently meets the objectives set forth in the contract.

Proper management is vital to the success of the contract and comprises several procedures, including:

- Contract maintenance
- Change control procedures

- Charges and cost monitoring
- Management reporting
- Asset management
- Continuous improvement

## **Contract Maintenance**

Contract maintenance entails keeping contract documentation up to date and relevant. Administrative procedures must be established to ensure proper upkeep of the contract. Maintenance must be performed by the Contracting Officer in an effort to ensure that any changes to the contract are fully documented in the contract file. File documentation should be sufficient for a third party to understand from the documentation what was done and why it was done. The Contracting Officer must identify all documentation relating to the contract and implement change control procedures to guarantee that no changes are made without proper authorization.

## **Change Control Procedures**

Change control procedures are included in the contract and typically refer to defining the roles and responsibilities of those involved in the contract, along with the procedures for raising, evaluating, costing, and approving change requests. Change control procedures provide a clear set of steps and clearly allocated responsibilities, including:

- Requesting changes
- Assessment of impact by the Client, enablers, and the Purchase/SCM Team
- Cost/price adjustment
- Prioritization and authorization
- Agreement with provider
- Control of implementation
- Documentation of change assessments and orders

## **Charges and Cost Monitoring**

Charges and cost monitoring entail the periodic review of the overall cost of the contract to ensure that budgets are maintained. All supplier and internal costs, including the costs of contract management, must be monitored by the Pricing Analyst on a regular basis, especially when changes are made, to ensure reasonableness and best value of the contract. The Purchase/SCM Team and Supplier will agree upon a method by which the charges and costs will be monitored. This will usually be in the form of an invoice or report sent from the Supplier to the Contracting Officer, or to the Contracting Officer's Representative (COR), on an agreed upon basis (e.g., weekly, monthly, quarterly reports).

Charges and costs are incurred for fixed-price contracts when a change is made involving any deviation from the fixed costs set forth in the contract. If the costs are exceeded by the Postal Service, the Postal Service is responsible for absorbing those costs because they are fixed in the contract, and if the costs are exceeded by the Supplier, the Supplier will absorb those costs, again because they are fixed in the contract.

Additional or unforeseen costs will be handled in a manner dependent upon the type of contract, terms determined during discussions with the supplier, or the dispute procedures contained in Clause B-9: Claims and Disputes. A discussion of contract types can be found in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## **Management Reporting**

During the early stages of the contract, the Contracting Officer should develop a communications plan to ensure that all information is effectively transmitted between the Supplier, Client, and various internal groups (e.g., Purchase/SCM Team, Marketing, Finance). This plan will include the responsibilities, timing, and points of coordination for such items as:

- Business reviews
- Performance reports
- Subcontracting reports
- Diversity reports
- Configuration change

Changes and updates will likely occur during the lifetime of the contract, so the contract must be flexible enough to provide for such events. Proper management-reporting techniques are crucial to maintaining the most current information regarding the contract.

## **Asset Management**

The Contracting Officer must ensure that records are kept of property provided to the Supplier or the Postal Service.

## **Continuous Improvement**

One constant goal for the Postal Service and the Supplier is to reduce the total cost of ownership (TCO). Performance measures may be included in any contract, but are most effective when used with a Performance-Based Contract. Performance-based contracts are discussed in detail in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

Performance measures are used to motivate the Supplier to improve in areas important enough to be rated, but not to the detriment of overall performance. Performance improvements such as quality of work, productivity, and cost-efficiency must be embodied in the terms of the contract; they can be at a number of levels, from price or turnaround time improvements to encouraging innovation of service delivery. Improvements should aim for

alignment of objectives, so that the Client and Supplier are working toward the same goals and both derive benefits when they are realized.

## **Allocate Resources for Contract Management**

The allocation of resources for contract management activities affords the Postal Service the opportunity to manage the contract by assigning funding, staff, facilities, and/or tools to a given contract, based on the size, complexity, and time frame established. Resource allocation ensures that the plans of the Postal Service are integrated and sustainable within the resources available, based on the contract management metrics that have been established. These metrics are discussed in detail in the Define Contract Management Metrics topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources.

The Client and Contracting Officer will work together to determine how resources will be allocated to manage a particular project, in conjunction with input from the rest of the Purchase/SCM Team. When allocating resources for any contract, it is important to identify the types of resources needed. Depending on the commodity being purchased, there are five categories of resources that need to be assessed:

- Funding — assess the current funding availability and compare it with the funding required to accomplish the project
- People — ensure that there is sufficient human capital to develop, manage, and operate the project
- Facilities — ensure that existing facilities can accommodate the project
- Technology — analyze the organization's current state of technology, and determine what will be required to enable effective operation of the proposed project
- Other resources — analyze other resources that the organization has, and determine which additional resources may be needed to carry out the project

The Assess Resources topic of the Conceptualize Need task of Process Step 1: Identify Needs should be revisited to gain further understanding of the previously identified resources and to determine how they can be allocated to ensure cost-effectiveness and best value to the Postal Service.

Once the resources for the contract have been allocated accordingly, managing the project will be an ongoing task.

## **Plan for Contract Management**

Planning for contract management entails determining how the requirements, terms, and conditions of a contract are addressed and facilitates the activities associated with eventual transactions between suppliers and the Postal Service.

Planning for contract management will confirm the previously planned activities associated with the administration of a contract and will provide an outline that helps the Client, Contracting Officer, and Item Manager to monitor the delivery and receipt of all purchased products and/or services. The essential components and personnel that ensure best value and facilitate contract management are:

- Current contract
- Cost and price control
- Resource management
- Contracting Officer's Representatives (CORs)
- Investment recovery plan

### **Current Contract**

Current copies of contracts must be maintained. Changes to the current contract regarding the scope of work, specifications, cost, or duration of the project can be made only by contract modification. Only the Contracting Officer can modify a contract.

### **Cost and Price Control**

As a result of the total cost of ownership analysis (TCO), funding assessment, should-cost analysis, price analysis, and Supplier capability analysis, the Purchase/SCM Team has already accumulated a large amount of data regarding charges and costs associated with the performance of the contract. Continuous monitoring measures must be implemented to ensure the viability of the following elements, which are integral to Process Step 4: Deliver and Receive Requirements:

- Contract's budget is not exceeded
- Ordering is accurate
- Shipping is facilitated
- Performance is met and of high quality
- Delivery is on time
- Receipt of product and/or services is properly recorded and reported
- Products are appropriately accepted or rejected, depending on the results of inspections

The Client is responsible for maintaining the contract budget and for reporting any financial discrepancies to the Contracting Officer. The Contracting Officer is responsible for ensuring that the Client is fully aware of all issues that may impact funding and budgets, and for involvement in all decisions that affect funding and budgets.

## Resource Management

The Postal Service must maintain and appropriately manage the resources allocated for a specific contract. Resources that are pertinent to a contract are determined during Assess Resources activity of the Conceptualize Need task and the Revisit/Update Resource Assessment topic of Decide on Make vs. Buy task of Process Step 1: Identify Needs. Resources are allocated during Allocate Resources for Contract Management activity of the Plan for Contract Management task of Process Step 3: Select Suppliers. The Item Manager and Contracting Officer must work together to successfully ensure that all required assets are being allocated and, once allocated, are functional.

## Contracting Officer Representatives (CORs)

Contracting Officer Representatives (CORs) are responsible for performing functions that do not require contract changes in the scope of work, specifications, cost, or duration within the meaning of the duties and limitations established by the appointing Contracting Officer. CORs are responsible for submitting reports that evaluate the Supplier's progress and performance. The Contracting Officer is responsible for explicitly informing the appointed CORs of the actual day-to-day duties and responsibilities that will facilitate the efficiency and effectiveness of transactions, because CORs act as liaisons between the Contracting Officer and the Supplier, oversee the receipt and/or return of equipment, and oversee quality inspections. Ongoing management and reporting will be necessary to ensure that the Supplier is consistently meeting the objectives established in the contract.

## Investment Recovery Plan

The investment recovery plan outlines the identification, reuse, sale, or disposal of surplus and/or idle assets and is used to generate significant revenue and create cost savings, allowing the Postal Service to reduce waste and increase revenue. It is a dynamic document that is revised and updated throughout the project life cycle, and is finalized during the Finalize Investment Recovery Plan topic of the Plan for Contract Management task of Process Step 3: Select Suppliers. The investment recovery plan is developed by the Client, and any information regarding the product that is essential to changing and/or finalizing the plan is furnished by the Item Manager.

## Other Topics Considered

Assess Resources topic, Conceptualize Need task, Process Step 1: Identify Needs

Develop Preliminary Total Cost of Ownership (TCO) Estimate topic, Conceptualize Need task, Process Step 1: Identify Needs

Analyze State of Technology topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Select Contract Type topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Appointment of Contracting Officer's Representatives (CORs) topic, Plan for Contract Management task, Process Step 3: Select Suppliers

Define Contract Management Metrics topic, Perform Solicitation-Related Activities, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Management task, Process Step 3: Select Suppliers

## Finalize Investment Recovery Plan

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Investment recovery is the identification, reuse, sale, or disposal of surplus and/or idle assets. Investment recovery can generate significant revenue and create cost savings, allowing the Postal Service to reduce waste and increase revenue. The finalized investment recovery plan proactively outlines final actions, identified surplus, and idle assets and, based on the product, what will be done with said assets. It is a dynamic document that is revised and updated throughout the project life cycle. The Develop Preliminary Investment Recovery Plan topic is addressed during the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. (See Chapter 5 of the *Administrative Support Manual* for information regarding surplus real property).

The Client is responsible for developing the finalized investment recovery plan, which illustrates how the surplus and idle assets are to be addressed. While investment recovery activities are not conducted until the Perform and Manage Investment Recovery Activities task of Process Step 6: End of Life, it is important to develop a finalized investment recovery plan during Process Step 3: Select Suppliers, since recovery must be addressed in conjunction with contract management activities.

The finalized investment recovery plan should address:

- Removal of surplus
- Final removal decision

### Removal of Surplus

The removal of surplus materials comprises any activities that remove any supplies that are:

- Discontinued
- Outdated
- Inoperable
- Excess inventory

The responsibility of removing supplies is at the discretion of the Postal Service. This is a task that can be assigned to internal personnel or contracted out to a third party. The entire Purchase/SCM Team is involved in this process and will offer any input/advice when needed to determine which supplies are not profitable for the Postal Service so they can be removed accordingly.

## **Final Removal Decision**

The final removal decision determines how to eliminate surplus materials at the conclusion of the asset's useful life. These surplus materials can be removed through any of the following methods:

- Recycle
- Reallocate
- Resell
- Remarket
- Return
- Remanufacture
- Remove
- Donate

## **Recycle**

Recycling is the process of both obtaining a market value for materials that can be reused in the manufacturing process and reducing the environmental impact of the material used by the Postal Service. Recycling on many items is mandated by Federal, regional, state, or local governments and failure to comply can lead to financial and social impacts on the Postal Service. The Purchase/SCM Team must be aware of these potential impacts and, in cooperation with Legal Counsel, advise the Client on appropriate actions. The Supplier is often very aware of the status of any material restrictions and can help in the mitigation of risk. Advice is also available to the Purchase/SCM Team from the Supply Management (SM) Operations Investment Recovery Team.

## **Reallocate (Relocate and Redeploy)**

Reallocation of identified surplus is the actual relocation and redeployment of a material. Reallocation puts the material to work as part of its lifespan and avoids the cost of purchasing. Although a material may no longer fulfill the purpose for which it was purchased, it still can fulfill other purposes pertinent to the Postal Service. The Purchase/SCM Team will determine when and where specific materials are fruitful for more than one project or use and convey this information to the Client. For reallocation to become a successful reality, the Purchase/SCM Team must communicate closely with any potentially concerned parties.



## **Resell**

Resale of surplus materials is the financial transaction of selling a material on the open market. Resale generates revenue that improves short-term cash flow and reduces the total cost of ownership (TCO). Potential revenue will be determined through market research. Resale is also appropriate for the

Consider Auctions topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources; specifically in this case, a forward auction. Some materials require special handling before resale:

- Antiques and collectibles must have the prior approval of the Postal Service Historian before sale.
- Material that bears the Postal Service logo must have the logo removed.
- Electronic equipment that may contain proprietary or privacy information must be cleansed of this information.
- Vending equipment resale will follow the instructions issued by the Self-Service and Access Management Office.
- Resale of property such as computer software may need to take into consideration data rights and intellectual property issues.

## **Remarket (Resell to Supplier)**

Remarketing is the selling of a surplus material back to the supplier. Suppliers frequently buy back used equipment to protect proprietary technology and prevent competition from being able to sell identical material (e.g., automation). Potential revenue realized by remarketing will be compared with potential revenue realized by reselling, and after a price analysis has been conducted, the results will be communicated to the Client, and a plan will be selected.

## **Return**

Returning identified surplus is a nonfinancial transaction of providing surplus material (e.g., delivery and industrial equipment) to the Supplier for a credit.

## **Remanufacture**

Remanufacturing identified surplus is the use of components of a material alone or combined with others to create a new material or product (e.g., mail transportation equipment and spare parts). Because manufacturing is not a core competency of the Postal Service, remanufacture may be a rare solution for the disposal of surplus and idle assets. Remanufacture would be appropriate when an internal Postal Service project that has decided to make a product has been identified by the Purchase/SCM Team and these surplus or idle assets can be leveraged to reduce the costs associated with the new product or service.

## **Remove**

Removal is the last-resort process of disposing of surplus material, and comes into play when the Postal Service must pay for the physical removal and disposition. However, as the need for recycling increases and the technology for sorting recoverable material improves for such things as mixed scrap metal, removal costs may decline. The Supplier or the SM Operations Investment Recovery Team may be able to identify opportunities other than paying for removal.

## **Donate**

If material can not be reused within the Postal Service or sold as a revenue offset to the TCO, it may be donated to Federal, state, or local governments or charitable organizations chartered by these governments, in that sequence. Antiques and collectibles must have the prior approval of the Postal Service Historian before donation.

## **Other Topics Considered**

Consider Auctions topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources.

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Perform and Manage Investment Recovery Activities topic, Implement Investment Recovery Plan task, Process Step 6: End of Life

# USPS Supplying Practices Process

## Step 4: Deliver and Receive Requirements

### Ordering

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An order is a request made directly to a Supplier to deliver specific products or services under certain terms or conditions, some or all of which have been established in advance. A requisition is an internal request for equipment and supply items across commodities that are stocked internally or ordered directly through the Material Distribution Center (MDC), the Express and Priority Mail Supply Center (E&PMSC), Mail Equipment Shops (MES), and elsewhere.

An order or a requisition is submitted via a Postal Service electronic tool. The priority of sources is:

- Excess material
- Requisitions from Postal Service catalogs
- Orders against existing contracts or agreements
- Modifications to existing contracts or agreements
- New contracts or agreements
- Credit card purchases

### Ordering and Requisitioning Channels

Several channels are available for the placement of Client orders and requisitions:

<b>Mechanism</b>	<b>Channel</b>	<b>Description</b>
eBuy	Internet	Excess, on-catalog and off-catalog
Material Distribution Inventory Management System (MDIMS)	Facsimile	Maintenance, stockrooms, direct supplier, retail products, specialized stamps, or wholesale
Touch-Tone Ordering System (TTOS)	Phone	Subset of MDIMS with phone accessibility
Electronic Maintenance Activity Reporting and Scheduling (eMARS)	Automatic	Maintenance stockrooms

Handbooks and guides containing the procedures and instructions for preparing and submitting requisitions through these various channels, as well as instructions and restrictions for the use of purchase cards, are provided in the Tools & Techniques section.

## **Federal Standard Requisitioning and Issue Procedure (FEDSTRIP)**

FEDSTRIP is a system of processing government agency requisitions for supplies from the General Services Administration (GSA) managed National Supply System. For orders from GSA or another agency, refer to Handbook AS-701, *Material Management*, for procedures regarding FEDSTRIP.

## **Contract Vehicles for Ordering**

Not all contracts lead to the immediate delivery of products and services. While some contracts contain concrete schedules for supplier performance, other contracts and all ordering agreements spell out time periods for the future delivery of products or performance of services upon the receipt of an order. An indefinite-delivery contract or ordering agreement can be used to expedite related future contracts. As Client needs for the requirements arise, the Contracting Officer may request delivery from a Supplier by issuing orders against the original contract or agreements.

See the Select Contract Type topic in the Develop Sourcing Strategy task in Process Step 2: Evaluate Sources for more discussion about contract types.

## **Indefinite-Delivery Contracts and Delivery Orders**

Indefinite-delivery contracts are used when the desired period of contract performance is known, but the exact time of delivery is unknown at the time of award. Indefinite-delivery contracts typically apply to contracts for products. For example, if the Postal Service purchases a high-resolution printer, it may establish an indefinite-delivery contract for future printer accessory purchases from the Supplier to reduce administrative lead time and inventory investment.

A delivery order is an order from the Postal Service to a Supplier to deliver products under an existing indefinite-delivery contract. During the contract term, delivery orders are issued by the Contracting Officer or designated ordering official.

## **Ordering Agreements and Task Orders**

An ordering agreement is a contracting vehicle primarily used for ordering services. It is a written agreement negotiated between the Postal Service and the Supplier that contains terms and conditions that apply to future contracts between the parties.

Task orders are principally placed against an ordering agreement. It is the responsibility of the Contracting Officer to issue the task order; the Client will issue task descriptions, as its needs arise; and the Supplier will estimate the

cost, based on the labor rates and other applicable costs that are established in the ordering agreement. The Contracting Officer may either accept the estimate of costs and schedule or negotiate with the Supplier to reach agreement.

## **Fixed-Price Task Orders**

Fixed-price task orders are appropriate for services that can be defined objectively and for which risk of performance is manageable. For such task orders, performance-based statements of work (SOWs) and measurable performance requirements should be implemented.

## **Performance-Based Statements of Work (SOWs)**

Task orders should include a performance-based SOW to accurately assess resources required and risks involved. A performance-based SOW is a description of the tasks to be performed by the Supplier in terms of required outcomes or results. With a performance-based SOW, accountability for the final outcome is more clearly defined; the Supplier remains responsible and accountable for achieving the required results, based upon internal technical approaches, management approaches, and internal processes that are not Client-dictated. As a result, the Supplier has greater flexibility in its proposal, but absorbs a commensurably greater share of the risk of contract performance. Additional information on performance-based SOWs can be found in the Start Request for Proposals (RFP) Development topic of the Prepare Project task of Process Step 2: Evaluate Sources.

## **Order Content**

A typical order contains:

- Item number and description, quantity, and unit and total price
- Place and date of delivery or performance
- Packaging, packing, and shipping instructions (if not already established in the contract)
- Accounting and fiscal data

The following should be included as appropriate:

- Price ceiling limiting the Postal Service's obligation
- Additional terms and conditions specific to the order and not already included in the contract or ordering agreement
- Any other pertinent information, including a statement of work (SOW) or statement of objectives (SOO) that describes the services to be performed (additional information can be found in the Start Request for Proposals (RFP) Development topic of the Prepare Project task of Process Step 2: Evaluate Sources)
- Communications plan for resolving potential conflicts (for major purchases)

## Order Pricing

Some ordering agreements and indefinite-delivery contracts have prices established at the time of contract award, while others do not. Depending on the circumstances, orders may be made based on preestablished prices or must be agreed to by both parties before the order is effective.

## Order Issuance

Depending on the circumstances, the Contracting Officer may appoint ordering officials to place orders.

## Other Topics Considered

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Supplier Disagreement Resolution topic, General Practices

## Clauses & Provisions

Clause 2-39: Ordering

Clause 2-40: Delivery-Order Limitations

Clause 2-41: Definite-Quantity

Clause 2-42: Indefinite-Quantity

Clause 2-43: Requirements

Provision 2-6: Credit Card Order Acceptance Requirement

## Shipping

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Shipping is the act of transporting goods and materials. Shipping is a material management function that identifies and provides transportation analysis, capabilities, and services. Information on shipping needs to be collected for material accountability.

It is in the best interest of the Postal Service to control its inbound shipments to minimize total cost of ownership (TCO). Shipping is affected by issues from internal controls (such as the documentation required for a shipment) to technology. Accurate information and close adherence to shipping procedures ensure that required service levels are provided cost-effectively to the Client. Transportation costs can contribute substantially to the cost of the end product and are an important element in the TCO. TCO is further defined in the Develop Preliminary Total Cost of Ownership Estimates topic of the Conceptualize Need task of Process Step 1: Identify Needs.

## USPS Supplying Practices Process Step 4: Deliver and Receive Requirements

The five preferred shipping methods of the Postal Service, in descending order, are:

- Mail
- Postal freight (Postal Vehicle Service [PVS])
- Freight managed by the Postal Service Transportation Management Service Provider (TMSP)
- Supplier-owned transportation network
- Free-on-board (f.o.b.) destination

The specific way in which materials move and the costs associated with the shipment depend upon numerous factors, including:

- When the Postal Service takes responsibility for the shipment
- Origin and destination of shipment
- Size of order
- The characteristics of the product (e.g., weight, density, fragility, and perishability)
- Transportation modes available to move the material (e.g., ships, trains, planes, or trucks)
- Delivery time frame (which affects ship date) associated with the shipment
- International concerns (e.g., manufacturing company, country shipped from, customs, duties, tariffs, and taxes)

The Postal Service's Transportation Solution Determination Process establishes a process for analyzing and selecting the most efficient and effective inbound transportation solution for the Postal Service at the lowest total cost. The Transportation Solution Determination Process flow chart depicts the steps taken to determine the shipping solution by Postal Service personnel from forming the requirement to the contract award.

### **Mailable Items**

The Supplier must deliver goods that meet the prescribed physical limitations of the current Postal Service Domestic Mail Manual either by its own personnel/equipment or by use of the Postal Service, unless the Contracting Officer grants a waiver of this requirement. The reasoning for such waivers must be documented in the contract file. In accordance with paragraph T of Clause 4-1: General Terms and Conditions, the Supplier is responsible for ensuring that the packing and packaging are sufficient to protect the goods and ensure usability upon receipt. In addition, Clause 2-9: Definition of Delivery Terms and Supplier's Responsibilities may be used to define the shipping requirements of the contract.

### **Postal Freight**

The Postal Service moves mail with a combination of Postal Service vehicles and contracted air, rail, truck, and ground services. Even though the daily volume of the mail can be estimated, there must be sufficient excess capacity

to meet any variances and to meet service standards. This often results in available surplus capacity that can be utilized for inbound shipments of items purchased by the Postal Service. The Item Manager will analyze transportation requirements and work with Network Operations Management (NOM) to determine shipments that can potentially be moved on Postal freight. Supply Management (SM) Operations will also be made aware of these opportunities so that they can provide backup support during high volume or other contingency periods. Property ownership normally transfers to the Postal Service when it is picked up; however, other arrangements can be established in the contract if there is a reason to have the Supplier keep the risk.

### **Transportation Management Service Provider (TMSP) Freight**

SM Operations has established a Transportation Management Service Provider (TMSP) to manage nonmail freight transactions, which are all supplies, parts, and equipment used for Postal Service operations. TMSP is a fourth-party logistics provider (4PL), which manages other logistics providers under contract. Upon entering a move order into the TMSP's order module, the TMSP will manage the order through all subsequent phases, including coordination of pickup and delivery, preaudit of invoices, and carrier payment. The TMSP is under contract to the Postal Service and responsible for transactional performance, managing carrier performance and rates, claims processing, and various other contracted responsibilities. Billings for these services will be charged back to the "bill to" finance number provided by the originating office. The Item Manager, with the support of the Purchase/SCM Team, will analyze transportation requirements and follow the guidelines provided by SM Operations on any shipments that potentially can move on nonmail freight. Authorized field sites will be given access to the TMSP for management of locally generated shipments. Property ownership normally transfers to the Postal Service when it is accepted by the commercial carrier; however other arrangements can be established in the contract, if there is a reason to have the Supplier keep the risk.

### **Supplier-Owned Transportation**

Supplier-owned transportation is usually leveraged when a Supplier is in close proximity to a Postal Service receiving location and the Supplier can deliver the product directly to the Postal Service. This type of service is preferable to free-on-board (f.o.b.) destination because it does not involve a third party in handling/delivering of the product and the cost of delivery is normally included in the standard commercial price. In a case in which the Supplier wants to charge for this service, the costs must be analyzed against the other transportation alternatives by the Item Manager for best value determination. Property ownership transfers to the Postal Service upon acceptance by the receiving site.



## **Free-On-Board (F.O.B.) Destination**

Delivery instructions for supplies must specify a free-on-board (f.o.b.) point, which is determined on the basis of overall costs, including rates, delivery terms, redirection in transit costs, and other factors. Generally, f.o.b. origin will produce lower costs for large-scale and consolidated purchases or when the Postal Service may benefit from determining and managing the transportation provider. The solicitation may require the Supplier's proposal to include both f.o.b. origin and destination prices for transportation analysis. A transportation analysis is available from field material management specialists or nonmail freight transportation at Headquarters.

F.o.b. origin means that the Postal Service makes the arrangements for the pickup, transportation, and delivery to the required destination. Title passes to the Postal Service when delivery is made to the carrier. The Supplier's risk is limited to loss or damage prior to delivery to the carrier or caused by improper marking or packing of the goods, while the transportation carrier is accountable to the Postal Service for loss or damage to the shipment. This payment for transportation services is separate from the price of the purchased supplies.

F.o.b. destination means delivery, free of expense to the Postal Service, to a destination or shipment base points specified in the contract. Title to the supplies passes to the Postal Service when they arrive at the stated destination. The Supplier pays the carrier and assumes the risk for loss or damage until delivery to the specified destination. Under this arrangement, freight costs are likely to be much higher because Suppliers add on a markup and the cost of freight is hidden in the purchase price of the product. However, some Suppliers have sufficient volume to get excellent discounts or, more frequently, there are program-related activities such as installation where the program-risk of transportation problems or early property transfer are unacceptable. The Item Manager is responsible for analyzing transportation requirements and determining the best value solution. Decisions will be documented in the contract files.

Paragraph t of Clause 4-1: General Terms and Conditions or when included by the Purchase/SCM Team, Clause 2-9: Definition of Delivery Terms and Supplier's Responsibilities addresses delivery terms.

## **Shipping Requirements**

The following Supplier requirements and inbound shipment guidelines must be followed. Suppliers must:

- Comply with all country-of-origin marking instructions and all instructions for exports to the Postal Service
- Comply with all packaging and labeling requirements in the related contractual documents
- Comply with the transportation routing guidelines in the contract or agreement and any subsequent Postal Service instructions or procedures

- Not use premium transportation unless specifically authorized by the Postal Service
- Not declare a value or purchase additional insurance on any shipments unless authorized by the Postal Service

The Postal Service's inbound shipments must have:

- Complete relevant shipping documentation (i.e., a bill of lading) to establish the physical legal transfer of ownership
- Clearly marked cartons

## Shipping Requests

Shipping requests are initiated by Postal Service entities and certain suppliers. The order entry portal provided by the Postal Service TMSP is the avenue through which shipping requests are entered. TMSP users include:

- Headquarters SM Operations staff
- Designated shipping and receiving staff at Material Distribution Centers (MDCs) and Critical Parts Centers (CPCs)
- Material Service Center staff
- District Material Management Specialists
- Approved and trained staff at Postal Service operating entities
- Designated Supplier staff

## Demurrage, Detention, and Storage

The Postal Service monitors demurrage, detention, and storage charges to ensure that loading and unloading procedures keep these charges to a minimum. Demurrage and detention both refer to the delaying of transportation equipment, by shippers or receivers, beyond specified lengths of free loading and unloading time allowed by carriers. Carriers may impose demurrage or detention charges for such delays. They may also impose storage charges when they must hold shipments on their own premises awaiting delivery or redelivery. If a delay is anticipated or temporary storage is required, the original shipping requestor or Item Manager should be contacted for assistance. All additional charges will be charged to the billing finance number designated in the original request.

## Receiving and Responsibility of Shipping

Suppliers are responsible for any loss or damage to the material occurring prior to Postal Service acceptance. The Supplier is required to pack and mark packages to be in compliance with paragraph t of Clause 4-1 or Clause 2-9, and other contract requirements. In the absence of such specifications, the shipment should be prepared in conformance with carrier requirements to protect the property and ensure assessment of the lowest applicable transportation charge.

If there is evidence that a shipment has been damaged in transit, receiving personnel should follow the instructions included in the Receipt and Inspection topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

## Delays

The Supplier must promptly notify the Contracting Officer if it is unable to comply with delivery dates specified in the contract. The Contracting Officer coordinates the information and alternatives with the Client and the Purchase/SCM Team. Following these discussions, the Contracting Officer can:

- Accept the delays and establish a new delivery schedule. The Contracting Officer must notify all receiving sites of the new schedule. This acceptance would normally include some additional considerations (price, performance, quantity, or service) from the Supplier.
- Accept partial deliveries of completed products and reschedule the remaining quantities. Again the Contracting Officer must notify all receiving sites of the revisions. This acceptance would normally include some additional considerations (price, performance, quantity, or service) from the Supplier.
- Reject the delay and terminate the contract for default. Further information on terminating a contract for default can be found in the Terminate Contract topic of the Make Payment task of Process Step 5: Measure and Manage Supply.

Clause 4-1: General Terms and Conditions addresses delay of performance or delivery.

## Early Delivery

Early delivery can increase the storage, handling, and cash flow costs to the Postal Service, as well as cause backups and traffic problems at loading docks and staging problems in receiving areas. Purchase/SCM teams who anticipate the possibility of early delivery should ensure that the contract addresses the topic and requires the approval of the Contracting Officer before early delivery is made. When the Contracting Officer accepts early deliveries, he or she must notify receiving sites of the changes in delivery schedule.

## Controlling Shipping Costs

The emphasis for controlling costs should focus on compliance with the Transportation Solution Determination Process and provide more notice and lead time to the TMSP for transportation moves so that better planning can occur. Proper planning and coordination can avoid most instances of expedited or air shipments. The Perform Value Chain Mapping and Analysis topic of the Prepare Project task of Process Step 2: Evaluate Sources aids in

obtaining these cost reduction measures. Examples of how the Item Manager can use some factors to improve savings include:

- Streamlining shipping and receiving — opportunities for streamlining inbound processes include:
  - Managing dock operations of incoming goods, as well as mandating delivery appointments, which reduces dock-to-stock time
  - Reducing documentation and copies of documentation and generalizing all shipping forms
  - Processing orders by a certain time of the day to take advantage of shipping rates for multiple orders or same day service
- Working closely with suppliers — working more closely with suppliers can result in more accurate forecasts and provide opportunities to assess supply chain processes for improvement
- Teaming up with the TMSP and other departments — working with Clients to forecast when materials or products will be needed may lead to transportation or freight cost savings
- Leveraging technology — information technology can be leveraged to automate manual processes (e.g., order and inventory tracking, interfacing with the TMSP)

## Internal Shipping Procedures

Various equipment and supply items across commodities are stocked internally and ordered directly through the Material Distribution Center (MDC), the Critical Parts Center (CPC), the Express and Priority Mail Supply Center (E&PMSC), Mail Equipment Shops (MES), and elsewhere.

Information on shipping the requisitioned equipment and supply items from these organizations and shipping procedures may be found in

Publication 247, *Supply and Equipment Catalog*. Issues addressed include:

- Shipping options for ordering methods for Express Mail® and Priority Mail® supplies
- Incorrect or incomplete shipments
- Instructions for shipments of special orders less than, greater than, or equal to 200 pounds
- Ship dates of special orders and shipping charges (e.g., included in the price of the items)
- Automatic shipments and special requests

## Global Sourcing

Global sourcing is the purchase of goods and services from foreign countries and requires the Postal Service to account for trade regulations, duties, and tariffs when selecting sourcing locations. Costs related to shipping in global sourcing include:

- Transportation costs — transportation, drayage, fuel, surcharges, and other freight-related fees
- Inventory carrying costs — warehousing, handling, taxes, insurance, depreciation, shrinkage, obsolescence, and other costs associated with maintaining inventories
- Cross-border taxes, tariffs, and duty costs — often referred to as “landed costs,” which are the sum of duties, shipping, insurance, and other fees and taxes
- Supply and operational risks — including geopolitical factors, such as changes in country leadership, tariff and policy changes, transit delays, and instability resulting from war, terrorism, natural disaster, and other matters

Cost/benefit analysis should be performed to address the challenges associated with accounting for these cost factors when selecting sourcing locations. Cost/benefit analysis should be completed for any complex nondomestic or domestic shipping decisions. To make an intelligent sourcing decision, all costs for each potential location must be determined.

## Other Topics Considered

Develop Preliminary Total Cost of Ownership Estimates topic, Conceptualize Need task, Process Step 1: Identify Needs

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Perform Value Chain Mapping and Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Evaluate and Analyze Actual Total Cost of Ownership (TCO) topic, Implement Investment Recovery Plan task, Process Step 6: End of Life

## Clauses & Provisions

Clause 4-1: General Terms and Conditions, paragraph t

Clause B-23: Guaranteed Shipping Weight

Clause 2-9: Definition of Delivery Terms and Supplier’s Responsibilities

## Receipt and Inspection

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Receipt is an important material management function that concludes the transportation shipment and collects information for material accountability. Inspection comprises measuring, examining, and testing to determine whether the materials provided in the shipment conform to contract requirements. Paragraph a of Clause 4-1: General Terms and Conditions and Clause 2-1: Inspection and Acceptance discuss the general requirements for inspection or acceptance.

Receiving and inspection operations comprise the activities from initial receipt of the material at a facility (commonly at a loading dock or other designated receiving point) to processing the material for final delivery or for storage. Receipt and inspection is a critical control point in the Postal Service's material system. If these functions are performed correctly, any existing discrepancies between what is ordered and received will be uncovered, and errors can easily be corrected at this time, as opposed to later, when the cost to correct them is certain to be higher.

The receipt of requirements and their inspection must be done accurately to conserve and protect Postal Service assets, as well as provide required information to other activities affected by the receiving process. After receipt and inspection is conducted, it is determined whether the materials will be accepted or returned, which are addressed in the Acceptance and Returns topics of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

### Designated Receiving Points

Each Postal Service stockroom, warehouse, or storage room activity will have designated receiving points staffed and operated by trained, designated receiving personnel. All incoming material and related receiving documents will flow through those designated processing points for control and documentation. Handbook AS-701, *Material Management*, provides guidance on some of these documentation requirements.

The contract or agreement will specify the receiving location, and all incoming shipments will be directed there (unless otherwise arranged and approved by an authorized Postal Service representative). Designated receiving areas will include a receipt staging area. Incoming materials will be delivered first to the staging area for processing and then to the ultimate consignee or to storage.

Incoming materials must be secured and safeguarded upon receipt. Valuable commodities, such as computers, must be safeguarded during the receiving process.

### Receiving Process

When a shipment arrives:

- Receiving personnel check the goods against the Supplier's delivery documents (i.e., packing slip, invoices, and bill of lading) and contractual requirements to ensure that the Postal Service

has actually received the material ordered (this is the basis for subsequent activities of the Process Invoices and Make Payment topics of the Make Payment task of Process Step 5: Measure and Manage Supply).

- The receiving personnel are to visually inspect the shipment to confirm correct quantity and quality and that no shipping damage has occurred. All discrepancies must be noted on the receiving transaction and appropriately resolved with the Supplier.
- In the event that goods are received damaged, the receiving department holds the goods for further action. When a container shows evidence of damage or pilferage (resealed or open containers), this must be called to the attention of the Transportation Management Service Provider (TMSP) (also referred to as the Carrier) representative at once and noted on the receipt bill of lading. Loss and Damage Reporting processes discussed below should be followed.
- A receiving report is prepared on which the results of the initial investigation are noted. This is a record of the shipment and the condition of its contents; it notes variances or discrepancies from the contractual requirement. If the order is considered complete, the receiving department closes out its copy of the purchase. If it is not, the contractual requirement is held open, awaiting completion.
- If the goods are in order and require no further inspection, then they will be routed to the originating department or to inventory (e.g., warehouse or stockroom).
- If the goods are not in order or further inspections are required, then the goods are checked to see whether they conform to specifications, which includes opening up packaging and inspecting for concealed damage (no apparent external container damages, but the product itself is found to be damaged when the container is opened). When damages are found, follow the process steps in Loss and Damage Reporting discussed below.
- Postal Service responsibilities after delivery and before Postal Service acceptance or rejection and notification will be addressed in the contractual documentation.

## Loss and Damage Reporting

When damage or loss is detected, receiving personnel must accept the shipment from the carrier and note the problem on the carrier's bill of lading. Receiving personnel should also take pictures of the problem; must notify Topeka Customer Service; and provide relevant data, documents, and details in accordance with the instructions found in Handbook AS-701, *Material Management*. The receiving department holds the suspect goods pending further instruction.

Topeka Customer Service determines the Postal Service party responsible to resolve the problem and forwards all relevant data, documents, and details to that party, according to the following:

- For goods received via U.S. mail, the Contracting Officer or internal shipping activity is notified.
- For goods received from a Supplier that shipped f.o.b. destination, the Contracting Officer is notified.
- For goods received from a Supplier that delivered the goods via its own equipment, the Contracting Officer is notified.
- For goods received as postal freight, Supply Management (SM) Operations is notified.
- For goods received that were shipped via TMSP, SM Operations is notified.

Topeka Customer Service will provide a monthly summary report of damage and loss activity to SM Operations for process improvement analysis and action.

## **Receipt Control, Stock Records, and Documentation**

Receiving personnel are responsible for maintaining files on shipments due in. File contents should be reviewed for planning purposes to ensure fast, accurate, and orderly receipt processing. When feasible, arrangements for receiving and storing any large-volume shipments should be made prior to the shipments' arrival.

Each designated receiving location must account for, and provide evidence of, a receiving transaction for all material, merchandise, or supplies accepted by the receiving location. Receiving transaction information must be maintained in the receiving department and made available to the appropriate departments (e.g., Accounts Payable) to ensure the timely completion of the activities associated with the Process Invoices topic of the Make Payment task of Process Step 5: Measure and Manage Supply.

Receiving transaction information must be adequately safeguarded from theft, destruction, or unauthorized use. Receiving transactions must be uniquely identifiable, traceable, and accounted for periodically.

## **Supplier's Responsibilities**

The Supplier's responsibilities for shipment and delivery must be in accordance with Clause 4-1: General Terms and Conditions (Assignment of Claims); Clause 2-9: Definition of Delivery Terms and Supplier's Responsibilities; Clause B-4: Variation in Quantity; and Clause B-7: Responsibility for Supplies.

If the contract contains a guaranteed-shipping-weight provision, in accordance with Clause B-23: Guaranteed Shipping Weight, the Supplier is responsible for the actual weight at the time of shipment for free-on-board



(f.o.b.) origin contracts. If the shipping weight exceeds the specified guaranteed shipping weight, the Supplier will be liable for any resulting excess transportation costs.

If required by the contract, the Supplier must furnish samples for the Contracting Officer's approval. They must be delivered to the Contracting Officer as specified or as directed. The Supplier must prepay all shipping charges on samples, pursuant to Clause B-62: Samples.

At the time specified for first article testing, the Supplier must deliver the units specified in the Schedule to the Postal Service at the testing facility set forth in the Schedule. The shipping documentation accompanying the first article must contain the number of the contract and the lot or item identification, in accordance with Clause 2-5: First Article Approval — Postal Service Testing.

As stated in Clause 2-11: Postal Service Property — Fixed-Price; Clause 2-12: Postal Service Property — Short Form; and Clause 2-13: Postal Service Property — Non-Fixed-Price, if the Supplier uses Postal Service–furnished property in a contract after completing the contract with the Postal Service, the Supplier will either prepare for shipment and deliver f.o.b. origin or dispose of Postal Service property as the Contracting Officer may authorize or direct.

Under Clause 2-15: Special Tooling, the Supplier furnishes lists of special tooling and changes in design to the Contracting Officer. The Supplier then promptly complies with any request by the Contracting Officer to transfer title to any items of special tooling by immediately preparing the items for shipment by properly packaging, packing, and marking, in accordance with any instruction issued by the Contracting Officer, and delivers them to the Postal Service as directed by the Contracting Officer.

## Inspecting Goods

Inspection is a time-consuming activity for the Postal Service. The Supplier is responsible for performing or having performed all inspections and tests necessary to substantiate that the items or services furnished conform to contract requirements.

The inspection type required to ensure that an item meets specification requirements is determined before the contract is issued. Items may be subject to:

- 100 percent inspection
- Sampling — various types of sampling may be used (e.g., single, double, or sequential)
- No inspection (e.g., if a Supplier is certified through the technique below)

When authorized in writing by the Contracting Officer, and if the contract includes Clause B-5: Certificate of Conformance, the Supplier may use a Certificate of Conformance for supplies or services that would otherwise require inspection. The Supplier's signed certificate must be attached to the inspection or receiving report. By issuing a Certificate of Conformance, the

Supplier is certifying that it is furnishing the supplies called for by the contract and that the supplies are of the quality specified and conform in all respects with the contract requirements.

The Postal Service will inspect (for preliminary review at receipt, and further if required) items at destination for:

- Type
- Quantity
- Damage
- Operability
- Preservation
- Packaging
- Marking

The Purchase/SCM Team must determine what quality requirements are needed. In most cases, the Supplier performs all necessary inspection and testing for conformance before delivery. The Postal Service reserves the right to inspect the goods at the point of destination. For goods that will not be fully inspected until they are used, the Contracting Officer must ensure that the contract does not imply acceptance of any Supplier's terms tending to limit the period of time during which defects must be reported if redress is to be obtained.

Refer to Loss and Damage Reporting above for procedures for documenting, reporting, and remedying damaged or discrepant shipments and receiving and reporting concealed damage.

## **Inspecting Services**

The Contracting Officer's Representative (COR) should verify the compliance of services rendered by one of the following methods:

- Review delivered product or service for compliance against the Statement of Work (SOW) and performance requirements
- Surveillance or audit of the work in progress

Pursuant to Clause 4-5: Inspection of Professional Services, the Contracting Officer may, at any time or place, inspect the services performed and the products, including documents and reports. In addition to any specific standards of quality set out in the contract, the Contracting Officer may reject any services or products that do not meet the highest standards of professionalism.

## **Other Topics Considered**

Shipping topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Acceptance topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Returns topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Process Invoices topic, Make Payment task, Process Step 5: Measure and Manage Supply

Make Payment topic, Make Payment task, Process Step 5: Measure and Manage Supply

## **Clauses & Provisions**

Clause 4-1: General Terms and Conditions (Assignment of Claims)

Clause 2-1: Inspection and Acceptance

Clause 2-5: First Article Approval — Postal Service Testing

Clause 2-9: Definition of Delivery Terms and Supplier's Responsibilities

Clause 2-11: Postal Service Property — Fixed-Price

Clause 2-12: Postal Service Property — Short Form

Clause 2-13: Postal Service Property — Non-Fixed-Price

Clause 2-15: Special Tooling

Clause 2-23: Reimbursement — Postal Service Testing

Clause 4-5: Inspection of Professional Services

Clause B-4: Variation in Quantity

Clause B-5: Certificate of Conformance

Clause B-7: Responsibility for Supplies

Clause B-62: Samples

## **Acceptance**

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Acceptance means the receipt and retention of products delivered or services rendered by a Supplier following inspection to ensure conformance with contract specifications. Acceptance may take place before delivery, at delivery, or after delivery, depending on the contract's provisions.

Acceptance constitutes acknowledgement that products or services conform to quality, quantity, and packing requirements set forth in the contract. Acceptance may be used for the start of the warranty period. After acceptance, the product or service can then be used by the Postal Service for its intended purpose.

After inspection, three possibilities exist for the received goods or services:

- Acceptance
- Rejection
- Acceptance with limitations

## Acceptance

Generally, the Postal Service accepts the Supplier's product or service when it conforms to the contract specifications or criteria. At the time of acceptance, no outstanding nonconformities remain. The Postal Service's payment to the Supplier prior to a timely rejection of the Supplier's product or service does not constitute acceptance.

Acceptance is the responsibility of the Contracting Officer or the Contracting Officer's Representative (COR). However, acceptance can be performed by the Client for direct delivery items. When this responsibility is assigned to a COR or other party, acceptance by that person is binding on the Postal Service. Contracting Officers may contract with third parties to perform contract administration responsibilities related to acceptance.

Contracts should specify the place of acceptance. Products accepted at a place other than destination may not be Inspected (inspection process determines whether the purchase will be accepted or rejected) again for acceptance at destination, but should be examined for quantity, damage in transit, and possible substitution or fraud. Additional information on Inspection can be found in the Receipt and Inspection topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

## Acceptance Based on Supplier Certification

When purchasing commercial items, acceptance based on supplier certification, Clause B-5: Certificate of Conformance, may be in the Postal Service's interest when:

- Only small losses will be incurred by a defect.
- The Supplier's reputation or past performance suggests that the products or services will be acceptable and that defective work will be replaced, corrected, or repaired without contest.
- The Supplier's production processes and procedures are demonstrated to provide quality products that meet or exceed Postal Service requirements. International Standards Organization (ISO) certification and maintenance of certification may be an indicator of quality performance.

## Revocation of Acceptance in Whole or in Part

The Purchase/SCM Team, represented by the Contracting Officer, can revoke acceptance of a nonconforming product or service if original acceptance:

- Resulted from the reasonable assumption that the nonconformance would be corrected, but it is not corrected
- Took place because the nonconformance has not been discovered before acceptance as a result of the difficulty of discovery (e.g., hidden defects) or because of the Supplier's assurances

The Postal Service has the same rights and duties upon revocation as upon rejection. Revocation of acceptance must occur within a reasonable time after the Contracting Officer discovers the deficiency. These issues are addressed in paragraph a of 4-1: General Terms and Conditions and Clause 2-1: Inspection and Acceptance.

## **Transfer of Title and Risk of Loss**

The title to products passes to the Postal Service upon formal acceptance, regardless of when or where the Postal Service takes physical possession, unless the contract specifically provides for earlier transfer of title.

Unless the contract specifically provides otherwise, risk of loss or damage remains with the Supplier until:

- Delivery of the products to a Carrier, if transportation is free-on-board (f.o.b.) origin
- Acceptance by the Postal Service or delivery to the Postal Service at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination

This does not apply to products that are rejected. The risk of loss of, or damage to, rejected products remains with the Supplier until correction or acceptance. Additional information on f.o.b. origin and destination can be found in the Shipping topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

## **Surveillance or Audit of the Work in Progress**

A surveillance plan is used to identify from the statement of work (SOW) the specific tasks that require compliance with the identified standards. The surveillance plan identifies standards by which the Supplier is expected to perform in a continuous, satisfactory manner. The Supplier must be informed immediately if there are issues of noncompliance with the contract specifications so the required corrections can be made.

The costs to the Supplier for Postal Service time when the Supplier is not compliant for an inspection requested by the Supplier and reinspections are addressed in Clause 2-23: Reimbursement — Postal Service Testing.

## **Delayed Acceptance**

The Purchase/SCM Team may consider using a special testing requirement after delivery and before acceptance (such as a preacceptance test) for purchases of complex equipment (e.g., mail-handling systems, telecommunications equipment, computers, and building systems). Requirements for delayed acceptance must be thoroughly described in the contract. Clause 2-6: Delayed Acceptance addresses preacceptance tests and the requirements of the Supplier associated with the tests.

## Rejection

The Purchase/SCM Team may reject any or all of the supplies or services not conforming to contract requirements resulting from:

- Requirements not met
- Defined criteria or specifications not satisfied (e.g., pursuant to Clause B-4: Variation in Quantity, variations in quantity will be accepted only in certain conditions and/or in certain thresholds)

When determined that correction within the delivery schedule is not possible, the Purchase/SCM Team must ordinarily reject products or services where nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability of parts or assemblies, weight, appearance, or any other basic objective of the contract. Suppliers must be given a notice of rejection promptly, including the reasons for rejection. If prompt notice is not given, acceptance may be implied as a matter of law. The Postal Service will return rejected items for correction, substitution, refund, or credit.

All repair, replacement, and other correction and redelivery must be completed within the time frame determined by the Postal Service. All costs and expenses and loss of value incurred as a result of, or in connection with, nonconformance and repair, replacement, or other correction will be recovered from the Supplier (e.g., through equitable price reduction or credit against any amounts that may be owed to Supplier).

## Correction or Replacement

Suppliers must be given an opportunity to correct or replace nonconforming products or services when it can be accomplished within the delivery schedule. If correction or replacement is feasible:

- There must be no additional cost to the Postal Service.
- The Postal Service reserves the right to charge the Supplier the cost of reinspection and retesting needed because of a previous rejection (rates charged and other expenses are in accordance with Clause 2-23: Reimbursement — Postal Service Testing).

When replacement or correction is not possible within the performance period and the Purchase/SCM Team has rejected performance, the Contracting Officer may provide the Supplier an opportunity to provide acceptable substitute performance if the Purchase/SCM Team decides that:

- Performance is still desired and
- Substitute performance will best mitigate the damage suffered by the Postal Service.

When substitute performance is accepted, the Contracting Officer must modify the contract to provide for appropriate consideration.

## **Nonconforming Supplies or Services**

Under paragraph a of 4-1: General Terms and Conditions and Clause 2-1: Inspection and Acceptance, if the Supplier fails or refuses to correct the defects or nonconformance, the Postal Service may:

- Acquire replacement supplies or services from other sources at the Supplier's expense
- Accept the supplies or services at a reduced price

Repeated delivery of nonconforming products or services must not be allowed. In such cases, the Purchase/SCM Team should take appropriate action, such as rejecting delivery and having the rejection documented in the Supplier's performance record.

## **Acceptance with Limitations**

Acceptance with limitations occurs when products or services partially conform to the contract specifications or criteria, nonconformities remain that can be worked around, or part of the deliverable is accepted (or the whole deliverable is conditionally accepted). If the Postal Service accepts with limitations, the contract must be modified.

The Purchase/SCM Team may not accept products or services where nonconformance adversely affects a basic contract objective unless acceptance is clearly in the Postal Service's interest and acceptable to the Client. The Purchase/SCM Team's decision to accept these products or services must be put in writing by the Contracting Officer (who must also modify the contract) and be based on:

- Information on the nature and extent of the nonconformance
- Advice of technical specialists that the material is safe to use and will perform its intended purpose
- The Supplier's request for acceptance of the product or service
- A recommendation for acceptance by the intended user, with supporting rationale
- Appropriate monetary or other considerations

The Purchase/SCM Team may accept minor nonconformities (e.g., defects). When minor nonconforming products or services are accepted, the Contracting Officer need not modify the contract to provide for appropriate consideration, unless:

- It appears that the savings to the Supplier in fabricating the nonconforming products or performing the nonconforming services exceed the cost to the Postal Service of processing and enforcing a modification
- The Postal Service's interests otherwise require a contract modification

Clause 4-1: General Terms and Conditions and Clause 2-1: Inspection and Acceptance address postacceptance Postal Service rights and Supplier obligations.

## Other Topics Considered

Shipping topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

## Clauses

Clause B-4: Variation in Quantity

Clause B-5: Certificate of Conformance

Clause 2-1: Inspection and Acceptance

Clause 2-6: Delayed Acceptance

Clause 2-23: Reimbursement — Postal Service Testing

Clause 4-1: General Terms and Conditions

Clause 4-5: Inspection of Professional Services

## Returns

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A return is the actual giving back by the Postal Service to the Supplier of a previously accepted product. Returns are very common when the delivered product has defects; does not conform to contract specifications; or has been improperly ordered, received, or accepted. The legal guidelines for returns are typically contained within, and outlined by, the terms and conditions of the contract and any warranty clauses. All returns require proper authorization from the Contracting Officer or the issuing activity and the use of applicable forms (e.g., Request for Return Authorization from the current Repair Parts Bulletin). Some returns, such as those to the Material Distribution Center (MDC), Mail Transportation Equipment Service Center (MTEESC), the office suppliers' catalog on eBay, etc., do not directly involve the Contracting Officer.

## Defects, Nonconformance, and Warranty

Defects and nonconformant characteristics are detected during an inspection, which is conducted during the Receipt and Inspection topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements. The Client is responsible for notifying the Contracting Officer and Supplier of items that have failed inspection. The Supplier is expected to deliver goods and services that are free of defects and fit for their predetermined purpose, in accordance with Clause 4-1: General Terms and Conditions and Clause 2-1: Inspection and Acceptance and/or with Clause B-5: Certificate of Conformance.

For defective items (as opposed to nondefective items that have been lost or damaged) covered by a warranty (e.g., paragraph o of Clause 4-1: General Terms and Conditions, or Clause 2-8: Warranty), every attempt should be



made to resolve all complaints, as informally as possible, through an appropriate Supplier representative. Damaged goods should be processed in accordance with the guidance found in the Acceptance topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

Although the Postal Service should not compromise its position, the Contracting Officer should discuss defects and nonconformance with the Supplier because elimination of potential misunderstandings is in the best interest of both the Postal Service and the Supplier. When resolutions cannot be informally reached, complaints will be addressed in the Supplier Disagreement Resolution topic of the General Practices. If the defective items adversely effect Postal Service operations during this resolution process, the Postal Service may obtain acceptable products from another source and include the costs as part of the negotiations.

## **Warranties**

A warranty requires the Supplier to repair or replace defects in materials or workmanship for a certain period of time after acceptance of the work by the Postal Service during the Complete Delivery task of Process Step 4: Deliver and Receive Requirements. A warranty reflects risks that the Supplier and subcontractors can identify and analyze, based on experienced warranty or callback costs. The Client will contact the Contracting Officer for further guidance if the Supplier refuses to correct or fails to replace a defective item or an aspect of the service under the warranty. The contract will lay out the terms of the warranty.

Paragraph o: warranty of Clause 4-1: General Terms and Conditions states that the supplier warrants and supplies that items delivered are merchantable and fit for the use described in the contract. Clause 2-8: Warranty, which may be used in lieu of paragraph o of Clause 4-1, signifies that the Supplier legally warrants, for the period specified, that all supplies furnished under the awarded contract, including packaging and markings, will be free from defects in material or workmanship and will conform to the specifications and all other requirements of the contract. Within the time specified in the schedule, the Contracting Officer must give written notice to the Supplier of any breach of warranty and must do either of the following:

- Require the prompt correction or replacement of any defective or nonconforming supplies
- Retain them, reducing the contract price by an amount equitable under the circumstances

## **Inappropriate and Erroneous Deliveries**

In accordance with the warranty language in the contract, if there is no receiving document with the (original) shipment, the designated receiving personnel must make an effort to ensure that the shipment is:

- Forwarded to the intended consignee

- Returned to the consignor, the person or organization that directs or arranges for a shipment (the consignor may or may not be the shipper)

The documents and actions associated with shipment, receipt, and acceptance of deliveries are respectively explained in further detail in the Shipping, Receipt and Inspection, and Acceptance topics of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements.

## Return Actions

Return actions are influenced by:

- Supplier responsibilities
- Corrections
- Replacements
- Simple returns
- Internal returns
- Exceptions
- Documentation

## Supplier Responsibilities

In accordance with Clause 2-8: Warranty, if the Supplier fails or refuses to correct or replace defective or nonconforming supplies, the Contracting Officer may correct or replace them with similar supplies and charge to the Supplier any cost to the Postal Service. In addition, the Contracting Officer may dispose of the nonconforming supplies, with reimbursement from the Supplier. Coordination with the Supplier must be documented prior to taking these actions.

Depending on the terms and conditions of the contract or the language of the delivery order, the Supplier may also be financially responsible for compensating the Postal Service for lost time if defective/nonconforming supplies adversely affected the project or caused delays. In such cases, the Purchase/SCM Team must ensure that any claims, unliquidated damages, or other complaints are documented.

## Corrections

Products eligible for correction are either not fit for their particular purpose or have a defect that inhibits functionality. A product that needs to be corrected will be returned to the Supplier, who is responsible for making all changes and repairs necessary to achieving the performance outlined in the awarded contract. When return for correction is required off-site or is covered by warranty, the Supplier is responsible for all costs of transportation and for risk of loss in transit. When the cost of physical return makes it impracticable to return an item for correction, the contract should also provide that the Postal Service may correct, or require the Supplier to correct, the item in its current physical location, at the Supplier's expense.

## Replacements

A product that is not fit for its particular purpose or that has a defect that inhibits functionality and cannot be corrected must be replaced. A product that needs to be replaced will be returned to the Supplier, who is responsible for substituting for the item another item that meets the contractual requirements and is void of all defects. When return for replacement is required, the Supplier is responsible for all costs of transportation and for risk of loss in transit. When the cost of physical return makes it impractical to return an item for replacement, the Supplier will be responsible for removing the item from its current physical location, with Postal Service concurrence, and for disposing of the item at the Supplier's expense.

## Simple Returns

A simple return is the actual return of a product to the Supplier when the product does not mandate corrections or replacement. Items that are shipped without a receiving document or mistakenly delivered or accepted (such as wrong items or wrong quantity) are eligible for simple returns. Suppliers are responsible for delivering the items explicitly established in the awarded contract. The receiving activity or Client should contact the Contracting Officer or the National Materials Customer Service for return authorization and instructions. Where a contract is involved, the Contracting Officer should be informed of the error and resolution. This information will be used by the Contracting Officer in supplier performance evaluations.

In accordance with Clause B-4: Variation in Quantity, the Supplier is responsible for delivering each item quantity within any allowable variations. If the Supplier delivers, and the Postal Service receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), these excess quantities will be treated as being delivered for the Supplier's convenience. Quantities in excess of \$100 will, at the option of the Postal Service, either be returned at the Supplier's expense or retained and paid for at the contract unit price. The Postal Service may retain excess quantities up to \$100 in value without compensating the Supplier for them, and the Supplier waives all right, title, or interests in them. Items with a cumulative value of \$100 are, therefore, "excepted" or "exempted" from returns.

## Reparable Parts and Internal Return Procedures

Various equipment and supply items across Postal Service commodities are stocked internally and ordered directly through the Material Distribution Center (MDC), the Critical Parts Center (CPC), the Express and Priority Mail Supply Center (E&PMSC), Mail Equipment Shops (MES), and elsewhere.

Overhauling or repairing defective parts is often the most effective way of meeting Client needs. Items with defective parts that must be overhauled and repaired are designated during the integrated logistics support planning process in the Develop Logistics Support Strategy topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs. These items are addressed in different ways (e.g., local activity repair [on-site at the same

facility], central depot repair [sending the item off-site to the Central Repair Facility in Topeka, Kansas, or to the Indianapolis Repair Facility in Indianapolis, Indiana], or supplier repair [directed shipment to the original manufacturer or other commercial source]). Specific procedures regarding managing repairables and the ways they are addressed are outlined in Handbook MS-63, *Maintenance Operations Support*, and in current Repair Part Bulletins.

All Postal Service facilities ordering parts, supplies, or equipment from the MDC may request authorization to return excess items that are new, properly marked, and properly packaged. Returned supplies must be of the current edition date and bulk pack quantity. Postal Service facilities that later obtain authorization for returns will not generate credits for items that were initially procured with capital funds. Authorized capitalized returns will be accepted at zero credit and averaged into wholesale inventory.

Items ordered or shipped in error from one of these or other central supply sources (e.g., General Services Administration [GSA] or Defense Logistics Agency [DLA]) will follow the procedures and instructions for returning supplies to these organizations found in Publication 247, Supply and Equipment Catalog and in Handbook AS-701, *Material Management*.

## Electronic Return Program (ERP)

Items that are returned must be packed to ensure adequate protection during transit. Items are returned to the designated facility (MDC or Repair) using the mail system or Transportation Management Service Provider (TMSP) and must include an Electronic Return Program (ERP) return label, a computer-generated tag that eliminates the manual recording of information at field sites, which is available on the Postal Service's intranet (at the depot repair operations site) at [http://crf.usps.gov/asp/ofc\\_entry\\_tab.asp](http://crf.usps.gov/asp/ofc_entry_tab.asp).

The ERP must also be used to obtain and print the appropriate address labels used for the return of repairable items to destinations (ship-to address). The ERP generates addresses other than the Topeka MDC that reduce handling and transportation costs by eliminating the Topeka MDC as an intermediary destination. Addresses may vary on occasion for a given item, resulting from the available amount of stock on hand and need to repair the item. Procedures are in place to ensure that these items are processed correctly at the receiving point, proper credits are given, and one-for-one returns are generated, when appropriate.

## Exceptions

The various return procedures associated with most materials are not applicable to the following:

- Cost transfers within district boundaries (these are considered as local decisions)
- Individual transactions with a cumulative value of \$100 or less (to avoid the high cost of processing)

## **Documentation**

All defects, nonconforming supplies, and instances of noncompliance with the warranty language of the contract must be reported and properly documented (in the contract file) by the Contracting Officer. When the Supplier has been qualified on the basis of quality management systems and defects subsequently become apparent, the Purchase/SCM Team should require review of the Supplier's quality assurance documentation or processes. When discrepancies are apparent, this information should be taken under consideration for the Decide to Renew a Contract or Exercise Options topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply. Discrepancies should also be addressed during lessons learned discussions with the Supplier described in the Share Lessons Learned topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

## **Other Topics Considered**

Shipping topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Acceptance topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Supplier Disagreement Resolution topic, General Practices

## **Clauses & Provisions**

Clause 2-1: Inspection and Acceptance

Clause 2-8: Warranty

Clause B-4: Variation in Quantity

Clause B-5: Certificate of Conformance

Clause 4-1: General Terms and Conditions

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# USPS Supplying Practices Process

## Process Step 5: Measure and Manage Supply

### Develop, Finalize, and Implement Cost Management Plan

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Effective cost management ensures that a project is completed on time and within budget. It serves as the critical link between project performance and budget, as the project enters Process Step 5: Measure and Manage Supply. Specifically, cost management helps control cost by monitoring the relationships between the earned value and the actual cost. Earned value (EV) refers to the budgeted cost of work performed for an activity or group of activities at a given point during the project. Earned Value Management (EVM) is a methodology used to measure and communicate the real physical progress of a project, taking into account the work completed, the time taken, and the costs incurred to complete that work.

A cost management plan supports cost management efforts by identifying the processes and procedures used to manage costs throughout the contract's life. The Pricing Analyst is responsible for the development of the cost management plan. The Item Manager will play a significant supporting role, anticipating possible resources and inventory changes that will influence cost.

A cost management plan ensures:

- Guidance — the plan guides the Contracting Officer in determining how cost variances are managed and establishes any contingencies for absorbing overages.
- Consistency — cost variances are managed with the same procedures throughout the contract.
- Control — the Contracting Officer will analyze any cost variance before a decision is made regarding administration of the contract.
- Accountability — the plan ensures that decisions about variance are documented and maintained in the contract file, making decisions accountable and auditable.

## Develop Cost Management Plan

The cost management plan is developed using the purchase plan and the following resources generated during Process Step 2: Evaluate Sources:

- Statement of work (SOW) or other description of the contract requirement produced during the Start Request for Proposals (RFP) Development topic of the Prepare Project task and the Review and Finalize Request for Proposals (RFP) topic of the Perform Solicitation-Related Activities task — indicates Client expectations in terms of quantity and quality, both of which affect cost
- The latest total cost of ownership (TCO) estimates produced in the Update/Refine Total Cost of Ownership (TCO) Analysis topic of the Prepare Project task — estimates total contract cost
- Funded budget as a result of the Formulate Project Budget and Request Funding topic of the Prepare Project task — provides the allowable cost (assuming that budget does not need to be changed)
- Results of activity-based costing (ABC) analysis performed during the Perform Value Chain Mapping and Analysis topic of the Prepare Project task — allows the Pricing Analyst to better allocate costs associated with specific cost drivers at various stages of the contract
- Life-cycle support plan developed during the Develop Life-cycle Support Plan topic of the Develop Sourcing Strategy task — clarifies the project's lifespan and enables the Postal Service to reduce complexity, decrease life cycle costs, and focus all efforts toward providing best value to the Client

The cost management plan describes how cost variances will be managed, should they occur. Cost variance refers to the difference between actual cost and earned value. The plan outlines the permitted range for cost deviation and response measures should cost deviate beyond the permitted range.

The cost management plan can be formal or informal, detailed or broad, depending on the complexity of the contract. The Contracting Officer must review the cost management plan regularly to ensure that its guidelines continue to be appropriate throughout the duration of the contract.

## Outline for Cost Management Plan

The following are suggested elements of a cost management plan:

- Introduction/Purpose — Describes the purpose of the cost management plan
- Contract Management Costs — Summarizes contract management costs. Detailed cost calculations should appear as appendices.
- Potential Causes of Variances — Defines permitted range for variances, and lists the factors specific to the project that could lead to variances.



- Identification of Variances — Describes the procedures that will be used to identify variances.
- Response to Variances — Describes the mechanisms to be used to resolve cost variance problems, including contingency plans to cover increased costs.

### Variance Definition

The Pricing Analyst is responsible for determining the range by which cost will be permitted to deviate from budget. Cost variance (CV) is calculated by comparing the actual cost of the work (AC) with the earned value (EV). Cost variance is typically expressed as a ratio or percentage. The formula is:

$$CV = [(EV - AC) / EV] \times 100$$

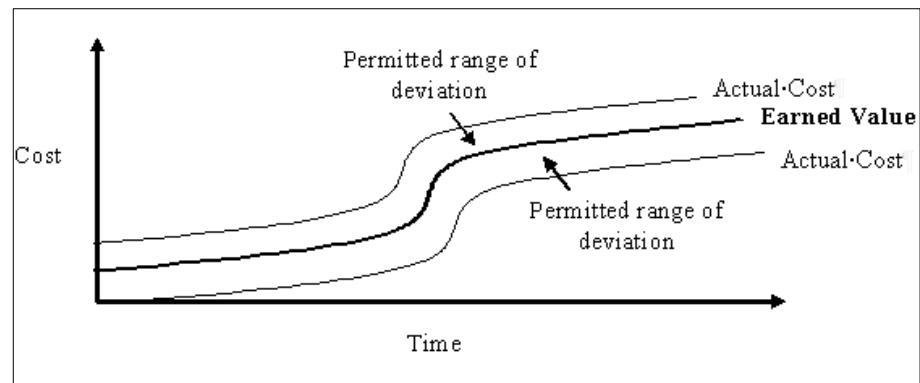
If the result is positive, the project is experiencing an “underrun.” If the result is negative, the project is experiencing an “overrun.”

The permitted range of deviation of actual cost from budget, or earned value, may be dependent on:

- Particular phase of the contract
- Length of the contract phase
- Length of the entire contract
- Nature of the task or products being estimated
- Perceived accuracy of the estimate

Figure 5.1 illustrates the permitted range of deviation as falling between the actual cost and earned value at any given point in the contract life cycle.

Figure 5.1  
**Permitted Range of Deviation**



The permitted range of deviation may vary from project to project because of differences in scope and period of performance. For many purchases, variances are permitted to change over the contract duration because of the difficulty of forecasting costs accurately for long-term contracts. For manufacturing projects, allowed variances may be fixed over the duration of the project life cycle. For projects that involve research and development, for example, larger deviations may be allowed during the earlier phases of the

project. However, in general, because the risk for any project decreases as time goes on, so should the allowed variance.

## Response to Variances

The cost management plan outlines how variances should be managed. The four main options are to:

- Ignore the variances
- Make functional modifications to the project
- Replan the project
- Redesign the product

Whether a cost variance falls within the permitted range of deviation will dictate the response measures. The choices available to manage a cost variance vary in terms of how drastic they are, how much work they require, and how much they change the contract. Ignoring the variance or making functional modifications are mild solutions. These choices require little or no work and make minimal changes to the project, if any. Replanning or making changes to the product scope are more drastic solutions that require a great deal of work and make substantial changes to the project. The contract management plan should anticipate situations that may necessitate each of the above options. Figure 5.2 suggests when each option should be used.

Figure 5.2

### Response to Variances

Action	Condition
Ignore the variance	Cost variance falls within the permitted range of deviation and does not appear to be a sign of future cost problems.
Make functional modifications to the project	Cost variance is within the permitted range, but could potentially grow or become a problem in the future. The modifications are small changes to the project that can save time and money.
Replan the project	Cost variance is outside of the permitted range. The Client or Contracting Officer attempts to replan the project without changing the project scope. This means finding less-expensive ways of doing things (e.g., less-expensive resources, contracting out).
Redesign the product	Redesign only if replanning is not sufficient to bring variance back to the permitted range.

Project replanning and product redesign involve major changes to the project. Both approaches require an assessment of the impact on the overall product quality and its ultimate usability by the Client. Taking either of these approaches too far could render the product or service substandard.

When actual cost deviates from earned value, it may be necessary to change the budget, rather than adjusting costs to match a previously determined monetary ceiling.

The following are valid reasons to change the budget:

- Change to the product or service that will have an impact on cost
- Change to the project scope that will have an impact on cost
- Major, unforeseen changes to the costs of resources or materials

The following are *not* valid reasons to change the budget:

- Cost variances that are normal and based on accurate estimations
- Cost variances that are due to poor planning or poor estimating
- Costs that would normally occur have been forgotten in the cost management plan

The Client must agree to the budget change request prior to seeking approval of additional funds.

## Finalize Cost Management Plan

When finalizing the cost management plan, the Contracting Officer should work with the Client to ensure that the planned variance responses are realistic and that they understand cost variance implications (e.g., if it would be possible to lower labor rates or adjust the scope and quantity to reduce the financial impact of a cost increase). The Client is responsible for the final cost management plan, including obtaining applicable reviews and approvals.

## Implement Cost Management Plan

During the contract management process, the Contracting Officer reviews the cost management plan regularly to ensure that its guidelines continue to be appropriate throughout the duration of the contract. The Pricing Analyst closely monitors the cost variance to ensure that significant variance is addressed appropriately and in a timely manner. The Item Manager informs the Pricing Analyst of any anticipated resources and inventory changes, and the Pricing Analyst updates the cost management plan accordingly.

Several techniques are available for measuring cost performance:

- Cost variance (CV)
- Earned value management (EVM)
- Cost performance index (CPI)

### Cost Variance (CV)

Cost variance (CV) is the most basic performance measure, defined as the difference between planned costs and actual costs. CV is calculated by comparing the actual cost of the work (AC) with the earned value (EV), typically expressed as a ratio or percentage:

$$CV = [(EV - AC) / EV] \times 100$$

The goal of calculating cost variances is to provide the basis for earned value management. The Pricing Analyst must understand the problems behind variances and the action that will correct any problems.

## Earned Value Management (EVM)

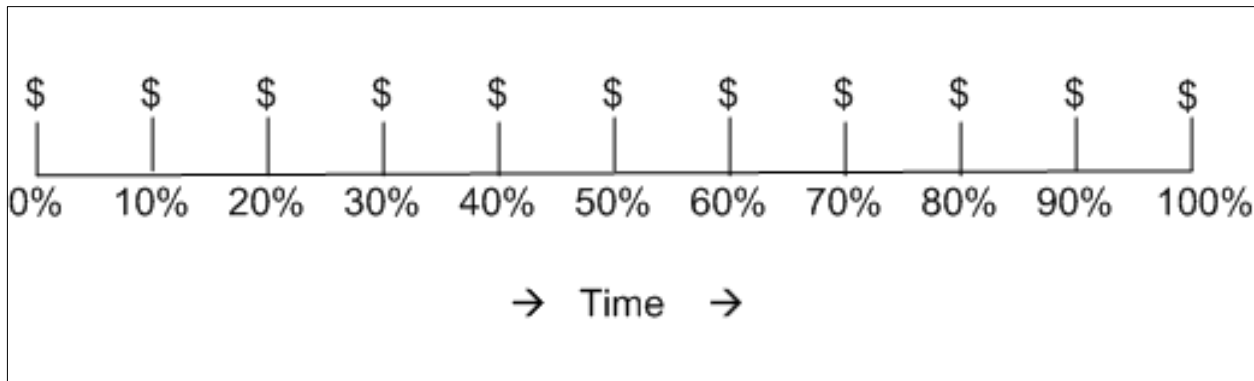
Some costs are incurred by tasks that are incomplete and have not yet earned any value. These costs are considered during cost analysis, but are not used when assessing the current earned value to the project. Earned value management (EVM) is perhaps the most useful activity in cost control because it combines costs and the schedule into one indicator. EVM shows how much the project is physically accomplishing in terms of both cost and time, giving management a more accurate and timely report on project progress. Earned value (EV) is the cost originally budgeted to accomplish the work that has been completed as of the analysis date. It answers the question, "How much work has actually been completed?"

EV is calculated from the measured work completed and the budgeted costs for that work:

$$\text{EV} = (\text{percentage of project completed}) \times (\text{project budget})$$

Figure 5.3 illustrates EV (represented by "\$") as being associated with the percentage of work completed at various points throughout the project.

Figure 5.3  
Earned Value (EV)



Actual cost (AC) is what it actually costs to accomplish all the work completed as of the analysis date. It answers the question, "How much have we actually spent?" This is usually determined from the organization's accounting system or can often be approximated by multiplying the number of people by the number of hours, days, or weeks worked.

$$\text{AC} = [(\text{actual hours incurred at the task level}) \times (\text{individual resource cost})] + \text{sum (actual expense amounts for the task)}$$

Planned value (PV) is the total budgeted cost up to the analysis date. It answers the question, "How much did we plan to spend as of this date?" A variant of this question is, "How much work should have been completed by this date?" PV can be computed from the project plan, or it can be approximated by multiplying the total budget by the fraction of total project duration at the analysis date. For example, if the project budget is \$100 and 20 percent of the project's time has elapsed, the approximate PV is \$20.

**PV = [(task % complete) x (baselined estimated hours) x (individual resource cost)] + sum (baselined estimated expense amounts for the task for all baselined expenses with actual expense dates)**

### **Cost Performance Index (CPI)**

The cost performance index (CPI) illustrates how efficiently a project team is accomplishing the completed work. CPI is determined by calculating the ratio of earned value (EV) to the actual cost (AC).

$$\text{CPI} = \text{EV} / \text{AC}$$

When the CPI is measured periodically, the CPI figures can be plotted in a line graph that illustrates trends over the life of the project (known as a “trend analysis”).

### **Schedule Performance Index (SPI)**

The CPI is often reported along with the schedule performance index (SPI). Both CPI and SPI are measures of efficiency, but the SPI is the ratio of earned value (EV) to planned value (PV), or budgeted costs.

$$\text{SPI} = \text{EV} / \text{PV}$$

For example, an SPI of 0.75 means that the project has earned only 75 percent of the value that was anticipated to have been earned.

### **Rating Performance**

CPI and SPI are used to rate the cost and schedule performance of a project. A poor rating provides a warning signal, allowing for corrective measures to be taken at the early stages of issue development. If the index is:

- Equal to 1.0 – performance is exactly as planned
- Greater than 1.0 – performance is better than planned
- Less than 1.0 – performance is poor

### **Estimate at Completion (EAC)**

The estimate at completion (EAC) is a calculated prediction of the total costs of a project at completion, based on performance to date. The Pricing Analyst calculates the EAC when assessing the EV for a project, as part of a periodic evaluation. The EAC is the Pricing Analyst’s educated guess regarding the total cost of a project. Before calculating EAC, the Pricing Analyst should determine how future cost variances may compare with current cost variances, because the formula differs based on the assumption about future variances.

As with other outputs, the periodic assessment of the EAC will contribute a vital part of the project’s history. The EAC is a useful tool for project management and is primarily used to:

- Indicate the expected cost of the total project
- Estimate the total costs of an activity or groups of activities
- Provide the best estimate of potential project profitability

If the current EAC for any project indicates potential for cost overruns, the Pricing Analyst must assess cost variances to anticipate whether the overruns will recur in the future. The Pricing Analyst is also responsible for checking the original cost estimates to determine whether the estimates were inaccurate and require revision.

In addition to future cost variances, the Pricing Analyst also needs to know the budget at completion (BAC), which is the sum of all budgets established for the contract:

$$\text{BAC} = (\text{baselined estimated hours assigned at the task level} \times \text{individual resource cost}) + \text{sum (baselined estimated expense amounts for the task)}$$

Generally, the EAC can be calculated in four different ways, depending on whether the CPI is readily available and on assumptions about future cost variances.

The standard formula for calculating EAC, when CPI is not available, is based on the project's cost performance to date, or the ratio between actual cost and earned value, as part of the budget at completion. This formula is used when current cost variances reflect future variances:

$$\text{EAC} = (\text{AC} / \text{EV}) \times \text{BAC}$$

If the CPI is available, simply divide it into the total budget at completion. This is presented in the second formula for calculating EAC:

$$\text{EAC} = \text{BAC} / \text{CPI}$$

The third formula combines actual costs to date and the estimate to complete (ETC). The ETC is the total of all estimated costs of work that has not yet been performed, or the difference between budget at completion and earned value (i.e.,  $\text{ETC} = \text{BAC} - \text{EV}$ ):

$$\text{EAC} = \text{AC} + \text{ETC}$$

This approach is most often used when:

- Past variances would have continued to occur into the future
- Original estimates have been revised significantly
- The revised estimates are deemed accurate

The final formula that can be used to calculate the EAC adds the actual-costs-to-date to the expected earned value of the work not yet completed. To find this "future earned value," simply multiply the PV by the percentage of work that has not yet been performed:

$$\text{EAC} = \text{AC} + (\text{PV} \times \% \text{ of work remaining})$$

This approach is most often used when the variances to date are seen as atypical and the project team expects that similar variances will not occur in the future.

Whichever method the Pricing Analyst uses to arrive at a final estimate, EAC can be used to calculate the variance at completion for the project. The final variance can be expressed as a dollar amount or as a percentage. It is commonly seen as a ratio of the total variance, or the difference between the

budgeted and estimated cost at completion of a project, to the budget at completion:

$$\text{VAC} = (\text{BAC} - \text{EAC}) / \text{BAC}$$

For a project with a BAC of \$75,000 and an EAC of \$85,000, the variance at completion would be \$10,000. Expressed as a percentage, the VAC would be \$10,000 divided by \$75,000. This project would be 13 percent over budget.

### **Revised Cost Estimates and Budget Updates**

If early measurement of cost efficiency reveals that the project is going to have trouble remaining within budget, the Pricing Analyst will need to revise the cost estimates and update the overall budget as required.

Preliminary estimates that were set during the planning stages of the project may need to be revised. The Pricing Analyst should consult the latest total cost of ownership (TCO) estimates produced in the Update/Refine Total Cost of Ownership (TCO) Analysis topic of the Prepare Project task of Process Step 2: Evaluate Sources. In some cases, changes in cost estimates would require updating the budget. Budget updates involve a change to the approved cost baseline and may not be performed without approval by the Client.

### **Contract Review**

At the end of a contract, the Pricing Analyst gathers all of the cost management documentation and evaluates cost management procedures. Documentation related to project cost management includes the cost management plan, budget reports, performance analyses, budget change requests, and progress updates. The Contracting Officer should prepare a summary document that confirms that all cost control decisions for the project adhere to quality guidelines. Outputs such as revision to the budget and estimates at completion should be used for quality and time management purposes to ensure the overall success of the project. They can also be used as inputs for similar projects in the future. The summary report and other documentation must be included in the contract file.

The lessons learned during cost control efforts should be posted to the Postal Service intranet knowledge site. The lessons-learned document includes:

- Main causes of cost control variances
- Reasons behind the corrective action chosen
- Alternative actions in future projects

For example, this document might indicate that changes of project scope caused the greatest variance and that poor project team performance and lack of detail in some planning areas caused cost overruns. In future projects, better expenditure detail in the planning phase and more experienced team members could be leveraged to improve performance. The Contracting Officer must share lessons learned with the Purchase/SCM Team and the Client and will archive them for future reference. Specific guidance on communicating lessons learned is discussed in detail in the Share Lessons

Learned topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

The purpose of cost management is to help ensure project objectives are achieved. By documenting the lessons learned and completing project closeout activities, the Purchase/SCM Team will help ensure achievement of project goals.

## Other Topics Considered

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Source

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Formulate Project Budget and Request Funding topic, Prepare Project task, Process Step 2: Evaluate Sources

Perform Value Chain Mapping and Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Develop Life Cycle Support Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Share Lessons Learned topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## Conduct Material Planning Activities

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Material refers to all supplies, equipment, and repair parts owned by the Postal Service. Material planning encompasses and incorporates the arrangements and preparations essential to logistics and the processes associated with logistics. These activities span from receipt of the material until disposal.

Conducting material planning accomplishes the Postal Service objective of providing quality material responsively and cost-effectively. The information garnered during material planning activities feeds into the Develop, Finalize, and Implement Inventory Control Plan and the Implement Life Cycle Support Plan topics of the Manage Demand task of Process Step 5: Measure and Manage Supply.

The Item Manager is responsible for conducting material planning activities, with the support of the Client, Contracting Officer, and Supplier. Conducting material planning activities involves:

- Characterizing the material
- Material logistics



## Characterizing the Material

The Item Manager and Client must ensure that the material type is appropriately classified. The material type plays a role in activities from processing to authorizations. Material types include:

- Capital — has a service life of more than one year, is identified as a stand-alone item of property throughout its useful life, has a unit cost of \$3,000 or more, and depreciates in value
- Expendable — items that cost less than \$3,000; repair parts and replacement components (e.g., batteries, motors), regardless of cost; and, for the most part, mail transport equipment (MTE), neighborhood delivery and collection box units (NDCBUs), workroom furniture, and similar items
- Sensitive — materials considered especially vulnerable to theft or loss (e.g., computers, cameras, valuable portable equipment)

The Supplier and Client communicate the material's factors to the Item Manager. These must be defined because they influence the receipt, storage, distribution, and recovery of the material. Material factors include:

- Nature of the material (e.g., shelf life)
- Size, weight, and shape
- Turnover
- Quantity

The following areas will be incorporated into planning activities, if applicable to the material:

- Schedule — key delivery dates of the material (leads to appropriately allocating and positioning inventory and assets; the schedule information will be supplied by the Client and Supplier)
- Technology — the current systems for tracking, handling, distributing, and managing the material (e.g., manual and automated systems such as the electronic Maintenance Activity and Reporting System (eMARS) and the Vehicle Maintenance Accounting System (VMAS))
- Environmental/Hazardous Waste — all applicable regulations regarding safety, control, and disposal of hazardous materials (e.g., the storage/disposal of hazardous/regulated materials needs to be organized and controlled)
- Security/Sensitivity Issues — will affect receipt, storage, and distribution of materials, if not resolved
- Other material planning activities (e.g., forecasting demand to bring supply and demand into convergence, adjusting for peak demand periods, and continually examining usage and quality trends of materials)

## Material Logistics

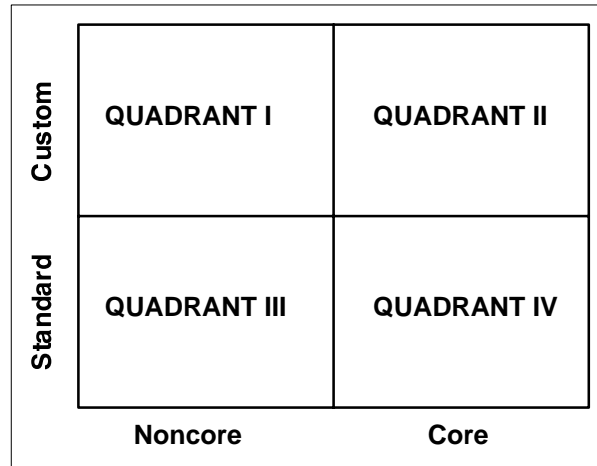
Material Logistics are directly influenced by the characteristics of the material. Once these characteristics are identified, the logistics of the material can be planned. Relative characteristics include:

- Receiving — incoming material packaging or transportation requirements can be defined (additional information can be found in the Receipt and Inspection topic of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements)
- Custody/safeguarding — custody is the immediate charge and control exercised by a person over Postal Service material; all Postal Service employees are responsible for safeguarding materials in their custody
- Material storage — for example, stocking and replenishment decisions (Develop, Finalize, and Implement Inventory Control Plan topic of the Manage Demand task of Process Step 5: Measure and Manage Supply), positioning stock, or issuing stock
- Administration — record keeping (e.g., Expendable Property Transaction files, Pending Verification files, and subcustody records) and reporting (e.g., reporting excess material that is identified as over and above the foreseeable needs of the Postal Service facility or organization accountable for them and is serviceable and readily available for redistribution)
- Distribution — process by which material is processed, handled, and moved within the Supply Management Operations system to clients (e.g., the mode of transportation needed to ship material from a warehouse)
- Investment recovery — the effective end-of-life decision is addressed by the following methods: recycle, reallocate, resell, remarket, return, remanufacture, and remove (Develop Preliminary Investment Recovery Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources; Finalize Investment Recovery Plan topic of the Plan for Contract Management task of Process Step 3: Select Suppliers; Implement Investment Recovery Plan topic of the Manage Demand task of Process Step 5: Measure and Manage Supply)
- Disposal — the final removal of the product and the finalizing action of end of life (Dispose topic of the Implement Investment Recovery Plan task of Process Step 6: End of Life)

## Quadrant Approach

A quadrant approach classifies Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Depending on the quadrant, material planning activities will focus on different areas of unique planning activities and material logistics, as illustrated in Figure 5.4.

Figure 5.4  
**Quadrant Approach**



**Quadrant I: Custom/Noncore Purchase**

There are few options, one or restricted supplier sources, and supply continuity is imperative for materials. Planning activities surrounding the materials schedule, such as key delivery dates and close contact with suppliers, will need to be conducted for materials in this quadrant.

**Quadrant II: Custom/Core Purchase**

Materials are vital to operations, are of high value, and there are few sources. The logistical areas of custody/safeguarding and material storage are of great importance and must be addressed by the material planning activities.

**Quadrant III: Standard/Noncore Purchase**

Many options and sources for materials, coupled with minimal brand preference, can lead to reduced purchase efforts and associated costs. Actions that can be taken are automation and reducing administrative costs (i.e., reporting and recording).

**Quadrant IV: Standard/Core Purchase**

Materials have many alternatives, many sources, and are readily available in the marketplace. Particular attention should be given to recovery because surplus in this quadrant is addressed as bringing in the highest dollar value, being greatest in inventory quantity, and offering easy logistics.

**Other Topics Considered**

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Management task, Process Step 3: Select Suppliers

Receipt and Inspection topic, Complete Delivery task, Process Step 4:  
Deliver and Receive Requirements

Develop, Finalize, and Implement Inventory Control Plan topic, Manage  
Demand task, Process Step 5: Measure and Manage Supply

Implement Investment Recovery Plan topic, Manage Demand task, Process  
Step 5: Measure and Manage Supply

Dispose topic, Investment Recovery task, Process Step 6: End of Life

## Implement Life Cycle Support Plan

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Typically, life cycle support plans are used when the Postal Service purchases products, not services, and span the time from product conception to product retirement, with more than 80 percent of the total cost of ownership being in the postpurchase phases. The life cycle support plan is a component of the purchase plan, and is a dynamic document that guides the project throughout its entire duration and is revised as more detailed information becomes available.

The Purchase/SCM Team determines which products call for the development of a life cycle support plan in the Develop Life Cycle Support Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. It is essential to note that a life cycle support plan is not appropriate to all purchases, but should be developed for products of considerable nature, scope, and complexity (e.g., for high-value and very complex products). Whether such a product is purchased from a supplier or made by the Postal Service, during its life cycle development, quality, cost, schedule, and user requirements must be considered at all phases. The plan is continuously updated as more detailed information becomes available.

A life cycle support plan clarifies the project lifespan of the product. An effective implementation of a life cycle support plan:

- Enables the Postal Service to reduce complexity, decrease life cycle costs, and allow for the focusing of all efforts toward providing best value to the Client
- Is instrumental in the development of the statement of work (SOW) and, if applicable, the decision analysis report (DAR)
- Assists the planning of future purchases

### Life Cycle Management Team

A cross-functional team, comprising the Purchase/SCM Team and members of the areas appropriate to the product, implements the activities in the life cycle support plan. This Team is commonly referred to as the “Life Cycle Management Team.” The Life Cycle Management Team comprises approximately 5–10 members and typically includes:

- Market Analysts
- Pricing Analysts

- Item Managers
- Individuals from Quality Assurance, Finance, Sales, Supply Management, and Engineering (whose functions include hardware/software design, configuration management, acceptance and performance testing, maintenance, and process development)

Degrees of management and responsibility for the plan will transfer to these different members, depending upon the phase of the process.

### **Production and Deployment**

The Life Cycle Management Team creates an integrated, well-planned deployment of the product that can be economically and efficiently supported throughout its life cycle. During the Production and Deployment phase, the life cycle support plan is revised to reflect actual operational experience.

Detailed maintenance support plans are prepared during the production and deployment phase. As information becomes available from the testing and operation of the product, the life-cycle support plan is validated and revised to reflect the most effective operation and support. All members of the Team implementing the life cycle support plan participate in this effort to ensure an integrated approach to issue resolution.

### **Operations (Use) and Support**

The Life Cycle Management Team collects data on the asset's performance; improvements are suggested, made, and managed; and new operational data are collected. Operations continue while a decision is made to redeploy or dispose of the product. If the product is modified or overhauled, life cycle support planning reenters the planning cycle in the concept phase, and the plan is updated to include overhaul or modification schedules. If there are plans to retire or relocate the asset, the asset's life cycle enters the Relocation/Disposal Planning phase.

The life cycle support plan incorporates the information gained during the deployment of an asset or from a modification, specifically information relating to maintenance, reliability, parts provisioning, and training. These data and operational data are compiled and included in the finalized life-cycle support plan.

### **Disposal**

Disposal is the final phase of the life cycle and can pose significant economic and social risks to the Postal Service.

The Life Cycle Management Team will meet to develop a disposal plan that will be added to the life cycle plan. A method of disposal is chosen because assets, especially physical assets, can still offer value from resale, remarketing (selling back to the Supplier), or even donation to social organizations or international postal partners.

There are a number of ways for the Postal Service to dispose of assets, which are summarized in the Dispose topic of the Implement Investment Recovery Plan task of Process Step 6: End of Life.

### **Other Topics Considered**

Develop Life Cycle Support Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Dispose topic, Investment Recovery task, Process Step 6: End of Life

## **Develop, Finalize, and Implement Inventory Control Plan**

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Inventory is used to ensure the availability of materials required in successive stages of the supply chain. However, inventory represents an invested cost that adds no direct value to the product being produced and therefore can be a significant contributor to the total cost of ownership (TCO). While inventory is sometimes necessary to smooth the step between sources and use, it should be minimized wherever it will reduce the TCO. This risk should be managed through speed and flexibility, not quantity. Caution should be exercised by the Purchase/SCM Team to avoid simply pushing inventory responsibilities back to the Supplier because this may in fact increase the overall costs and risks.

Where inventory is appropriate (e.g., Supplier or Postal Service centralized, regional, Districts, or stockrooms), an inventory control plan aids in managing inventory (material on hand to support requirements), so the range (number of items) and depth (quantities) of inventories are kept to a minimum level necessary for effective Client support. Again, the focus needs to be on speed and flexibility, not quantity.

The development, finalization, and implementation of the inventory control plan informs decisions on:

- Stocking — what and how much
- Stock replenishment — when and how much to order
- Disposal of excess stock
- Inventory control standards

Cost-effective and feasible arrangements that place the risks and related expenses of inventory on non-Postal sources of supply, including direct delivery contracts or just-in-time (JIT) purchasing, should always be considered. JIT is a management philosophy that strives to eliminate sources of manufacturing costs by having the right part in the right place at the right time. Where direct delivery or JIT approaches are used by the Purchase/SCM Team, the Team must work with the Supplier to optimize the Supplier's inventory costs.

The following elements can be applied to every level of inventory:

- Develop inventory control plan
- Ascertain stocking decision factors
- Classify demand-based and non-demand-based items
- Provisioning
- Stock positioning
- Repairable management
- Stockroom management

## **Develop Inventory Control Plan**

Development of the inventory control plan includes the following activities:

- Ascertain stocking decision factors
- Classify demand-based and non-demand-based items
- Systems for the reorder process
- Create steps for conducting replenishment
- Establish steps for asset tracking and reporting
- Choose possible methods for investment recovery
- Form inventory control standards

## **Ascertain Stocking Decision Factors**

Questions that aid in determining factors surrounding stocking decisions are:

- How critical is the material to Postal operations (e.g., will the lack of the material delay processing or cause a loss of revenue)?
- What are the supply and demand patterns (e.g., is there enough demand to stock the item; can inventory be built up in anticipation of future demand)?
- Is the item expensive or fragile, does it have a short shelf life, or is it otherwise particularly prone to loss (stocking is costly in these instances)?
- Do market sources dictate the amount of inventory stocked (e.g., an oversupply of items may need to be stocked when suppliers no longer carry items that are needed to support operations or for commodities traded on a worldwide market or when inventory can be purchased to hedge against expected higher prices)?
- Do quantity discounts; reduction in shipping, clerical, or setup costs; and other possible cost savings or benefits of carrying quantities greater than needed outweigh increased inventory costs (e.g., item, carrying, ordering, stock-out, and capacity-related costs)?
- How long will it take to get the material (a short lead time often means that stocking can be minimized or even eliminated)?

- Is storage space available to handle the material (Postal or commercial)?

## **Classify Demand-Based and Non-Demand-Based Items**

The items can also be classified as “demand-based” or “non-demand-based.” Demand-based items are stocked at the local level because they have demonstrated sufficient past demand history to warrant stocking under specified Postal Service demand frequency thresholds. At the wholesale level (centralized storage/distribution), high demand makes an item a good candidate for direct supplier delivery or JIT distribution. The economics of large quantity over time makes it feasible for the Supplier to produce on a stable plan and to make regular shipments. The result stabilizes the Supplier resource needs and cash flows. Requisitioning or demand frequency provides information on the continued stocking of an item. If a stocked item does not have the appropriate frequency, it becomes a candidate to be dropped from inventory.

Non-demand-based items are items stocked because of their importance to the Client or because the items have been proven to be less costly to stock than not to stock. There are two types of non-demand-based items: insurance and critical. Insurance items are a component, a subassembly, or assembly that has a very low mortality rate, is infrequently used, and is stocked as insurance against a lengthy lead time or pipeline delay. Critical items are items that, if not available when needed, will impact the ability of the installation to perform its mission; they can also be items on hand for personnel health and safety. The installation determines which items are critical. The items must be cataloged (identified and classified as “non-demand”) so more management attention can be given to them.

## **Provisioning**

Provisioning is the process of determining how the materials required by Postal Service activities should be provided. It includes characterizing the items (e.g., as capital, expense, sensitive, repairable, hazardous, and even centrally or locally acquired). Provisioning looks at the criticality of the item to the process being supported, the anticipated failure rates and resultant demand patterns, and the lead time to reacquire. The models and processes for this analysis are done by SM Operations in cooperation with Maintenance Policies and Procedures. The result is a listing of items and quantities that will be:

- Centrally purchased and distributed to each level of Postal Service storage or
- Identified for repair (internal or commercial) vs. new purchase or
- Coded for local purchase as required



## Stock Positioning

Stock positioning uses the information gathered for the provisioning process and applies it to where material should be optimally placed to meet activity requirements. It considers criticality, maintainability factors, and the cycle times to get the material from storage points to the use location. Key to this analysis is that speed of delivery can offset the need for larger quantities of inventory, but this needs to be based on the potential effect each alternative has on the TCO (e.g., we can reduce the quantity of local inventory, but if that increases the user downtime and costs or results in a revenue loss, then this decision is not the best TCO for this supply chain situation).

## Reparable Management

Reparables are a category of parts with characteristics that show the item to be cheaper to repair rather than buy new. These may be distinct items, such as a 50-horsepower motor or a module with replaceable components. The following are questions that should be addressed when dealing with reparables:

- Can the most common faults be repaired more economically than replacing the whole unit?
- At what level should the repairs be done (e.g., on equipment; off equipment, but on-site; or off-site)?
- Who should do the repairs? (This is obviously related to the “where” decision, but also extends to whether it should be repaired via the (prime) Supplier, the original equipment manufacturer (OEM), or a third-party provider.)
- What processes should be followed to supply the reparable, get the return (a form of reverse logistics), and get it repaired and returned to ready-for-issue status?

## Stockroom Management

Postal Service storage and stockroom space management is a complicated undertaking, involving a variety of skills and disciplines, because each storage operation must be carefully planned and designed. Stockrooms must provide services and controls that are most effective and efficient for the task at hand and for the Postal Service as a whole. Sophisticated techniques are used to design and organize storage areas, and equally sophisticated locator systems are used to permit quick and accurate identification of material whereabouts. Storage space management serves the purpose of constantly monitoring, reporting, and controlling storage space that represents a significant Postal Service investment.

Definitions:

- Stockroom — any formal location where the Postal Service stores and issues materials.
- Storage Space — the physical area where supplies, equipment, products, and parts are placed prior to issuance to the user. This

space includes areas for administrative support of receipt, storage, and issuing functions or can be located in another space, room, or even facility.

- Management — the supervision and maintenance of stockroom and storage space areas.

A variety of tools and processes are used within the Postal Service for the organization and management of stockrooms and storage space: for example, Material Distribution/Inventory Control System (MDIMS), electronic Maintenance Activity Reporting System (eMARS), Vendor-Managed Inventory (VMI), and vendor consignment inventories (VCI). The Item Manager should be consulted for guidance and assistance in setting up these facilities. The Item Manager and the Purchase/SCM Team should refer to the following handbooks:

- Handbook AS-701, *Material Management*
- Handbook F-1, *Post Office Accounting Procedures*
- Handbook MS-63, *Maintenance Operations Support*
- Handbook PO-701, *Fleet Management*

## Stocking Decisions

Any cost-effective and feasible alternatives to stocking items should always be considered. This includes systems contracts, just-in-time purchasing, or other arrangements that place the risks and related expenses of inventory on non-Postal sources of supply.

Demand-based items are stocked because they have demonstrated sufficient past demand history to warrant stocking under specified demand frequency thresholds. Non-demand-based items are items stocked because of the items' importance to the Client or because the items have been proven to be less costly to stock than not to stock. Stocking decisions are addressed in greater detail in the Develop, Finalize, and Implement Inventory Control Plan topic of the Manage Demand task of Process Step 5: Measure and Manage Supply.

## Positioning

Not all items are stored in the main stockroom. Sometimes it is more advantageous for items to be stored in other locations. The decision on where to place items is called "positioning." Locations to store material include:

- Centralized locations — national or regional storage areas positioned to provide timely, but cost-effective services to supported areas.
- Plant or facility locations — stockrooms and storage space in direct support of a specific site.
- Remote locations — located away from the main stockroom.
- Satellite locations — consist of predetermined quantities of parts and supplies located in Postal Service installations for distribution

to a repair activity away from the main stockroom. These can be fixed locations or mobile stock locations.

## Systems for the Reorder Process

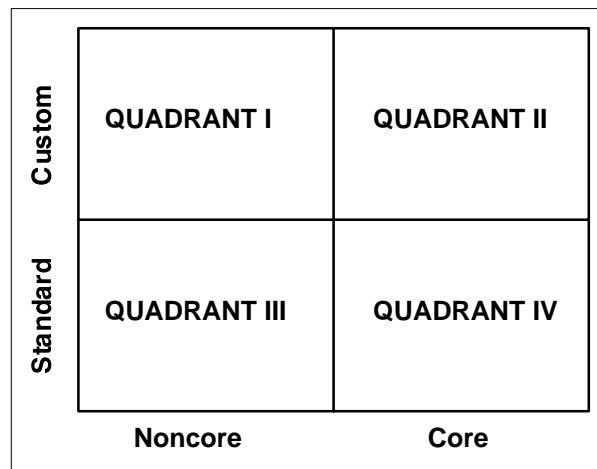
The Postal Service uses a variety of systems to determine the asset quantities at which a replenishment action is placed. Although some of these systems utilize complex forecasting tools and techniques, at its simplest level, stock is replenished using a reorder point (ROP) process also known as the “perpetual inventory system.” The computer system in use tracks on-hand and on-order real assets. This figure is compared with a calculated asset balance at which the combined ordering, fulfillment, and shipment times would indicate an order should be placed. When assets are at or below a certain ROP, a quantity is reordered to replenish the stock, based on authorized stock levels. In theory, when assets are at the ROP, the stockroom holds just enough stock to cover predicted usage while the order is being processed and shipped, plus emergency stocks.

## Quadrant Approach

A quadrant approach (see Figure 5.5) classifies Postal Service purchases into four categories, depending on their impact on the Postal Service core competencies (noncore versus core) and complexities (standard versus custom). Depending on the quadrant, the stocking decisions, replenishment, and disposal of inventory will be structured differently.

Figure 5.5

### Quadrant Approach



### Quadrant I: Custom/Noncore Purchase

These items contribute significant supporting capability to the Postal Service and are considered specialized. The stocking decisions should take into account that specifications for requirements change, which may cause the current stock to be oversupplied and have to be removed. Care should be taken not to overstock items.

### **Quadrant II: Custom/Core Purchase**

These items create direct value for the end Client; examples include specialized software and critical raw materials. In these cases, items should be readily stocked so they can be accessed quickly because they are pertinent to Postal Service operations. Stocking decisions should reflect the continual search for innovation in form and usage to provide a consistent stream of new opportunities to build a competitive advantage.

### **Quadrant III: Standard/Noncore Purchase**

These items are essential to support the business infrastructure, but do not relate or provide value to the end Client. The Supplier frequently manages the complete supply chain process, in addition to supplying the product or service.

### **Quadrant IV: Standard/Core Purchase**

These items create value for the end Client, but do not need to be customized exclusively by the Postal Service. Just-in-time (JIT) purchasing is an option in Quadrant IV.

### **Other Topics Considered**

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Administration task, Process Step 3: Select Suppliers

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Investment Recovery task, Process Step 6: End of Life

## **Implement Investment Recovery Plan**

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An investment recovery plan outlines how to identify, reuse, sell, or dispose of surplus and/or idle supplies. Investment recovery can generate significant revenue and create cost savings, allowing the Postal Service to reduce waste and increase revenue.

The investment recovery plan is first developed in the Develop Preliminary Investment Recovery Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources and is finalized in the Finalize Investment Recovery Plan topic of the Plan for Contract Management task of Process Step 3: Select Suppliers.

Implementation of the plan will guide and outline the activities associated with, and performed during, the Investment Recovery task of Process Step 6: End of Life. Implementing the investment recovery plan is the act of establishing as practice the previously planned activities associated with measuring and managing supply. The Item Manager is responsible for

measuring and managing supply, the process essential to maintaining the appropriate levels of inventory to fulfill customer demand (or lack thereof). The Client is also responsible for implementing the inventory control plan, in conjunction with the Item Manager.

By this stage of the process, a final removal decision has been made by the Client regarding discontinued products, outdated products, inoperable equipment, and excess inventory, in accordance with the finalized investment recovery plan and the quadrant approach. The entire Purchase/SCM Team is involved in investment recovery; the Item Manager and Client must consult the Contracting Officer, Market Analyst, and Pricing Analyst for their insight, input, and advice regarding storage space, hidden costs, external demand, and the current value of surplus.

The essential components that ensure best value and facilitate investment recovery pertain to actualizing the final removal decision. Investment recovery is addressed by the following methods:

- Recycle — the “scrapping” of an asset that can no longer perform its intended function, cannot or should not be repaired, and cannot be sold as surplus
- Reallocate — the actual relocation and redeployment of a material
- Resell — the financial transaction of selling a material on the open market
- Remarket — the selling of a surplus material back to the Supplier
- Return — the nonfinancial transaction of providing surplus material (e.g., delivery and industrial equipment) to the Supplier for a credit
- Remanufacture — the use of components of a material, alone or combined with others, to create a new material or product (e.g., mail transportation equipment and spare parts)
- Remove — the process of disposing of surplus material (e.g., old office furniture)
- Donate — the donation of assets to another organization

## **Recycle (Scrap)**

Recycling surplus reduces the impact of Postal Service operations on the environment. The Client decides which assets no longer perform their intended function, cannot or should not be repaired, cannot be sold as surplus, and therefore will be “scrapped.” The Client then must consult the Market Analyst and the Pricing Analyst regarding the value of the scrap material collected, as determined by volume and geographical location of the scrap (relative to the proximity of dealers and the ease and efficiency of the collection process). The following five factors determine the degree of success of a recycling (scrap) management program:

- Current market for the particular material
- Type of material (e.g., ferrous or nonferrous)

- Condition of the material (e.g., mixed, sorted, clean)
- Quantity of the material
- Involvement of a knowledgeable process manager

When it is decided that identified surplus will be recycled (scrapped), supplies will be collected and relocated to a scrap dealer. The Client determines how this surplus will be physically relocated to the dealer (e.g., send to, or require removal by the new owner of the material).

## **Reallocate (Relocate and Redeploy)**

Reallocating identified surplus is the actual relocation and redeployment of a material. Reallocation puts the material to work as part of its lifespan and avoids the cost of purchasing. Although a material may no longer fulfill the purpose for which it was originally purchased, it still can fulfill other purposes useful to the Postal Service. The Purchase/SCM Team will determine when and where specific materials are fruitful to more than one project or use and convey this information to the Item Manager and the Client. For reallocation to become a successful reality, the Purchase/SCM Team must communicate closely with any potentially concerned parties.

When it has been decided that identified surplus will be reallocated, supplies will be redeployed and relocated to a new Client with an identified need for the surplus. This puts the material to work as part of its lifespan, albeit for a different Client. To implement the final decision to reallocate, there must be the need and the space.

## **Reallocate on eBay: Excess Item Catalog (EIC)**

All eBay users have the ability to enter excess items into the Excess Item Catalog (EIC) located in the eBay purchasing system. The purpose of EIC is to promote the redistribution of excess assets and to defer the cost of buying new equipment. EIC is a form of reallocation in which items no longer in use by the Client are leveraged by a new Client and is, therefore, applicable to investment recovery. However, EIC is not applicable to the investment recovery plan (as developed in the Develop Preliminary Investment Recovery Plan topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources) because the items are catalogued and not immediately used (and may never be used). Only items that are known to fulfill the future need of another Client can be addressed by the investment recovery plan. Obsolete items can be put on EIC by the Client, but there is always the risk that these items will not be leveraged in the future. EIC is available through eBay: <http://ebuy.usps/jsp/co/Login.jsp>.

## **Resell**

Reselling surplus materials is the financial transaction of selling a material on the open market. Reselling generates revenue that improves short-term cash flow. Potential revenue will be determined through market research. Reselling is also appropriate for a forward auction, the traditional auction used when organizations want to sell off excess inventory, machinery, or equipment that

is no longer in use to maximize revenue (which is discussed in the Auction topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources).

If the identified surplus will be resold, the Market Analyst must be consulted to determine the value of a specific product. Data rights and intellectual property issues may need to be considered in the resale of property such as computer software. Additional information on data rights can be found in the Clarify Data Rights and Intellectual Property Issues topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## **Remarket (Resell to Supplier)**

Suppliers frequently buy back used equipment to protect proprietary technology and prevent competition from being able to sell identical material. Potential revenue realized by remarketing will be compared with potential revenue realized by reselling. After a price analysis has been conducted, the results will be communicated to the Client, and a plan will be selected.

Effective remarketing usually requires an advanced agreement between the Postal Service and Supplier. This agreement should be included in the contract's terms and conditions.

## **Return**

The return of material should be addressed in the contract. When a return takes place the supplier will give the Postal service a credit.

## **Remanufacture**

Except for locks, manufacturing is not a core competency of the Postal Service, so remanufacture may be a rare solution for the disposal of surplus and idle assets. Remanufacture would be appropriate when a "make" decision has been made by the Purchase/SCM Team, a product will be created internally, and these surplus or idle assets can be leveraged to reduce the costs associated with the new product or service. The decision to remanufacture will lead to the utilization of surplus to strategically make in-house another product at the Postal Service, as outlined in the Conduct Make vs. Buy Decision Analysis topic of the Decide on Make vs. Buy task of Process Step 1: Identify Needs.

## **Remove**

Disposal is often costly, but the costs of disposal in the long run can be reduced or negated. Potential savings are determined by a total cost of ownership (TCO) analysis, the analysis of the total cost incurred over the life cycle of an item, encompassing development, purchase, use, maintenance, support, and disposal. The decision to remove identified surplus is made if it is determined to be more economical than other methods by the Pricing Analyst. The Item Manager must consult the Contracting Officer when removing items because Supplier involvement is sometimes required.

The Postal Service environmental policy, as stated in Handbook AS-550, *Recycling Guide*, and Handbook AS-552, *Pollution Prevention Guide*, must be incorporated into procedures governing material redistribution, recycling, and disposal.

## Donate

If the Postal Service has determined that goods have no residual value and if their disposal is unlikely to produce any revenue, the Postal Service may authorize the donation of the assets to another organization. Such donations should be to nonprofit organizations, state agencies, or public bodies and not to individuals. Organizations can include schools, charities, and volunteer organizations. Donations must be approved by the Life Cycle Management Team, and it must be confirmed by the Market Analyst that the assets have no significant market value.

## Other Topics Considered

Conduct Market Research and Benchmarking Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Conduct Make vs. Buy Decision Analysis topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Consider Auctions topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Management task, Process Step 3: Select Suppliers

Investment Recovery task, Process Step 6: End of Life

## Execute Quality Assurance Plan (QAP)

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Managing project quality assures that a product or service under contract meets the Client's quality requirements. Quality assurance (QA) is defined as the evaluation of overall project performance on a regular basis to provide confidence that the project will satisfy the relevant quality standards. The goal of QA is to provide the Client with appropriate visibility into the "health" of the contract, with respect to quality objectives.

A quality assurance plan (QAP) is a component of the purchase plan outlined in the Develop Purchase Plan and Best Value Parameters topic of the Prepare Project task in Process Step 2: Evaluate Sources. The purchase plan provides the overall strategy for accomplishing and managing a purchase. The QAP describes the strategy and methods the project will



deploy to ensure that the contract and its deliverables are on track to meeting Client requirements.

The QAP is an important component of delivery and performance management because it is the shared understanding between the Client, the Purchase/SCM Team, and the Supplier on both how to measure and monitor quality and how to determine and implement corrective actions. By adhering to the QAP, the project is one step closer to delivering the highest-possible-quality result within available resources, schedule, and budget.

## **Develop the Quality Assurance Plan (QAP)**

The Client works closely with the Quality Assurance Team to carry out a contract's QA activities. The Quality Assurance Team is often made up of members of the Purchase/SCM Team and reports to the both the Client and the Contracting Officer.

Each project should have some form of QAP. The complexity and formality of the plan should be scaled according to the size and potential risk of the project. The Quality Assurance Team drafts the QAP and submits it to the Client for review and approval.

The QAP addresses both key project processes and project deliverables. The QAP establishes clear and specific criteria for defining quality at each key checkpoint and for each deliverable. The QAP should include a surveillance schedule and clearly stated surveillance method(s). Surveillance can range from a one-time inspection of a product or service to periodic in-process inspections of ongoing product or service delivery. It also clearly states review method(s), the chain of reports, and plans for corrective actions.

Basic quality requirements are addressed in 4-1: General Terms and Conditions. However, Clause 2-2: Quality Management Systems should be included in supply or service contracts when the supplies or services being purchased are extensive, complex, or unique and the Postal Service requires that the Supplier maintain a quality management system. Clause 2-1: Inspection and Acceptance may be included in contracts for supplies or services; however, Clause 2-1 and Clause 2-2 should *not* be included in the same contract. Clause 2-23: Reimbursement — Postal Service Testing must be included when Clause 2-1 or Clause 2-2 are included in the contract.

## **Execute the QAP**

Independent and regular evaluations of project performance provide the confidence that the project is progressing in a satisfactory manner. These reviews monitor the effectiveness of project processes and pinpoint project risks. The Quality Assurance (QA) Team documents quality assurance reviews using quality assurance reports to indicate status and make recommendations. Because minimizing risk is an integral part of quality management, the Contracting Officer, who is responsible for risk management on the project, should ensure that risk management reviews parallel quality assurance reporting intervals specified in the QAP.

Quality assurance reviews take place at the checkpoints cited in the QAP. Reviews include separate interviews with the Client, Supplier, members of the Purchase/SCM Team, and other project stakeholders. Evaluation criteria and approval authority have been outlined in the QAP, which should be revisited by the Quality Assurance Team with the review participants.

Upholding quality standards is a team effort. The Client, Supplier, and Purchase/SCM Team share joint responsibility with the QA Team for executing the QAP. Critical success factors to executing the QAP include:

- The Client, Supplier, and Purchase/SCM Team abide by decision-making structures and processes for advising corrective actions and implementing QA recommendations in a timely manner.
- QA recommendations are addressed at the appropriate level.
- Involve independent QA staff early in the project; this will allow time for them to develop project knowledge and prepare for an integrated review process.
- Client and Purchase/SCM Team invite QA representation at key meetings, site visits, and project activities.
- The Client and Purchase/SCM Team address points of risk identified in QA reports in a timely manner, using the risk management plan to assess risk trends and evaluate recommendations and risk mitigation strategies.
- Respond quickly to implement QA recommendations or revise processes.
- Maintain thorough and accurate documentation of all inputs and outputs of the processes, reporting, tracking, recommendations, and corrective action activities
- QA review should help channel communications among the Client, the Purchase/SCM Team, and the Suppliers. A three-way feedback mechanism will alert participants to early signs of risks and avoid costly corrections later in the project.
- Document lessons learned to use for reviews on the Postal Service intranet knowledge site.

## **Other Topics Considered**

Manage Risks topic, Decide on Make vs. Buy task, Process Step 1: Identify Needs

Develop Purchase Plan and Best Value Parameters topic, Prepare Project task, Process Step 2: Evaluate Sources

Consider Performance-Based Contracting Arrangements topic, Develop Sourcing Strategy, Process Step 2: Evaluate Sources

Acceptance topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

## **Clauses & Provisions**

Clause 2-1: Inspection and Acceptance

Clause 2-2: Quality Management System

Clause 2-23: Reimbursement — Postal Service Testing

Clause 4-1: General Terms and Conditions

## **Evaluate Contract Effectiveness**

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Evaluation of Postal Service contract effectiveness is an assessment of whether the contract met the identified needs and expectations of the Client. It also addresses how the contract has generated revenue or loss and determines what corrective action needs to be taken to prevent future losses, if any. It is critical for the Postal Service to ensure that all deadlines are being met as scheduled. Contract performance information is used by the Postal Service for future purchases to guarantee that the proper investments are being made and that best value has been obtained.

### **Supplier and Subcontractor Contracts**

Contract effectiveness evaluations help to ensure that all Suppliers and Subcontractors are performing in a satisfactory manner. Contract effectiveness information is also used by the Postal Service for follow-on purchases, to guarantee that only the top performers are considered. Additional information can be found in the Perform Risk Analysis on Supplier Proposals topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources.

### **Postal Service Performance**

It is critical for the Postal Service to evaluate its contract management. Evaluating contract management is an assessment of how the Postal Service has managed a contract, including:

- How did the Postal Service's behavior during the initiative hinder or help the completion of the project?
- How well did the Supplier (including Subcontractors) perform, and was there a positive response to the Postal Service?
- Did the contract generate revenue or loss, and what corrective action needs to be taken to prevent future losses, if any?

### **Performance Evaluation Team**

The Performance Evaluation Team evaluates both the Supplier's performance and the Postal Service's management of the contract. Members should be from the Purchase/SCM Team, other Postal Service specialists (e.g., Financial or Legal Counsel), or external experts. Depending on the characteristics and complexity of the purchase, the Performance Evaluation Team may consist of the Purchase/SCM Team, or may incorporate other

stakeholders and individuals as appropriate. Ideally, those involved will have previous experience working with Postal Service contracts of a similar nature, scale, and complexity.

It is the responsibility of the Performance Evaluation Team to evaluate contract effectiveness. Depending on the contract, the Performance Evaluation Team may choose to focus on the factors that are critical to the overall success of the contract when evaluating Supplier and Subcontractor performance, such as:

- Adherence to schedules — this is the project's planned start and finish date; all commitments are to be met on the agreed-upon due date
- Forecasting/controlling costs — an assessment of the costs associated with the contract; keeping within the budget
- Overall satisfaction — Postal Service evaluates how satisfied it is with the Suppliers

Contract effectiveness evaluations are conducted at the discretion of the Performance Evaluation Team, which serves as an incentive for Suppliers to maximize their performance and Client satisfaction. Evaluations of contract effectiveness become part of the Supplier's contract performance history, and they should be readily available on an ongoing basis. Evaluations are readily accessible on an internal basis, and this information may be leveraged for future contract award considerations.

## **Performance Indicators**

Indicators are specified to monitor performance of the contract requirements. Target performance measures are assigned for each indicator and are the basis for determining whether the contract is providing the best value for the Postal Service. The performance work statement (PWS), statement of work (SOW), or statement of objectives (SOO) describes the effort in terms of measurable performance standards (outputs). A quality assurance plan (QAP) is used to determine whether the Postal Service is meeting the applicable contract requirements. Additional information can be found in the Start Request for Proposals (RFP) Development topic of the Prepare Project task of Process Step 2: Evaluate Sources and in the Execute Quality Assurance Plan topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

Performance standards establish the required performance level for Postal Service contracts. Correspondingly, the target measure establishes a maximum allowable error rate or variation from the standard. Failure to perform within this target results in an examination of whether the contract is beneficial to the goals and objectives of the Postal Service. Examples of standards include quality of work, productivity, and cost-efficiency. The Purchase/SCM Team should ensure that each standard is necessary and carefully chosen.

## **Quality Assurance Plan (QAP) and Examination**

A quality assurance plan (QAP) directly corresponds to the performance standards and measures contract performance. The QAP ensures that the Client receives the quality called for in the contract and pays only for what is received. The QAP should include an examination schedule and clearly stated examination method(s). Examination allows the observation of contract-related activities to ensure that the Supplier is performing satisfactorily.

Ongoing inspections are recommended, and discussions regarding performance should be held with the Supplier frequently. The Contracting Officer is responsible for engaging the Supplier in dialogue and offering opportunities for improvement and explanation as problems arise. Substandard quality levels mandate corrective action, and the Contracting Officer will establish deadlines by which corrective action must be taken. Ineffective or problematic contract performance should be identified on an ongoing basis.

When the Performance Evaluation Team collects and rates data pertinent to contract performance, the Supplier should be given access to the data collected and have the opportunity to explain, clarify, or rebut negative information.

## **Other Topics Considered**

Start Request for Proposals (RFP) Development topic, Prepare Project task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Perform Risk Analysis on Supplier Proposals topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Execute Quality Assurance Plan topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## **Clauses & Provisions**

Clause B-18: Subcontracts

## Contract Modifications

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There are two types of contract modifications:

1. Bilateral modifications (supplemental agreements) that are signed by both the Supplier and the Contracting Officer. Bilateral modifications include modifications to:
  - Make equitable adjustments under Paragraph C of Clause 4-1: General Terms and Conditions, Clause B-37: Changes (Construction), or other clauses providing for equitable adjustment
  - Reflect other agreements of the parties modifying contract terms
2. Unilateral modifications are signed only by the Contracting Officer in accordance with a contract clause. Unilateral modifications include modifications to:
  - Make administrative changes (unilateral changes, in writing, that do not affect the substantive rights of the parties, such as a change in the paying office)
  - Issue change orders
  - Make changes authorized by specific clauses or contract provisions (such as exercising an option or suspending work)
  - Issue termination notices

Except for certain mail transportation contracts, only Contracting Officers are authorized to sign contract modifications for the Postal Service. Other Postal Service personnel may not:

- Act in a manner that causes the Supplier to believe they have authority to bind the Postal Service
- Direct or encourage the Supplier to perform work that should be covered under a contract modification

Contract modifications, including changes that can be issued unilaterally, must be priced before they are signed if it can be done without adversely affecting the interest of the Postal Service. If a significant cost increase could result from a contract modification and time does not permit negotiating a price, at least a maximum price must be negotiated whenever practicable.

### Effective Dates

The effective date of an administrative change, change order, or other unilateral modification issued by the Postal Service is any effective date established in the contract or, if none, the date of the modification. The effective date of a bilateral modification (such as a supplemental agreement) is any effective date established in the contract or, if none, the date agreement is reached (usually the date signed by the last agreeing party).

Modifications issued in connection with previous directions or agreements, such as settlements of the cost of changes, confirmations of terminations, or conversions of terminations for default to terminations for convenience, ordinarily take the effective date of the underlying action. For modifications converting a termination for default to a termination for convenience, the effective date will be the same as the effective date of the termination for default.

## **Notification of Contract Changes**

Under Paragraph C of Clause 4-1, or Clause B-37, Changes (Construction), when the Supplier considers that any written or oral order (including a direction, an interpretation, an instruction, or a determination) from the Contracting Officer causes a change in the contract, the Supplier must notify the Contracting Officer in writing that the Supplier regards the order as a change order. The Contracting Officer must then evaluate the order, notify the Purchase/SCM Team of the findings, and:

1. Confirm that it is a change, direct further performance, and plan for its funding
2. Countermand the alleged change
3. Notify the Supplier that no change is considered to have been ordered

## **Availability of Funds**

The Contracting Officer may not execute a contract modification that causes or will cause an increase in funds without having first met with the Purchase/SCM Team and obtained a certification of funds availability, except for modifications to contracts that:

1. Are conditioned on availability of funds
2. Contain a limitation of cost or funds clause

The certification of funds availability should be based on the negotiated price. Modifications signed before there is price agreement may be based on the best available estimate.

## **Exercise of Options**

The exercise of options and associated thoughts, considerations, and concerns are discussed in detail in the Consider of Use of Renewals and Options topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, as well as in Decide to Renew a Contract or Exercise Options topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

## Correcting Mistakes

A contract may be modified to correct or mitigate the effect of a mistake.

Examples are:

- A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it
- A Supplier's mistake so obvious that it was or should have been apparent to the Contracting Officer
- A mutual mistake concerning a material fact (particularly, mistakes concerning the promises the parties made to one another under the contract)
- A claim of mistake that is asserted after contract award, and a decision to deny a claim of mistake asserted after contract award, in whole or in part, is handled under the procedures of Clause B-9: Claims and Disputes.

## Change Orders

Paragraph C of Clause 4-1: General Terms and Conditions and Clause B-37: Changes (Construction) allow the Contracting Officer to make unilateral changes, as specified in the clause, within the general scope of the contract. These changes are accomplished by issuing written change orders.

The Supplier must continue performing under the contract as changed, except under contracts that are not fixed-price or incrementally funded where the Supplier is not obligated to continue or incur costs beyond the limits established in Clause 2-31: Limitation of Cost, or Clause 2-32: Limitation of Funds.

The Postal Service uses the established accounting procedures when analyzing the price or cost of changed work.

## Administration of Change Orders

When change orders are not priced before performance, they usually require two documents: (1) the change order and (2) a supplemental agreement reflecting an equitable adjustment for the change order. If an equitable adjustment in the contract price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued. If the change order has no effect on price or delivery, no equitable adjustment or supplemental agreement is needed. Administrative changes and changes issued under a clause giving the Postal Service a unilateral right to make a change (such as an option clause) require only one document.

Contracting Officers must promptly negotiate equitable adjustments resulting from change orders, and must follow up when claims for equitable adjustment are not received within 30 days after the order. Before negotiating an equitable adjustment, the Contracting Officer must ensure that price and cost analyses, as appropriate, are made and must consider the Supplier's segregable costs of the change, if available. If additional funds are required



as a result of the change, the funds must be available before the supplemental agreement is signed.

To avoid controversies that may result from a supplemental agreement making an equitable adjustment, the Contracting Officer should:

- Ensure that all elements of the equitable adjustment have been presented and resolved
- Include a release of claims in the supplemental agreement

## **Equitable Adjustments for Delays**

In determining the consequences of events that delay performance, the United States Court of Federal Claims and the Postal Service Board of Contract Appeals have applied general risk-allocation principles. These have been supplemented by standard contract clauses under which the time and cost effect of delays are dealt with separately. Clause B-19: Excusable Delays deals with the types of events that protect the Supplier from sanctions for late performance. Other clauses, such as Clause B-16: Suspensions and Delays, cover the recovery of costs associated with delays. The Supplier bears the risk of schedule and cost effects for delays it causes or for delays within its control. Generally, the Supplier is excused from nonperformance due to delays caused by factors for which neither the Supplier nor the Postal Service is responsible. However, the Supplier must bear the cost impact of such delays. The Postal Service is responsible for the schedule and cost effects of delays it causes, delays that are under its control, or delays for which it has agreed to compensate the Supplier. Clause B-15: Notice of Delay requires the Supplier to notify the Contracting Officer of problems that might delay performance. Paragraph S of Clause 4-1: General Terms and Conditions incorporates by reference each of these clauses.

## **Excusable Delays**

A Supplier may be granted an extension of the delivery or performance schedule for an excusable delay.

A Supplier's failure to perform may be considered an excusable delay when it arises out of either:

- Causes beyond the control and without the negligence of the Supplier — including the following:
  - Acts of God or the public enemy
  - Acts of the government in its sovereign capacity or the Postal Service in its contractual capacity
  - Fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather
- A subcontractor default due to causes beyond the control and without the fault or negligence of both the Supplier and the subcontractor, unless the supplies or services were obtainable from another source in time to permit the Supplier to meet the delivery schedule

## Compensable Delays

A Supplier may be granted an extension of the contract delivery or performance schedule, a price adjustment, or both, as the Purchase/SCM Team, represented by the Contracting Officer, deems appropriate, when an unreasonable delay in performance is caused by the Postal Service or is under its control, or when it has agreed to pay the Supplier for the delay. Situations that may entitle the Supplier to an equitable adjustment (schedule, cost, or both) include:

- Delay in issuing the notice to proceed
- Delay in availability of the site
- Differing site conditions
- Actual or constructive changes or delays
- Delay in providing funding
- Delay in inspections
- Delay in issuing changes
- Delay in providing Postal Service-furnished equipment
- Failure to perform by other Postal Service suppliers

The Supplier has the burden of proof in establishing the basis for the equitable adjustment required to overcome the delay. When a delay is attributable to both the Postal Service and the Supplier, a contract delivery or performance schedule adjustment should not normally be granted for a period of delay caused at least in part by actions or failures on the part of the Supplier. However, damages may not be assessed against the Supplier in these situations.

## Acceleration of Performance

The Postal Service has the right to require accelerated performance under Paragraph C of Clause 4-1. This right should be exercised only when required to maintain the operational capability of the Postal Service. Contracting Officers must document the specific facts that require acceleration of performance and the estimated impact on contract price. Whenever possible, the Contracting Officer must negotiate acceleration actions in advance. Contracting Officers should be alert to constructive acceleration situations. Constructive acceleration occurs when the Postal Service does not agree to a delivery or performance schedule extension to which the Supplier is entitled (or is later determined to be entitled), causing the Supplier to accelerate performance. It is important to note that constructive acceleration may result in a claim for a price increase.

## Novation Agreements

Novation agreements are agreements signed by the Supplier (the “transferor”), the successor in interest (the “transferee”), and the Postal Service, by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Postal Service recognizes the transfer of the contract and

related assets. The Postal Service generally prohibits contract novation (see Paragraph B of Clause 4-1). However, the Postal Service may recognize a third party as the successor in interest when that party's interest arises out of the transfer of:

- All the Supplier's assets
- The entire portion of the assets involved in performing the contract

Situations in which novation may be permitted include, but are not limited to the following:

- Sale of the Supplier's assets with a provision for assuming liabilities
- Transfer of assets as part of a merger or corporate consolidation
- Incorporation of a proprietorship or partnership, or formation of a partnership

The Contracting Officer is responsible for determining, in consultation with Legal Counsel, whether to permit contract novation. Before concurring in a contract novation, the Contracting Officer must determine the capability of the successor in interest. If it is not in the Postal Service's interest to concur in a contract novation, the "original supplier" remains responsible for performance, and the contract may be terminated for default for failure to perform. In the case that multiple contracts of one supplier, or transfers from several transferors to one transferee are involved, the Contracting Officer responsible for the largest unsettled (unbilled plus billed-but-unpaid) contract dollar balance is responsible for executing the novation agreement.

## **Assignment of Claims**

The Supplier may assign money that will be due under a Postal Service contract to a single bank or other financial institution, with the approval of the Contracting Officer (see Paragraph B of Clause 4-1). Any other attempted assignment may be treated as a breach of contract. Contracting Officers may approve any authorized assignment that does not jeopardize contract performance. The assignment of claims discussed in this topic does not pertain to assignments ordered by a court or law. The Contracting Officer should consult with Legal Counsel in such cases.

## **Change-of-Name Agreements**

Change-of-name agreements are agreements signed by the Supplier and the Postal Service that recognize a legal change of the Supplier without otherwise altering the original contract. A change-of-name agreement is appropriate when only a change of the Supplier's name is involved, and the rights and obligations of the parties remain unaffected. The agreement must be signed by the Contracting Officer and the Supplier modifying all existing contracts between the parties to reflect the name change.

## Other Topics Considered

Consider of Use of Renewals and Options topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources,

Decide to Renew a Contract or Exercise Options topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## Clauses & Provisions

Clause B-9: Claims and Disputes

Clause B-15: Notice of Delay

Clause B-16: Suspensions and Delays

Clause B-19: Excusable Delays

Clause B-37: Changes (Construction)

Clause 2-31: Limitation of Cost

Clause 2-32: Limitation of Funds.

Clause 4-1: General Terms and Conditions (specifically Paragraphs B, C, and S)

## Share Lessons Learned

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Sharing lessons learned regarding the purchase process is a mechanism for the transfer of knowledge among members of the Purchase/SCM Team and Supplier. A lesson learned is not past performance information like that discussed in the Prequalify Suppliers topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. It is a function of project closeout and is an ongoing discussion among the parties to the purchase to determine what was successful and what could have been improved.

Lessons learned can be extended to anyone within the Postal Service who will gain value from the experiences of parties to, and administrators of, a contract. Because effective relationships between the Postal Service and the Supplier are central to the success of a purchase, partnerships and collaboration should be fostered to achieve mutual goals. In sharing lessons learned and by communicating useful information regarding both successful and unsuccessful endeavors, efforts, problems, and accomplishments are identified, resolved, and/or propagated. Effective contribution to the lessons learned forum results from clear and concise communication.

Whether lessons learned should be shared is the decision of the Purchase/SCM Team. Factors that should be considered are the overall effectiveness or lack thereof of the contract, whether the purchase furthered or hindered a major Postal Service program, whether the Purchase/SCM Team employed any innovative purchase practice and the extent of which those purchase practices were successful or unsuccessful, and any other pertinent facts the Purchase/SCM Team feels would benefit other Purchase/SCM Teams.

The main forum for sharing lessons learned is a postcontract performance workshop, facilitated by the Contracting Officer, which is attended by the Purchase/SCM Team and pertinent representatives from the Supplier. The results of the workshop should be posted on the Postal Service intranet knowledge site so that the lessons learned can be perpetually accessed and shared. Sharing lessons learned is the foundation for the topics associated with the Manage the Supplier Relationship task of Process Step 5: Measure and Manage Supply.

Sharing lessons learned is the circulation and transfer of helpful knowledge in an open and descriptive environment and requires:

- Soliciting feedback from the Purchase/SCM Team
- Soliciting feedback from the Supplier
- Soliciting feedback from Subcontractor(s)
- Identifying root causes of problems
- Identifying and suggesting improvements

### **Solicit Feedback from Purchase/SCM Team**

The Client and Contracting Officer must internally generate and circulate findings that assess whether the contract met the identified needs and expectations of the Client. This assessment should also address how the contract has generated revenue or loss and determines whether process improvements are appropriate. Additional information for how to conduct this assessment can be found in the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply.

Contract performance information is used by the Postal Service for future purchases to guarantee that the proper investments are being made for future purchases and that best value has been obtained. The findings should address the following lessons learned:

- Postal Service conduct and self-assessment
- Effectiveness of procedures
- Effectiveness of tools and techniques
- Effectiveness of “as-is” relationship with the Supplier
- Satisfaction with Supplier timeliness
- Necessary personnel skills and capabilities

### **Solicit Feedback from the Supplier**

The Contracting Officer must also generate and circulate findings using the information leveraged from the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply. The findings should regard the following lessons learned:

- Effectiveness of interface between the Purchase/SCM Team and the Supplier

- Supplier opinions regarding project successes
- Supplier opinions regarding project failures
- Supplier suggestions for improvement

### **Solicit Feedback from Subcontractors**

Depending on the particular purchase, the Contracting Officer must also generate and circulate, to postcontract performance workshop participants, findings using the information leveraged from the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply. The findings should consider:

- Effectiveness of interface between the Supplier and the Subcontractor(s)
- Subcontractor opinions regarding project successes
- Subcontractor opinions regarding project failures
- Subcontractor suggestions for improvement

### **Determine Root Cause of Problems**

The Client and Contracting Officer, in conjunction with postcontract award workshop participants, must leverage their collective experiences, expertise, and expectations for the future to analyze the findings generated from the solicited feedback. Once complete, they must reciprocally circulate the analysis to the remainder of the Purchase/SCM Team. Once problems are identified, the root cause is determined, and the Supplier has had the opportunity to respond, the information is recorded and posted to the knowledge site. By determining the reason for difficulties and project failures, the Postal Service can change future actions, plan strategies for enhancement, and gain a competitive advantage. Problems may have various reasons or causes, including:

- Process — policies, processes, procedures, methods, and/or techniques
- Tools and technology — architecture, platforms, physical environment
- Organization — relationship between the Postal Service and the Supplier, assigned roles and responsibilities, formal and informal structures, support functions
- Skills — experience and training necessary to ensure both Postal Service and Supplier personnel capabilities
- Culture and leadership — communication, teamwork, morale, attitudes, beliefs, incentives
- Plans and controls — awarded contract, plans, schedules, measurements

## Identify and Suggest Improvements

Mechanisms and methods that will improve performance will also be explored, and the knowledge generated from sharing lessons learned can be leveraged to identify these mechanisms and methods. All parties involved with contract management and contract performance must successively share lessons learned with relevant quality, method, or process stakeholders who are impacted by the suggested improvements. Sharing lessons learned creates a knowledge chain effect, which is the group process of continually imparting acquired expertise to others so that they too can acquire and share expertise. A continuous improvement process for the sharing of lessons learned and improvement opportunities is laid out in the Continuous Improvement topic of the General Practices.

## Value Engineering

Value engineering is a method of encouraging suppliers to independently develop and propose changes to improve an end item, the way it is produced, or the way a contract is performed. The change must reduce the contract's cost and not impair the essential characteristics or functions of the product or service. Savings are shared by both parties, and the supplier is paid allowable development and implementation costs.

A value-engineering change proposal (VECP) is a proposal that:

- Requires a change to a current contract;
- Results in savings to the contract; and
- Does not involve a change in:
  - (a) Deliverable end items only;
  - (b) Test quantities due solely to the results of previous testing under the contract; or
  - (c) Contract type only.

If the Postal Service accepts a VECP, the Supplier shares in the contract savings based on the negotiated agreement contained in the contract. The contract savings are calculated by subtracting the sum of the estimated cost of performing the contract with the VECP, Postal Service costs, and the Supplier's allowable development and implementation costs from the estimated cost of performing the contract without the VECP. If priced options are included in the contract, those prices will be adjusted in accordance with the above calculation. Profit is excluded when calculating contract savings.

## Noncompetitive Purchases

The Contracting Officer may negotiate a noncompetitive contract or contract modification for an additional quantity incorporating a change proposal when:

- An otherwise acceptable VECP is received too late during performance to provide a significant benefit under the current contract; or
- Additional quantities are required that are not provided for under the contract.

When a supplier who does not have a current contract submits an unsolicited proposal in the form of a VECP, the Purchase/SCM Team may decide to have the Contracting Officer negotiate a noncompetitive contract incorporating the VECP.

## Evaluation

Generally the Purchase/SCM team will evaluate a VECP and either accept it or reject it, in whole or in part, within 45 days of its submission to the Contracting Officer. To expedite the evaluation, suppliers may give oral presentations to the appropriate parties. If evaluating the proposal will take more than 45 days, the Contracting Officer must notify the proposer of the expected decision date. If a proposal is rejected, the Contracting Officer must notify the proposer and explain the rejection.

The supplier may withdraw all or part of a VECP any time before it is accepted by the Postal Service.

## Acceptance

Acceptance of all or part of a VECP and determination of the savings requires the agreement of both parties. Acceptance is accomplished by a supplemental agreement to the contract. If agreement on price is reserved for a later supplemental agreement, but agreement cannot be reached, the matter must be treated as a dispute under Clause B-9: Claims and Disputes.

The Supplier must perform according to the existing contract until a VECP is accepted. The Contracting Officer's decision to accept or reject all or part of a VECP is final and not subject to Clause B-9: Claims and Disputes.

If the Purchase/SCM Team foresees a potential cost reduction through value engineering under subcontracts, additional paragraph j should be added to Clause 2-22: Value Engineering Incentive. If there is a potential for savings through value engineering, Clause 2-22: Value Engineering Incentive, should be included in firm fixed-price contracts of \$100,000 or more, at any time during the term of the contract. However, the clause may not be used in:

- Fixed-price incentive contracts
- Research and development contracts
- Contracts with nonprofit or educational organizations
- Contracts for professional or consultant services
- Contracts for product or component improvement
- Contracts for commercially available goods and services

## Other Topics Considered

Involve Suppliers in Planning topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Prequalify Suppliers topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources



Evaluate Contract Effectiveness topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Continuous Improvement topic, General Practices

## **Clauses & Provisions**

Clause B-9: Claims and Disputes

Clause 2-22: Value Engineering Incentive

## **Decide to Renew a Contract or Exercise Options**

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As discussed in the Consider Use of Renewals and Options topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, the Purchase/SCM Team should consider whether a particular contract should include clauses that will allow the Postal Service to renew a contract or exercise options to purchase additional items or services, once the original term of the contract has expired. The renewal of a contract or the exercise of a contractual option takes place when the Purchase/SCM Team decides that a need is continuing and that maintaining the current Supplier's performance would represent the best value to the Postal Service.

Contracts cannot be renewed and options cannot be exercised unless the current contract contains either Clause B-78: Renewal or the relevant clauses discussed in the Consider Use of Renewals and Options topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. A contract is renewed via modification and the mutual agreement of the Postal Service and the Supplier; contractual options can be exercised unilaterally by the Postal Service or following discussions and negotiations, depending on the clauses in the contract. The renewal of certain mail transportation contracts must follow specific procedures, and these are contained in the commodity-specific business practices.

### **Renewal**

Contract renewal decisions are guided by the following:

- Supplier contract performance
- Item purchase history
- Discussions and negotiations
- Assessment of switching cost conditions and considerations
- Market research
- Assessment of pricing conditions
- Restrictions on Postal Service action

### **Supplier Contract Performance**

The decision to renew a contract is based on the Postal Service's continuing need for the good or service, the Supplier's successful completion of a

contract, and the Supplier's proposed price. The Contracting Officer must leverage the findings generated during the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply. The information from this topic is an assessment of whether the contract met the identified needs and expectations of the Postal Service. It also addresses whether project objectives were met, and determines what corrective action needs to be taken.

Suppliers that successfully meet the terms and conditions of a contract, and are positively evaluated by the Performance Evaluation Team (which is often the Purchase/SCM Team with a new function as discussed in the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply), should be considered for contract renewal. While contracts should not be renewed if the Supplier has performed unsatisfactorily, a minor or temporary deviation from target measures and performance indicators should not automatically lead to a decision not to renew. The Contracting Officer, in conjunction with the entire Purchase/SCM Team, must review any such deviations and consider them when engaging in discussions and negotiations with the Supplier.

### **Item Purchase History**

Purchase histories contribute to a clear understanding of the existing purchasing process while providing an opportunity to determine whether any steps require modification or elimination. Some benefits of reviewing purchase histories include:

- Controlling inventory discrepancies and late orders
- Determining the extent to which suppliers can lower prices
- Improving the quality and timeliness of the delivered product or service

### **Market Conditions**

Renewals with an existing supplier should only be made when the Purchase/SCM Team determines that doing so will be the best business decision. To make this determination, the Purchase/SCM Team must examine the marketplace to ensure that the incumbent supplier provides the best value in relation to other potential suppliers.

### **Discussions and Negotiations**

The Contracting Officer is responsible for holding discussions and negotiations with the Supplier to determine the contract terms and conditions that will be established upon contract renewal. If the new terms and conditions are so different from those of the original contract that they are outside the scope of the original contract, then renewal should be abandoned and the new requirement solicited. Before the renewal can be awarded, the entire Purchase/SCM Team is responsible for determining whether the Supplier is still capable of offering best value.

Depending on the outcome of the discussions, the Contracting Officer consults the Purchase/SCM Team and decides whether renewal is the best business solution. However, before renewing the contract, the Contracting Officer must also verify that the current contract type still reflects the appropriate risk and responsibility assumed by the Supplier, as explained in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources. If the contract type is no longer favorable, a more appropriate contract type should be selected. All discussions and negotiations must be documented and included in the contract file.

### **Cost-Switching Conditions and Considerations**

Switching cost considerations associated with changing suppliers should influence the overall contract renewal decision. In certain cases (e.g., when other suppliers can meet Postal Service demand more efficiently and less expensively than the current Supplier), the extent of competition in the marketplace mitigates the investigation and development of new relationships with other suppliers. However, changing suppliers has the consequence of procedural, financial, and relational switching costs. Because switching costs can become quite substantial, it can be in the Postal Service's best interest to resist changing suppliers and instead renew the contract, unless the cost savings from the alternative supplier(s) are greater than the cost of switching. The Contracting Officer is responsible for leveraging the results of the switching cost analysis when deciding whether to renew the current Supplier's contract. This analysis is discussed in the Perform Switching Cost Analysis topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

### **Renewal Procedures and Restrictions**

The Purchase/SCM Team should renew a contract only when doing so reflects the best value to the Postal Service. When making this decision, the Purchase/SCM Team must consider whether the performance and administrative benefits of the renewal outweigh the potential benefits of competition and other business considerations. If the Purchase/SCM Team decides to renew a contract, the Contracting Officer provides written notice of renewal to the Supplier. This notification must be provided 60 days before contract expiration (preliminary notice will not be deemed to commit the Postal Service to a renewal). The contract file should be documented with the rationale for the renewal decision. Contracts may be renewed only once, and the term of the renewal may not exceed four years.

## Exercising Options

Before exercising an option, the Purchase/SCM Team must determine that:

- Funds are available
- The Postal Service still needs the supplies or services covered by the option
- Exercising the option is the most advantageous alternative, price and other factors considered (“other factors” includes any need for continuity of operations and the switching costs or other costs of disrupting operations discussed above)

The Contracting Officer must determine that the option price is the most advantageous to the Postal Service, based on one of the following:

- Market research clearly indicates that a better price than that offered by the option cannot be obtained.
- The time between the award of the contract containing the option and the exercise of the option is so short that the option price is probably the lowest obtainable, considering such factors as market stability and usual duration of supply or service contracts.
- A new solicitation fails to produce a better price than that offered by the option (this method of testing the market should be used only if neither of the other methods is satisfactory).

If the contract provides for economic price adjustment, the effect of such adjustment on prices under the option must be ascertained in determining whether to exercise the option.

When an option is to be exercised, the Contracting Officer must, in writing:

- Determine that the option may properly be exercised (as discussed above)
- Notify the Supplier within the time specified in the contract that the option is being exercised
- Modify the contract as needed, citing the option clause as authority

## Other Topics Considered

Conduct Spend Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Select Contract Type topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Consider Use of Renewals and Options topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Perform Switching Cost Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources.

Evaluate Contract Effectiveness topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

## Clauses & Provisions

Clause B-78: Renewal

Clause 2-17: Option for Increased Quantity

Clause 2-18: Option Item

Clause 2-19: Option to Extend (Service Contract)

Clause 2-20: Option to Renew (with Preliminary Notice)

Clause 2-25: Unpriced Options

## Process Invoices

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An invoice is the document issued by the Supplier to the Postal Service that provides a detailed list of products delivered or professional services rendered, with an account of all costs to be paid. Invoices may arrive in written and/or electronic form and are then processed by the Contracting Officer. Not all individual deliveries will incorporate an invoice. For those deliveries of purchased items that do require an invoice, Supplier invoices must be submitted before payment can be made, in accordance with Clause 4-1: General Terms and Conditions, Invoices (paragraph g) or Clause B-20: Invoices. Clause 4-1: General Terms and Conditions contains the basic terms and conditions for Postal Service contracts. Depending on the particular purchase, these terms and conditions may be modified or added to protect the interests of all parties and ensure the success of the purchase.

The Supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:

- Any services being billed for have been performed in accordance with the contract requirements
- Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with shipping instructions issued by the Contracting Officer in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the contract

Invoices are submitted for each delivery and shipment, discussed in detail in the Shipping and Receipt and Inspection topics of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements. In accordance with Clause 4-1: General Terms and Conditions, Invoices (paragraph g) or Clause B-20: Invoices, to ensure prompt payment, an invoice must be submitted for each destination and each shipment. Each invoice must contain:

- The Supplier's name and address
- The contract number
- Any applicable task or delivery order number
- A description of the supplies or services and the dates delivered or performed

- The point of shipment or delivery
- Any applicable unit prices and extensions
- Shipping and payment terms
- Any additional information required by the contract

In accordance with Clause 4-6: Invoices (Professional Services), invoices that are submitted for the rendering of professional services must also contain and indicate the following additional information:

- Person performing service each day by hour and part of an hour
- Services performed each day by hour and part of an hour
- Rates and charges for each service so detailed
- Individual expenses charged, if allowed under this agreement

Minimum charges for portions of an hour may be allowed if discussed in the contract.

Depending on the product ordered or service rendered, certain invoices should contain additional detailed information regarding contract performance (e.g., work in progress). The Contracting Officer will address such specific invoices in conjunction with the Client and Item Manager, who have specific knowledge about particular items delivered and services rendered.

## Receive Invoices

Invoices, when in written form, must be sent to the office specified in the awarded contract or order. An invoice that is received by anyone other than the office specified in the contract or order is not properly submitted. Invoices that do not contain the relevant and necessary data (e.g., contract number, point of delivery, payment terms) are not considered to have been properly submitted. Invoices that are received before contract performance or order delivery violate the certification requirement established in Clause 4-1: General Terms and Conditions, Invoices (paragraph g) and Clause B-20: Invoices. The Supplier may also submit invoices electronically to the Contracting Officer.

## Verify Invoice Amount

Invoice amounts should always match the purchase order amount. When the amount to be paid by the Postal Service to the Supplier is correct, the specified office can approve the invoice and the activities associated with the Make Payment topic of the Make Payment task of Process Step 5: Measure and Manage Supply. The accuracy of the purchase order amount and, contingently, of the invoice is verified by reviewing the prices established for products and/or services in the contract.

When the amount on the invoice does not match the purchase order amount, the specified office is responsible for giving notice to the Supplier within seven days and for resolving the issue. Problems with invoices arise when the amounts charged are different from the amounts documented in the purchase order, which are usually based on prices established and

referenced in the actual contract. In such cases, the Supplier resolves these problems by resubmitting a new invoice with the correct amount, or the Supplier submits a credit memo to be applied to the original invoice. A credit memo is the document issued by the Supplier to record an adjustment against, and applied to, an invoice.

## **Approve Invoice**

When invoices contain proper data and have been received for actual contract performance, the specified office must approve the invoice. Invoices must be approved within seven days of receipt. When improper invoices are received, the Contracting Officer is required to verify, reject, and give notice to the Supplier within seven days of the receipt of these improper invoices. The activities associated with making payments on an approved invoice can be viewed in their entirety in the Make Payment topic of the Make Payment task of Process Step 5: Measure and Manage Supply.

## **Withholding**

The Contracting Officer may decide to reject an invoice and consequently not pay the Supplier. Nonpayment may be damaging to the Supplier's business and may jeopardize performance, as well as harming the working relationship between the Postal Service and the Supplier. Therefore, the Contracting Officer must carefully consider the reasons for withholding or refusing payment and must address problems regarding payment expeditiously.

The Contracting Officer may refuse to pay the Supplier or may withhold payments otherwise due, in whole or in part, when:

- The contract provides for withholding (for instance, when retainage [a percentage of a contract price retained from the Supplier as assurance that Subcontractors will be paid and that contract performance will be completed] is authorized)
- Elements of the amount invoiced by the Supplier are not allowable
- The Supplier has been overpaid or otherwise owes the Postal Service money as a result of the Supplier's actions or inactions under the contract
- The Supplier owes the Postal Service money for reasons unrelated to the contract
- As a result of judicial action or applicable law, parties other than the Supplier have made claims against the Postal Service or have not waived rights exercisable against the Postal Service

## **Other Topics Considered**

Shipping topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Make Payment topic, Make Payment task, Process Step 5: Measure and Manage Supply

## **Clauses & Provisions**

Clause 4-1: General Terms and Conditions

Clause 1-2: Advance Payments

Clause 1-3: Progress Payments

Clause 2-30: Allowable Cost and Payment

Clause 4-6: Invoices (Professional Services)

Clause B-20: Invoices

Clause B-48: Payment (Construction)

## **Make Payment**

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Payment is the money rendered by the Postal Service to the Supplier in exchange for the products or services provided upon receipt of a proper invoice. The Contracting Officer, in conjunction with Finance, must ensure that all payments are made once a legitimate invoice has been processed during the Process Invoices topic of the Make Payment task of Process Step 5: Measure and Manage Supply. Failure to make payment, or late payment, can have harmful effects, such as damaged working relationships, time delays, and interest accrual.

### **Payment Type**

Payment amounts and payment schedules are addressed in contracts, although the method used for making payment does not have to be stipulated in the contract.

When the invoice is received from an eBuy purchase, the automatic electronic transfer of funds is documented in a Monthly Billing Summary report.

### **Payment Time Frame**

Generally, the Postal Service will make payment to the Supplier no later than thirty days after receiving the invoice. Certain contracts incorporate very specific terms of payment and delineate an actual payment date. In these cases, the Postal Service will pay the Supplier as established in the contract.

A discount date is the date by which an early or prompt payment, monetarily less than the normal payment amount because of its chronological timeliness, can be made. Consequently, the (prompt payment) discount amount is the mathematical difference between the prompt payment amount and the normal payment amount. The prompt payment discount can be represented as a raw fixed figure or as a percentage of the normal payment amount. Discount dates exist when contracts incorporate very specific terms



of payment that lessen the payment amount if prompt payment is made. The Postal Service will pay the Supplier as soon as possible, and not later than the discount date, in these cases. Discounts are taken from the date that the supply is delivered or the invoice is received up until the discount date. Discount dates should be exploited whenever early payment is financially advantageous to the Postal Service.

## **Partial Payments**

The Contracting Officer is responsible for approving requests for partial payment upon delivery of goods or services that partially fulfill contract requirements and performance expectations. The Contracting Officer will consult the Client regarding delivery of products or services when partial payments are to be made. When the awarded contract does not provide unit prices for the supply, the Contracting Officer may determine an appropriate formula for payment. The Contracting Officer must review any payments that are to be made in accordance with payment terms incorporated in non-fixed-price contracts.

## **Progress Payments**

Progress payments are payments incrementally made in exchange for demonstrated progress toward completion of a contract and are applicable to the performance of any contract that incurs costs over time that could negatively affect the Supplier's operations.

The Contracting Officer is responsible for determining the need for progress payments and must consult the Client and Legal Counsel regarding the nature of contract performance in relation to the specific purchase and payment terms stipulated in the contract. The Contracting Officer must obtain monthly progress reports from the Supplier, illustrating progress of the work as related to progress payments made. The Contracting Officer may, when approving progress payment requests, rely on the Supplier's accounting system. However, postpayment reviews (including audits, when considered necessary) must be made periodically to determine the validity of progress payments already made and expected to be made. The Contracting Officer will consult the Client regarding the progress of contract performance when progress payments are made.

Progress payments are explained in greater detail in the Determine Need for Progress or Advance Payment topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## Payment Terms

Paragraph i of Clause 4-1: General Terms and Conditions discusses standard payment provisions. Payments under the following contract types have unique payment considerations that are governed by other Postal Service clauses that may be used instead of paragraph i of Clause 4-1:

- Fixed-Price Contracts: Payments for work or supplies delivered under these contracts are made in accordance with Clause 2-26: Payment — Fixed Price
- Time-and-Materials and Labor-Hour Contracts: Payments for services delivered under these contracts are made in accordance with Clause 2-38: Payment (Time-and-Materials and Labor-Hour Contracts)
- Construction: Payments for construction contracts are made in accordance with Clause B-48: Payment (Construction)
- Highway Transportation Service: Payments for these services are made in accordance with Clause B-74: Payment (Highway)
- Air Mail Taxi Service: Payments for these services are made in accordance with Clause B-83: Payment (Air Taxi)

## Interest

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 et. seq., as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496, in accordance with Clause 4-1: General Terms and Conditions, paragraph i, or Clause B-22: Interest. Interest on late payments made will be paid automatically by the Postal Service to the Supplier when the following conditions are met:

- A proper invoice has been received and processed; there is no disagreement over quantity, quality, or other contract provisions; and thirty days have passed.
- An improper invoice has been received; the Contracting Officer has failed to notify the Supplier; and seven days have passed since receipt.

When a prompt payment discount is taken after the discount date has expired, the Postal Service has ten (10) days after this expiration to correct the underpayment by making the remainder of the nondiscounted payment amount. Failure to do so will result in automatic payment of interest, no matter if the Supplier has requested the payment of interest or not. Interest will be calculated beginning with the first day after the discount date through the date the Supplier is paid in full. The percentage of interest to be paid and successively applied to the payment is calculated by, and in accordance with:

- Clause 4-1: General Terms and Conditions, paragraph i, or Clause B-22: Interest
- Prompt Payment Act, 31 U.S.C. 3901 et. seq., as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496

- The interest rate due a Supplier will be published in the Postal Bulletin

## Penalties

A penalty amount (calculated, as a matter of policy, in accordance with Office of Management and Budget [OMB] regulations) will be paid, in addition to the interest, if:

- The Supplier is owed interest
- The Supplier is not paid the interest within ten (10) days after the date the invoice amount is paid
- The Supplier makes a written demand that the Postal Service pay such a penalty not later than forty (40) days after the date the invoice amount is paid

## Other Topics Considered

Determine Need for Progress or Advance Payment topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Process Invoices topic, Make Payment task, Process Step 5: Measure and Manage Supply

## Clauses & Provisions

Clause 4-1: General Terms and Conditions

Clause 2-26: Payment — Fixed Price

Clause 2-38: Payment (Time-and-Materials and Labor-Hour Contracts)

Clause 8-7: Withholding Payment (Technical Data and Computer Software

Clause B-22: Interest

Clause B-48: Payment (Construction)

Clause B-74: Payment (Highway)

Clause B-83: Payment (Air Taxi)

## Laws & Regulations

Prompt Payment Act, 31 U.S.C. 3901 et. seq., as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496

## Terminate Contract

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Contracts may be terminated, consistent with the termination provisions in the contract. No contract priced at or with a potential termination liability exceeding \$1 million may be terminated unless the VP, SM, has approved termination. In addition, no contract regardless of price which is considered

sensitive or highly visible may be terminated unless the VP, SM, has approved termination.

## Termination for Convenience

A contract containing a term allowing it to be terminated for convenience such as subparagraph I of Clause 4-1: General Terms and Condition, subparagraph a. 2 of Clause B-12: Termination for Convenience or Default, or Clause B-71: Termination for Convenience (Transportation), or similar contract term, may be terminated for convenience when it is in the Postal Service's best interest, for example, when the products or services supplied under the contract are no longer required or the contract becomes unnecessary for some other reason.

When a contract is terminated for convenience, the Supplier is entitled to a percentage of the contract price, reflecting the percentage of work performed prior to notice of the termination, as well as any reasonable charges that the Supplier can demonstrate directly resulted from the termination, (or, in the case of highway transportation contracts, liquidated damages calculated as provided in the Changes (Transportation) clause of the contract). Therefore, the Contracting Officer must consider the cost of a termination for convenience when deciding whether to take such action. Similarly, when a contract has been terminated for convenience, the need to obtain sufficient documentation to support payment to the Supplier must be balanced against the objective of accomplishing a simple and expeditious settlement.

The Contracting Officer may settle a contract terminated for convenience by:

- Negotiated agreement
- A Contracting Officer's determination (subject to the Supplier's right, under Clause B-9: Claims and Disputes of its contract, to seek review of that determination)
- A combination of the above methods

Termination for convenience may, in some instances, be to the advantage of the Supplier. In these instances, the Supplier may be willing to waive entitlement to charges or liquidated damages to which it may be entitled, thereby making termination for convenience more attractive to the Postal Service, as well. Any such waiver by the Supplier must be the subject of a contract modification signed by the Supplier.

## Termination for Default

Termination for default may be appropriate when the Supplier fails to meet satisfactorily the requirements set forth in the contract. The Purchase/SCM Team, under the direction of the Contracting Officer, must take necessary action to correct any problem caused by unsatisfactory and unsuccessful Supplier contract performance. If the corrective action is unsuccessful in correcting the unsatisfactory contract performance, termination for default should be considered.

Paragraph m of Clause 4-1 and Clause B-12 address termination for default. As to fixed-price contracts, the Postal Service has the right, subject to the notification requirements of the termination for default clause, to terminate all or any part of a contract when the Supplier 1) fails to complete any material requirement of the contract within the time specified in the contract (including any extensions); 2) fails to make progress to a degree that it endangers performance of the contract; 3) fails to perform any other contract provision; or 4) fails to give adequate assurances.

When a default termination is being considered, the Contracting Officer must ensure that termination for default, rather than convenience, is appropriate. The Contracting Officer must consult with the purchase/SCM Team and Legal Counsel, and, as appropriate, should seek the insights of other purchasing personnel and technical specialists (see above for certain required reviews and approvals). The following must be considered:

- The provisions of the contract, and applicable laws and regulations;
- The specific failures of the Supplier and, unless time has not permitted obtaining them, any offered excuses for failure;
- The availability of the supplies or services from other sources;
- The urgency of the need for the supplies or services, and whether or not they can be obtained sooner from sources other than the delinquent Supplier;
- The degree to which the Supplier is essential to the Postal Service, and the effect of a termination for default on the Supplier's capability as a Supplier under other contracts;
- The effect of a termination for default on the ability of the Supplier to liquidate progress payments; and
- Any other pertinent facts and circumstances.

When a termination for default appears imminent on a contract subject to a surety bond, the Contracting Officer must send a written notification of that fact (not an actual notice of default) to any surety, at both its main and local offices. If requested by the surety, and agreed to by the Supplier and any assignees, arrangements may be made to have future checks mailed to the Supplier in care of the surety.

### **Initiating Termination for Failure to Make Timely Delivery**

When a Supplier fails to make timely delivery, the Contracting Officer has a reasonable time after the unmet delivery date to determine whether the contract should be terminated for default. Delay beyond a reasonable time may result in a waiver of the right of the Postal Service to terminate for default. If the right to terminate has been waived by delay, a new delivery date, which must be reasonable in light of the circumstances affecting contract performance, must be established by bilateral or unilateral contract modification. The Supplier's failure to meet the newly established date may again give rise to the right to terminate for default.

When the Contracting Officer determines that termination for default for failure to make timely delivery is proper, a termination notice may be issued at once. No demand for adequate assurances should be issued, but the Contracting Officer may allow the Supplier to assert any alleged excusable delay.

### **Initiating Termination for Causes Other Than Failure to Make Timely Delivery**

When the Contracting Officer makes a preliminary determination that termination for default is appropriate in cases other than failure to make timely delivery, he or she should, if practical, notify the Supplier in writing of the possibility of termination. This notice may call the Supplier's attention to its liability in the event that the contract is terminated for default; request that the Supplier show cause why the contract should not be terminated for default; state that failure of the Supplier to explain why the contract should not be terminated may be taken as an admission that no valid explanation exists; and, when appropriate, invite the Supplier to discuss the matter.

### **Demand for Adequate Assurance**

When the Contracting Officer determines that the Supplier is failing to make satisfactory progress to a degree that endangers contract performance, or determines that some other failure, under the contract or otherwise (other than failure to make timely delivery), is cause for concern, a written demand for adequate assurance must be issued. The demand must specify the failure and give the Supplier ten days (or longer, if necessary) to assure the Postal Service of steps that will be taken to cure the failure. When the time remaining in the contract delivery schedule does not permit a response period of ten days or longer, a demand may be made part of the notice described in the paragraph above. No demand for adequate assurance is required when the Supplier has anticipatorily repudiated the contract, that is, when the Supplier has affirmatively demonstrated, by words or action, that it will not or cannot perform its contractual obligations.

### **Steps for Termination for Default**

In the event of a termination for default, the Contracting Officer may have the Supplier transfer title and deliver the completed supplies or manufacturing materials to the Postal Service. The completed supplies and manufacturing materials may be acquired for use in continuing the terminated contract work or use under another contract.

Except to the extent that funds are withheld from the amount otherwise due for the supplies or materials in an amount the Contracting Officer determines necessary to protect the Postal Service's interest, the Postal Service must pay the Supplier the contract price for any supplies completed and delivered, and the amount agreed upon by the Contracting Officer and the Supplier for any manufacturing materials acquired by the Postal Service. (The Postal Service is not liable for the Supplier's costs on undelivered work and is entitled to repayment of any progress payments for undelivered work.)

To assure that the Postal Service is protected from the Supplier's failure to make provision for the Postal Service's potential liability to laborers and material suppliers for lien rights, the Contracting Officer must take one or more of the following measures before making the payment referred to above:

- Ascertain whether any payment bonds furnished by the Supplier are adequate to satisfy all claims, or whether it is feasible to obtain similar bonds to cover outstanding liens;
- Require the Supplier to furnish statements from laborers and material suppliers disclaiming any lien rights they may have in the supplies and materials;
- Obtain agreement between the Postal Service, the Supplier, and any claimants to release the Postal Service from any potential liability to the Supplier or claimants;
- Take any other action that is appropriate in view of the Supplier's degree of solvency and other circumstances.

### **Contracts Other than Fixed-Price**

Clause B-12: Termination for Convenience or Default, applies to terminations of non-fixed price contracts. In the event of the termination of a contract other than fixed-price, the Supplier must be reimbursed costs allowed under Clause B-12 (the costs of preparing the Supplier's settlement proposal are not allowable). Any fee payable under the contract must be reduced as directed by the clause. The clause does not give the Postal Service the right to recover excess repurchase costs, but it does give the Postal Service continuing rights when the Supplier fails to replace or correct defective supplies.

As discussed above, the Contracting Officer must consider whether termination for default is appropriate and the Supplier must be given any required notice of impending termination or demand for adequate assurance before terminating for default.

### **Termination on Notice**

If a contract provides for its termination on notice by the Postal Service, the Postal Service may terminate the contract by sending the Supplier a written notice consistent with the contract's provisions for termination on notice. A contract containing a termination on notice clause may also contain a clause allowing for termination for default and providing less notice than that in the termination on notice clause. In such cases, if the contract is terminated for default or for cause and it is subsequently established that that termination was improper, the Supplier's damages will be limited to any amount to which it would have been entitled had the termination for default or cause been a termination on notice.

## Termination Notices and Postal Service Actions

If the Supplier can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, a termination for default will be deemed a termination for the convenience of the Postal Service, and the rights and obligations of the parties will be governed accordingly.

The Contracting Officer may terminate contracts only by written notice to the Supplier. In terminating a fixed-price contract for default for a cause other than failure to make timely delivery, the termination notice discussed here must be preceded by the notice or notices discussed. Notice must be by:

- Certified Mail, Return Receipt requested
- Telegraphic notice
- Hand delivery with written acknowledgment by the Supplier
- E-mail and Fax

The notice must state:

- The type of termination and the contract clause authorizing the termination
- The date the Supplier is required to stop performance
- The extent of the termination and, if a partial termination, the portion of the contract to be continued
- Special instructions

When the termination notice is sent to the Supplier, the Contracting Officer must simultaneously send a copy to the applicable information service center and to any known assignee, guarantor, or surety of the Supplier.

## Remedies

On rightful rejection or justifiable revocation of acceptance, the Postal Service has a security interest in supplies delivered under the contract for any payments and expenses reasonably incurred in inspection, receipt, transportation, care, and custody (in other words, they can be used to secure payment to cover those incurred costs).

When supplies or services are still required after termination for default, the Contracting Officer may repurchase the same or similar supplies or services against the Supplier's account as soon as practicable. The repurchase price must be reasonable considering the quality and time requirements. Whenever practicable, the Contracting Officer should make the decision to repurchase before issuing a termination notice.

The Contracting Officer may repurchase a larger quantity than the quantity terminated for default when needed, but the defaulting Supplier may be charged for no more than the terminated quantity (including any variations in quantity permitted by the terminated contract). If the repurchase is for a quantity no larger than the terminated quantity, the Contracting Officer may use any terms and purchase methods appropriate for the repurchase, following normal approval or deviation procedures. If the repurchase is for a larger quantity than the terminated quantity, the entire quantity must be



treated as a new purchase. If the repurchase price is higher than the price of the terminated supplies or services, the Contracting Officer must, after final payment on the repurchase contract, demand the excess amount from the supplier, in writing, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors.

## Damages

If a contract is terminated for default, or if a procedure is used in lieu of termination for default, the Contracting Officer must ascertain and demand any damages to which the Postal Service may be entitled. These damages are in addition to any excess repurchase cost.

When the Contracting Officer has accepted defective supplies, the Postal Service may recover, as damages for any nonconformity, the loss under usual circumstances resulting from the supplier's breach. This may be determined in any reasonable manner. Damages for breach of warranty are the difference, at the time and place of acceptance, between *the value of the supplies or services accepted* and *the value they would have had if they had been as warranted*, unless special circumstances show there are proximate damages (damages resulting directly from the breach of warranty) of a different amount.

Normally, incidental and consequential damages may also be recovered. Incidental damages include:

- expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of supplies rightfully rejected
- any commercially reasonable charges
- expenses in connection with repurchase
- any other reasonable expense incidental to the delay or other breach

Consequential damages include:

- Any loss resulting from contract requirements and needs which the supplier should have been aware of when the contract was signed and which could not be reasonably prevented
- Injury to people or property resulting directly from a breach of warranty

The Contracting Officer, on notifying the Supplier, may deduct all or any part of the damages resulting from any breach of the contract, or from late delivery or delay not subject to liquidated damages, from any part of the price still due.

Damages for nondelivery or repudiation by the Supplier when repurchase is not possible are the difference between the market price at the time when the Contracting Officer learned of the breach and the contract price, together with any incidental and consequential damages, but less expenses saved as a consequence of the supplier's breach. Market price is determined at the place of acceptance or, in cases of rejection after arrival or revocation of acceptance, at the place of arrival.

## Other Topics Considered

Acceptance topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Evaluate Contract Performance topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Share Lessons Learned topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Process Invoices topic, Make Payment task, Process Step 5: Measure and Manage Supply

Make Payment topic, Make Payment task, Process Step 5: Measure and Manage Supply

## Clauses & Provisions:

Clause 4-1: General Terms and Conditions

Clause B-9: Claims and Disputes

Clause B-12: Termination for Convenience or Default

## Close Out Contract

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Contract closeout is the administrative procedure associated with the end of the business agreement with the Supplier and the archiving of documents in the contract file. Contract closeout occurs after the Supplier has successfully completed contract performance and has been accordingly compensated or when the contract is terminated for default or convenience. The primary purpose of contract closeout is to ensure that the Supplier has complied with all contractual requirements and that the Client's needs have been met and fulfilled. Contracts that are improperly performed or that fail to offer best value to the Postal Service are appropriate for termination for default or termination for convenience and are addressed in detail in the Terminate Contract topic of the Make Payment task of Process Step 5: Measure and Manage Supply.

A contract is considered performed and fully completed when:

- Supplier has completed the required deliveries, and the Client has subsequently received, inspected, and accepted the products
- Supplier has performed all services, and the Client has accepted these services
- Contract performance has been officially assessed and evaluated in the Evaluate Contract Effectiveness topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply
- Final payment has been made
- Decision has been made to neither renew the contract nor exercise options on the contract

The Contracting Officer is responsible for ensuring that the following contract closeout activities are performed:

- Scope verification — occurs at the end of the tasks and phases associated with the project to ensure that all the scope requirements for that task, phase, or project have been accomplished; demonstrates that sound business judgment was applied to the overall purchase project
- Financial review — determines whether all the invoices are paid and whether the actual expenditures matched the planned budget. Invoices and payment are explained, in detail, in the Process Invoices and Make Payment topics of the Make Payment task of Process Step 5: Measure and Manage Supply
- Product/service delivery and acceptance — acknowledges receipt of products and services conforming to contract specifications during the Receipt and Inspection and Acceptance topics of the Complete Delivery task of Process Step 4: Deliver and Receive Requirements
- Client sign-off — after the Client accepts the products or services defined in the contract, it must sign off on products or services after delivery; acknowledgement of receipt of the products or services allows for closeout of the contract
- Lessons learned — Purchase/SCM Team members must capture and share the lessons learned from the project, including analyzing data and discussing project results with participants; lessons learned are used to improve future purchase projects and the overall purchasing process; the information is then summarized and archived, as explained by the Share Lessons Learned topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply
- Inventory management and disposal — products that have been accepted may no longer require input from the Supplier and will remain the responsibility of the Postal Service; the Item Manager must ensure that products are being properly stored for future use, as explained in the Develop, Finalize, and Implement Inventory Control Plan topic of the Manage Demand task of Process Step 5: Measure and Manage Supply; products that the Supplier has delivered and have already been utilized are appropriate for disposal or investment recovery, which are explained in detail in the Dispose topic of the Investment Recovery task of Process Step 6: End of Life
- Personnel reassignment — as the end of the contract approaches, it is the Client's responsibility to ensure that Purchase/SCM Team members from the Client organization are assigned current projects or deployed to future projects, and it is the Contracting Officer's responsibility to ensure that Purchase/SCM Team members from Supply Management (SM) are assigned current projects or deployed to future projects

- Close and archive files — project-related plans, reports, and any other pertinent documentation, as well as the contract files must be closed out and archived by the Contracting Officer at the end of the project; the contract file must contain sufficient documentation to permit an outside party to review and understand the process and business decisions that resulted in contract award, contract modification, and contract expiration; the warning notices and records associated with contracts terminated for default or convenience must also be placed in the contract file

Upon completion of contract closeout procedures, the Contracting Officer must officially signify that Client sign-off has been completed and include any related questions or recommendations in the contract file.

## Other Topics Considered

Receipt and Inspection topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Acceptance topic, Complete Delivery task, Process Step 4: Deliver and Receive Requirements

Develop, Finalize, and Implement Inventory Control Plan topic, Manage Demand task, Process Step 5: Manage and Measure Supply

Evaluate Contract Effectiveness topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Make Decision to Renew or Exercise Options topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Share Lessons Learned topic, Manage Delivery and Contract Performance task, Process Step 5: Measure and Manage Supply

Process Invoices topic, Make Payment task, Process Step 5: Measure and Manage Supply

Make Payment topic, Make Payment task, Process Step 5: Measure and Manage Supply

Terminate Contract topic, Make Payment task, Process Step 5: Measure and Manage Supply

Dispose topic, Investment Recovery task, Process Step 6: End of Life

## Recognize and Reward Supplier

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Recognition of a Supplier is the identification of exceptional contributions and capabilities from past experiences on Postal Service contracts. It is in the Postal Service's best interests to realize the importance of recognizing and rewarding supplier contributions and accomplishments. Rewarding suppliers for outstanding performance motivates further quality and encourages suppliers to strive for excellence in their products, service levels, and

operations. Recognizing and rewarding suppliers strengthens strategic relationships, which fosters strong and productive supplier relationships.

Reward programs inherently benefit suppliers. Recipients will show substantial improvement in total quality and performance levels compared with unrecognized suppliers. Suppliers can also improve company reputation, increase marketability, and reduce costs. Posted on websites and used in marketing materials, recognition awards help suppliers develop new business and create strong relationships with other companies. By achieving a certain status with the Postal Service, suppliers can:

- Improve their competitiveness
- Improve their relationships with the Postal Service
- Reduce inspections

## Evaluating, Rating, and Ranking Suppliers

Performance metrics are tools that enable the Postal Service to objectively benchmark the ability of their suppliers to meet company performance standards. Supplier recognition and rewards are linked to these standards. Once supplier performance is measured, the Postal Service may choose to recognize and reward outstanding suppliers to cultivate the Supplier/purchaser relationship. Determining what to measure is the most important challenge of evaluating supplier performance. The metrics used to measure supplier performance should be simple and *SMART*:

- Specific — metrics are specific and targeted to the area measured
- Measurable — data that are accurate and complete can be collected
- Actionable — easy to understand and clear, when performance is charted over time, which direction is “good” and which direction is “bad”
- Relevant — do not measure everything, but only things that are important
- Timely — measures for which data are available when needed

The major metric categories that manage supplier performance, although they may vary in terminology, are:

- Cost
- Quality
- Delivery
- Responsiveness
- Technology
- Other metrics may include continuous improvement, value, environmental, etc.

Metrics are reviewed internally and externally by the Supplier. The key metrics that are in place should be vital to supplier performance and aligned with Postal Service objectives and strategies.

Metrics are used to create a rating system, which may be weighted to emphasize factors crucial to successful performance. Feedback should be solicited from suppliers regarding ratings to assure buy-in. Ratings are used for:

- Objectively comparing similar suppliers
- Identifying supplier excellence award winners
- Aiding future supplier selection (supply base optimization)

## **Rewards and Recognition**

Reward incentives can include assurance of future business or public recognition such as a plaque, awards luncheon or dinner, honors ceremony, press release, or outstanding letter or formal communication to the Supplier's senior manager. Recognition programs encourage performance improvements by rewarding suppliers with additional benefits, cash back for achieving performance-based objectives, and strategic or key supplier status. In return for some of these rewards, suppliers must be willing to invest and share risks on key Postal Service programs, innovations, and technologies.

## **Maintaining Supplier Commitment**

To ensure that suppliers retain motivation to attain rewards and recognition, the frequency and number of awards presented to suppliers must be considered. The following tactics can assist the Postal Service in maintaining the prestige of supplier recognition and rewards:

- Use high-caliber suppliers in the evaluations to reinforce the idea that the competition is of high quality.
- Present the awards in a highly visible setting to ensure that the prestige of the award is recognized and remains high.
- Hold awareness evaluations in a timely manner. Awards should be given frequently enough to keep suppliers encouraged, but not so frequently that the award is no longer seen as an accomplishment over a substantial period of time.

## **Feedback**

One of the most valuable benefits from supplier recognition and reward programs is feedback. After analyzing and assessing the results of the evaluation, the Postal Service should provide feedback to the suppliers and advise them of the changes that need to be made in specified areas. These programs also allow the suppliers to provide feedback to the Postal Service for improvements to Postal Service operations.

## **Postal Service Quality Supplier Awards (QSA) Program**

The Postal Service initiated the Quality Supplier Awards (QSA) Program to annually recognize its most outstanding suppliers (i.e., suppliers who have clearly demonstrated their ability and commitment to consistently provide

quality products or services to the Postal Service). The awards are presented by the Postmaster General to publicly and formally recognize suppliers who have truly made significant contributions toward helping the Postal Service benefit from Supply Chain Management best practices. These efforts have been successful in providing positive bottom-line and performance results that ultimately help the Postal Service more effectively achieve its mission of providing mail service to the American public.

This program has recognized small, large, minority-owned, and woman-owned firms for outstanding performance since 1989. In the past, winners have been segregated by small and large company categories. From 1997 to 2002, winners were segregated further by three other categories:

- Operational Services
- Professional and Consultant Services
- Manufacturing

### **Quality Supplier Award (QSA) Criteria**

Evaluating responses to a set of criteria is the Postal Service's basis for awarding suppliers the QSA. The criteria conform to commercial best practices by:

- Being linked with the Postal Services strategies and objectives
- Incorporating some of the major categories (i.e., cost, quality, etc.) used to manage supplier performance

However, the Postal Service can further align the QSA Program with commercial best practices by developing the criteria (standards) that suppliers are evaluated against into metrics.

The Postal Service follows other best practices by having its employees or teams who work closely with the suppliers participate in the evaluation. The "internal customers" provide information concerning the criteria. Unlike the QSA Program, where evaluation is based on qualitative evidence, most reward and recognition programs evaluate information that is in the form of quantitative data.

### **Quality Supplier Award (QSA) Recognition and Rewards**

The Postal Service publicly recognizes the suppliers who attain a QSA that follows commercial best practices. The winners receive a QSA plaque and a letter of commendation signed and presented by the Postmaster General at the QSA Ceremony, which is hosted by the Vice President, Supply Management (VP, SM). Postal Service Officers and Vice Presidents are also invited to the ceremony. A celebratory reception is held after the QSA Ceremony, which includes supplier attendees and members of the Purchase/SCM Teams responsible for the successful effort. A videotape, photographs, posters, and mementos such as "USPS Quality Supplier" lapel pins are provided to the winning suppliers to share with their employees and to aid their publicity efforts.

A press release is prepared by the Postal Service Media Relations Organization for appropriate distribution and publicity. Winning suppliers are able to create a press release themselves and use any other means to communicate the award (e.g., supplier website).

After the Postal Service establishes criteria and performs the evaluation, the suppliers' information can not only be used for the QSA Program but can also be leveraged to designate suppliers a certain status, such as "strategic" or "key." Currently, the Postal Service uses the information gained from the criteria as examples of cost reduction achievements and best practices implemented by various Postal Service Purchase/SCM Teams.

### **Quality Supplier Award (QSA) Feedback**

Rewards can serve to strengthen Postal Service and supplier relationships and motivate not only the winners but also the losing nominees to improve and win the award the following year (if suppliers are not motivated, this can be a telling sign of the award program or the supply base). Providing feedback to suppliers, especially those that were not selected for the award, is essential to generating supplier understanding of necessary improvements and how to align with Postal Service objectives. The nominator, a Postal Service employee, receives feedback relating to how the Supplier can improve as a Postal Service supplier and QSA nominee.

### **Other Topics Considered**

Provide Feedback topic, Make Final Decisions task, Process Step 3: Evaluate Sources



# USPS Supplying Practices Process

## Step 6: End of Life

### Dispose

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The Postal Service recognizes that assets will eventually no longer bring value to the business and will need to be disposed of. Disposal addresses the methods that will be used to get rid of Postal Service assets, either internally or externally through redistribution or placement.

Disposal is critical to Process Step 6: End of Life, because it can pose significant economic and social risks to the Postal Service. These risks arise from several sources, among which are:

- Many assets contain materials that are considered hazardous and require special steps for approved disposal; as the original asset owner, improper disposal of these assets can result in a suit against the Postal Service. Material safety data sheets (MSDSs) describe how to properly dispose of items containing hazardous materials. They can be found at <http://hazard.com/msds/index.php>.
- Computer-based assets can contain either information of proprietary value to the Postal Service or private information about Postal Service employees, clients, and customers. These assets require special processing to preclude incidental release of this information and avoid lawsuits.
- Assets visible to the public that are branded must be handled carefully to prevent misuse or misrepresentation or the apparent use of these assets for criminal purposes.
- A number of assets now contain devices designed to provide integrity or security of the mail, Postal Service employees, and customers of the Postal Service; these devices must be removed prior to disposal.
- Mail processing and other equipment have licensed software systems that must be removed at the time of disposal.

In spite of these risks, assets (especially physical assets) can still offer value from trade-in, resale, donation, or relocation of the asset within the Postal Service to where it will provide the most benefit for service use. The Postal Service environmental policy, as stated in the applicable AS series Handbooks, must be incorporated into procedures governing material redistribution, recycling, and disposal.

## Life Cycle Management Team

Before an asset can be disposed of, it is the responsibility of the Life Cycle Management Team to review and approve the recommended disposal methods for excess property. The Life Cycle Management Team is a cross-functional team that comprises members of the Purchase/SCM Team and members of the areas appropriate to the product. The Life Cycle Management Team will have previous knowledge of, and working experience with, the assets being disposed of to determine the most economical and efficient means of disposal. The Life Cycle Management Team consists of about 5–10 members and typically includes:

- Market Analysts
- Pricing Analysts
- Item Managers
- Individuals from Quality Assurance, Finance, Sales, Supply Management, and Engineering

Degrees of management and responsibility in making the disposal decision will transfer to these different members depending upon the type of asset being disposed of.

## Asset Disposal

Assets that are disposed of can range from furniture to equipment and supplies that have a useful life of greater than three years. This does not include fixed assets such as land, buildings, and machinery. When considering how to dispose of Postal Service assets, it is important to look at the reasons why they are being disposed of. Items are commonly disposed of because:

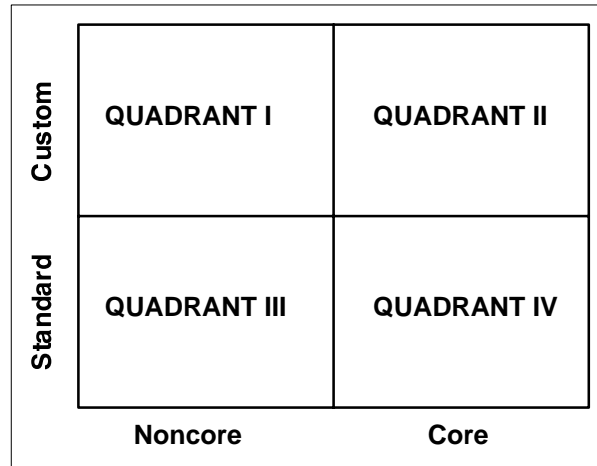
- They are no longer required because of a change in function or usage patterns
- They are required to be disposed of
- They are occupying storage space and will not be needed in the near future
- They are beyond repair
- Other pertinent reasons

Methods for disposal or investment recovery are discussed in the Implement Investment Recovery Plan topic of the Manage Demand Task of Process Step 5: Measure and Manage Supply.

## Quadrant Approach

A quadrant approach (see Figure 6.1) classifies all Postal Service purchases into four categories, depending on their impact on Postal Service core competencies (noncore versus core) and complexities (standard versus custom). The Quadrant Approach should be used by the Client and the Life Cycle Management Team to guide their disposal decision to trade in, donate, recycle, reallocate, resell, or remove.

Figure 6.1  
**Four Quadrants**



**Quadrant I: Noncore/Customized Purchases**

Excess and unused items in this quadrant will be either recycled or reallocated. For the identified surplus that is to be recycled, the Client and Item Manager must relocate this surplus to an appropriate scrap dealer. For reallocation, the Client must redeploy and relocate this surplus to the new Client. The strategic approach regarding Quadrant I calls for supply continuity, and these items should be used multiple times.

**Quadrant II: Core/Customized Purchases**

Excess items from Quadrant II play an integral role in the Postal Service's operations and will be traded in, recycled, reallocated, or resold. For identified excess that is to be traded in, the Item Manager must contact the Supplier, and because the transaction is contractual, the Supplier will pay the Postal Service for the surplus that has been reacquired. For recycling, the Client and Item Manager must relocate this surplus to an appropriate scrap dealer. For reallocation, the Client must redeploy and relocate this surplus to the new Client. For reselling, the Market Analyst must be consulted to determine the value of a specific product if it will be bought by an external party. The surplus will then be sold, and the Client can determine how it will be physically relocated to the new owner.

**Quadrant III: Noncore/Standard Purchases**

Excess and surplus items in Quadrant III will be donated, recycled, reallocated, resold, or removed. These items have many sources and many options and provide low value to the end Client. For identified items that are to be donated, the Life Cycle Management Team will determine who the recipients will be. For identified surplus that is to be recycled, the Client and Item Manager must relocate this surplus to an appropriate scrap dealer. For reallocation, the Client must redeploy and relocate this surplus to the new Client. For identified surplus that will be resold, the Market Analyst must be consulted, the surplus will then be sold, and the Client can determine how it will be physically relocated to the new owner. For identified surplus that is to

be removed, the Item Manager must consult the Contracting Officer (because Supplier involvement is sometimes required) and then ensure that the items are disposed of or donated.

### **Quadrant IV: Core/Standard Purchases**

Excess items in Quadrant IV have created direct value for the Client and are readily available in the marketplace. Items of this standard nature can have various functions, and are therefore useful both internally and externally. These items can be remarketed, donated, recycled, reallocated, or resold. For identified excess that is to be remarketed, the Item Manager must contact the Supplier, and because the transaction is contractual, the Supplier will pay the Postal Service for the surplus that has been reacquired. For donations, the Client and Life Cycle Management Team will work together to determine which organization the materials will be donated to. For identified surplus that is to be recycled, the Client and Item Manager must relocate this surplus to an appropriate scrap dealer. For identified surplus that is to be reallocated, the Client must redeploy and relocate this surplus to the new Client. For reselling, the Market Analyst must be consulted to determine the value of a specific product if it will be bought by an external party. The surplus will then be sold, and the Client will determine how it will be physically relocated to the new owner.

### **Other Topics Considered**

Consider Auctions topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources.

Develop Preliminary Investment Recovery Plan topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Finalize Investment Recovery Plan topic, Plan for Contract Administration task, Process Step 3: Select Suppliers

Stockroom and Storage Space Management topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Clarify Data Rights and Intellectual Property Issues topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

## **Write Off Inventory**

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Inventory is stock of raw materials, work in process, and finished goods being held at a given time. Inventory is generally the least-liquid item listed by the Postal Service in the current asset account of its balance sheet. Despite investment recovery, many items remain in excess after completion of contract performance because of the nonliquid nature of inventory. Any

warehouse operation, regardless of how efficiently it is managed, accumulates excess inventory, usually from errors regarding demand forecasts or record keeping. When excess inventory cannot be used for alternative purposes, it becomes obsolete.

The inventory control plan (which contains data on the quantities, locations, and conditions of inventory that is due in, on hand, and due out) is used to avoid both the overstocking and the obsolescence of inventory. Obsolete inventory does not create any value for the Postal Service because this type of inventory cannot generate revenue or create cost savings. The residual material, if not usable elsewhere in the Postal Service, is then considered obsolete and will go through the normal disposal process.

## **Disposal**

Disposal is the final phase of the life cycle and can pose significant economic and social risk to the Postal Service. The actual removal and relocation of excess inventory not addressed by investment recovery is explained in the Dispose topic of the Investment Recovery task of Process Step 6: End of Life. The Postal Service must then write off these items from the current asset account on its balance sheet.

## **Write Off**

Write offs occur when an item has a remaining capitalized value on the Postal Service's accounting books. This is the capitalized central inventory for stocked consumables and spares, as well as the undepreciated values in the property accountability systems for equipment. Write offs for inventory items are taken against a specialized account managed by Materials Production and Distribution. Write off of the undepreciated value of equipment is paid for by the owning organization against its operating or program budget. The value in both cases is determined by the book value less any returns that can be gained through any salvage value.

The Client and Item Manager must inform the Purchase/SCM Team of inventory items that are written off so that future investment recovery plans, inventory control plans, and demand forecasts can be updated appropriately.

## **Other Topics Considered**

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Develop Preliminary Investment Recovery Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Develop Life Cycle Support Plan topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Develop, Finalize, and Implement Inventory Control Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Implement Life Cycle Support Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Implement Investment Recovery Plan topic, Manage Demand task, Process Step 5: Measure and Manage Supply

Dispose topic, Investment Recovery task, Process Step 6: End of Life

## Evaluate and Analyze Actual TCO

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Total cost of ownership (TCO) refers to the total cost incurred over the life cycle of an item, encompassing development, purchase, use, maintenance, support, and disposal. A TCO analysis exposes the hidden costs easily overlooked during budget planning or when making purchase decisions. As a result, it becomes possible to yield higher savings by optimizing relevant cost elements throughout the entire project life cycle versus by individual supply chain management (SCM) step.

A preliminary estimate of TCO took place during the Develop Preliminary Total Cost of Ownership Estimates topic of the Conceptualize Need task of Process Step 1: Identify Needs. A more complete TCO estimate was calculated in the Update/Refine Total Cost of Ownership (TCO) Analysis topic of the Prepare Project task of Process Step 2: Evaluate Sources. The TCO has also been further refined during the following topics in Process Step 2: Evaluate Sources:

- Conduct Should-Cost Analysis topic of the Collect Ideas and Build Fact Base task
- Develop Switching Cost Analysis topic of the Develop Sourcing Strategy task
- Review and Finalize Request for Proposals (RFP) topic of the Perform Solicitation-Related Activities task
- Conduct Price/Cost Analysis topic of the Evaluate Proposals task

As the project reaches the end of its life, the Pricing Analyst needs to validate the estimated TCO against actual TCO. An actual TCO is based on the costs incurred over the project's life cycle. It also incorporates the inputs used for a typical TCO estimate, upgrading them to actual numbers and measures. An actual TCO study assesses the total cost from purchase to the write off of inventory. A reduction in actual TCO from previous comparable projects represents a cost saving for the Postal Service. Net savings is the difference between prior-year spend and current-year spend for the same or comparable products, services, or activities. Savings related to supplier price or market increases do not qualify as cost savings because they do not show up on the bottom line, even though they may qualify as negotiated savings or cost avoidance. Negotiated saving is the difference between a supplier's initial proposed price and the final purchase price.

Cost avoidance is the identifiable and measurable elimination of a new cost that would have otherwise occurred except for planned and deliberate SCM actions. Cost avoidance does not qualify as a cost saving because the avoidance has no direct dollar-for-dollar impact on the bottom line. Similarly, avoidance does not qualify as a cost reduction because the avoided cost is a "new" cost and, by definition, not included in prior-year spend. The cost

avoidance minimizes or eliminates the negative impact on current or future-year spend, however. Cost avoidance is measured differently than negotiated savings are. Cost avoidance is the difference between the average quoted market price and the price paid, which could be more or less than the initial proposed price.

The TCO formula, laid out in Process Step 1: Identify Needs, still applies:

$$\text{TCO} = \text{P} + \text{Present Value of (O + T + M + W + E - S)}$$

Where:

- P = Purchase costs
- O = Operating costs
- T = Training costs
- M = Maintenance costs
- W = Warehousing and distribution costs
- E = Environmental costs
- S = Salvage value

A financial review, conducted at contract closeout, determines whether all invoices are paid and whether the actual expenditures matched the planned budget. The review will provide actual cost figures to the cost items that make up the actual TCO value. Invoices and payment are explained, in detail, in the Process Invoices and Make Payment topics of the Make Payment task of Process Step 5: Measure and Manage Supply.

The Pricing Analyst uses the actual TCO in conjunction with the estimate to track the cost trends over time. How much the actual data differs from the estimate can suggest important areas that can improve future performance (e.g., additional project metrics, cost reduction levers, cost avoidance opportunities). The following should be considered when analyzing the actual TCO:

- What caused the discrepancy between actual and estimate?
- If actual TCO is above estimate for certain activities, is any part of the cost avoidable?
- If actual TCO is below estimate for certain activities, what is the reason? What are the trade offs, if any, to the reduced cost?
- Does the comparison between actual TCO vs. estimated TCO indicate any cost-saving opportunities not previously captured? Are there any cost reduction levers in addition to those identified in the Identify Cost Reduction Levers topic of the Conceptualize Need task in Process Step 1: Identify Needs?
- What are some appropriate project metrics that should be included to produce more accurate forecasts in the future?

Another advantage for calculating the actual TCO is that it allows for comparison among alternative projects. For instance, the Pricing Analyst can compare the actual cost of making an item in-house versus buying it, or sole sourcing versus multiple sourcing, in terms of their impact on overall project cost. The result can be used as support for future make versus buy and sourcing decisions.

The information derived from calculating and analyzing the actual TCO at the end of a project's life can be used to fine-tune future project estimates on similar projects. It adds to the repository of project metrics, cost elements, and cost data, which will add to project flexibility and help save time and money on future endeavors.

## **Other Topics Considered**

Develop Preliminary Total Cost of Ownership Estimates topic, Conceptualize Need task, Process Step 1: Identify Needs.

Identify Cost Reduction Levers topic, Conceptualize Need task, Process Step 1: Identify Needs

Update/Refine Total Cost of Ownership (TCO) Analysis topic, Prepare Project task, Process Step 2: Evaluate Sources

Conduct Should-Cost Analysis topic, Collect Ideas and Build Fact Base task, Process Step 2: Evaluate Sources

Develop Switching Cost Analysis topic, Develop Sourcing Strategy task, Process Step 2: Evaluate Sources

Review and Finalize Request for Proposals (RFP) topic, Perform Solicitation-Related Activities task, Process Step 2: Evaluate Sources

Conduct Price/Cost Analysis topic, Evaluate Proposals task, Process Step 2: Evaluate Sources

Identify Cost Reduction Levers topic, Conceptualize Need task, Process Step 1: Identify Needs

Process Invoices topic, Make Payment task, Process Step 5: Measure and Manage Supply

Make Payment topic, Make Payment task, Process Step 5: Measure and Manage Supply



# USPS Supplying Practices Commodity Specific

## Design and Construction Purchasing

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### Applicability

Design and construction purchasing is the purchase of architect/engineer, construction, and related services. This section covers the purchase of:

- Services related to facilities design
- Construction
- Construction management

### Architect-Engineer Services

The Postal Service purchases architect-engineer (A/E) services from prequalified suppliers based on demonstrated competence and qualification for the type of services required. Fees are negotiated after selection. Generally, A/E contracts are awarded in accordance with the guidelines of the Supplying Practices. However, when the guidelines of this section conflict with any other guidelines of the Practices, the guidelines of this section govern.

### Definitions

A/E services are professional services requiring the performance or approval by a registered or licensed architect or engineer associated with the design or construction of real property, as well as incidental services that members of those professions may logically or justifiably perform in relation to construction, alteration, or repair of buildings, site improvements, roads, or other kinds of real property. Such incidental services include:

- Master planning
- Architectural and engineering studies
- Investigations
- Surveys
- Reports
- Design development
- Drawings preparation

- Specification preparation
- Interior design
- Space planning
- Environmental services
- Observation and reporting of the work performed during construction, alteration, or repair

Environmental A/E services are those environmental services which require performance or approval by a registered or licensed architect or engineer. Environmental A/E services should be purchased using the procedures in this section. Other environmental services such as continuous monitoring and/or testing for environmental compliance at postal facilities do not require performance by a registered or licensed architect or engineer. These services should be purchased in accordance with the practices discussed in Special Categories of Purchases.

## **A/E Selection Procedures**

### **Publicizing**

For each contract for which the fee is expected to exceed \$50,000, a notice of intent to contract for A/E services must be publicized in the Government-wide Point of Entry (GPE) available at [www.fedbizopps.gov](http://www.fedbizopps.gov) (further details can be reviewed in the Issue Request for Proposals (RFP) and Publicize Requirements topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources). The notice must solicit submission of Standards Forms (SF) 254, *Architect/Engineer and Related Services Questionnaire* and 255, *Architect/Engineer and Related Services Questionnaire for Specific Project*. For each contract for which the fee is not expected to exceed \$50,000, publicizing should be limited to the area in which the project will be performed.

### **A/E Selection Team**

Contracting Officers establish teams to evaluate and select A/E suppliers. Each selection team must be composed of at least two members with one member designated as the chairperson. Team members must be appointed from among professionally qualified Postal Service personnel who collectively have experience in architecture, engineering, construction, and purchasing, although staff limitations or project-specific considerations may require that individuals working under contract for the Postal Service be appointed to the selection team. These individuals may be appointed only on a case-by-case basis subject to approval of the Contracting Officer. Each project file must contain written certification by each evaluation team member that he or she has no conflict of interest that may impair their objectivity in the selection process.

Less complex, low dollar A/E projects may be awarded directly without the formation of an A/E selection team. For these projects, the Contracting Officer may appoint an individual from the A/E selection team to recommend three or more qualified suppliers from existing SF 254 and SF 255

information. If the number of known qualified suppliers is insufficient to provide a competitive review, then the project may be publicized within the area in which the project is to be performed.

## **Postal Service Cost Estimate**

Before discussions or negotiations of any proposed contract or contract modification is initiated, an independent Postal Service estimate of the cost for the required A/E services must be developed, based on a detailed analysis of the costs expected to be generated by the work. Consideration must be given to the estimated value of the services and to the scope, complexity, and nature of the project. Detailed information about cost estimates is contained in the Develop Preliminary Total Cost of Ownership Estimates topic of the Conceptualize Need task of Process Step 1: Identify Needs and the Conduct Should-Cost Analysis topic of the Collect Ideas and Build Fact Base task of Process Step 2: Evaluate Sources.

The independent estimate must be revised as required during discussions or negotiations to reflect changes in or clarification of the scope of the work to be performed. A fee estimate based on the application of percentage factors to cost estimates for the various segments of the project may be developed for comparison purposes, but such an estimate must not be used as a substitute for the independent Postal Service estimate. To the extent necessary, the cost breakdown figures in the Postal Service estimate may be revealed during discussions or negotiations provided that the overall amount of the Postal Service estimate is not disclosed. Any change in the Postal Service estimate during or after price discussions or negotiations must be specifically but succinctly explained in the contract file.

## **Cost or Pricing Data**

The guidelines of the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources (relating to cost analysis, guidelines of cost or pricing data, and preparation of discussions memoranda) apply to purchases of A/E services. Because of the procedures used to purchase A/E services and the lack of price competition, price analysis is normally insufficient.

## **Fees for A/E Services**

The Contracting Officer is responsible for negotiating a fair and reasonable fee for the services to be performed. In determining a fair and reasonable fee, the Contracting Officer should compare the independent Postal Service estimate with the A/E supplier's proposal. Also, the Contracting Officer should consider previous prices paid for similar services. Additional guidelines are contained in Handbook P-2, *Design and Construction Purchasing Practices*.

## **Discussions or Negotiations**

Discussions and negotiations will be conducted initially with the A/E supplier given the highest technical ranking. If a mutually satisfactory contract cannot

be achieved with that supplier, the discussions or negotiations must be terminated. Discussions or negotiations will then be initiated with the supplier next in order of preference. This procedure must be repeated until a mutually satisfactory contract has been negotiated. Depending on the particular business situation, the Contracting Officer may, at his or her discretion, complete A/E requirements in accordance with the *Supplying Principles and Practices* (P&P). In these instances, award will be made to the A/E supplier offering the best value to the Postal Service. More information about discussions is available in the Hold Discussions topic of Evaluate Proposals task of Process Step 2: Evaluate Sources. More information about negotiations is available in the Negotiate with Suppliers topic of the Perform Preaward Activities task of Process Step 2: Evaluate Sources.

## **A/E Supplier Performance Evaluation**

The project manager responsible for monitoring the performance of an A/E Supplier must complete an objective written evaluation of the Supplier's performance, including any environmental elements, using Forms 7477-A, *A/E's Performance Design Phase Evaluation*, and 7477-B, *A/E's Performance Construction Phase Evaluation*. For further guidance see Handbook P-2, *Design and Construction Purchasing Practices*.

## **Indefinite-Quantity A/E Services Contracts**

The Postal Service requires that a large number of small repair and alteration, environmental and other projects be performed each year. Indefinite-quantity (IQ) A/E contracts permit a large number of projects to be accomplished at one or more facilities through the issuance of delivery (work) orders against a single contract rather than through individual RFPs. Each indefinite-quantity contract is limited to the geographic area that has been described in the RFP. Multiple awards may be made if provided for in the RFP.

Limitations regarding contract term, dollar limitations, and delivery (work) order limits are issued by the VP, SM, or authorized designee.

Guidance for indefinite-quantity A/E services contract preparation is contained in Handbook P-2, *Design and Construction Purchasing Practices*.

## **Construction**

### **Purchasing Construction**

This section applies to the purchase of construction. When the guidelines of this section conflict with any other guidelines of the Supplying Practices, the guidelines of this section govern.

### **Definition**

Construction means construction, alteration, repair (including painting and improvements of all types), environmental work (asbestos abatement, UST removal/replacement, etc.), and demolition of buildings, structures, and improvements of all types. The term does not include other investigative work

such as engineering, environmental or other studies that is not part of the beginning of the construction process. Normally, construction does not include any construction work pursuant to a lease and performed by the lessor (see Handbook RE-1, *Realty Acquisitions and Management*).

### **Purchase Method**

Generally, construction is purchased in accordance with the process steps in the Supplying Practices. Suppliers should be prequalified, and depending on the particular business situation, purchase or prequalification opportunities may be publicized in accordance with the Issue Request for Proposals (RFP) and Publicize Requirements topic of the Perform Solicitation-Related Activities task in Process Step 2: Evaluate Sources. When the Contracting Officer determines that the price proposed by a lessor offers the best value to the Postal Service, alterations, repairs, and improvements to be accomplished by the lessor may be performed without competition. The bonding requirements discussed in the Bonds, Insurance, and Taxes topic of General Topics must be met for all construction contracts.

### **Contract Types**

Generally, contracts for construction should be firm fixed price contracts. Such contracts may be:

- Lump-sum contracts for the total work or for defined parts of it
- Unit-price contracts in which a unit price is paid for a specified quantity of work, such as cubic yards of earth or concrete, or square yards of pavement
- A combination of both (of the above)

However, any contract type discussed in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources may be used.

### **Specifications**

The supplier may seek approval to substitute equal products or processes for those specified by brand name (see Clause B-63: Materials and Workmanship). Accordingly, the request for proposals (RFP) should identify any products or processes that may not be substituted after award. See Handbook P-2, *Design and Construction Purchasing Practices* for further guidance.

### **Presolicitation Notices**

As discussed in the Issue Request for Proposals (RFP) and Publicize Requirements topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources, a presolicitation notice may be issued for construction projects. Notices may be distributed to plan hold rooms, companies on solicitation mailing lists maintained by the purchasing office, and any other known interested parties within the Postal Service or members of the public. Any presolicitation notice issued must include a statement of

the project's magnitude in terms of physical characteristics and an estimated price range (for example, 30,000 sq. ft. building with an estimate cost range of \$500,000 to \$1,000,000 for the project). However, in no event may the statement disclose the Postal Service estimate.

## **Preproposal Conferences and Attendees**

Preproposal conferences are discussed in detail in the Issue Request for Proposals (RFP) and Publicize Requirement topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Sources. Handbook P-2, *Design and Construction Purchasing Practices* may also be leveraged for further guidance. The design A/E must be available to help interpret plans and specifications.

## **Inspection of Construction Site and Data**

Provision must be made for suppliers to inspect the construction site. Also, suppliers must be given the opportunity to examine data available to the Postal Service that may provide information affecting performance of the work, such as boring samples, and original boring logs. This information should be assembled in one place and be made available to all offerors in the same manner. When feasible, a record should be kept of the identity and affiliation of all offerors' representatives inspecting the site or examining the data.

## **Performance Time**

In establishing the time for contract completion, the Purchase/SCM Team should consider, among other things, the nature and complexity of the project, the construction seasons involved, the availability of equipment, labor and other factors and the increased cost for an aggressive project schedule. In any given contract, separate completion periods may be established for separable items of work. When such periods are shown, requests for time extensions must be evaluated for each item, and all affected completion periods must be modified when appropriate.

## **Liquidated Damages**

Liquidated damages are discussed in the Terminate Contract topic of the Make Payment task of Process Step 5: Measure and Manage Supply and in the Bonds, Insurance, and Taxes topic of General Topics. Construction purchase contracts may contain Clause 2-10: Liquidated Damages, as well as other clauses relevant to liquidated damages, and the insertion of this language into contracts must be considered. For additional information on calculating the liquidated damages rate for construction projects see the guidelines in Handbook P-2, *Design and Construction Purchasing Practices*. When different completion periods for separate parts or stages of the work are specified in the contract, the clause may be revised to provide for liquidated damages for each separate part or stage in which delay will damage the Postal Service.

## **Base and Alternate Prices**

RFPs permitting alternate proposals must require the base proposal to include all features considered essential to a sound and adequate building design. Any alternates to be included in the specifications should represent significant amounts of work in relation to the base proposal, and they should generally be structured as “add” or “deduct” alternates. When accurate cost estimates are not available, a base proposal may be required for the minimum acceptable project, with “add” alternates for desired materials or equipment. When budget constraints exist, a base proposal may be required for the plans and specifications as stated, with “deduct” alternates for desired materials or equipment to be used to bring proposals back within budget. RFP documents calling for alternates must clearly state that the Postal Service reserves the right to accept or reject any and all alternate prices, as may be determined by the Contracting Officer to be in the Postal Service’s interests.

## **Performance of Work by Supplier**

Unless the Supplier is required to perform a significant part of the contract work with its own forces, it may be difficult to obtain adequate Supplier supervision of the work. To address this problem, each Postal Service construction contract must contain Clause B-42: Performance of Work by Supplier, establishing the minimum percentage of the work that the Supplier must perform, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work. The percentage may be increased for contracts with unusual requirements (i.e., environmental, mechanical).

## **Request for Proposals (RFP)**

The development, review, finalization, and issue of the request for proposals (RFP) are discussed in detail in the following topics of Process Step 2:

Evaluate Sources:

- Start Request for Proposals (RFP) Development (of the Prepare Project task)
- Review and Finalize Request for Proposals (RFP) (of the Perform Solicitation-Related Activities task)
- Issue Request for Proposals (RFP) and Publicize Requirements (of the Perform Solicitation-Related Activities task)

Handbook P-2, *Design and Construction Purchasing Practices* may also be leveraged for further information.

## **Distribution**

RFPs may be furnished (with plans and specifications) without charge to organizations that maintain plan hold rooms, or other types of organizations, for the benefit of suppliers, subcontractors, and material suppliers. The extent

of this distribution (geographical or otherwise) may be determined on a case-by-case basis by the Contracting Officer.

## **Release of Plan Holders List**

Release of the plan holders list may be determined only after careful review of the Privacy Considerations topic of the General Practices and the content of Handbook AS-353.

## **Contract Award**

A notice of intent to make award must be furnished to the successful offeror no later than the time set for acceptance in the RFP or any extension to which the offeror has agreed. The notice must advise the supplier of any required bonds and the date by which the supplier must execute and return such bonds. When all required bonds have been received, the Contracting Officer will make award and issue a notice to proceed. The Contracting Officer may issue the notice to proceed at the time of award or may issue it at the preconstruction conference. The Contracting Officer then will send a written notice of the award to all offerors who submitted a proposal and any other known interested parties within the Postal Service or the public.

## **Construction Supplier Performance Evaluations**

The project manager responsible for monitoring the performance of a construction Supplier must complete Form 5002, *Construction Supplier Performance Evaluation*, of the Supplier's performance, including any environmental elements, for each project. For further guidance see Handbook P-2, *Design and Construction Purchasing Practices*.

## **Indefinite-Quantity Construction Contracts**

The Postal Service requires a large number of small repair and alteration, environmental, and other projects to be performed each year.

Indefinite-quantity construction contracts permit a large number of projects to be accomplished at one or more facilities through the issuance of delivery (work) orders against a single contract rather than through individual RFPs.

A request for proposals (RFP) must be used to request proposals based on a unit price schedule prepared by the Postal Service. Offerors must be required to submit a multiplier that will apply equally to all prices listed in the unit price schedule. The multiplier submitted by the offeror must not be more than two decimal places (e.g., 1.22 or 0.97). Each indefinite-quantity contract is limited to a specific geographic area.

Limitations regarding contract term, dollar limitations, and delivery (work) order limits are issued by the VP, SM, or authorized designee. Delivery (work) orders are limited to the geographic area described in the contract. No new construction or building expansion work may be ordered under an indefinite-quantity construction contract, except for site preparation or foundation work for a pre-engineered building purchased directly from the manufacturer. The Contracting Officer may request quotations from an



indefinite-quantity construction supplier for work items not covered by the unit price schedule and order such items, in addition to ordering covered work. However, not more than 25 percent of the cost of any delivery (work) order may be for such uncovered work.

Guidance for indefinite-quantity construction contract preparation is contained in Handbook P-2, *Design and Construction Purchasing Practices*.

Liquidated damages are discussed in the Terminate Contract topic of the Make Payment task of Process Step 5: Measure and Manage Supply and in the Bonds, Insurance, and Taxes topic of General Topics. Indefinite quantity construction contracts may contain Clause 2-10: Liquidated Damages, as well as other clauses relevant to liquidated damages, and the insertion of this language into contracts must be considered. For additional information on calculating the liquidated damages rate for construction projects see the guidelines in Handbook P-2, *Design and Construction Purchasing Practices*. When different completion periods for separate parts or stages of the work are specified in the contract, the clause may be revised to provide for liquidated damages for each separate part or stage in which delay will damage the Postal Service.

IQC construction Supplier evaluation will be conducted in the same manner as regular contract construction Supplier evaluation.

## **Design-Build Contracting**

Generally, design-build contracts are awarded following the same guidelines contained in the Supplying Practices. However, because these purchases call for a combination of services, the purchasing process is somewhat unique. When the guidelines of this section conflict with any other guidelines of the Supplying Practices, these govern.

### **Definition**

Under design-build contracting, one entity or supplier performs both architecture-engineering and construction under one single contract providing single-source responsibility for delivering the project design and construction. The design-build entity or supplier can assume several organizational structures. Most common are suppliers possessing both design and construction resources in-house. Others are combinations of a joint venture between designer and supplier, a constructor-led team with the designer in a subcontract role, or a designer-led team with the constructor in a subcontractor role.

### **Purchase Method**

The practices discussed in the Supplying Practices and the procedures listed in Handbook P-2, *Design and Construction Purchasing Practices* regarding publicizing, RFPs, and contracts apply to the purchase of design-build services. Prequalification procedures should ordinarily be used in connection with design-build services, regardless of contract type.

### **Fixed-Price Design-Build Contract**

Fixed-price design-build contracts are suitable for use on small, simple projects with well-defined scopes, for which design has been developed to at least the 30 percent level through Standard Plans or otherwise. The fixed-price is comprised of fixed fees for A/E services (which cover all costs of remaining design work and A/E construction services, plus associated overhead and profit) and a fixed-price to complete all construction work (which covers all construction overhead and profit). The contract is awarded based upon the guidelines contained in the Supplying Practices.

### **Cost-Reimbursable Design-Build Contracts**

Cost-reimbursable design-build contracts are suitable for use on all major projects for which the scope or complexity dictate the use of design-build construction delivery services. Cost-reimbursable design-build contracts must be based on a Guaranteed Maximum Price (GMP) which must be determined through competition or through discussions. The GMP is comprised of fixed fees for A/E services (which cover all costs of remaining design work and A/E services during construction, plus associated overhead and profit), reimbursable direct construction costs, and a construction services fee (which covers all construction overhead and profit). If the supplier's total fees and actual construction costs together exceed the GMP as adjusted for changes (if any), the adjusted GMP is the amount paid for complete performance; if they do not exceed the adjusted GMP, the Postal Service and the supplier share the savings in accordance with a contractually established ratio.

Cost-reimbursable design-build contracts with a competitive Guaranteed Maximum Price (GMP) are suitable for use on projects for which design has been developed to at least the 30 percent level and a reliable estimate of the maximum cost to construct the facility can be made. The contract is awarded based on the guidelines in the Supplying Practices.

Cost-reimbursable design-build contracts with a negotiated Guaranteed Maximum Price (GMP) are suitable for use on all major projects when factors such as significant ambiguities concerning the scope of the project, requirements for integration with fixed mechanization, or new types of projects prevent the development of a reliable estimate of the maximum cost to construct the facility. The Postal Service provides the offerors with design which is less than 30 percent developed (typically only 10 percent developed) along with a Construction Cost Limit (CCL). The CCL is the Postal Service budget estimate of the total cost to construct the facility including the offeror's overhead and profit. These contracts are awarded through the following purchase process:

- Phase I covers the completion of design to the point where a GMP can be reasonably negotiated and is awarded based upon the procedures covering evaluation of technical and management proposals and price proposals.
- Phase II covers all remaining design and all construction work and is awarded based upon negotiation of a CCL within the GMP.

If a CCL cannot be negotiated within the GMP, the Postal Service may require the supplier to redesign within the CCL at no cost to the Postal Service or may withdraw from the project. If the supplier withdraws, the Postal Service keeps the design and uses it to contract with a different supplier using a fixed-price design-build contract or a cost-reimbursable design-build contract with a competitive GMP.

Fixed-price contracts with economic price adjustment and contracts with performance incentives may be used. See the Supplying Practices and Handbook P-2, *Design and Construction Purchasing Practices* for further guidance.

### **RFPs for Design-Build Contracts**

RFPs and contracts for design-build are unique. Guidelines regarding applicable contract clauses and solicitation provisions are provided in Handbook P-2, *Design and Construction Purchasing Practices*.

### **Requirements for Design-Build Proposals**

In addition to the technical proposal, offerors must also furnish Standard Form 254, *Architect-Engineer and Related Services Questionnaire*, and Standard Form 255, *Architect-Engineer and Related Services Questionnaire for Specific Project*. See Handbook P-2, *Design and Construction Purchasing Practices* for further guidance.

### **Design-Build Supplier Performance Evaluations**

The project manager responsible for monitoring the performance of a design-build contract must complete an objective written evaluation of the supplier's performance including any environmental elements.

## **Construction Management Support Services**

### **Definition**

A CMSS supplier monitors the management, coordination, and general direction of the work and progress of a construction supplier. The CMSS supplier maintains a full-time staff at the project site during construction. A CMSS supplier may be retained at any time during the project planning, design, or constricting phase. During the construction phase the CMSS Supplier must maintain a full-time staff at the project site.

### **Purchase Method**

The Supplying Practices and Handbook P-2, *Design and Construction Purchasing Practices* offer guidance regarding publicizing requirements, RFPs, and contracts, which applies to the purchase of construction management support services.

## **Contract Types**

Contracts for construction management support services may be indefinite-quantity contracts or a single fixed-price contract for a single project. In order to facilitate the expeditious assignment of CMSS suppliers to projects where their services are needed, construction management support services contracts are generally awarded as indefinite-quantity contracts requiring the CMSS supplier to provide a range of construction services for multiple construction contracts over a specified period of time and within a specified geographic area. Limitations regarding contract term, dollar limitations, and (delivery) work order limits are issued by the VP, SM, or an authorized designee.

## **CMSS Contract as an Alternative to A/E Contract Options**

The Postal Service may contract with a CMSS supplier rather than exercising an A/E construction-management option to perform field duties during construction. The CMSS supplier may not prepare working drawings, design, or specification that will be used for construction services.

## **RFPs for Construction Management Support Services Contracts**

Guidelines regarding applicable contract clauses and solicitation provisions are provided in Handbook P-2, *Design and Construction Purchasing Practices*.

## **Selection Processes for Construction Management Support Services Contracts**

See Handbook P-2, *Design and Construction Purchasing Practices* for guidance on the evaluation and selection process.

## **Evaluation of Price Proposals**

The offeror's price proposal is a multiplier factor that is applied to each work-day category. The multiplier submitted by the offeror must not be more than two decimal places (e.g., 1.22 or 0.97).

## **Contracts Award**

See Handbook P-2, *Design and Construction Purchasing Practices* for guidance on the contract award process.

## **Contract Management Support Services Supplier Performance Evaluations**

The project manager responsible for monitoring the performance of a CMSS Supplier must complete an objective written evaluation using Form 7477-A, *A/E's Performance Design Phase Evaluation* and 7477-B, *A/E's Performance Construction Phase Evaluation*, of the Supplier's performance, including any environmental elements, for each project. For further guidance see Handbook P-2, *Design and Construction Purchasing Practices*.

## **Environmental Engineering Services**

When the Postal Service requires environmental engineering services such as the design and/or monitoring of environmental mitigation, abatement, or clean-up measures, an engineering supplier should be retained using the procedures applicable to procurement of A/E services. In those cases where a supplier is hired to both design and perform environmental mitigation, abatement, or clean-up measures, the supplier should be retained using the procedures applicable to purchase of design-build services.

## **Mail Transportation Purchasing**

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Mail transportation purchasing is the purchase of mail transportation and related services. The following addresses the purchase of mail transportation services authorized in Part V of title 39, U.S. code, and those authorized under applicable guidelines of 49 U.S.C. 41904. It also addresses the purchase of ancillary services directly related to the transportation of mail.

### **Purchasing Method**

Generally, and depending on the item being purchase, mail transportation is purchased following the policies and procedures contained in the Supplying Practices. In case of any conflict between this section and those Practices, the guidelines of this section govern.

### **Administrative Officials**

Administrative officials are Postal Service officials designated by a Contracting Officer to supervise and administer a Supplier's performance of mail transportation and related services. Officials so designated do not have the authority to make contract changes as described below.

### **Contracting Officer's Representative**

A Contracting Officer may designate, by name and position title, Postal Service employees to serve as Contracting Officers' representatives (see the Appoint Contracting Officer's Representatives (CORs) topic of the Plan for Contract Management task of Process Step 3: Select Supplier). These individuals are authorized to take actions related to the award and administration of specified contracts. Designations must be in writing and must clearly specify the contracts or types of contracts over which the Contracting Officer's representative has delegated authority. Designations remain in effect until:

- Revoked by the Contracting Officer or the Contracting Officer's successor; or
- Revoked by the departure or reassignment of the individual designated.

## Authority and Limitations

A Contracting Officer's representative is authorized to:

- Review and grant contract adjustments when the annual compensation paid under the contract will not increase or decrease by more than 10 percent.
- Discuss, approve, and sign orders and contract modifications changing service schedules, provided that the annual compensation paid under the contract will not increase or decrease by more than 10 percent; and
- Review and sign contract modifications having no effect on cost or price.

A Contracting Officer's representative may not award, agree to, or sign any contract or, except as described above, any contract modification or termination notice. Only Contracting Officers have such authority.

## Restrictions

CORs must be employed in the Executive and Administrative Schedule or the Postal Career Executive Service. They may not redelegate their authority. They may, however, assign the performance of administrative tasks to their subordinates.

## Establishing Mailing Lists

If suppliers have not been prequalified, the Contracting Officer, working with the Purchase/SCM Team, must establish a list of potential suppliers for each RFP, and maintain lists of potential suppliers for services solicited on a recurring basis. Suppliers wishing to be included on the national mailing list may apply by submitting Form 5436, *Mailing List Application — Mail Transportation Services*, or by letter providing the information required by the Purchase/SCM Team. Suppliers must be retained on mailing lists for 2 years from the date of their application or the date of their most recent response to a solicitation, whichever is later. Those that have been removed from mailing lists may be reinstated by filing a new application.

## Use of Mailing Lists

The Purchase/SCM Team, using its knowledge of the marketplace and depending on the particular purchase, should solicit enough mailing list suppliers to ensure adequate competition. In addition, the Contracting Officer may have an announcement of the request for proposals (RFP) published in the Government-wide Point of Entry (GPE). Announcements of RFPs may be made available to newspapers, other news media, and trade journals at no cost to the Postal Service. Paid commercial announcements or advertisements may be used when determined by the Contracting Officer to be in the Postal Service's interest. Unless precluded by urgency, any announcement must appear at least 30 days before the date for receipt of proposals.

## Contract Type

Information relevant to contract type is available in the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources.

## Contract Term

Except for air and terminal-handling contracts, the term of the contract must be one of the following:

- *Regular Contract.* A fixed-term contract that cannot exceed 4 years unless warranted by special conditions or the use of special equipment. In these cases, the contract may be for a 6-year term.
- *Emergency Contract.* A contract entered into for the duration of an emergency under the authority of 39 U.S.C. 5001.
- *Temporary Contract.* A short-term contract that may not exceed 2 years, and that may be terminated by either party without entitlement or indemnity.

## Use of Contracts

Regular contracts should be used whenever possible. Temporary contracts may be used only when (a) the need for the service is expected to be 2 years or less, or (b) the need for the service has been established, but the duration, frequency, or volume of mail are not certain. Temporary contracts must be replaced with regular contracts as soon as service requirements are firmly established.

Emergency contracts may be entered into only when an emergency exists, and must terminate when the emergency ceases and the Postal Service is able to obtain service otherwise pursuant to its contracting authority. No emergency contract may remain in effect more than 6 months without the approval of the manager, Transportation Portfolio. Circumstances under which emergency contracts may be appropriate include the following:

- A catastrophic event has interrupted normal transportation operations.
- Strikes or other labor disputes are causing service interruptions.
- A mail transportation supplier has been suspended or removed or a contract has been terminated.
- A sole highway supplier has died or become incompetent and the estate representative will not continue service.
- The generation of mail at unanticipated locations or an unexpected increase in mail volume at regular locations exceeds the mail hauling capacity of the Postal Service or regular suppliers.

## Modes of Transportation

Transportation contracts are distinguished by the mode of transportation service provided. A contract for any mode of service may require container and additional services such as stevedoring, terminal handling, and ground drayage between postal facilities and the supplier's facilities. The modes follow:

### Air Transportation

- *Air Taxi.* Air taxi contracts call for the transportation of mail by dedicated aircraft operating between two or more specified points. In most cases, these contracts also call for the exclusive use of the entire aircraft capacity for the transportation of mail. Handbook PO-513, *Mail Transportation Handbook*, and more specifically, Handbook PO-509, *Air Taxi Contract Administration*, provides guidelines and procedures in the purchase and administration of air taxi contracts. If any conflict occurs between the handbooks and these guidelines, these guidelines apply.
- *Air Network.* Air transportation network contracts call for the transportation of mail by air carrier, usually by dedicated aircraft between points where hub transfers are used.
- *Air Segment.* Air transportation segment contracts call for the transportation of mail by air carrier between an origin and a destination specified by the Postal Service.
- *Air System.* Air system contracts call for the transportation of mail from, to and between any point(s) within the air carrier's existing transportation system or network. The air carrier's existing system may be modified from time to time as determined by the air carrier. An air carrier's transportation system consists primarily of transportation by aircraft, but may include road feeder service (RFS) connections. Such contracts may be awarded either (a) through a competition in which price is a factor in the selection decision; or (b) on the basis of a uniform or common rate set by the Postal Service. If price is a factor in selecting air system suppliers, the purchasing procedures contained in the Supplying Practices should be followed. If set rate contracts are solicited, the purchasing method used must be authorized by the manager, Transportation Portfolio. The method used may deviate from those in the Supplying Practices, so long as those procedures (a) are reasonably adapted to negotiated, set rate contracting; and (b) are approved in writing, prior to issuance of a RFP, by the manager, Transportation Portfolio.
- *Surface Airlift.* A surface airlift contract calls for the airlifting of surface mail to its destination.

### Ground Transportation

- *Highway.* Highway transportation is the surface transportation of mail by means other than bus, rail or water. Service may be between either two or more designated points (over the road) or



within a local metropolitan area (shuttle service). Highway transportation contracts may include requirements for the in-route distribution of mail in specially designed and equipped vehicles, box delivery, collections and other services similar to those provided by rural carriers. Under these contracts, another suitable means of transportation may be authorized when the use of a motor vehicle would prove impracticable.

- *Rail Transportation.* A rail transportation contract calls for the transportation of mail in rail carrier supplied or Postal Service-furnished equipment by freight carriers or their subcontractors. These contracts may incorporate one or many origin/destination segments. Handbook PO-513, *Mail Transportation Handbook*, provides guidelines and procedures in the purchase and administration of rail contracts. If any conflict occurs between the handbook and these Practices, these Practices apply.
- *Amtrak Transportation.* An Amtrak transportation contract consists of mail movement from various origins to various destinations via Amtrak passenger train network. Mail is transported in either mail handling cars (MHCs), baggage cars or other equipment as specified in the requirements. Handbook PO-513, *Mail Transportation Handbook*, provides guidance and procedures for the purchase and administration of the Amtrak contract. If any conflict occurs between the handbook and these Practices, these Practices apply.
- *Intermodal Transportation.* Intermodal transportation is the transportation of mail in carrier-supplied or Postal Service-furnished equipment by the use of intermodal carriers or subcontractors. These Intermodal carriers include rail carriers, highway suppliers, or third party intermodal companies. Intermodal transportation is the combination of more than one mode of transportation to move mail between origin and destination (for example, the use of highway and rail transportation to complete one movement of mail from origin entry to destination arrival).
- *Bus.* Bus contracts call for the transportation of mail by passenger common carriers in passenger-carrying or other motor vehicles on the routes on which they are permitted to carry passengers. These contracts may either cover a segment of the particular bus service or may cover the entire bus system or network.

### **Water Transportation**

- *Domestic Inland Water.* A domestic inland water contract calls for the transportation of mail in vessels between points within the 48 contiguous states or between points within Alaska, Hawaii, or U.S. territories and possessions. Such a contract may include guidelines requiring box delivery, collection and other services similar to those furnished by highway suppliers or rural carriers.

- *Domestic Offshore Water.* Domestic offshore water contracts call for the transportation of mail in vessels between points in the 48 contiguous states and offshore points and points in Alaska, Hawaii, or U.S. territories and possessions.
- *International Ocean.* An international water contract is a contract with U.S. or foreign-flag carriers for the transportation of mail by vessel from points in the United States or its territories and possessions to points in foreign countries.

## Ground Transportation Network

Ground transportation network contracts call for the transportation of mail by ground truck operations and may include ancillary terminal handling or delivery requirements as determined by the Postal Service.

## Terminal Handling

Terminal handling contracts call for the sorting, dispatching, loading, or unloading of mail into and out of transportation equipment. These services may be performed at the supplier or the Postal Service terminal handling facility and may or may not be ancillary in nature to the line-haul services performed by the same or other suppliers.

## Leased Trailer

Leased trailer contracts call for the lease of trailers for transportation of mail within geographical areas designated by the Postal Service. These contracts may contain provisions for trailer maintenance and repair service and load restraint systems, and other related requirements determined to be in the best interest of the Postal Service.

## Alternatives to Contracts

The following may be used to obtain mail transportation services:

- *Domestic Air Transportation Services.* Transportation of mail between points within the state of Alaska performed by scheduled air carriers and paid for at rates of compensation established by the Department of Transportation in its service mail rate orders (30 U.S.C. 5402(f)).
- *International Ocean Transportation.* International ocean transportation services may be obtained on a per-pound basis by tender. Mail of all classes and empty mail equipment may be tendered to U.S. and foreign-flag steamship companies for transportation in accordance with the scheduled rates at Figure 1 (International Ocean Transportation Schedule of Rates), unless the responsible manager has negotiated other rates. Mail may be tendered at postal facilities for transport by the steamship company to the pier, or at the carrier's facility. The schedule or negotiated rates include any costs incurred for such transport.

- International Air Transportation.* International air transportation services other than those for which the Postal Service has contracting authority under Title 39 U.S.C. 5402(a) and (b) and 49 U.S.C. 41904 must be obtained from carriers with permits and reimbursed pursuant to Department of Transportation service mail rate orders.

Figure 3

**International Ocean Transportation Schedule of Rates**

<b>Distance (Nautical Miles)</b>	<b>Rate (cents/lb)</b>
0–499	\$16.0
500–999	16.4
1,000–1,499	16.7
1,500–1,999	17.1
2,000–2,499	17.4
2,500–2,999	17.8
3,000–3,499	18.1
3,500–3,999	18.4
4,000–4,499	18.8
4,500–4,999	19.1
5,000–5,499	19.5
5,500–5,999	19.8
6,000–6,499	20.2
6,500–6,999	20.5
7,000–7,499	20.8
7,500–7,999	21.2
8,000–8,499	21.5
8,500–8,999	21.9
9,000–9,499	22.2
9,500–9,999	22.6
10,000–10,499	22.9
10,500–10,999	23.2
11,000–11,499	23.6
11,500–11,999	23.9
12,000–12,499	24.3
12,500–12,999	24.6
13,000–13,499	25.0
13,500–13,999	25.3
14,000–14,499	25.7
14,500–14,999	26.1

## Renewal of Contracts

Competitively awarded regular and temporary mail transportation contracts may be renewed by the mutual agreement of the Postal Service and the supplier. Regular or temporary highway and inland water contracts that have been wholly subcontracted less than 6 months before their expiration date (except those subcontracted by an immediate family member of a deceased or incompetent supplier) may not be renewed. Wholly subcontracted contracts that have been in effect for greater than 6 months are eligible for renewal and may be renewed by mutual agreement between the Postal Service and the subcontractor, by which the subcontractor becomes the prime Supplier under the renewal contract. Clause B-78: Renewal must be included in transportation contracts that may be considered for renewal.

Renewal contracts have the following characteristics:

- *Duration.* The renewal term of a temporary contract may not exceed 2 years, and the renewal term of a regular contract may not exceed the greater of 4 years or the original contract term.
- *Service.* The service provided at the beginning of the renewal term must be the same as that existing at the end of the previous contract term.
- *Contract Rate.* The contract rate at the beginning of the contract renewal term must be the contract rate in existence at the end of the previous contract term.

Renewals involve the following procedures:

- *Establishing Requirements.* Before entering into discussions for the renewal of a contract, the Purchase/SCM Team must determine the need to be met by the renewal contract and a reasonable rate for the service that will meet that need.
- *Determining Satisfactory Service.* Contracts should not be renewed with Suppliers who are currently providing less than satisfactory service. Faults in service which do not rise to the level of deficiencies and thus would justify termination for default may be sufficient to support a determination not to renew.
- *Negotiating Service and Price.* Having determined that a contract is appropriate for renewal, the Contracting Officer with the assistance of the Purchase/SCM Team enters into discussions with the Supplier on the terms of the renewal contract. Before agreeing to the final terms, the Purchase/SCM Team must determine that renewal offers the best value and most advantageous alternative to the Postal Service, price, and other factors considered. For the purpose of this determination, "other factors" may include the benefits of continuity of service and the potential costs of disruption arising out of resolicitation.

If agreement is reached on the renewal terms, the existing contract is modified to reflect any adjustments in service and rates. If a contract will not be renewed, or terms for renewal cannot be agreed upon in whole or in part, any continuing service requirement may be the subject of a new competitive RFP.

The determinations made throughout the renewal process must be thoroughly documented in the contract renewal file. It is important to note that emergency contracts may not be renewed.

## **Extension and Short-Term Renewal of Contracts**

When appropriate, Contracting Officers may issue modifications extending the term of a contract, as distinct from the renewal of a contract. The contract term may be extended in increments of up to 1 year, provided the extension does not result in a total term of more than 2, 4, or 6 years, whichever is the allowable maximum contract term. The extension must be made with the consent of the Supplier by a supplemental agreement, and the need for the extension must be documented in the contract file.

Pending full renewal in accordance with the guidelines bilaw, an expiring contract that is eligible for renewal may be renewed for short terms of up to 1 year by mutual agreement of the parties. When the full renewal is approved, the short-term renewal may be converted into a full-term renewal to cover the full remaining term of the contract.

## **Contract Changes**

Contracting Officers, working with the Purchase/SC M Team, may take action to discontinue, extend, or curtail contracts; to change and restate service required; and to increase or decrease frequencies. The Purchase/SCM Team must carefully consider the effect of any proposed contract change. No change may be authorized that is contingent on or related to a change in another contract service without the concurrence of the Contracting Officer responsible for the other service.

## **Termination for Convenience**

A contract, or any part of a contract, should be terminated if it becomes unnecessary or if it is to be superseded by some other service. The Supplier must be notified in writing of the termination and is entitled to the indemnity provided in the contract. If it is more advantageous to operate than to pay the indemnity, the service should be continued. Discontinuance of service under the contract may, in some instances, be to the advantage of the Supplier. In these instances, if the Supplier is willing to waive the indemnity, the waiver must be included in a contract modification discontinuing the service. In the case of highway or inland domestic water routes, the waiver must be included in a supplemental agreement signed by the Supplier.

Suppliers should be provided as much advance notice as possible when a contract is to be terminated before the end of its term. Specific requirements for notice may be stated in the contract. A Supplier may be notified by letter of intent to discontinue in advance of issuing a formal notice. In the case of highway, inland domestic water routes or air taxi, the termination must be approved by the manager, Transportation Portfolio, prior to being issued.

## Service Changes to Highway or Domestic Inland Water Contracts

There are two general types of service changes: minor service changes and major service changes. They are affected by contract modification.

A minor service change is any change that results in a change in equipment type or termini; an extension; a curtailment; a change in line of travel; or a permanent increase in the frequency or number of trips which, either individually or in combination with previous changes, does not increase by more than 100 percent the mileage required at the beginning of the contract or renewal term. An insignificant minor service change is one that increases the Supplier's rate of pay by no more than \$2,500. A significant minor service change is one that increases the Supplier's rate of pay by more than \$2,500.

A major service change is any service change other than a minor service change.

### Effecting Service Changes

*Insignificant Minor Service Change.* Insignificant minor service changes resulting in increased compensation to the Supplier may be ordered by the Contracting Officer as a unilateral contract modification. They do not require the Supplier's approval. The Contracting Officer may authorize an equitable increase in compensation at the existing rate or at such other rates as the Contracting Officer determines to be fair and reasonable. If the Supplier considers the amount of increase inequitable, the Contracting Officer must attempt to negotiate a mutually agreeable increase and incorporate it by contract modification. If time permits, the Contracting Officer may discuss the change and increase in compensation with the Supplier; if an agreement on compensation is reached, the change may be made by contract modification. If agreement cannot be reached, the Contracting Officer may issue a unilateral contract modification and determine the amount of increased compensation, subject to Clause B-9: Claims and Disputes.

*Significant Minor Service Change.* Significant minor service changes are made by contract modification, incorporating a price adjustment, with the agreement of the Supplier.

*Major Service Change.* Major service changes are discussed with the Supplier and effected by contract modification. The Contracting Officer must obtain the approval of the manager, Transportation Portfolio, before entering into discussions regarding major service changes. When determining whether or not to recommend or approve the negotiation of a major service change, the Purchase/SCM Team must take into consideration indemnity liability, the Supplier's experience in operating a service of the scope required, past performance, rate, and any factors that would indicate the proper course of action to take in the best interests of the Postal Service. When a major service change is not approved by the manager, Transportation Portfolio, the old service may be terminated and the new service purchased.

*Other Surface Contracts and Air Contracts.* Service changes for contracts other than those discussed in above may be made, consistent with the terms of the contract, provided that these changes do not:

- Alter the original intent of the contract; or
- Transform the service into an entirely new service.

Exceptional service is additional service to perform scheduled or backup route operations (such as extra trips, detour miles, and additional equipment). Exceptional service may be required only when an unanticipated increase in mail volume or other conditions arise that require the performance of additional service or equipment. Whenever feasible, Contracting Officers should hold discussions or negotiations with suppliers to establish the rate to be paid for exceptional service before its performance. When discussions or negotiations in advance would delay the mail or otherwise not be feasible, the Contracting Officer or a designated representative may order the Supplier to perform such service at pro-rata pay.

If no rate of pay for exceptional service has been negotiated in advance, the Supplier may be paid a lump sum reimbursement for the difference between costs incurred as a direct result of performing exceptional service and pro-rata payment, provided that such costs are adequately supported by evidence satisfactory to the Contracting Officer. Claims for compensation above pro-rata pay for exceptional service must be filed in writing with the Contracting Officer, with full supporting documentation, no later than 90 days after the performance of the service.

Disputes regarding compensation are handled as provided in Clause B-9: Claims and Disputes.

### **Schedule Changes for Highway or Domestic Inland Water Contracts**

Improvement of mail service must be the primary consideration in ordering a schedule change. Schedules may not be changed for the convenience of suppliers, subcontractors, or drivers unless the change will in no way be detrimental to the Postal Service. The Purchase/SCM Team must consider the following before making schedule changes:

- *Financial effect on the Supplier.* Reversing a schedule or requiring an excessive layover might cause sufficient increase in cost of operation to provide the basis for a request for pay adjustment.
- *Hardship on suppliers or customers.* Arbitrary action should be avoided and reasonable effort should be made to work out arrangements satisfactory to suppliers.
- *Schedule realism.* Schedules may not be set that would require running times in violation of established speed limits.

The Purchase/SCM Team must ensure that schedule changes are coordinated with all those responsible for other affected services.

The service and rate of compensation under emergency contracts may not be changed unless specifically authorized in the contract or by the manager, Transportation Portfolio.

It is essential to be aware of the following clauses:

- Clause B-71: Termination for Convenience (Transportation), must be included in all regular and temporary highway and air taxi contracts.
- Clause B-72: Termination for Convenience — Emergency Contracts, must be included in all emergency highway and air taxi contracts.
- Clause B-67: Changes (Transportation), must be included in all highway transportation regular and temporary contracts.

## **Subcontracting Highway or Domestic Inland Water Contracts**

For the purpose of this section, a subcontract is any agreement, other than an employer-employee agreement or a temporary agreement for labor by an owner-operator as described below, between a party that has contracted with the Postal Service to transport mail and a third party, in which the third party agrees to provide all or part of the contract service or goods or services that support performance of the prime contract. An employer-employee agreement is one under which the employee is subject to the continuing authority of the mail transportation supplier to supervise and direct the manner of work performance of the employee. Such an employer-employee agreement is also characterized by, expressly or implied, the employer's responsibility to pay compensation directly to the employee and to withhold taxes and amounts for social security benefits from the employee's compensation for the work performed under the agreement. If an owner-operator, because of illness or temporary equipment failure, is required to obtain labor from another in order to continue performance of the service as required by the contract, that transaction is not a subcontract within the meaning of this section.

The Subcontracting With Small, Minority, and Woman-Owned Businesses topic of the Perform Preaward Activities task of Process Step 2: Evaluate Sources, is applicable to subcontracts under this section.

All subcontracts that require the subcontractor to handle, deliver, or otherwise to have access to the mail must be approved by the Contracting Officer, except that a supplier may, without approval of the Contracting Officer, subcontract the whole or part of a contract or irregular mail movements such as plant loads with one or more owner-operators who provide and drive their own vehicles.

Execution by a supplier of a subcontract for the performance of contract service and its approval by the Postal Service does not release the Supplier from its contractual obligations, nor from liability for damages.



Whenever the Purchase/SCM Team determines that a Supplier has breached the contract by subcontracting the whole or part of the contract contrary to the requirements of these Guidelines, the Contracting Officer may terminate the contract for default.

Subcontractors performing contract service must meet the same capability and qualification requirements as the prime Supplier.

If a whole contract is subcontracted, the subcontract must be for the full remainder of the contract term, and the subcontractor's initial rate of pay must be the same as the Supplier's unless there is a change in operations costs resulting from a service change or from the enactment of a statute or ordinance or the adoption of lawful regulations by any federal, state, or local agency.

When a subcontract is terminated, the prime Supplier may be required to take charge of the route. A subcontract to provide contract service may be terminated at the subcontractor's request only with the prior approval of the Contracting Officer, which will be given only for good cause. Subcontracts for contract service are automatically terminated by death of the subcontractor or abandonment of the service by the subcontractor.

When a subcontractor performing contract service fails to comply with the terms of a contract, the Contracting Officer notifies the prime Supplier of the subcontractor's irregularities. The Contracting Officer may require removal of the subcontractor for failure to perform and that the prime Supplier resume route operations, or exercise any other remedies provided by the contracts with the prime Supplier.

*Other Surface Contracts and Air Contracts.* For other surface and air contracts whose terms permit subcontracting, the Supplier must give the Contracting Officer advance notice of its intent to subcontract. The Supplier may enter into a subcontract unless notice of disapproval is received from the Contracting Officer within 30 days of the date the notice was given.

## **Release of Supplier**

In the case of highway or domestic inland water contracts, when the Purchase/SCM Team determines that it is in the best interest of the Postal Service, a Supplier may be released from a contract if unable to perform adequately due to a disability, or when the Supplier's life or the public safety would be endangered by the Supplier's continued performance. Whenever practicable, a replacement contract should be awarded before the current Supplier is released. The Supplier must waive any indemnity as a condition of release. For other than highway or domestic inland water contracts, a Supplier may be released only as provided in the terms of the contract.

## **Service Deficiencies**

The Contracting Officer may make deductions from the payment due Supplier for failure to perform contractually required service, and may assess damages for delinquencies with regard to any contractual requirements as provided in the terms of the contract. The Contracting Officer may also

change or remit deductions and damages. Suppliers are also answerable in damages to the Postal Service for the proper care and transportation of the mail. Such damages, as determined by the Contracting Officer, may be withheld by the Postal Service from compensation otherwise due the Supplier. Suppliers are accountable to the Postal Service for loss or damage to the mail or any part thereof due to (1) loss, riffling, damage, wrong delivery, depredation, or other mistreatment of the mail by the Supplier or any of the Supplier's officers, agents, or employees, or (2) the failure of the Supplier or any of the Supplier's officers, agents, or employees to exercise due care in the custody, handling, or transportation of the mail.

When a Supplier has committed a breach of the contract not sufficiently serious to warrant termination, the Supplier may be assessed damages in an amount determined by the Contracting Officer, in accordance with the terms of the contract.

When a Supplier, or Supplier's agent or employee, permits loss or damage to the mail, the Contracting Officer may withhold from the Supplier's compensation as damages the value of the mail lost or damaged plus administrative costs of handling the irregularity. When a Supplier holding several contracts is subject to a fine or assessment for damages on one contract, the Contracting Officer may withhold compensation due under other contract held by the Supplier until such fines and damages have been recovered.

## **Death or Incompetence of Supplier**

The procedures below are to be followed upon the death or legally adjudged incompetence of an individual contracting in his or her own name (sole proprietorship), or in the name of a corporation all of whose stock is substantially owned by the individual (closely held corporation) and the Supplier is a highway or inland domestic water Supplier. These procedures do not apply when the death or incompetence of an owner or officer of a corporation does not significantly impair the corporation's ability to perform the contract service.

The Contracting Officer must act to maintain continuity of service. If a prime contract is affected, the representative of the estate (administrator, executor, or immediate family member) must be contacted to ascertain whether the estate wishes to continue to perform the service. If a subcontract is affected, the subcontract may be terminated and the prime Supplier is responsible for performance of the service.

The death of a sole proprietor terminates the contract, and the estate has no obligation to continue to provide the service. The representative of the estate may operate the route with the consent of the Contracting Officer. If there is reason to deny consent, the Contracting Officer must promptly submit a full written report to the manager, Transportation Portfolio, for determination. The Contracting Officer must document the file with evidence of the representative's authority to represent and assume control of the Supplier's business.

When an individual regains competence during the performance of the contract by a representative, the individual may apply to the contracting office for reinstatement as supplier. Any such application must be approved by the manager, Transportation Portfolio, before reinstatement.

### **Partnership**

When the Supplier is a partnership, and the death or incompetence of a member of the partnership dissolves the partnership, the surviving partner or partners may continue to operate the route. At the request of the surviving partner or partners, the Contracting Officer will order a simple name change to recognize the new contracting entity.

### **Estate Representatives**

When the representative of an estate assumes a route, the contract rate remains the same. Pending pay adjustment requests are processed under instructions in effect at the time of adjustment. The operator of the route is entitled to all benefits of the adjustment.

The representative of an estate may subcontract all or part of the route in accordance with the discussion of subcontracts above.

If a contract expires while being performed by the representative of an estate, the contract cannot be renewed, unless the representative is the surviving spouse or child of the deceased, in which case the contract may be renewed in that individual's name. If the representative of an estate does not want to continue the service, or if consent is denied for the representative to continue the service, the Contracting Officer should purchase emergency service and issue a RFP for a new permanent service contract. Procedures for processing payments to deceased or incompetent suppliers are described in Handbook PO-513.

### **Eligibility Requirements (for Suppliers)**

Any individual 21 years of age or older, any partnership in which at least one partner is 21 years of age or older, and any corporation in which at least one of the officers is 21 years of age or older may hold mail transportation contracts. See the General Practices for restrictions concerning contracts with Postal Service employees and business organizations substantially owned or controlled by Postal Service employees or their immediate families. RFPs may establish other eligibility requirements as needed.

The following persons are ineligible to perform services under a contract:

- Persons on parole or under suspended sentence for commission of a felony.
- Persons with known criminal records which involve convictions for offenses involving moral turpitude or dishonesty.
- Persons who associate with convicted felons.
- Persons known to engage in the illegal use, possession, sale, or transfer of narcotics or other drugs.

- Persons who knowingly submit false data or conceal data for the purpose of gaining employment.
- Persons whose traffic records indicate that their driving motor vehicles would be hazardous (applies only to drivers and assistants).
- Pilots with unsatisfactory aircraft operations safety performance records. Persons who through their abusive or disruptive behavior would pose a danger to fellow workers.

Supplier employees engaged as drivers of vehicles with a GVW of 10,001 lbs. or more must be at least 21 years old. All other drivers must be at least 18 years old. No supplier, subcontractor, or employee of a supplier or subcontractor may be allowed access to mail matter or postal operational areas unless he or she displays a valid identification card issued by the Postal Service. Unless they have been excepted ("exempted"), the Postal Service will not issue the identification cards described above to individuals until they have been screened to determine their suitability for that access. Forms and procedures for screening are as set forth in Handbook PO-508 and in any applicable Management Instruction.

### **Exceptions**

Persons employed by suppliers whose own security screening procedures have been approved by the Contracting Officer and reviewed by the Inspector-in-Charge.

Persons who are civil service personnel otherwise subject to investigation under Executive Order 10450.

- Persons previously screened under another contract with a break in service of less than 1 year.
- Persons hired for service in an emergency of not more than 15 days. (This does not exempt regular relief or substitute employees or those repeatedly hired on an emergency basis.)
- Persons employed to transport plant-load mail, but only if such mail is not generated with regularly recurring frequency.

*Notification of Supplier.* The Contracting Officer will notify the Supplier of the grounds on which any person has been denied access to the mails under the procedure set out herein. Any decision as to whether a supplier, subcontractor, or contract or subcontract employee is to be denied access to the mail or precluded from operating a vehicle transporting mail must be made by the Contracting Officer in accordance with the eligibility requirements above.

*Disclosure of Information.* All information obtained or developed in the screening program must be restricted from disclosure outside the Postal Service to anyone other than the Supplier, subcontractor, or contract or subcontract employee concerned.

## **Contract Administration**

*General.* The Purchase/SCM Team is responsible for monitoring contract performance in a manner appropriate to ensure that the Supplier provides all services and equipment required under the terms of the contract.

*Unsatisfactory Service.* The Purchase/SCM Team under the direction of the Contracting Officer must take necessary action to correct any problem caused by unsatisfactory Supplier performance. If the remedies and damages discussed above are insufficient, termination for default should be considered.

*Major Irregularity.* A major irregularity is an action or service deficiency requiring summary suspension or removal of the Supplier in the public interest (such as subcontracting without approval, or theft, deliberate loss, damage, or abandonment of the mail or contract operation). When a major irregularity occurs, the Contracting Officer may take immediate suspension or removal action, without prior notice to the Supplier. Suspension may be with or without pay, as provided in the contract.

## **Professional/Technical and Consultant Services**

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The Postal Service contracts for professional/technical and consultant services when doing so makes good business sense in light of available personnel resources. For example, short-term expertise may be necessary to assist in the development of new customer service programs or to manage spikes in operational workload. In other cases, long-term contracts for these services may prove more fiscally and technically beneficial than the use of career employees. When contemplating contracting for these services, and for personal services (see below), Purchase/SCM Teams must consider the financial commitment and potential return on investment. For certain requirements, such as those affecting craft positions and duties, additional reviews and approvals are required; these include meeting legal and labor agreement obligations set forth in Federal regulations and labor agreements. In these cases, Purchase/SCM Teams must consult with Strategic Initiatives at Headquarters. In addition, reviews and approvals are required for contracts with former Postal Service officers, executives, and employees, regardless of whether these individuals are contracted with directly or are employed or proposed to be employed by a supplier, as discussed in the Contracts with Former Postal Service Officers, Executives, and Employees, and Employees and Their Immediate Families topic of the General Topics.

**Conflicts of Interest.** When purchasing professional/technical or consultant services, Purchase/SCM Teams must pay particular attention to the potential for organizational conflicts of interest, and consider using Clause 1-7: Organizational Conflict of Interest, or a similar clause in the contract.

## **Professional and Technical Services**

*Definitions.* Generally, professional services are those performed by individuals or firms of recognized status, such as accounting, engineering,

law, and the sciences. Technical services are provided by individuals or firms who are expert in a given field, such as information technology, training, writing and editing, purchasing, marketing and demographics, and other such areas. These services may be used to: (a) provide needed expertise on an individual or group basis; (b) to supplement the career workforce as required by workload; and (c) to provide turn-key services in support of postal operations.

*Licenses.* When prequalifying or purchasing professional services for which individuals are normally required to be licensed (such as medical, legal, accounting, and architecture), licenses must be required as a prerequisite to prequalification or contract award. Acceptable licenses may be limited to those issued by a particular state or entity, but only when local expertise is necessary to successful performance.

*Required Clauses.* All contracts for professional/technical services must include the following clauses:

- Clause 4-4: Nondisclosure (Professional Services). This clause may be modified after consultation with assigned legal council.
- Clause 4-5: Inspection of Professional Services. The clause provides for inspection of the supplier's work product and acceptance of only those products that meet reasonable professional standards. The clause is to be used in lieu of, not in addition to, the standard inspection language contain in Clause 4-1: General Terms or Conditions, or for Clause 2-1: Inspection and Acceptance, when used as a substitute for Clause 4-1.
- Clause 4-7: Records Ownership. The clause gives the Postal Service ownership of contract files, including copies of all supplier work papers. While this clause is mandatory for professional service contracts, Purchase/SCM Teams have to decide whether to include it or not in technical services contracts, depending on the nature of the service.

Depending on the particular purchase, the following clauses should be included in contracts for professional/technical services:

- Clause 4-6: Invoices (Professional Services). This clause is included in all non-fixed-price contracts for professional/technical services. The clause requires presentation of invoices showing who performed the services, the hours and partial hours of service provided each day, and the services provided each hour or partial hour. Suppliers may be allowed to set minimum charges for partial hours or days.
- Clause 4-8: Key Personnel. This clause requires use of the key personnel identified in the supplier's proposal, unless the Contracting Officer approves substitution, and provides for contract termination for failure to comply.
- Clause 1-1: Privacy Protection, must be included as applicable. See the discussion in the Privacy Considerations topic of the General Practices.

## Consultant Services

*Definition.* Consultant services are services provided by expert individuals or firms possessing exceptional qualifications in a particular technical or professional field. They are used to enhance the understanding of complex issues and to provide new insights into alternate solutions to, or make recommendations on, business or decision-making functions of a postal organization. Consultants neither involve themselves in the day-to-day operations of Postal Service organizations except for study purposes, nor work under the immediate direction and control of Postal Service employees. Usually, consultant service suppliers provide reports or analyses as the deliverable upon completion of their contractual duties.

*Use.* Consultant services are used to enhance the understanding of complex issues and to provide new insights into alternate solutions to, or recommendations on, business or decision-making functions of a postal organization.

## Personal Services Contracts

*Definition.* A personal services contract is a contract with an individual under the terms of which the individual will:

1. Work under the direct supervision of postal personnel;
2. Work on postal premises and use postal equipment; and
3. Perform duties similar in nature to those of postal employees.

A personal services contract may create the appearance of an employee-employer relationship, and may result in additional costs, such as tax withholding. For this reason, Purchase/SCM Teams should strive to use contracting vehicles other than personal services contracts, but, when deemed appropriate, they may be used, subject to the reviews and approvals discussed in the Contracts with Former Postal Service Officers, Executives, and Employees, and Employees and Their Immediate Families topic of the General Topics.

*Use.* Personal services contracts may be awarded for professional/technical services but may not be awarded for consultant services.

*Contracts.* All personal services contracts should be written to ensure that the Postal Service does not incur unnecessary costs or liabilities. Purchase/SCM Teams should work with assigned counsel to ensure that the interests of the Postal service are protected in areas such as taxes, unemployment liability, etc.

## Information Technology

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### Definitions

*Computer.* A device capable of accepting data, performing prescribed operations on the data, and supplying the results of those operations. It

includes any device that operates on (1) discrete data by performing arithmetic and logic processes on the data or (2) analog data by performing physical processes on the data.

*Computer software.* Computer programs, computer databases, and their documentation.

*Hardware.* Computers and peripheral machines.

*Information technology (IT).* Encompasses all types and categories of computer, networking, and telecommunications systems (where voice and/or data may be transmitted by cable, telephone, or wireless), and all associated hardware, firmware, software, and services. This includes emerging technologies that collect and transmit information such as wireless handheld data collection devices, information kiosks, electronic commerce services, distance learning systems, World Wide Web sites, multimedia, and office equipment such as fax machines and copiers. IT also includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. IT does not include any equipment that contains embedded technology that is used as an integral part of the product but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation is not IT.

*System life cost.* All costs associated with acquiring, operating, and maintaining an information system, including conversion, environmental (such as heating, ventilation, air conditioning), training, and support service costs from the date the system is acquired until it is no longer needed for Postal Service use.

*Information Security.* The protection afforded to information and information resources to protect the integrity, confidentiality, and availability of Postal Service information and the interests of the Postal Service, suppliers, and the public. Security measures, including personnel security, physical and environmental security, application security, hardware and software security, and network and communications security, may be applied to IT resources.

*Undue burden.* A significant difficulty or expense.

## **General**

*Technical Standards.* Even small-dollar information technology purchases may involve questions of system compatibility, expansion potential, and other complex issues. The Postal Service's Information Technology organization researches, tests, and evaluates information systems and components to ensure quality and intersystem communication capability. Therefore, it is the policy of the Postal Service to acquire information technology in accordance with the technical standards established by Information Technology and concurred in by the VP, SM.



## Accessibility

*General.* Section 508 of the Rehabilitation Act Amendments of 1998 requires the Postal Service to ensure that information technology (IT) purchased by the Postal Service allows employees with disabilities and individuals with disabilities who are members of the public to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities, unless doing so would impose an undue burden (see below).

*Applicability.* Unless an exception applies, purchases of IT must meet the applicable accessibility standards at 36 CFR part 1194. Exception determinations are required prior to contract award, except for indefinite delivery contracts and the other circumstances discussed in below.

*Indefinite Delivery Contracts.* Exception determinations are not required prior to award of indefinite delivery contracts, except for requirements that are to be satisfied by initial award. Contracting Officers who award indefinite delivery contracts must indicate to requiring and ordering activities which IT the supplier indicates as compliant and where full details of compliance can be found (e.g., the supplier's or other exact Web site location). Before task or delivery orders are issued, requiring and ordering activities must ensure IT meets the applicable accessibility standards at 39 CFR part 1194, unless an exception applies. Accordingly, indefinite delivery contracts may include noncompliant IT items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

*Nonapplication.* The accessibility standards at 36 CFR part 1194 do not apply to:

- Taking delivery for items ordered prior to June 21, 2001.
- Within-scope modifications of contracts awarded before June 21, 2001.
- Exercising unilateral options for contracts awarded before June 21, 2001.
- Multiyear contracts awarded before June 21, 2001.

*Exceptions.* The requirements of Section 508 of the Rehabilitation Act as amended do not apply to IT that:

- Is acquired by a supplier incidental to a contract.
- Is located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.
- Is being acquired as IT that is available in the commercial marketplace, and the IT meets all of the accessibility standards that can be met within time to meet the Postal Service's delivery requirements.
- Would impose an undue burden on the Postal Service.

*Basis.* In determining whether compliance with all or part of the accessibility standards in 36 CFR Part 1194 would be an undue burden, the Postal Service must consider the difficulty or expense of compliance.

## Documentation

*Undue Burden.* The requiring or ordering activity must document in writing the basis for an undue burden decision and provide the documentation to the Contracting Officer for inclusion in the contract file.

*Commercial Items.* When acquiring commercial items, the requiring or ordering activity must document in writing, for guidelines to the Contracting Officer for inclusion in the contract file, the extent to which commercial items fail to meet specific accessibility standards and a description of the market research performed to establish the extent of the commercial IT's noncompliance.

## Information Technology Guidance

*Technical Standards.* Information Technology periodically issues standards, policies, and general guidance by means of management instructions, handbooks, and technical bulletins, in order to supplement guidance in terms of updated standards and policy interpretations. The core technical standards which guide information technology purchases are contained in Handbook AS-820, *Postal Computing Environment*. To ensure compliance with these standards, Provision 4-7: Postal Computing Environment, must be included in all information technology RFPs and resultant contracts.

*Technical Appraisals.* Information Technology conducts market research and technical appraisals of the information technology marketplace and potential suppliers. Information Technology conducts technical appraisals of potential suppliers at various points during the purchasing process, particularly during the presolicitation phase. The objective is to proactively ensure seamless integration into the Postal Service's computing environment. Suppliers interested in having their products or services appraised by Information Technology must submit a request to that organization. Additionally, Contracting Officers should encourage requirements organizations to seek a similar review by Information Technology of their current and future requirements. Lastly, prequalification of suppliers should be considered for all information technology purchases (see the Prequalify Suppliers topic of the Perform Solicitation-Related Activities task of Process Step 2: Evaluate Suppliers).

## Security Considerations

Protecting Postal Service information resources, and sensitive information (including customer and employee personally-identified information (PII)) is an essential element of IT purchasing. Therefore, purchase/SCM teams must ensure that specifications or statements of work for IT purchases, and associated RFPs and contracts address information security requirements (in addition to the security clearance requirements discussed in the Supply Chain Security topic of the General Practices, if applicable). Due to the fact that purchases of IT or other information processing and information gathering services can frequently involve the generation of or access to sensitive information, purchase/SCM teams must also ensure that the Postal Service's privacy protection requirements are addressed as necessary (see

the Privacy Considerations General Practice, or consult the Privacy Office). Further, to ensure that Postal Service IT and other sensitive information is protected, purchase/SCM teams must coordinate their activities with the Corporate Information Security Office (CISO). This coordination should take place during purchase planning but must occur before issuance of the solicitation. If necessary, the purchase/SCM team and CISO will complete a Business Impact Assessment (BIA) to determine the information security requirements (the BIA and other matters are discussed in the handbooks discussed below). These requirements will be incorporated into statements of work and specifications, or will be made available to offerors during the purchase process. Provision 4-10, Application Information Security Requirements, which states that offerors must comply with the policies contained in Handbooks AS-805, *Information Security*, AS-805A, *Application Information Security Assurance (ISA) Process*, and coordinate activities with and provide deliverables to the CISO, must be included in all solicitations for IT and other information processing and information gathering services. Clause 4-19, Application Information Security Requirements, must be included in all contracts for IT and other information processing and information gathering services when PII or other sensitive information will be generated or collected during contract performance.

### **Placement of Postal Service Data on Laptop or Other Devices**

To further ensure that PII is protected on all forms of IT equipment, suppliers must obtain consent from the Contracting Officer before placing any Postal Service data onto laptops or other mobile media. The Contracting Officer must forward such requests to CISO for review and approval. This requirement is further outlined in Clause 4-19, Application Information Security Requirements.

### **Contract Close-Out**

If the contract concerns the generation or collection of customer or employee PII, see the Privacy Considerations General Practice for information regarding its disposal.

### **Technological Substitutions and Enhancements**

*General.* Due to the rapid changes in technology, it may be advisable to provide for such changes in Postal Service contracts (a) to conform to commercial market conditions so suppliers are not forced to maintain continued production of obsolete goods, and (b) to enable internal customers the flexibility to upgrade their respective infrastructures along the lines of currently available technology.

*Substitution of Information Technology Equipment.* When it is likely that market forces will change so rapidly that a supplier may be forced to maintain production lines of outdated technology in order to meet the requirements of a Postal Service contract, information technology contracts should include Clause 4-16: Substitution of Information Technology Equipment, to ensure that the supplier has the opportunity to focus its production capabilities on the latest

product offerings; simultaneously the Postal Service benefits by receiving the latest equivalent products from the supplier at no additional cost.

*Technology Enhancement.* Contracts should include Clause 4-17: Technology Enhancement, when requirements organizations wish to have the latest technology available. This clause requires suppliers to propose state-of-the-art products regardless of whether or not current offerings are in production. The proposed offerings may or may not be equivalent in price to the offerings under contract, but the capabilities (such as performance capacity) must meet or exceed contract requirements. In these cases, the Contracting Officer, representing the Purchase/SCM Team, conducts a cost/capability analysis to ensure that price per unit of capability is consistent with the original contract's prices. If the offerings far exceed the Postal Service's needs, the Postal Service may decline to accept the proposal.

## Sources

*Postal Service Sources.* Existing assets or supplies, equipment or services already within the Postal Service or available under a current contracts should always be considered before purchasing new assets.

*General Services Administration (GSA) Sources.* GSA provides multiple-award schedule contracts (MASCs) through the Information Technology Schedule 70. This schedule covers purchase, leasing, maintenance, repair services, and repair/spare parts for commercially available information technology, and also covers software and related training, electronic commerce and information technology-related professional services. These schedule contracts do not contain maximum order limitations and are available at [www.fss.gsa.gov/pub/schedules](http://www.fss.gsa.gov/pub/schedules), or from:

GSA/FSS INFORMATION TECHNOLOGY ACQUISITION CENTER  
WASHINGTON DC 20406-0001

In addition to MASCs, GSA maintains national requirements contracts and area contracts. Current schedules for teleprocessing services may be obtained from:

GSA TELECOMMUNICATIONS PROCUREMENT DIVISION (KET)  
18TH AND F STREETS NW WASHINGTON DC 20405-0001

## Solicitation Provisions

- Provision 4-4: Demonstrability, must be included in solicitations for commercial hardware or software when a system test using Postal Service test data is required.
- Provision 4-5: Functional Demonstration, must be included in solicitations for commercial hardware or software when a functional demonstration of one or more products is required.
- Provision 4-6: System Integrity, must be included in contracts for third-party software installed on all computer systems in the possession of the Postal Service, with the exception of personal computers.

- Provision 4-7: Postal Computing Environment, must be included in solicitations for commercial hardware or software so as to ensure that standard solutions emerge from the solicitation to the greatest degree possible. This provision also requires the identification of nonstandard solutions by prospective offerors to the Contracting Officer.
- Provision 4-10: Application Information Security Requirements, must be included in all solicitations for IT and other information processing and information gathering services when PII or other sensitive information would be generated or collected during contract performance.

## Clauses

- Clause 4-9: Inspection and Acceptance — Systems, must be included in contracts for computers with a unit price greater than \$50,000. This clause is to be used in lieu of, not in addition to, the inspection terms and conditions included in Clause 4-1: General terms and Conditions. If a computer contract covers other supplies or services also, Clause 4-1 or other inspection clauses must be included for the other supplies or services.
- Clause 4-10: Liquidated Damages — Industrial Supply or Service Items Not Ready for Use, filled in appropriately, must be included in systems contracts when the use of this clause is justified.
- Clause 4-11: Use of Hardware or Software Monitors, must be included in contracts whenever monitors will be attached to a computer system.
- Clause 4-12: Site Preparation, must be included in contracts whenever the Postal Service must specially prepare a site for installation of an information system.
- Clause 4-13: Software License Warranty and Indemnification, must be included in contracts whenever software is procured by license from the contractor.
- Clause 4-14: Software Development Warranty, must be included in contracts for customized software.
- Clause 4-15: Warranty Exclusion and Limitation of Damages, must be included in all contracts for information systems.
- Clause 4-16: Substitution of Information Technology Equipment, must be included in RFPs and contracts for information technology in which the supplier will be afforded the opportunity to replace the product line(s) being purchased with equivalent items that are newer technology provided the pricing is equal to or less than the items being replaced.
- Clause 4-17: Technology Enhancement, must be included in all RFPs and contracts which require the supplier to propose newer, more effective, and more economical products on a continuous basis that the Postal Service may incorporate to keep pace with changing technological environments.

- Clause 4-18: Information Technology Accessibility Standards, must be included in all information technology contracts.
- Clause 4-19: Application Information Security Requirements, must be included in all contracts for IT and other information processing and information gathering services when PII or other sensitive information would be generated or collected during contract performance.
- Clause 1-1: Privacy Protection, must be included as applicable. See the Respond to External Communications Requests topic of the Make Final Decisions task in Process Step 3: Select Suppliers.

# Solicitation Provisions

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**Provision A-1 Restriction on Disclosure and Use of Data (March 2006)**

Offerors that include in their proposals data they do not want used or disclosed by the Postal Service for any purpose other than proposal evaluation may take the following steps:

- a. Include on the front page or in the introductory material of their proposal the following: “This proposal includes data that may not be duplicated, used, or disclosed outside the Postal Service — in whole or in part — for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of — or in connection with — the submission of such data, the Postal Service will have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Postal Service’s right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (*Offeror insert numbers or other identification of sheets*).”
- b. Mark each sheet of data they wish to restrict with the following legend: “Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

**Provision A-2 Solicitation for Information or Planning Purposes (March 2006)**

- a. The Postal Service does not intend to award a contract on the basis of this solicitation or to pay for the information solicited.
- b. This solicitation is issued for the purpose of: (*Contracting officer state purpose of solicitation*).

**Provision 1-1 Supplier Clearance Requirements (March 2006)**

The contract resulting from this solicitation will require the contractor or its employees (including subcontractors and their employees) to have access to occupied postal facilities, and/or to postal information and resources, including postal computer systems. Clearance in accordance with *Administrative Support Manual 272.3* will be required before that access will be permitted. It is the contractor’s obligation to obtain and supply to the Postal Service the forms and information required by that regulation.

Offerors must familiarize themselves with the requirements of that section, taking into account in their offices the time and paperwork associated with the screening.



**Provision 1-2 Domestic Source Certificate — Supplies (March 2006)**

The offeror certifies that each end product, except those listed below, is a domestic-source end product (as defined in the *Preference for Domestic Supplies* clause) or (subject to the eligibility thresholds set out in the Evaluate Foreign and Domestic Proposals topic in Process Step 2, Evaluate Sources of the Postal Service Supplying Practices) end products mined, produced, or manufactured in (i) countries that have entered into World Trade Organization Government Procurement Agreement (WTO GPA) or (ii) a country that has entered into a Free Trade Agreement (FTA) with the United States covering government purchases and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States. Excluded end products (*Offeror show country of origin for each excluded end product*):

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**Provision 1-3 Domestic Source Certificate — Construction Materials (March 2006)**

The offeror certifies that only domestic construction materials (as defined in the *Preference for Domestic Construction Materials* clause) will be used in the performance of this contract, except for foreign construction materials listed below:

<u>Material</u>	<u>Quality</u>	<u>Estimated Cost</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

**Provision 1-4 Prohibition Against Contracting with Former Postal Service Officers or PCES Executives (March 2006)**

The offeror represents that former Postal Service officers or Postal Career Executive Service (PCES) executives will not be employed as key personnel, experts or consultants in the performance of the contract if such individuals, within 1 year of their retirement from the Postal Service, will be performing substantially the same duties as they performed during their career with the Postal Service. In addition, no contract resulting from this solicitation may be awarded to such individuals or entities in which they have a substantial interest, for 1 year after their retirement from the Postal Service, if the work called for in the solicitation requires such individuals to perform substantially the same duties as they performed during their career with the Postal Service.

**Provision 1-5 Proposed Use of Former Postal Service Employees (March 2006)**

In its proposal, the supplier must identify any former Postal Service employee it proposes to engage, directly or indirectly, in the performance of the contract. The Postal Service reserves the right to require the supplier to replace the proposed individual with an equally qualified individual.

**Provision 2-1 Warranty Information (March 2006)**

Offerors are encouraged to submit information on any standard commercial warranties provided for offered products. The Postal Service will consider these warranties in determining the most advantageous proposal, to the extent provided in the evaluation factors.

**Provision 2-2 Time of Delivery (March 2006)**

- a. The Postal Service requires delivery to be made according to the delivery schedule specified in Section C of the contract Schedule. The Postal Service will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above will be considered unacceptable and rejected. When an offeror offers an earlier delivery schedule than required, the Postal Service reserves the right to award under either the required delivery schedule or the proposed delivery schedule. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

**(ALTERNATE (a)(1) — DESIRED DELIVERY)**

- a. The Postal Service desires delivery according to the desired delivery schedule specified in Section C of the contract Schedule. If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose an alternative delivery schedule. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Postal Service's required delivery schedule specified in Section C of the Schedule. Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable specified required delivery period will be considered unacceptable and if the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

**(End of Alternate (a)(1))**

- b. The Contract Award provision of the solicitation provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Postal Service will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should

compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

**(ALTERNATE (b)(1) — AWARD BASED ON CALENDAR DATES AFTER ASSUMED DATE OF AWARD)**

- b. The delivery dates or specific periods contained in Section C are based on the assumption that the Postal Service will make award by the date of award specified in Section C of the contract Schedule. Each delivery date in the delivery schedule will be extended by the number of calendar days after the above date that the contract is in fact awarded.

**(End of Alternate (b)(1))**

**(ALTERNATE (b)(2) — AWARD BASED ON CALENDAR DATES AFTER ASSUMED DATE OF RECEIPT OF NOTICE OF AWARD)**

- b. The delivery dates or specific periods contained in Section C are based on the assumption that the supplier will receive notice of award by the date specified in Section C of the contract Schedule. Each delivery date in the delivery schedule will be extended by the number of calendar days after the above date that the supplier receives notice of award, provided that the supplier promptly acknowledges receipt of notice of award.

**(End of Alternate (b)(2))**

**Provision 2-3 Evaluation of Options (March 2006)**

- a. Unless it is determined in accordance with the Consider Use of Renewals and Options topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, and the Decide to Renew a Contract or Exercise Options topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply, in the Postal Service *Supplying Practices*, that evaluation of options is not in the best interest of the Postal Service, option prices will be included in the evaluation of offers for award purposes. Evaluation of options does not obligate the Postal Service to exercise the options.
- b. If the Postal Service elects to exercise an option at the time of award, proposals will be evaluated on the basis of total price for the basic quantity and for the option quantity to be exercised with the award. In all other cases, proposals will be evaluated by adding the total price for all option quantities to the total price for the basic quantity.
- c. Any proposal that is materially unbalanced as to prices for basic and option quantities may be disregarded as unacceptable. An unbalanced proposal is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

**Provision 2-4 Evaluation Exclusive of Options (March 2006)**

The Postal Service will evaluate offers for award purposes by including the price for the basic requirement, i.e., options will not be included in the evaluation of award purposes.

**Provision 2-5 Evaluation Exclusive of Unpriced Options (March 2006)**

The Postal Service will evaluate the unpriced option at the time the option is exercised.

**Provision 2-6 Credit Card Order Acceptance Requirement (March 2006)**

The Postal Service intends to place credit card orders, using an authorized Postal Service credit card, under the ordering agreement or contract resulting from this solicitation. Any supplier entering into an ordering agreement or awarded a contract as a result of this solicitation must have the capability to accept orders made with such a credit card.

**Provision 2-7 Brand Name or Equal (March 2006)**

- a. One or more items called for by this solicitation have been identified in the Schedule by a brand-name-or-equal product description. Proposals offering equal products will be considered for award if these products are clearly identified and are determined by the Postal Service to contain all of the essential characteristics of the brand-name products referenced in the solicitation.
- b. Unless the offeror clearly indicates in the proposal that the proposal is for an equal product, the proposal will be considered as offering a brand-name product referenced in the solicitation.
- c. If the offeror proposes to furnish an equal product, the brand name and model or catalog number, if any, of the product to be furnished must be inserted in the space provided in the solicitation. The evaluation of proposals and the determination as to equality of the product offered will be based on information furnished by the offeror or identified in the proposal, as well as other information reasonably available to the purchasing activity. The purchasing activity is not responsible for locating or obtaining any information not identified in the proposal and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of the proposal:
  - (1) All descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to establish exactly what the offeror proposes to furnish and to determine whether the product offered meets the requirements of the solicitation; or

- (2) Specific references to information previously furnished or to information otherwise available to the purchasing activity to permit a determination as to equality of the product offered.
- d. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror must:
- (1) Include in the proposal a clear description of the proposed modifications; and
  - (2) Clearly mark any descriptive material to show the proposed modifications.

**Provision 2-8 Investment Recovery (March 2006)**

With its proposal, the supplier must provide an investment recovery plan to reuse the equipment, or eliminate or reduce final disposal costs. Final disposition must be environmentally responsible, eliminate or reduce landfill, and comply with all federal, state and local laws and regulations. Proposals must address the complete life-cycle, including final disposition of the items being purchased. Disposition alternatives include take-back, repair, refurbishment, and disposal. The supplier is required to design and describe additional innovative, value-added, end-of-life disposition opportunities for the items being purchased.

**Provision 2-9 Accounting System Guidelines — Cost Type Contracts (March 2006)**

Before awarding a contract resulting from this solicitation, the Postal Service's Inspector General or representative must review and approve the accounting system the prospective supplier will use for the contract. To be approved, the accounting system must address or contain each of the following elements:

- a. Proper segregation of direct costs from indirect costs.
- b. Identification and accumulation of direct costs by contract.
- c. Logical and consistent method for the allocation of indirect costs.
- d. Accumulation of costs under general ledger control.
- e. A timekeeping system that identifies employees' labor by contract.
- f. A labor distribution system that charges direct and indirect labor to the appropriate contract.
- g. Interim (at least once a month) determination of costs charged to a contract through posting to books of account.
- h. Exclusion from costs charged to Postal Service contract amounts that are not allowable pursuant to applicable regulations.
- i. Identification of costs by contract line item and units (as if each unit or line item was a separate contract).
- j. Segregation of preproduction costs from production costs.

- k. Labor charging system.
- l. Timekeeping policy and preparation.

**Provision 3-1 Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements (March 2006)**

All suppliers, except small businesses, or unless this purchase is being made under commercial purchasing procedures, must submit with their proposals the contract-specific subcontracting plan required by Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements*. Generally, this plan must be agreed to by both the supplier and the Postal Service before award of the contract.

**Provision 4-1 Standard Solicitation Provisions (March 2006)**

- a. *Submission of Offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified on this solicitation. Offers may be submitted on PS Form 8203, *Order/Solicitation/Offer/Award*, letterhead stationary, or as otherwise specified in the solicitation. As a minimum offers must show:
  - (1) Solicitation number;
  - (2) The name, address and telephone number of the offeror;
  - (3) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
  - (4) Terms of any expressed warranty;
  - (5) Price and any discount terms;
  - (6) "Remit to" address, if different than mailing address;
  - (7) A completed copy of the representations and certifications;
  - (8) Acknowledgment of Solicitation Amendments;
  - (9) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items, and other references (including contract numbers, point of contact, with telephone numbers, and other relevant information); and
  - (10) If the offer is not submitted on PS Form 8203, include a statement specifying the extent of agreement with all terms and conditions and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation, may be excluded from consideration.
- b. *Business Disagreements.* Business disagreements may be lodged with the Supplier Disagreement Resolution Official (SDR Official) if the supplier and the contracting officer have failed to resolve the disagreement as described in 39 CFR Section 601 (available for review

at [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr)). The SDR Official will consider the disagreement only if it is lodged in accordance with the time limits and procedures described in 39 CFR Section 601. The SDR Official's decisions are available for review at [usps.com](http://usps.com).

- c. *Product Samples.* When required by the solicitation, product samples must be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples must be submitted at no expense to the Postal Service and returned at the sender's request and expense, unless they are destroyed during preaward testing.
- d. *Multiple Offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.
- e. *Late Offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered unless determined to be in the best interests of the Postal Service.
- f. *Type of Contract.* The Postal Service plans to award a \_\_\_\_\_ contract (*contracting officer insert type of contract; see the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources, of the Postal Service Supplying Practices*) under this solicitation, and all proposals must be submitted on this basis. Alternate proposals based on other contract types will \_\_\_ will not \_\_\_ be considered.
- g. *Contract Award.* The Postal Service may evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. Discussions may be conducted if the Postal Service determines they are necessary. The Postal Service may reject any or all offers if such action is in the best interest of the Postal Service; accept other than the lowest offer, and waive informalities and minor irregularities in offers received.
- h. *Multiple Awards.* The Postal Service may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Postal Service reserves the right to make an award on any items for quantity less than the quantities offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.
- i. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it, and its date. The text of incorporated terms may be found at <http://www.usps.com/purchasing/purchasingpubs/pubsmenu>. If checked, the following provision is incorporated in this solicitation by reference: (Contracting officer will check as appropriate.)

Provision 3-1, *Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements* (March 2006) \_\_\_\_.

**Provision 4-2 Evaluation (March 2006)**

- a. *General.* The Postal Service will award a contract resulting from this solicitation to the offeror whose offer conforming to the solicitation is deemed to offer the Postal Service the best value, price and other factors as specified considered. The following performance evaluation factors will be used in the evaluation of offers:

\_\_\_\_\_

\_\_\_\_\_

(Contracting officer insert the proposal-specific and supplier-specific performance evaluation factors and indicate their relative importance. In addition, state, in accordance with Process Step 2: Evaluate Sources of the Postal Service *Supplying Practices*, the relative importance of the performance evaluation factors as compared to price.)

- b. *Options.* The Postal Service will \_\_\_ will not \_\_\_ evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Postal Service may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options will not obligate the Postal Service to exercise the option(s).
- c. *Notice of Award.* The Postal Service may accept an offer (or part of an offer), whether or not there are discussions after its receipt, before an offer's specified expiration time, unless a written notice of withdrawal is received before award. A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party.

**Provision 4-3 Representations and Certifications (March 2006)**

- a. *Type of Business Organization.* The offeror, by checking the applicable blocks, represents that it:
  - (1) Operates as:
    - \_ a corporation incorporated under the laws of the state of \_\_\_\_\_; or country of \_\_\_\_\_, if incorporated in a country other than the United States of America.
    - \_ an individual;
    - \_ a partnership;
    - \_ a joint venture;
    - \_ a limited liability company;
    - \_ a nonprofit organization; or



## Solicitation Provisions

- an educational institution; and
- (2) Is (check all that apply)
  - a small business concern;
  - a minority business (indicate minority below)
    - :  Black American
    - Hispanic American
    - Native American
    - Asian American:
  - a woman-owned business; or
  - none of the above entities.
- (3) *Small Business Concern.* A small business concern for the purposes of Postal Service purchasing means a business, including an affiliate, that is independently owned and operated, is not dominant in producing or performing the supplies or services being purchased, and has no more than 500 employees, unless a different size standard has been established by the Small Business Administration (see 13 CFR 121, particularly for different size standards for airline, railroad, and construction companies). For subcontracts of \$50,000 or less, a subcontractor having no more than 500 employees qualifies as a small business without regard to other factors.
- (4) *Minority Business.* A minority business is a concern that is at least 51 percent owned by, and whose management and daily business operations are controlled by, one or more members of a socially and economically disadvantaged minority group, namely U.S. citizens who are Black Americans, Hispanic Americans, Native Americans, or Asian Americans. (Native Americans are American Indians, Eskimos, Aleuts, and Native Hawaiians. Asian Americans are U.S. citizens whose origins are Japanese, Chinese, Filipino, Vietnamese, Korean, Samoan, Laotian, Kampuchean (Cambodian), Taiwanese, in the U.S. Trust Territories of the Pacific Islands or in the Indian subcontinent.)
- (5) *Woman-owned Business.* A woman-owned business is a concern at least 51 percent of which is owned by a woman (or women) who is a U.S. citizen, controls the firm by exercising the power to make policy decisions, and operates the business by being actively involved in day-to-day management.
- (6) *Educational or Other Nonprofit Organization.* Any corporation, foundation, trust, or other institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profits of any private shareholder or individual.

b. *Parent Company and Taxpayer Identification Number*

- (1) A parent company is one that owns or controls the basic business policies of an offeror. To own means to own more than 50 percent of the voting rights in the offeror. To control means to be able to formulate, determine, or veto basic business policy decisions of the offeror. A parent company need not own the offeror to control it; it may exercise control through the use of dominant minority voting rights, proxy voting, contractual arrangements, or otherwise.
- (2) Enter the offeror's U.S. Taxpayer Identification Number (TIN) in the space provided. The TIN is the offeror's Social Security number or other Employee Identification Number (EIN) used on the offeror's Quarterly Federal Tax Return, U.S. Treasury Form 941, or as required by Internal Revenue Service (IRS) regulations. Offeror's TIN: \_\_\_\_\_
- (3) Check this block if the offeror is owned or controlled by a parent company: \_\_\_\_\_
- (4) If the block above is checked, provide the following information about the parent company:  
 Parent Company's Name: \_\_\_\_\_  
 Parent Company's Main Office: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 No. and Street: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
 Parent Company's TIN: \_\_\_\_\_
- (5) If the offeror is a member of an affiliated group that files its federal income tax return on a consolidated basis (whether or not the offeror is owned or controlled by a parent company, as provided above) provide the name and TIN of the common parent of the affiliated group:  
 Name of Common Parent: \_\_\_\_\_  
 Common Parent's TIN: \_\_\_\_\_

c. *Certificate of Independent Price Determination*

- (1) By submitting this proposal, the offeror certifies, and in the case of a joint proposal each party to it certifies as to its own organization, that in connection with this solicitation:
  - (a) The prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other offeror or with any competitor;
  - (b) Unless otherwise required by law, the prices proposed have not been and will not be knowingly disclosed by the offeror before award of a contract, directly or indirectly to any other offeror or to any competitor; and
  - (c) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

## Solicitation Provisions

- (2) Each person signing this proposal certifies that:
    - (a) He or she is the person in the offeror's organization responsible for the decision as to the prices being offered herein and that he or she has not participated, and will not participate, in any action contrary to paragraph a above; or
    - (b) He or she is not the person in the offeror's organization responsible for the decision as to the prices being offered but that he or she has been authorized in writing to act as agent for the persons responsible in certifying that they have not participated, and will not participate, in any action contrary to paragraph a above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to paragraph a above.
  - (3) Modification or deletion of any provision in this certificate may result in the disregarding of the proposal as unacceptable. Any modification or deletion should be accompanied by a signed statement explaining the reasons and describing in detail any disclosure or communication.
- d. *Certification of Nonsegregated Facilities*
- (1) By submitting this proposal, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.
  - (2) As used in this certification, segregated facilities means any waiting rooms, work areas, rest rooms or wash rooms, restaurants or other eating areas, time clocks, locker rooms or other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment area, transportation, or housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
  - (3) The offeror further agrees that (unless it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors before awarding subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause; that it will retain these certifications in its files; and that it will forward the following notice to these proposed subcontractors (except when they have submitted identical certifications for specific time periods):

**Notice:** A certification of nonsegregated facilities must be submitted before the award of a subcontract exceeding \$10,000 that is not exempt from the Equal Opportunity clause. The

certification may be submitted either for each subcontract or for all subcontracts during a period (quarterly, semiannually, or annually).

e. *Certification Regarding Debarment, Proposed Debarment, and Other Matters*

(This certification must be completed with respect to any offer with a value of \$100,000 or more.)

- (1) The offeror certifies, to the best of its knowledge and belief, that it or any of its principals:
  - (a) Are \_\_\_ are not \_\_\_ presently debarred or proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency;
  - (b) Have \_\_\_ have not \_\_\_, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
  - (c) Are \_\_\_ are not \_\_\_ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph (b) above;
  - (d) Have \_\_\_ have not \_\_\_ within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in conjunction with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property; and
  - (e) Are \_\_\_ are not \_\_\_ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph (d) above.
- (2) The offeror has \_\_\_ has not \_\_\_, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal, state, or local agency.
- (3) "Principals," for the purposes of this certification, means officers, directors, owners, partners, and other persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

## Solicitation Provisions

- (4) The offeror must provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - (5) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered as part of the evaluation of the offeror's capability (see the Conduct Supplier Capability Analyst Topic of the Evaluate Proposals task, a Process Step 2: Evaluate Sources, in the Postal Services *Supplying Practices*). The offeror's failure to furnish a certification or provide additional information requested by the contracting officer will affect the capability evaluation.
  - (6) Nothing contained in the foregoing may be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - (7) This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, Title 18, United States Code.
  - (8) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Postal Service, the Contracting Officer may terminate the contract resulting from this solicitation for default.
- f. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, its provision or clause number assigned to it, and its date. The text of incorporated terms may be found at <http://www.usps.com/purchasing/purchasingpubs/pubsmenu>. If checked, the following provision(s) is incorporated in this solicitation by reference: (Contracting officer will check as appropriate)
- (1) Provision 1-2, *Domestic Source Certificate — Supplies* (March 2006) \_\_\_\_
  - (2) Provision 1-3, *Domestic Source Certificate — Construction Materials* (March 2006) \_\_\_\_
  - (3) Provision 9-1, *Equal Opportunity Affirmative Action Program* (March 2006) \_\_\_\_
  - (4) Provision 9-2, *Preaward Equal Opportunity Compliance Review* (March 2006) \_\_\_\_
  - (5) Provision 9-3, *Notice of Requirements for Equal Opportunity Affirmative Action* (March 2006)

**Provision 4-4 Demonstrability (March 2006)**

- a. At the sole discretion of the Postal Service and before award of the contract, the Postal Service, upon notification by the contracting officer, may request a test demonstration to validate the technical acceptability of the offeror's proposal. The intent of the Postal Service in any test demonstration is to conduct a test of any or all products proposed by the offeror no less than 40 calendar days after receipt of the offeror's proposal and within 7 working days after the contracting officer's written notification, at a mutually agreeable site approved by the Postal Service.
- b. The demonstration serves the sole purpose of validating/confirming the offeror's proposal and will not result in any additional revisions to that proposal, nor be construed to be an opportunity to revise.
- c. While the Postal Service intends to conduct the demonstration only with the responsible offeror selected for this purchasing, the Postal Service reserves the right to request test demonstrations from any or all offerors in the competitive range. The demonstration will be conducted on a pass/fail basis. If the demonstration does not validate the offeror's proposal on the initial observation, the offeror will be afforded a second opportunity to correct the test deficiencies. Within 10 calendar days after notification of the unsatisfactory results, the offeror must conduct the second demonstration. If the offeror elects to substitute a product in any second demonstration, this product must be offered to the Postal Service at the same price (or a lower price), and be certified as functionally equivalent. If the offeror fails the second demonstration, the offeror will be unacceptable for after completion of the demonstration whether it was satisfactory or unsatisfactory.
- d. The Postal Service reserves the right to proceed with a demonstration by the next-ranked offeror if such demonstration has not already been accomplished. The same terms and conditions would apply to this offeror.

**Provision 4-5 Functional Demonstration (March 2006)**

- a. The Postal Service may request functional demonstrations of some or all products proposed by an offeror during the technical evaluation process when Postal Service questions about specific products or families of products could be resolved more effectively through direct contact with the offeror and the proposed product.
- b. The Postal Service will provide the offeror with a list of products, software, or both, that will be required for the demonstration. The purpose of this request is to obtain operational information, and the requirements may be satisfied by visiting an operational site and/or development center. Such functional demonstrations may be held at a site selected by the offeror, subject to approval of the contracting officer. The Postal Service will request that the demonstration be held not less than 5, but no more than 10 working days following the date of the request.

- c. The offeror will not earn technical points as a result of the functional demonstration.

**Provision 4-6 System Integrity (March 2006)**

To ensure the integrity of the Postal Service's computer operating systems, third-party software vendors must provide either a statement certifying that their product, when properly installed, will not compromise or otherwise degrade the integrity of the operating system; or provide the software source code.

**Provision 4-7 Postal Computing Environment (March 2006)**

- a. The Postal Service is committed to building core information technology (IT) structure that can be shared and has sufficient robustness to accommodate new applications and future enhancements. Therefore, all IT infrastructure components provided and applications developed as a result of solicitation must be compliant with the specifications contained in U.S. Postal Service Handbook AS-820, *Postal Computing Environment*, and the Infrastructure Tool Kit (ITK). Copies of Handbook AS-820 and the ITK can be obtained from the contracting officer.
- b. Although the Postal Service discourages nonstandard or hybrid technical solutions, it recognizes that there may be occasions when such information technology or applications are necessary and prudent to fulfill certain business needs. Therefore, the offeror must notify the contracting officer in writing if:
  - (1) The business requirements cannot be met as defined within Handbook AS-820; or
  - (2) Handbook AS-820 and the ITK do not specify tools needed to meet the instant business requirements.

**Provision 4-8 Pre-Proposal Conference (March 2006)**

- a. The Postal Service is planning a pre-proposal conference during which potential offerors may obtain a better understanding of the work required.
- b. Offerors are strongly urged to visit the site prior to the conference to inform themselves fully about the location and conditions under which the work is to be performed.
- c. Offerors are encouraged to submit all questions in writing at least 5 days before the conference. Questions will be considered at any time prior to or during the conference. Subsequent to the conference, the Postal Service will distribute to all conference participants and all other prospective offerors a record of the conference containing an abstract of the questions and answers, and a list of attendees. If warranted, an amendment will be issued to reflect changes to the solicitation.

- d. Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference or in the post-conference abstract, all terms and conditions of the solicitation remain unchanged unless changed by amendment.

#### **Provision 4-9 Preparation of Proposals (Construction) (March 2006)**

- a. Offerors are expected to examine the drawings, specifications, and all provisions and instructions. Failure to do so will be at the offeror's risk.
- b. Each offeror must furnish the information required by the solicitation. The offeror must sign the proposal and print or type its name on the proposal and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the proposal.
- c. Time, if stated as a number of days, will include Saturdays, Sundays, and federal holidays.

#### **Provision 4-10 Application Information Security Requirements (August 2008)**

The Postal Service is committed to creating and maintaining an environment that protects Postal Service information resources from accidental or intentional unauthorized use, modification, disclosure, or destruction. Handbook AS-805, *Information Security*, establishes Postal Service information security policies. Handbook AS-805-A, *Application Information Security Assurance (ISA) Process*, provides the process for identifying the sensitivity and criticality of the application system, determining information security requirements for protecting the application system, and ensuring appropriate cost-effective information security controls, mechanisms, and procedures are implemented to protect the application system. The supplier's proposal must indicate compliance with the policies delineated in Handbook AS-805, *Information Security*, and processes defined in Handbook AS-805-A, *Application Information Security Assurance (ISA) Process*.

After contract award and before beginning performance on this contract, the supplier must coordinate ISA activities with the Postal Service's Corporate Information Security Office (CISO) and complete ISA templates and provide applicable documentation and deliverables as directed by the Postal Service.

#### **Provision 7-1 Performance Bond Requirements (March 2006)**

- a. Any offeror selected for award of a contract as a result of this solicitation will be required to submit a performance bond in a penal amount equal to 100 percent of the contract price, within the time specified by the contracting officer.
- b. The bond must be executed on the Postal Service forms attached to this solicitation, and sureties must be acceptable to the Postal Service.



Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list.

- c. Contract award will not be made until both an executed performance and payment bonds (see Provision 7-2) are received by the contracting officer.

### **Provision 7-2 Payment Bond Requirements (March 2006)**

- a. Any offeror selected for award of a contract as a result of this solicitation will be required to submit a payment bond in the penal amount set forth in the Schedule, within the time required by the contracting officer.
- b. The bond must be executed on the Postal Service forms attached to this solicitation, and sureties must be acceptable to the Postal Service. Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list.
- c. Contract award will not be made until both an executed payment and performance bonds (see Provision 7-1) are received by the contracting officer.

### **Provision 7-3 Fidelity Bond Requirements (March 2006)**

Any offeror awarded a contract as a result of this solicitation will be required to submit a fidelity bond in the penal amount set forth in the Schedule, in a form acceptable to and within the time specified by the contracting officer. Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list. Failure to submit an acceptable bond may be cause for termination of the contract for default.

### **Provision 7-4 Deposit of Assets Requirements (March 2006)**

- a. Except for payment bonds required for construction contracts, any offeror required to submit a surety bond as a result of this solicitation may instead deposit assets in a form acceptable to the Postal Service in an amount set forth in the Schedule.
- b. When assets are deposited, the offeror must execute the Postal Service bond form made a part of this solicitation. Failure to deposit assets acceptable to the Postal Service may be cause for termination of the contract for default.

**Provision 7-5 Alternative Payment Protections (March 2006)**

- a. (The supplier shall submit one of the following payment protections:)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. The penal sum of the payment protection shall be in the amount of \$\_\_\_\_\_.
- c. The submission of the payment protection is required by \_\_\_\_\_.
- d. The payment protection shall provide protection for the full contract performance period plus 1-year period.
- e. Except for escrow agreements and payment bonds, which provide their own protection procedures, the contracting officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative judicial proceedings or mutual agreement of the parties.
- f. When a tripartite escrow agreement is used, the supplier shall utilize only suppliers of labor and material who signed the escrow agreement.

**Provision 8-1 Alternate Intellectual Property Rights Proposals (March 2006)**

- a. The Postal Service intends to award a contract that may provide for Postal Service acquisition of one or more of the following:
  - (1) Title to any patents resulting from contract performance.
  - (2) Unlimited rights in certain data (technical data and computer software) delivered to the Postal Service during contract performance.
  - (3) Use and disclosure rights in data that may be copyrighted or may embody trade secrets or confidential commercial or financial information.
- b. Offeror may propose alternate intellectual property rights arrangements (including licensing arrangements for commercial exploitation of intellectual property developed under the contract); provided (i) the arrangements apply only to intellectual property developed solely at supplier private expense and not first produced in performance of this requirement, (ii) such arrangements are necessary to protect the offeror's trade secrets and commercial market competitiveness, and (iii) the Postal Service, including its support service suppliers and their subcontractors, subject to the same disclosure restrictions as the Postal Service, will have the right to utilize such intellectual property for its internal purposes. The following must be included in any alternate proposal.
  - (1) Suggested allocation of rights between the parties.

- (2) Description of benefits (including royalties to the Postal Service) to each party if the alternate is selected.
  - (3) Costs to each party if alternate is selected (including royalties not collected by the Postal Service).
  - (4) Supporting documentation for calculating benefits and costs.
  - (5) A statement indicating willingness to accept the standard clauses (Patent Rights, Rights in Technical Data, and Rights in Computer Software) if the alternate is rejected.
- c. The contracting officer will consider alternate intellectual property rights proposals in determining which offeror's proposal is most favorable to the Postal Service, in accordance with the solicitation's evaluation and award section.

**Provision 8-2 Representation of Rights in Data (March 2006)**

- a. By completion of the representation below, the offeror must identify in its proposal the data (including subcontractor-furnished data) it intends to identify as "limited rights data" or "restricted computer software," or that it does not intend to provide as required. Any identification of limited rights data or restricted rights computer software is not determinative of the status of such data, should a contract be awarded to the offeror.

*Representation Concerning Data Rights*

Offeror has reviewed the requirements for the delivery of technical data or computer software and states (*Offeror check appropriate block*):

None of the data proposed for fulfilling the requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling the requirements qualify as limited rights data or restricted computer software and are identified as follows:

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- b. "Limited rights data" and "restricted computer software" are defined in the contract clauses entitled *Rights in Technical Data* and *Rights in Computer Software*.

**Provision 8-3 Use of Limited Rights Data for Purchase of Repair Parts (March 2006)**

The Postal Service has determined that it may use competitive procedures to procure repair parts and assemblies for the equipment or supply items being developed or manufactured under this contract. The *Rights in Technical Data*

clause in this solicitation has therefore been modified to provide that limited rights data furnished under any contract resulting from this solicitation may be used for the purpose of competitive purchasing.

**Provision 8-4 Royalty Report (March 2006)**

Offerors must include in their proposals a report of any patent royalties or license fees that they expect to pay in connection with performance of any contract resulting from this solicitation. The report must include the following:

- a. Identification of patent, license agreement, and so forth.
- b. Reason for payment of royalty or license fee.
- c. Payee and amount payable.
- d. Rights obtained.

**Provision 9-1 Equal Opportunity Affirmative Action Program (March 2006)**

The offeror, by checking the applicable block or blocks, represents that it (1) \_\_\_ has developed and has on file, \_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) and \_\_\_ has, \_\_\_ has not filed the required reports with the Joint Reporting Committee, or (2) \_\_\_ has not previously had contracts subject to the written affirmative action program requirement of the rules and regulations of the Secretary of Labor.

**Provision 9-2 Preaward Equal Opportunity Compliance Review (March 2006)**

If the contract award will be \$10 million or more, the prospective supplier and its known first-tier subcontractors with subcontracts of \$10 million or more will be subject to a preaward compliance review. In order to qualify for award, the prospective supplier and first-tier subcontractors must be found in compliance pursuant to 41 CFR 60-1.20.

**Provision 9-3 Notice of Requirements for Equal Opportunity Affirmative Action (March 2006)**

- a. The offeror's attention is called to the *Equal Opportunity* clause and the *Affirmative Action Compliance Requirements for Construction* clause.
- b. The goals for minority and female participation, expressed in percentage terms for the supplier's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade

---

*(Contracting officer insert goals.)*

Goals for female participation for each trade

---

*(Contracting officer insert goals.)*

- c. These goals apply to all the supplier's construction work performed in the covered area. If the supplier performs construction work in a geographical area located outside the covered area, the supplier must apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from the Office of Federal Contract Compliance Programs (OFCCP).
- d. The supplier's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 must be based on (1) its implementation of the *Equal Opportunity* clause, (2) specific affirmative action obligations required by the *Affirmative Action Compliance Requirements for Construction* clause, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The supplier must make a good-faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from supplier to supplier, or from project to project, for the sole purpose of meeting the supplier's goals will be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.
- e. The supplier must provide written notification to the Director, OFCCP, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification must list the:
  - (1) Name, address, telephone number, and employer's identification number of the subcontractor;
  - (2) Estimated dollar amount of the subcontract;
  - (3) Estimated starting and completion dates of the subcontract; and
  - (4) Geographical area in which the subcontract is to be performed.
- f. As used in this notice, and in any contract resulting from this solicitation, the covered area is *(Contracting officer insert description of the geographical area where the contract is to be performed, giving the state, county, and city)*.

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**Clause B-1 Definitions (March 2006)**

As used in this contract, the following terms have the following meanings:

- a. *Contracting officer.* The person executing this contract on behalf of the Postal Service, and any other officer or employee who is a properly designated contracting officer; the term includes, except as otherwise provided in the contract, the authorized representative of a contracting officer acting within the limits of the authority conferred upon that person.
- b. *Subcontracts.* Except as otherwise provided in the contract, the term includes purchase orders under this contract.

**Clause B-2 (Reserved) (March 2006)**

**Clause B-3 Contract Type (March 2006)**

This is a contract.  
(*Insert type of contract*)

**Clause B-4 Variation in Quantity (March 2006)**

- a. No variation in the quantity of any item called for by this contract will be accepted unless caused by conditions of loading, shipping, or packing, or allowances in the manufacturing process, and then only to any extent specified elsewhere in the contract.
- b. The supplier is responsible for delivering each item quantity within any allowable variations. If the supplier delivers, and the Postal Service receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), these excess quantities will be treated as being delivered for the supplier's convenience.
- c. The Postal Service may retain excess quantities up to \$100 in value without compensating the supplier for them, and the supplier waives all right, title, or interests in them. Quantities in excess of \$100 will, at the option of the Postal Service, either be returned at the supplier's expense or retained and paid for at the contract unit price.
- d. If this contract calls for deliveries at different times, this clause applies to each delivery rather than to the aggregate of all deliveries under the contract.

**Clause B-5 Certificate of Conformance (March 2006)**

- a. When authorized in writing by the contracting officer, the supplier may use a Certificate of Conformance for supplies or services that would otherwise require inspection. The right of inspection under the inspection provisions of this contract is not prejudiced by this procedure.
- b. The supplier's signed certificate must be attached to the inspection or receiving report.
- c. The Postal Service has the right to reject defective supplies or services within a reasonable time after delivery, by written notification to the supplier. The supplier must promptly replace, correct, or repair the rejected supplies or services at the supplier's expense.
- d. "I certify that on *(supplier insert date)*, the *(insert supplier's name)* furnished the supplies called for by Contract No. *(supplier check which is applicable)* by shipment via *(carrier)* on *(identify the bill of lading or shipping document)* or by placing them in local inventory. I further certify that the supplies are of the quality specified and conform in all respects with the contract requirements."

Date of Execution:

Signature:

Title:

**Clause B-6 (Reserved) (March 2006)**

**Clause B-7 Responsibility for Supplies (March 2006)**

Except as otherwise provided in this contract:

- a. The supplier is responsible for the supplies covered by the contract until they are delivered at the designated delivery point, regardless of the point of inspection;
- b. After delivery and before Postal Service acceptance or rejection and notification, the Postal Service is responsible for loss or destruction of or damage to the supplies only if it results from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment; and
- c. The supplier bears all risks as to rejected supplies after notice of rejection, except that the Postal Service is responsible for loss, destruction, or damage resulting from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment.

**Clause B-8 (Reserved) (March 2006)****Clause B-9 Claims and Disputes (March 2006)**

- a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (“the Act” or “CDA”).
- b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.
- c. “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the supplier seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d.2 below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount is not acted upon in a reasonable time.
- d.
  - (1) A claim by the supplier must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the supplier is subject to a written decision by the contracting officer.
  - (2) For supplier claims exceeding \$100,000, the supplier must submit with the claim the following certification:
 

“I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the supplier believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the supplier.”
  - (3) The certification may be executed by any person duly authorized to bind the supplier with respect to the claim.
- e. For supplier claims of \$100,000 or less, the contracting officer must, if requested in writing by the supplier, render a decision within 60 days of the request. For supplier-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the supplier of the date by which the decision will be made.
- f. The contracting officer’s decision is final unless the supplier appeals or files a suit as provided in the Act.
- g. When a CDA claim is submitted by or against a supplier, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as

described in d(2) of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.

- h. The Postal Service will pay interest in the amount found due and unpaid from:
  - (1) The date the contracting officer receives the claim (properly certified, if required); or
  - (2) The date payment otherwise would be due, if that date is later, until the date of payment.
- i. Simple interest on claims will be paid at a rate determined in accordance with the *Interest* clause.
- j. The supplier must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

#### **Clause B-10 Pricing of Adjustments (March 2006)**

When costs are a factor in determining any contract price adjustment under the *Changes* clause or any other provision of this contract, the Conduct Price/Cost Analyst topic of Process Step 2: Evaluate Sources, of the Postal Service Supplying Practices in effect on the date of this contract will serve as a guide in negotiating the adjustment.

#### **Clause B-11 (Reserved) (March 2006)**

#### **Clause B-12 Termination for Convenience or Default (March 2006)**

- a. Performance under this contract may be terminated by the Postal Service in whole or in part whenever:
  - (1) The supplier defaults in performing this contract (including in the term "default" any refusal or failure to prosecute the work diligently enough to ensure its completion within the time specified or any extension), and fails to cure the default within 10 days (or for a longer period as the contracting officer may allow) after receipt from the contracting officer of a notice specifying the default; or
  - (2) The contracting officer determines that termination is in the best interests of the Postal Service. A termination may be effected by delivery to the supplier of a notice of termination specifying whether the termination is for default or for the convenience of the Postal Service, the extent of work terminated, and the effective date of the termination. If, after notice of termination for default under subparagraph a.1 above, it is determined that the supplier was not in default or that the delay was excusable, the notice of termination will be deemed to have been issued for the convenience of the Postal Service.

- b. Upon receipt of a notice of termination, unless otherwise directed by the contracting officer, the supplier must take the following actions:
- (1) Stop work under the contract to the extent specified in the notice.
  - (2) Place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the unterminated work.
  - (3) Terminate all orders and subcontracts to the extent that they relate to the work terminated.
  - (4) Assign to the Postal Service, as directed by the contracting officer, all right, title, and interest of the supplier under the orders and subcontracts terminated. The Postal Service has the right, in its discretion, to settle or pay claims arising out of these terminations.
  - (5) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the contracting officer. The contracting officer's decision is final for the purposes of this clause.
  - (6) Transfer title to the Postal Service and deliver as directed by the contracting officer:
    - (a) Work in process, completed work, and other material produced as a part of or acquired for the work terminated; and
    - (b) The completed or partially plans, drawings, information, and other property that, if the contract had been completed, would have been furnished to the Postal Service.
  - (7) Use its best efforts to sell as directed by the contracting officer any property of the types referred to in subparagraph b.6 above, provided that the supplier may acquire property under the conditions prescribed and at prices approved by the contracting officer, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Postal Service to the supplier, or be credited to the price or cost of the work covered by this contract or paid in any manner directed by the contracting officer.
  - (8) Complete performance of the work not terminated.
  - (9) Take any action that may be necessary, or that the contracting officer may direct, for protecting and preserving any property related to this contract that is in the possession of this supplier and in which the Postal Service has or may acquire an interest.
- c. At any time, the supplier may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not disposed of and may request the Postal Service to remove inventory items or enter into a storage agreement covering them. Not later than 15 days after receiving this request, the Postal Service will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the contracting officer upon removal of the items or, if the items are stored, within 45 days after submission of the list.



- d. After termination, the supplier must submit to the contracting officer a termination claim in the form and with the certification prescribed by the contracting officer. The claim must be submitted promptly, but in no event more than 180 days after the effective date of termination, unless an extension in writing is granted by the contracting officer. However, if the contracting officer determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 180-day period. Upon failure of the supplier to submit a termination claim within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the supplier by reason of the termination and will pay that amount.
- e. Subject to the provision of paragraph d above, the supplier and the contracting officer may agree upon the whole or any part of the amount to be paid (including and allowance for the fee) to the supplier by reason of the termination.
- f. If the supplier and the contracting officer fail to agree on the amount with respect to cost or fee, the contracting officer will determine, on the basis of information available, the amount, if any, due the supplier and pay the supplier as follows:
  - (1) If the settlement includes cost and fee:
    - (a) All costs and expenses reimbursable in accordance with this contract, not previously paid to the supplier and such as may continue for a reasonable time after termination;
    - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders;
    - (c) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims, together with reasonable storage, transportation, and other costs incurred in connection with protecting or disposing of the termination inventory (however, if the termination is for default, there must not be included any amount for the preparation of the supplier's settlement proposal); and
    - (d) A portion of the fee payable under the contract, determined as follows:
      - (i) In the event of termination for convenience, a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractor's termination claims, less fee payments previously made; or
      - (ii) In the event of termination for default, that proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles accepted bears to the total number of articles of a like

kind called for by this contract. If the amount determined under this subparagraph (2) is less than the total payment already made to the supplier, the supplier must repay to the Postal Service the excess.

- (2) If the settlement includes only the fee, its amount will be determined in accordance with f.1(d) above.
- g. Costs claimed, agreed to, or determined pursuant to paragraphs c, d, and e above must be in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* in effect on the effective date of termination. The final settlement is limited as provided in the *Limitation of Cost* clause of this contract.
- h. The supplier has the right of review, under the *Claims and Disputes* clause, of any determination made by the contracting officer under paragraph d or f above, except that if the supplier fails to request an extension of time, the supplier will have no right of review. In any case where the contracting officer determines the amount due under paragraph d or f above, the Postal Service must pay to the supplier the following:
  - (1) If there is no right of review under this clause or if no timely review has been taken, the amount determined by the contracting officer; or
  - (2) If a review has been taken, the amount finally determined.
- i. There will be deducted:
  - (1) All unliquidated advance or other payments made to the supplier applicable to the terminated portion of this contract;
  - (2) Any claim the Postal Service may have against the supplier; and
  - (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the supplier or sold in accordance with this clause.
- j. If the termination is partial, the portion of the fee payable for the continued portion of the contract must be equitably adjusted by agreement between the supplier and the contracting officer.
- k. The Postal Service may, under the terms and conditions it may prescribe, make partial payments against costs incurred by the supplier in connection with the terminated portion of the contract whenever, in the opinion of the contracting officer, the aggregate of the partial payments is within the amount to which the supplier will be entitled. If the total of these payments exceeds the amount finally determined to be due under this clause, the excess must be repaid to the Postal Service upon demand, together with interest calculated in accordance with the *Interest* clause of this contract, for the period from the date the excess payment is received by the supplier to the date on which the excess is repaid to the Postal Service. However, no interest will be charged with respect to an excess payment attributable to a reduction in the supplier's claim by reason of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition.

**Clause B-13 (Reserved) (March 2006)**

**Clause B-14 (Reserved) (March 2006)**

**Clause B-15 Notice of Delay (March 2006)**

Immediately upon becoming aware of any difficulties that might delay deliveries under this contract, the supplier will notify the contracting officer in writing of them. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give notice may preclude later consideration of any request for an extension of contract time.

**Clause B-16 Suspensions and Delays (March 2006)**

- a. If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:
  - (1) An order or act of the contracting officer in administering this contract; or
  - (2) By a failure of the contracting officer to act within the time specified in this contract — or within a reasonable time if not specified — an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the supplier, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- b. A claim under this clause will not be allowed:
  - (1) For any costs incurred more than 20 days before the supplier has notified the contracting officer in writing of the act or failure to act involved; and
  - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

**Clause B-17 Disallowance of Costs (March 2006)**

- a. The contracting officer may at any time issue the supplier a written notice of intent to disallow specified costs under this contract that have been determined not to be allowable under the contract terms.

- b. The supplier may, after receiving a notice of intent to disallow costs, submit a written response to the contracting officer, with justification for allowance of the costs. If the supplier does respond within 60 days, the contracting officer will, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

**Clause B-18 Subcontracts (March 2006)**

- a. Subcontract, as used in this clause, includes, but is not limited to, purchase orders and changes and modifications to purchase orders. The supplier must notify the contracting officer reasonably in advance of entering into any subcontract if the supplier does not have a purchasing system approved by a federal government agency and if the subcontract:
  - (1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed \$25,000 including any fee;
  - (2) Is proposed to exceed \$100,000; or
  - (3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that in the aggregate is expected to exceed \$100,000.
- b. The advance notification required by paragraph a above must include:
  - (1) A description of the supplies or services to be subcontracted;
  - (2) Identification of the type of subcontract to be used;
  - (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
  - (4) The proposed subcontract price and the supplier's cost or price analysis;
  - (5) The subcontractor's current, complete, and accurate cost or pricing data if required by other contract provisions; and
  - (6) A negotiation memorandum reflecting:
    - (a) The principal elements of the subcontract price negotiations;
    - (b) The most significant consideration controlling establishment of initial or revised prices;
    - (c) The reason cost of pricing data were or were not required;
    - (d) The extent, if any, to which the supplier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (e) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the supplier and subcontractor; and the effect of any such defective data on the total price negotiated;

- (f) The reasons for any significant differences between the supplier's price objective and the price negotiated; and
  - (g) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation must identify each critical performance element, management decisions used to quantify each incentive element, reasons for incentives, and a summary of all trade-off possibilities considered.
- c. The supplier agrees to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- d. The contracting officer may disapprove any subcontract in writing for which advance notification is required under paragraph a above.
- e. Even if the supplier's purchasing system has been approved, the supplier must obtain the contracting officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of the contract.
- f. The lack of disapproval does not constitute a determination:
  - (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the acceptability of any subcontract price or of any amount paid under any subcontract; or
  - (3) To relieve the supplier of any responsibility for performing this contract.
- g. No subcontract under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

### **Clause B-19 Excusable Delays (March 2006)**

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure by the supplier to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either of them, the supplier will not be deemed to be in default, unless:
  - (1) The supplies or services to be furnished by the subcontractor are obtainable from other sources;

- (2) The contracting officer orders the supplier in writing to procure the supplies or services from other sources; and
- (3) The supplier fails to comply reasonably with the order.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier.

**Clause B-20 Invoices (March 2006)**

- a. The supplier’s invoices must be submitted before payment can be made.
- b. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
  - (1) Any services being billed for have been performed in accordance with the contract requirements; and
  - (2) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with shipping instructions issued by the contracting officer in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the contract.
- c. To ensure prompt payment, an invoice must be submitted for each destination and each shipment. Each invoice must contain:
  - (1) The supplier’s name and address;
  - (2) The contract number;
  - (3) Any applicable task or delivery order number;
  - (4) A description of the supplies or services and the dates delivered or performed;
  - (5) The point of shipment or delivery;
  - (6) Any applicable unit prices and extensions;
  - (7) Shipping and payment terms; and
  - (8) Any additional information required by the contract.

**Clause B-21 Change-Order Accounting (March 2006)**

The contracting officer may require change-order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The supplier, for each change or series of related changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) or work, both changed and not changed, allocable to the change. The supplier will maintain

such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is finally disposed of in accordance with the *Claims and Disputes* clause.

**Clause B-22 Interest (March 2006)**

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 *et. seq.*, as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496.

**Clause B-23 Guaranteed Shipping Weight (March 2006)**

- a. This clause applies if this contract contains a guaranteed shipping-weight provision.
- b. The supplier is responsible for the actual weight at the time of shipment. If the shipping weight exceeds the specified guaranteed shipping weight, the supplier will be liable for any resulting excess transportation costs.
- c. The supplier must determine the excess transportation costs and deduct them from the invoice, making reference on it to the applicable bill of lading numbers.
- d. When the excess transportation costs are not known and timely notification is not made to the contracting officer for possible price adjustment, 2 percent of the invoice amount covering each shipment with excess weight may be withheld until the Postal Service can calculate the excess costs. In this case, an administrative-cost fee of \$50 per shipment will be assessed in addition to any excess transportation costs incurred.

**Clause B-24 Frequency Authorization (March 2006)**

- a. Authorization of radio frequencies required in support of this contract must be obtained through the contracting officer by the supplier or subcontractor in need thereof. Frequency-management procedures prescribed in the schedule of this contract must be followed in obtaining radio frequency authorization.
- b. For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the supplier or subcontractor must provide technical operating characteristics of the proposed electromagnetic radiating device to the contracting officer during the initial planning, experimental, or developmental phases of contractual performance.
- c. This clause, including this paragraph c, must be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio-frequency authorization is required.

**Clause B-25 Advertising of Contract Awards (March 2006)**

Except with the contracting officer's prior approval, the supplier agrees not to refer in its commercial advertising to the fact that it was awarded a Postal Service contract or to imply in any manner that the Postal Service endorses its products.

**Clause B-26 Protection of Postal Service Buildings, Equipment, and Vegetation (March 2006)**

The supplier must use reasonable care to avoid damaging buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Postal Service installation. If the supplier fails to do so and damages any buildings, equipment, or vegetation, the supplier must replace or repair the damage at no expense to the Postal Service, as directed by the contracting officer. If the supplier fails or refuses to make repair or replacement, the supplier will be liable for the cost of repair or replacement, which may be deducted from the contract price.

**Clause B-27 Performance at Occupied Postal Premises (March 2006)**

- a. In performing this contract, the supplier must:
  - (1) Comply with applicable Occupational Safety and Health Standards (29 CFR 1910) promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970;
  - (2) Comply with any other applicable federal, state, or local regulations governing work-place safety to the extent they do not conflict with a.1 above; and
  - (3) Take all other proper precautions to protect the safety and health of the supplier's employees, Postal Service employees, and the public.
- b. The supplier must coordinate its use of the premises with the installation head or other representative designated by the contracting officer. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the supplier of Postal Service tools and equipment; the furnishing by the supplier of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Postal Service employees and property.

**Clause B-28 Safety and Health Standards (March 2006)**

- a. Materials, supplies, articles, or equipment manufactured or furnished under this contract or order must conform to the Occupational Safety and Health Standards (29 CFR 1910) pursuant to authority in the



Occupational Safety and Health Act of 1970 (OSHA), and to other safety and health requirements specified in this contract or order.

- b. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.
- c. If this contract or order contains a Postal Service standard and an OSHA standard covering the same general area of applicability, the Postal Service standard governs and takes precedence, unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
- d. Upon delivery of the first article under the contract or order, or if none, upon delivery of the first production quantity, the supplier must execute a certification in a form acceptable to the contracting officer, attesting to the conformance of the delivered items to the requirements of this clause.

**Clause B-29 (Reserved) (March 2006)**

**Clause B-30 Permits and Responsibilities (March 2006)**

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the performance of the contract. The supplier is responsible for all damage to persons or property, including environmental damage, that occurs as a result of its omission(s) or negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, the environment, and the property of others.

**Clause B-31 (Reserved) (March 2006)**

**Clause B-32 Differing Site Conditions (March 2006)**

- a. The supplier must promptly, and before such conditions are disturbed, notify the contracting officer in writing of:
  - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. The contracting officer shall promptly investigate the conditions, and if such conditions do materially so differ and will cause an increase or decrease in the supplier's cost of, or the time required for, performance of any part of the work under this contract whether or not changed as a

result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- c. No claim of the supplier under this clause shall be allowed unless the supplier has given the notice required in (a) above; provided however, the time prescribed thereof may be extended by the Postal Service.
- d. No claim by the supplier for an equitable adjustment under this clause will be allowed if asserted after final payment under this contract.

**Clause B-33 Clause B-33 Inspection and Acceptance (Construction)  
(March 2006)**

- a. Except as otherwise provided in this contract, inspection and testing by the Postal Service of materials and workmanship shall be made at reasonable times and at the site of the work, unless the contracting officer determines that it shall be made at the place of production, manufacture, or shipment of such material. The contracting officer's decision shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the supplier of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Postal Service after acceptance of the completed work under the terms of paragraph f of this section.
- b. The supplier shall without charge, replace any material or correct any workmanship found by the Postal Service not to conform to the contract requirements, unless the Postal Service consents to accept such material or workmanship with an appropriate adjustment in contract price. The supplier shall promptly segregate and remove rejected material from the premises.
- c. If the supplier does not promptly replace rejected material or correct rejected workmanship, the Postal Service may, by contract or otherwise, replace or correct it and charge the cost to the supplier.
- d. The supplier must furnish (without charge) all facilities, labor, and materials needed to conduct inspections and tests as required by the contracting officer. The supplier will be charged any additional costs of inspection if material and workmanship are not ready at the time specified by the supplier for inspection.
- e. The Postal Service may examine completed work by removing or tearing it out. The supplier must replace or correct any work found not to conform to contract requirements. If work is torn out and found to comply with contract requirements, the contracting officer must make an equitable adjustment for the services provided for the inspection and replacement of the work.
- f. The Postal Service will inspect the work as soon as practicable after completion. Acceptance by an authorized Postal Service representative is conclusive except in the case of latent defects, fraud, gross mistakes amounting to fraud, or Postal Service rights under any warranty or guarantee.

**Clause B-34 Notice to Proceed and Commencement, Prosecution and Completion of Work (March 2006)**

No work will be performed except pursuant to a Notice to Proceed issued by the Contracting Officer.

The supplier will be required to (a) commence work under this contract within 10 calendar days after the date the supplier receives the Notice to Proceed, (b) prosecute the work diligently, and (c) complete the entire work, ready for use not later than \_\_\_\_\_ calendar days from the date of receipt of the Notice to Proceed. The time stated for completion includes final cleanup of the premises.

**Clause B-35 Specifications and Drawings (March 2006)**

- a. The supplier must keep at the site, copies of the drawings and specifications and must at all times give the contracting officer access to them. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, is of like effect as if shown or mentioned in both. In case of discrepancy or conflicts between drawings and specifications, the specifications will govern.
- b. In case of difference between small and large-scale drawings, the large-scale drawings will govern. Schedules on any contract drawing will take precedence over conflicting information on that or any other contract drawing. On any of the drawings in which a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the work.
- c. When the word "similar" appears on the drawings, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the work.
- d. In case of discrepancy either in figures, drawings, or specifications, the matter must be promptly submitted to the contracting officer, who will promptly make determination in writing. Any adjustment by the supplier without such a determination will be at the supplier's own risk and expense. The contracting officer must furnish from time to time such detailed drawings and other information as may be necessary.
- e. The supplier must verify all dimensions shown of existing work, and all dimensions required for work that is to connect with work now in place, by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions must be referred to the contracting officer before the supplier performs any work affected by these discrepancies.

**Clause B-36 Postal Service Partial Occupancy (March 2006)**

- a. The contracting officer reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the project by the Postal Service. Before such occupancy or use, the contracting officer must furnish the supplier an itemized list of work remaining to be performed or corrected. Failure to list an item will not relieve the supplier of the responsibility for complying with the terms of the contract.
- b. Costs incurred as a result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment under the *Changes* clause.

**Clause B-37 Changes (Construction) (March 2006)**

- a. The contracting officer may at any time, without notice to any sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Postal Service-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- b. Any other written or oral order (which, as used in this paragraph b, includes direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order only if the supplier gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the supplier regards the order as a change order. This notification must be delivered to the contracting officer within 30 days of receipt of the change order.
- c. If any change under this clause causes an increase or decrease in the supplier's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, the contracting officer will make an equitable adjustment and modify the contract in writing. However, except for claims based on defective specifications, no claim for any change under paragraph b above will be allowed for any costs incurred more than 20 days before the supplier gives written notice as required. In the case of defective specifications for which the Postal Service is responsible, the equitable adjustment will include any increased cost reasonably incurred by the supplier in attempting to comply with the defective specifications.
- d. No claim by the supplier for an equitable adjustment will be allowed if asserted after final payment under this contract.
- e. See also Clause B-10, *Pricing of Adjustments*.

**Clause B-38 Accident Prevention (March 2006)**

- a. All construction work on this project must be performed in compliance with the Occupational Safety and Health Act of 1970 or with local or state occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).
- b. The supplier will maintain an accurate record of exposure data and all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The supplier must report the exposure data and accidents as prescribed by the contracting officer.
- c. Job Safety programs are required as follows:
  - (1) Within 30 days after receiving a notice to proceed, the supplier must submit to the contracting officer, in quintuplicate, a proposed job safety program designed to provide a system by which hazards on the project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
  - (2) The proposed job safety program must state that subcontractors are required to comply with the general supplier's job safety rules and requirements issued under the authority of that program.
  - (3) The proposed job safety program must identify, by name, the supplier's representative responsible for the execution of the job safety program.

**Clause B-39 Indemnification (March 2006)**

The supplier must save harmless and indemnify the Postal Service and its officers, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of any personal injury or property damage received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this contract, resulting in whole or in part from negligent acts or omissions of the supplier, any subcontractor, or any employee, agent, or representative of the supplier or any subcontractor.

**Clause B-40 Construction Cost Breakdown (March 2006)**

- a. Cost breakdown with proposal:  
If required by the contracting officer, the offeror must submit with its proposal a construction cost estimated breakdown on the attached form.
- b. Cost breakdown after award:  
If required by the contracting officer, the supplier must submit, within 30 calendar days after receiving the notice to proceed, a construction cost

estimated breakdown on the sample forms, and instructions, provided in Section 01040, Division 1, *General Requirements*.

**Clause B-41 Conditions Affecting the Work (March 2006)**

The supplier is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or its costs. Any failure by the supplier to have done so does not relieve the supplier from responsibility for successfully performing the work without additional expense to the Postal Service. The Postal Service assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents before execution of this contract, unless such understanding or representations by the Postal Service are expressly stated in the contract.

**Clause B-42 Performance of Work by Supplier (March 2006)**

The supplier must perform on the site, with its own organization, work equivalent to at least \_\_\_\_\_ percent of the total amount of work to be performed under this contract. The percentage of work required to be performed by the supplier may be reduced with written approval of the contracting officer.

**Clause B-43 Superintendence by Supplier (March 2006)**

The supplier must give personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the contracting officer, on the work at all times during progress, with authority to act for the supplier.

**Clause B-44 Use of Premises (March 2006)**

- a. If the premises are occupied, the supplier, any subcontractors, and their employees must comply with the regulations governing access to, operation of, and conduct while on the premises and must perform the work required under this contract so as not to unreasonably interfere with the conduct of Postal Service business or use and occupancy by Postal Service tenants.
- b. Any requests received by the supplier from occupants to change the sequence of work must be referred to the contracting officer for determination.
- c. The supplier, any subcontractors, and their employees will not have access to any building outside the scope of this contract, without permission of the contracting officer.

**Clause B-45 Other Contracts (March 2006)**

The Postal Service may award other contracts for additional work, and the supplier must cooperate fully with the other suppliers and Postal Service employees and carefully fit in its own work as may be directed by the contracting officer. The supplier must not commit or permit any act that will interfere with the performance of work by any other supplier or by Postal Service employees.

**Clause B-46 Subcontracts (Construction) (March 2006)**

- a. Nothing in this contract may be construed to create any contractual relationship between any subcontractors, and the Postal Service. The divisions or sections of the specifications are not intended to control the supplier in dividing the work among subcontractor or to limit the work performed by any trade.
- b. The supplier is responsible to the Postal Service for acts and omissions of its own employees and of subcontractors and their employees. The supplier is also responsible for the coordination of the work of the trades, subcontractors, and suppliers.
- c. The Postal Service will not undertake to settle any differences among the supplier, subcontractors, or suppliers.

**Clause B-47 Permits and Responsibilities (Construction) (March 2006)**

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the prosecution of the work. The supplier is responsible for all damage to persons or property that occurs as a result of its negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The supplier is responsible also for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction that may have been accepted.

**Clause B-48 Clause B-48 Payment (Construction) (March 2006)**

- a. The Postal Service will make progress payments monthly or at more frequent intervals as determined by the contracting officer. Bond costs may be included in the supplier's estimates without proration. Before the first progress payment becomes due, the supplier must prepare a breakdown of the contract price acceptable to the contracting officer. The values in the breakdown will be used for determining progress payments. The supplier's overhead and profit must be prorated through the life of the contract.
- b. If the contract price is more than \$50,000, material delivered that will be incorporated into the structure may be taken into consideration in

computing progress payments. Before each payment is made, the supplier must furnish to the contracting officer proof of the quantity, value, and delivery of materials.

- c. In making progress payments, the contracting officer will ordinarily retain ten percent of the progress payments earned. However, if the contracting officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, the contracting officer may authorize payment in full of all progress payment earned. Also, if the contracting officer considers the amount retained to be in excess of that adequate for the protection of the Postal Service, the contracting officer may release to the supplier all or a portion of the excess whenever the work is substantially complete. On completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention.
- d. All material and work covered by progress payments will be the sole property of the Postal Service. However, this paragraph d does not (1) relieve the supplier of responsibility for all material and work for which payment has been made or for restoration of any damaged work or (2) waive the right of the Postal Service to require fulfillment of all the contract terms.
- e. Before receiving a progress payment or final payment under this contract, the supplier must certify to the contracting office that payment due subcontractors or suppliers under contractual arrangements with them has been made from the proceeds of prior payments or will be made in timely fashion from the payment then due the supplier.
- f. Upon completion and acceptance of all work, the amount due the supplier under this contract must be paid upon the presentation of a properly executed invoice, after the supplier has furnished the Postal Service with a release of all claims against the Postal Service arising by virtue of this contract, other than claims in stated amounts that must be specifically excepted by the supplier from the operation of the release. If the supplier's claim to amounts payable under the contract has been assigned as provided in the *Assignment of Claims* clause, a release may also be required of the assignee.

**Clause B-49 Building Codes, Fees, and Charges (March 2006)**

- a. State and local building codes and regulations do not apply as a matter of law to work inside the property lines of Postal Service-owned properties but generally do apply to Postal Service-leased properties. In compliance with Postal Service policy, the supplier must comply with all state and local building code requirements unless otherwise specifically provided.
- b. The supplier must pay all fees and charges for connections to outside services and for use of property outside the site.



**Clause B-50 Protection of Existing Vegetation, Structures, Utilities, and Improvements (March 2006)**

- a. The supplier will preserve and protect all existing vegetation (such as trees, shrubs, and grass) and structures on or adjacent to the site of work that are not to be removed and that do not unreasonably interfere with the construction work. Care will be taken in removing trees authorized by the contracting officer for removal, to avoid damage to vegetation that will remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, will be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the contracting officer.
- b. The supplier will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is or should have been known, and will repair or restore any damage to these facilities resulting from failure to comply with the requirements of this contract or to exercise reasonable care in performing the work. If the supplier fails or refuses to repair any such damage promptly, the contracting officer may have the necessary work performed and charge the cost to the supplier.

**Clause B-51 Heat (March 2006)**

Unless otherwise specified, or unless directed otherwise by the contracting officer, the supplier must:

- a. Provide heat as necessary to protect all work materials and equipment against injury from dampness and cold;
- b. Protect, cover, and/or heat, as may be necessary to produce and maintain a temperature of not less than 50 degrees Fahrenheit in the concrete during the placing, setting, and curing of concrete, and in the plaster during the application, setting, and curing of plaster; and
- c. Provide heat as necessary to produce in the area where the work is to be done a temperature of not less than 70 degrees Fahrenheit for the period beginning 10 days before the placing of interior finishes and finish materials and continuing until completion of beneficial occupancy of the area.

**Clause B-52 Debris and Cleanup (March 2006)**

- a. The supplier must, during the progress of the work, remove and dispose of the resultant dirt and debris and keep the premises clean.
- b. The supplier will, upon completion of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain Postal Service property as provided by this contract), and leave the premises in a clean, neat, and orderly condition satisfactory to the contracting officer.

**Clause B-53 Survey Monuments and Bench Marks (March 2006)**

- a. The Postal Service has established, or will establish, such general reference points as will enable the supplier to proceed with the work. The supplier will provide new monuments where shown or specified. If the supplier finds that any previously established reference points have been destroyed or displaced, or that none has been established, the supplier must promptly notify the contracting officer.
- b. The supplier must protect and preserve established bench marks and monuments and make no changes in locations without the written approval of the contracting officer. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the work under this contract, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the contracting officer) be replaced and accurately located or relocated (as appropriate) at the supplier's expense, by a licensed engineer or licensed land surveyor.
- c. New monuments will be 6 inches square by 3 feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
- e. The supplier must verify the figures shown on the survey and site plan before undertaking any construction work and will be responsible for the accuracy of the finished work.
- f. After completion of construction and before final payment, the supplier must furnish the Postal Service blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

**Clause B-54 (Reserved) (March 2006)****Clause B-55 Standard References (March 2006)**

- a. All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in the contract as fully as if printed and bound with the specifications of this contract, in accordance with the following:
  - (1) Wherever reference is made to standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the supplier must comply with the requirements set forth in the issue

or edition identified in this contract except as modified or as otherwise provided in the specifications.

- (2) Wherever reference is made to any document other than those specified in subparagraph a.1 above, the supplier must comply with the requirements set forth in the edition specified in this contract or, if not specified, the latest edition or revision, as well as the latest amendment or supplement in effect on the date of the solicitation except as modified by the specifications of this contract.
- b. Federal Specifications, Federal Standards, and Standard Specifications of the Public Buildings Service can be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards," "Product Standards," and "Simplified Practice Recommendations" should be addressed to:  
  
Office Of Product Standards  
National Bureau Of Standards  
Washington DC 20234-0001

Publications of associations referred to in the specifications can be obtained directly from the associations.

- c. Upon request, the supplier must make available at the job site, within a reasonable time, a copy of any trade manual or standard incorporated by reference in this contract that governs quality and workmanship.

#### **Clause B-56 Shop Drawings, Coordination Drawings, and Schedules (March 2006)**

- a. The supplier will submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the contracting officer, as follows:
  - (1) Shop drawings will include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
  - (2) Drawings and schedules, other than catalogs, pamphlets, and similar printed material, must be submitted in reproducible form with two prints made by a process approved by the contracting officer. Upon approval, the reproducible form will be returned to the supplier which must furnish the number of additional prints, not to exceed ten required by the Special Conditions of the specifications. The supplier must submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the supplier may desire or need or for use by subcontractors.
- b. Before submitting shop drawings on the mechanical and electrical work, the supplier must obtain the contracting officer's approval of lists of mechanical and electrical equipment and materials as required by the specifications.

- c. The supplier will check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of the supplier's approval may be returned for resubmission.
- d. Each shop drawing or coordination drawing must have a blank area of 5 by 5 inches, located adjacent to the title block. The title block must display:
  - (1) Number and title of drawing;
  - (2) Date of drawing or revision;
  - (3) Name of project building or facility;
  - (4) Name of supplier and (if appropriate) of subcontractor submitting drawing;
  - (5) Clear identity of contents and location on the work; and
  - (6) Project title and contract number.
- e. Unless otherwise provided in this contract, or otherwise directed by the contracting officer, shop drawings, coordination drawings, and schedules must be submitted to the contracting officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit at least 10 working days for checking and appropriate action.
- f. Except as otherwise provided in paragraph g below, approval of drawings and schedules will be general and may not be construed as:
  - (1) Permitting any departure from the contract requirements;
  - (2) Relieving the supplier of responsibility for any errors, including details, dimensions, and materials; or
  - (3) Approving departures from full-size details furnished by the contracting officer.
- g. If drawings or schedules show variations from the contract requirements because of standard shop practice or for other reasons, the supplier must describe the variations in the letter of transmittal. If acceptable, the contracting officer may approve any or all variations and issue an appropriate change order. If the supplier fails to describe these variations, it will not be relieved of the responsibility for executing the work in accordance with the contract, even though the drawings or schedules have been approved.

**Clause B-57 “As Built” Drawings (March 2006)**

- a. The supplier must, during the progress of the work, keep a master set of prints on the job site, on which is kept a careful and neat record of all deviations from the contract drawings prepared by the architect-engineer made during the course of the work.
- b. Upon completion of the project, these “as built” prints must be certified as to their correctness by the signature of the supplier and turned over

to the architect-engineer for use in preparing a permanent set of "as built" drawings.

**Clause B-58 Spare-Parts Data (March 2006)**

- a. The supplier must furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the contract; and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 180 days at the particular installation.
- b. The foregoing does not relieve the supplier of any responsibilities under the guarantees specified.

**Clause B-59 Construction Progress Chart (March 2006)**

- a. Within 30 days after receiving notice to proceed, the supplier must prepare and submit to the contracting officer for approval six copies of a practical progress chart. The chart must show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the supplier proposes to carry on the work, the date on which it will start each category of work, and the contemplated dates for completion. The chart must be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. At the end of each progress payment period, or at such intervals as directed by the contracting officer, the supplier must:
  - (1) Adjust the chart to reflect any changes in the contract work, completion time, or both, as approved by the contracting officer;
  - (2) Enter on the chart the total percentage of work actually in place; and
  - (3) Submit three copies of the adjusted chart to the contracting officer.
- b. If in the opinion of the contracting officer the work actually in place falls behind that scheduled, the supplier must take such action as necessary to improve progress. The contracting officer may require the supplier to submit a revised chart demonstrating its program and proposed plan to make up lag in scheduled progress and to ensure completion of work within the contract time. If the contracting officer finds the proposed plan unacceptable, the supplier may be required to submit a new plan. If a satisfactory plan is not agreed upon, the contracting officer may require the supplier to increase the work force, the construction plan and equipment, or the number of work shifts, without additional cost to the Postal Service.

- c. Failure of the supplier to comply with these requirements will be considered grounds for determination by the contracting officer that the supplier is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

**Clause B-60 (Reserved) (March 2006)**

**Clause B-61 Warranty (Construction) (March 2006)**

- a. Unless otherwise provided in the specifications, the supplier warrants that all work is in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one year after the date of final acceptance under this contract.
- b. If, within the warranty period, the contracting officer finds that warranted work needs to be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in accordance with the contract terms, the supplier must promptly and without additional expense to the Postal Service:
  - (1) Place in a satisfactory condition all of the warranted work;
  - (2) Satisfactorily correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory work; and
  - (3) Satisfactorily correct any work, materials, or equipment disturbed in fulfilling the warranty.
- c. Should the supplier fail to proceed promptly in accordance with the warranty, the Postal Service may have the work performed at the supplier's expense.
- d. The supplier must obtain each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of the business or trade. The supplier must obtain and furnish to the Postal Service all information required to make any such guarantee or warranty legally binding and effective, and must submit both the information and the guarantee or warranty to the Postal Service in sufficient time to permit the Postal Service to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all work under this contract.

**Clause B-62 Samples (March 2006)**

- a. After contract award, the supplier must furnish samples required by the specifications or by the contracting officer, for the contracting officer's approval. They must be delivered to the contracting officer or to the architect as specified or as directed. The supplier must prepay all shipping charges on samples. Materials or equipment for which

samples are required may not be used in the work until the contracting officer approves in writing.

- b. Each sample must be labeled to show:
  - (1) Name of project building or facility, project title, and contract number;
  - (2) Name of supplier and (if appropriate) subcontractor;
  - (3) Identification of material or equipment, with specification requirement;
  - (4) Place of origin; and
  - (5) Name of producer and brand (if any).
- c. Samples of finish materials must have additional markings that will identify them under the finish schedules.
- d. The supplier must mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraphs b and c above. The supplier must also enclose a copy of that letter with the shipment and send a copy to the Postal Service representative on the project. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any contract requirement. Substitutions are not permitted unless approved in writing by the contracting officer.
- e. Approved samples not destroyed in testing will be sent to the Postal Service representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the supplier's expense if the supplier so requests at the time of submission.
- f. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material. The Postal Service reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service.
- g. Samples of materials or equipment delivered on the site or in place may be taken by the Postal Service representative for testing. Failure of a sample to meet contract requirements will automatically void previous approvals of the item tested. The supplier must replace materials or equipment found not to have met contract requirements, or there will be a proper adjustment of the contract price as determined by the contracting officer.
- h. Except as otherwise specified, if tests are called for in the specifications, the supplier must pay all costs of these tests. When tests are not specifically called for in the specifications but are required by the Postal Service, the Postal Service will pay all costs of the tests and related engineering services unless the tests indicate that the workmanship or materials used by the supplier are not in conformance with drawings, specifications, approved shop drawings, or the approved materials. In this event, the supplier must pay for the tests, remove all

work and material failing to conform, and replace with work and materials in full conformity. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the contracting officer.

**Clause B-63 Materials and Workmanship (March 2006)**

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the work must be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The supplier may substitute any equipment, material, or process that the contracting officer finds to be equal to that named. To obtain approval to use a different equipment, material, or process, the supplier must furnish the contracting officer the manufacturer's name, the model number, and other identifying data and information regarding the nature and performance of the proposed substitute. If requested by the contracting officer, samples must be submitted for approval at the supplier's expense, shipping charges prepaid. Materials or processes substituted without approval may be rejected.
- b. In the event of substitution in accordance with paragraph a above, the supplier must furnish to the contracting officer for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution.
- c. The supplier must obtain the contracting officer's approval of the machinery and mechanical equipment incorporated into the work. The supplier must submit samples of all materials and equipment as directed by the contracting officer or as required by the specifications.
- d. All work must be performed in a skillful and workmanlike manner. The contracting officer may, in writing, require the supplier to remove from the work any employee the contracting officer deems incompetent, careless, or otherwise objectionable.

**Clause B-64 Accountability of the Supplier (Highway) (March 2006)**

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.



The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except

- (1) The supplier is not liable for its failure to perform if the failure arises out of circumstances beyond its control, and without its fault or negligence, and
  - (2) The supplier is not liable for a failure of its subcontractors to perform if the subcontractor's failure arises out of circumstances beyond the supplier or the subcontractor's control, and without the fault or negligence of either.
- c. The supplier shall faithfully account for and deliver to the Postal Service all
- (1) Mail,
  - (2) Moneys, and
  - (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into its possession during the term of this contract.
- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment for service not rendered.

#### **Clause B-65 Adjustments to Compensation (March 2006)**

Contract compensation may be adjusted, from time to time, by mutual agreement of the supplier and the contracting officer.

- a. Any such adjustments shall be made in accordance with the provisions of this clause and any U.S. Postal Service Management Instruction governing adjustments in effect on the date of adjustment.
- b. In connection with an adjustment, the contracting officer may examine such records and books of account maintained by the supplier as the contracting officer may deem necessary.
- c. Adjustments in compensation pursuant to this clause shall be memorialized by formal amendment to the contract.
- d. Should the Postal Service introduce procedures which affect the supplier's obligations with respect to the costs of fuel or taxes, the contract price will be adjusted with respect to those costs, pro rata, without entitlement to other compensation for those adjustments, subject to the resolution of any dispute about the adjustments under the *Claims and Disputes* clause.

**Clause B-66 (Reserved) (March 2006)**

**Clause B-67 Changes (Transportation) (March 2006)**

a. *Service Changes*

- (1) *Minor Service Changes.* The contracting officer may, at any time, without consulting the supplier, issue orders directing an extension, curtailment, change in line of travel, revisions of route, or increase or decrease in frequency of service or number of trips and fixing an adjustment in the supplier's compensation which increases or decreases the supplier's rate of pay by no more than \$2,500. If the supplier believes the increased cost of providing the service required by the order exceeds the increase made in compensation, it may request an adjustment of compensation for the service change.
- (2) *Other Service Changes.* Service changes other than minor service changes, including increases or decreases in compensation, may be made by mutual agreement of the contracting officer and the supplier. Such changes shall be shall be memorialized by formal amendment to the contract.

b. *Extra Trips*

- (1) An extra trip is an additional trip of service operated on an infrequent time basis over the same route or part as normally provided under the terms of the contract. Extra trips shall be negotiated in advance of the performance when the contracting officer deems it appropriate. However, the contracting officer may order the supplier to perform such extra service at pro rata pay. If no rate of pay for extra trips has been negotiated in advance, the supplier shall nonetheless perform such extra trips as are ordered by the contracting officer and may, on an after-the-fact basis, obtain a lump sum reimbursement for the difference between costs incurred as a direct result of performing such extra trips and pro rata payment for such trips, provided that such claims costs are adequately supported by documentary evidence furnished to the contracting officer. Claims for compensation above pro rata pay for extra trips must be filed in writing with the contracting officer, accompanied by full supporting documentation of costs, no later than 90 days after the performance of such extra trips. When the contracting officer has ordered several extra trips under a single order, the 90-day period begins on the date of performance of the last trip performed under such order. Failure to agree to such compensation above pro rata pay shall be resolved under the *Claims and Disputes* clause.

c. *Detours*

When the regular line of travel of a contract route is impassable and the supplier performs full service over another and longer line of travel, the supplier's compensation shall be equitably increased for such service; provided, however, that such increase;

- (1) Comprises at least \$1.00 (one dollar) in a Postal Accounting Period, and
- (2) Does not exceed an amount determined by multiplying the additional miles actually traveled by the rate per mile that applies to the trip on which the detour was made, determined by dividing the regular compensation for the trip by the regular number of miles.

**Note:** No payments will be made with respect to any detour not reported to the contracting officer or the contracting officer's designee within 90 days after the detoured service is performed.

d. The supplier shall proceed diligently in accordance with service changes and extra trips ordered unilaterally by the contracting officer. Disputes concerning such orders shall be resolved pursuant to the *Claims and Disputes* clause.

e. *Liquidated Damages*

- (1) If this is a Highway Transportation Contract and it is terminated for convenience due to the implementation of Delivery Point Sequence, Reclassification, Priority Mail Processing Centers, or Integrated Mail Handling Systems, without fault on the part of the supplier, liquidated damages for the termination will be established as one-twelfth of the annual rate.

In the event of a partial termination for convenience or other service curtailment for these causes, liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to the amount established above.

- (2) In all other cases, if this is a Highway Transportation Contract or a Domestic Water Transportation Contract and is terminated for convenience without fault on the part of the supplier, liquidated damages for the termination will be established as:
  - (i) One third of the annual rate (if during the first two years), or
  - (ii) One-sixth of the annual rate (if during the third year), or
  - (iii) One-twelfth of the annual rate (if during the fourth year).

In the event of a partial termination for convenience or other service curtailment liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to (i), (ii), or (iii) above (as applicable).

**Clause B-68 Changes in Corporate Ownership or Officers (March 2006)**

- a. This clause applies only if the supplier is a corporation and it holds no other regular highway transportation contracts or the aggregate annual rate dollar value of any regular highway transportation contracts it holds is less than \$150,000.
- b. A principal owner is any individual, partnership, corporation, or other entity which holds 25 percent or more of the supplier's stock. Corporate officers are the President, Vice President, and Secretary.
- c. The supplier shall furnish the contracting officer, in writing, the names of its principal owners and its corporate officers before contract award, renewal or novation.
- d. Except in the case of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing not less than 30 days prior to any planned change in the principal owners or corporate officers.
- e. In the event of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing within 30 days.

**Clause B-69 Events of Default (March 2006)**

The supplier's right to perform this contract is subject to termination under the clause entitled Termination for Default. The following constitute events of default, and this contract may be terminated pursuant to that Clause.

- a. The supplier's failure to perform service according to the terms of the contract;
- b. If the supplier has been administratively determined to have violated Postal laws and regulations and other laws related to the performance of the service;
- c. Failure to follow the instructions of the contracting officer;
- d. If the supplier transfers or assigns his contract, except as authorized herein, or sublets the whole or a portion of this contract contrary to the applicable provisions of the U.S. Postal Service *Supplying Principles and Practices* or without any required approval of the contracting officer;
- e. If the supplier combines to prevent others from proposing for the performance of Postal Service contracts;
- f. The supplier's failure properly to account, deliver and pay over moneys, mail and other property pursuant to this contract;
- g. If the supplier or a partner, if the supplier is a partnership, or a principal owner or corporate officer, if the supplier is a corporation, (a) has been or is, during the term of the contract, convicted of a crime of moral turpitude affecting his or her reliability or trustworthiness as a mail transportation supplier, such as any form of theft, fraud, embezzlement or assault, or (b) associates with known criminals, or (c) otherwise is not reliable, trustworthy or of good character.

- h. Any breach by the supplier or subcontractor of any warranty contained in PS Form 7465, *Transportation Services Subcontract*;
- i. If the supplier allows any employed individual to operate a vehicle in connection with this contract who has a record indicating that it would be hazardous for that individual to do so;
- j. If the supplier's transportation equipment is insufficient, inadequate, or otherwise inappropriate for the service;
- k. If the supplier employs any individual in connection with the contract contrary to the instructions of the contracting officer;
- l. If at any time the supplier, its principal owners, corporate officers or personnel are disqualified by law or regulation from performing services under this contract, and upon notice thereof, the supplier fails to remove any such disqualification;
- m. If the supplier fails to establish and maintain continuously in effect insurance as required by this contract, or fails to provide proof of insurance prior to commencement of service and thereafter as required by the contracting officer;
- n. If the supplier fails to provide any notification of a change in principal owners or corporate officers which this contract may require; or
- o. If the supplier materially breaches any other requirement or clause of this contract.

#### **Clause B-70 Release of Supplier (March 2006)**

- a. The contracting officer may release an individual sole-proprietor supplier from the contract for reasons of physical disability which prohibit the supplier from adequately operating the route, or which endanger the supplier's life if operation of the route continues, if:
  - (1) The supplier applies to the contracting officer for a release;
  - (2) The contracting officer determines that a release will be in the interest of the Postal Service; and,
  - (3) The Postal Service secures a new contract.
- b. A release under this clause is not a termination for convenience, and the supplier expressly waives any claim for liquidated damages for such release.

#### **Clause B-71 Termination for Convenience (Transportation) (March 2006)**

The contracting officer, on 30 days written notice, may terminate this contract or the right to perform under it, in whole or in part, when such action is in the best interest of the Postal Service. When a termination is effected under this clause, in the case of a highway transportation or domestic water transportation contract, the supplier shall be paid as liquidated damages the sum provided for in the *Changes (Transportation)* clause. For any other type of surface transportation contract, the Postal Service shall not be liable for any damages for a termination effected under this clause. The liquidated

damages permitted by this contract, if any, constitute the supplier's full remedy for a whole or partial termination under this clause.

**Clause B-72 Termination for Convenience — Emergency Contracts (March 2006)**

This contract may be terminated by the Postal Service upon notice of not less than 24 hours, or by the supplier upon notice of not less than 15 days; without the allowance of any damages or extra pay in lieu of damages.

**Clause B-73 Trailer Damage (March 2006)**

a. *General*

- (1) The supplier is liable for any damage to a trailer owned or leased by the Postal Service or a third party caused by a negligent act or omission of the supplier or its subcontractors.
- (2) The Postal Service shall be liable for any damage to a trailer owned or leased by the supplier caused by a negligent act or omission of the Postal Service.

b. *Minor Repairs to Trailers*

- (1) The supplier shall perform minor repairs to all trailers used under this contract, including trailers furnished by the Postal Service, when such repairs are necessary for the safe completion of a trip of service. Minor repairs include repair or replacement of trailer tires. Tire carcasses shall be returned to the Postal Service.
- (2) The Postal Service shall reimburse the supplier for the costs of performing any repairs required under paragraph b which are reasonable, customary and fully documented.

c. *Major Repairs to Trailers.* The supplier is responsible for all major repairs to its trailers. If a trailer furnished by the Postal Service incurs major damage en route, and requires towing for repair, the supplier shall promptly notify the Administrative Official of these facts. Upon direction of the Administrative Official, the supplier shall tow the trailer, either to the nearest Postal Service Bulk Mail Center or to a repair facility. The Postal Service shall reimburse the supplier its costs incurred for towing service, so long as such costs are reasonable, customary and documented.

**Clause B-74 Payment (Highway) (March 2006)**

General. This is a fixed price contract for highway transportation service, to be provided according to the Statement of Work and Specifications. The basis for payment established for this contract is stated in the solicitation cover sheet. No adjustments will be made in contract price except as provided below or under other clauses of this contract.

Payment for services rendered under this contract will be made as follows:

- a. The St. Louis Accounting Service Center (ASC) will pay the supplier automatically at the conclusion of each Postal Accounting Period for which payment is due.
  - (1) If the fixed price is expressed as an annual rate, payment will be computed by dividing the annual rate stated in this contract by 365 (or 366 in any portion of the contract term beginning on July 1 of the calendar year preceding a leap year and ending on June 30 of the leap year), and multiplying that result by the number of days in that Postal Accounting Period. If this contract ends before the end of a Postal Accounting Period, payment will be based on the number of days within that period during which the contract was in force.
  - (2) If the fixed price is expressed as a unit rate (per trip, round trip, etc.), payment will be computed based on the number of units certified by the Administrative Official at the close of each Postal Accounting Period.
- b. From time to time the contracting officer may authorize (i) adjustments in compensation pursuant to the *Adjustment to Compensation* clause, or (ii) changes in service requirements or extra trips pursuant to the *Changes* clause. The Postal Service will file the appropriate documentation with the St. Louis ADC for such adjustments or changes and the supplier need not separately invoice for them.
- c. The supplier must invoice for all payments not covered by paragraph a or b above.
  - (1) Claims for damage to trailers must be filed and documented in accordance with Management Instruction PO-530-89-1, *Processing Trailer Damage Claims*, as amended, revised, or reissued from time to time.
  - (2) Requests for payment for detours must be filed as provided under the detours provision of the *Changes* clause.
  - (3) All other requests for payment must be submitted in accordance with the *Payment — Fixed Price* clause.
- d. Deductions may be made from payments otherwise due the supplier under this contract or any other contracts held by the supplier, for any amounts for which the supplier is liable as damages or otherwise.

**Clause B-75 Accountability of the Supplier (Non-Highway) (March 2006)**

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling,

damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.

The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except for any failure to perform that is excused by the *Excusable Delays* clause of this contract.

- c. The supplier shall faithfully account for and deliver to the Postal Service all
  - (1) Mail,
  - (2) Moneys, and
  - (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into the possession of the supplier during the term of this contract.
- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment made by the Postal Service for service not rendered.

**Clause B-76 Excusable Delays (Mail Transportation Non-Highway)  
(March 2006)**

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either, the supplier will not be deemed to be in default, unless the supplier failed to take immediate, reasonable and prudent action to (i) replace its subcontractor or to (ii) otherwise mitigate the effects of its subcontractor's problems.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.



**Clause B-77 Protection of the Mail (March 2006)**

The supplier must protect and safeguard the mail from loss, theft, or damage while it is in the supplier's custody or control and prevent unauthorized persons from having access to the mail.

**Clause B-78 Renewal (March 2006)**

This contract may be renewed by mutual agreement of the parties.

**Clause B-79 Forfeiture of Compensation (March 2006)**

If the supplier fails to perform a trip for any reason, the supplier shall forfeit the compensation otherwise due for that trip. If the supplier fails to perform a trip, and such failure is due to the fault or negligence of the supplier or of its subcontractors, the supplier shall be liable for all damages actually suffered by the Postal Service by reason of such failure.

**Clause B-80 Laws and Regulations Applicable (March 2006)**

This contract and the services performed under it are subject to all applicable federal, state and local laws and regulations. The supplier shall faithfully discharge all duties and obligations imposed by such laws and regulations, and shall obtain and pay for all permits, licenses, and other authorities required to perform this contract.

**Clause B-81 Information or Access by Third Parties (March 2006)**

The Postal Service retains exclusive authority to release any or all information about mail matter in the custody of the supplier and to permit access to that mail in the custody of the supplier. All requests by non-postal individuals (including employees of the supplier) for information about mail matter in the custody of the supplier or for access to mail in the custody of the supplier must be referred to the contracting officer or his or her designee.

**Clause B-82 Access by Officials (March 2006)**

The supplier shall deny access to the cargo compartment of a vehicle containing mail therein to Federal, state or local officials except at a postal facility and in the presence of a postal employee, unless to prevent damage to the vehicle or its contents.

**Clause B-83 Payment (Air Taxi) (March 2006)**

The Postal Service will pay the supplier the amounts due for services performed under this contract, less deductions, if any, as provided herein, subject to the following terms:

- a. *Payment Due Date:* Postal Service Form 2756, *Certification of Air Taxi Mail Service Performed*, will be made to effect payment. A carrier's billing invoice will not be required. Payment will be made by St. Louis Accounting Service Center (ASC) within 30 days after the end of the service period. Interest will be paid for late payment commencing on the 38th day after the end of the service period.
- b. *Compensation.*
  - (1) Full payment, at the rate provided in this contract, will be made for each scheduled trip which the supplier completes or serves at least one point on the route before being prevented from completing the trip due to weather or other conditions beyond the pilot's control, except for mechanical failure or an accident.
  - (2) Partial payment will be made as follows:
    - (a) For any trip canceled by the Postal Service prior to its commencement, payment will be at the rate of 50 percent of the trip rate.
    - (b) For a trip not completed because of mechanical failure or accident, compensation will be based upon point-to-point great circle trip miles completed.
  - (3) No payment will be made for a trip canceled other than by the Postal Service.

**Clause 1-1 Privacy Protection (July 2007)**

In addition to other provisions of this contract, the supplier agrees to the following:

- a. *Privacy Act.* If the supplier operates a system of records on behalf of the Postal Service, the Privacy Act (5 U.S.C. 522a) and Postal Service regulations at 39 CFR Parts 266-267 apply to those records. The supplier is considered to operate a system of records if it manages records (including collecting, revising, or disseminating records) from which information is retrieved by the name of an individual or by some number, symbol, or other identifier assigned to the individual. The supplier agrees to comply with the Act and the Postal Service regulations in designing, developing, and operating the system of records, including ensuring that records are current and accurate for their intended use, and incorporating adequate safeguards to prevent misuse or improper disclosure of personal information. Violations of the Act may subject the violator to criminal penalties.
- b. *Customer or Employee Information.* If the supplier has access to Postal Service customer or employee information, including address information, whether collected online or offline by the Postal Service or

by a supplier acting on its behalf, the supplier must comply with the following:

- (1) *General.* With regard to the Postal Service customer information to which it has access pursuant to this contract, the supplier has that access as an agent of the Postal Service and must adhere to its postal privacy policy at [www.usps.com/common/docs/privpol.htm](http://www.usps.com/common/docs/privpol.htm).
- (2) *Use, Ownership, and Nondisclosure.* The supplier may use Postal Service customer or employee information solely for purposes of this contract, and may not collect or use such information for non-Postal Service marketing, promotion, or any other purpose without the prior written approval of the contracting officer. The supplier must restrict access to such information to those employees who need the information to perform work under this contract, and must ensure that each such employee (including subcontractors' employees) sign a nondisclosure agreement, in a form suitable to the contracting officer, prior to being granted access to the information. The Postal Service retains sole ownership and rights to its customer or employee information. Unless the contract states otherwise, upon completion of the contract the supplier must turn over all Postal Service customer or employee information in its possession to the Postal Service, and must certify that no Postal Service customer or employee information has been retained unless otherwise authorized in writing by the contracting officer.
- (3) *Security Plan.* When applicable, and unless waived in writing by the contracting officer, the supplier must work with the Postal Service to develop and implement a security plan that addresses the protection of customer or employee information. The plan will be incorporated into the contract and followed by the supplier, and must, at a minimum, address notification to the Postal Service of any security breach. If the contract does not include a security plan at the time of contract award, it must be added within 60 days after contract award.
- (4) *Breach Notification.* If there is a breach of any nature in the security of Postal Service data, including customer or employee data, the supplier must follow the breach notification requirements included in the security plan discussed in (3) above. The supplier will be required to follow Postal Service policies regarding breach notification to customers and/or employees.
- (5) *Legal Demands for Information.* If a legal demand is made for Postal Service customer or employee information (such as by subpoena), the supplier must immediately notify the contracting officer and the nearest office of the Postal Inspection Service. After notification, the Postal Service will determine whether and to what extent to comply with the legal demand. Should the Postal Service agree to or unsuccessfully resist a legal demand, the

supplier may, with the written permission of the contracting officer, release the information specifically demanded.

- c. *Online Assistance.* If the supplier assists in the design, development, or operation of a Postal Service customer Web site, or if it designs or places an ad banner, button, or link on a Postal Service Web site or any Web site on the Postal Service's behalf, the supplier must comply with the limitations in subparagraph b(1) above relating to ad banners, buttons, or links, and the use of cookies, web beacons, or other web analysis tools. Exceptions to these limitations require the prior written approval of the contracting officer and the Postal Service's Chief Privacy Officer.
- d. *Marketing E-Mail.* If the supplier assists the Postal Service in conducting a marketing e-mail campaign, the supplier does so as an agent of the Postal Service and must adhere to the Postal Service policies set out in Postal Service Management Instruction AS-350-2004-4, *Marketing E-mail*. Suppliers wishing to conduct marketing email campaigns to postal employees must first obtain the prior written approval of the contracting officer.
- e. *Audits.* The Postal Service may audit the supplier's compliance with the requirements of this clause, including through the use of online compliance software.
- f. *Indemnification.* The supplier will indemnify the Postal Service against all liability (including costs and fees) for damages arising out of violations of this clause.
- g. *Flow-down.* The supplier will flow this clause down to subcontractors that would be covered by any portion of this clause if they were the supplier.

## Clause 1-2 Advance Payments (March 2006)

- a. *Requirements for Payments.* Upon supplier submission of properly certified invoices or vouchers and contracting officer approval, advance payments will be made under this contract. The supplier will apply terms similar to those of this clause to any advance payments to subcontractors.
- b. *Use of Funds.* The supplier may pay only for properly allocable, allowable, and reasonable costs incurred. Determinations of whether costs are properly allocable, allowable, and reasonable will be in accordance with generally accepted accounting principles, subject to the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* in effect on the date of this contract.
- c. *Repayment to the Postal Service.* At any time, the supplier may repay all or part of the funds advanced by the Postal Service. When requested in writing to do so by the administering office, the supplier must repay to the Postal Service any part of unliquidated advance payments considered by the administering office to exceed the

supplier's current requirements or an amount calculated in accordance with paragraph d below.

- d. *Maximum Payment.* When the sum of all unliquidated advance payments exceeds 80 percent of the contract price, the Postal Service will withhold further payments. On contract completion or termination, the Postal Service will deduct from the amount due the supplier all interest charges payable. If previous payments to the supplier exceed the amount due, the excess amount must be paid to the Postal Service on demand. For purposes of this paragraph d, the contract price is the contract price stated at time of award, less any subsequent price reductions under the contract, plus any price increases resulting from any terms of the contract. Any payments withheld under this paragraph will be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract will resume.
- e. *Interest*
  - (1) The supplier must pay interest to the Postal Service on the daily balance of unliquidated advance payments at the daily rate specified in subparagraph e.3 below. Interest will be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing interest:
    - (a) Advance payments will be considered as increasing the unliquidated balance as of the date of the advance payment check;
    - (b) Repayment of the supplier's check will be considered as decreasing the unliquidated balance as of the date on which the check is received by the Postal Service authority designated by the contracting officer; and
    - (c) Liquidations by deductions from Postal Service payments to the supplier will be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.
  - (2) Interest charges resulting from the monthly computation will be deducted from payments, other than advance payments, due the supplier. If the accrued interest exceeds the payment due, any excess interest will be carried forward and deducted from subsequent payments. Interest carried forward will not be compounded. Interest on advance payments will cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Postal Service. The Postal Service will charge interest on advance payments to subcontractors in the manner described above.
  - (3) If interest is required under the contract, it will be paid at the rate determined in accordance with the *Interest* clause of this contract.
  - (4) If the full amount of interest charged under this paragraph e has not been paid by deduction or otherwise upon completion or termination of this contract, the supplier must pay the remaining interest to the Postal Service on demand.

- f. *Lien on Property under Contract*
- (1) All advance payments under this contract, together with interest charges, must be secured, when made, by a lien in favor of the Postal Service, paramount to all other liens, on the supplies or other things covered by the contract and on all material and other property acquired for or allocated to its performance, except to the extent that the Postal Service already has valid title to the supplies, materials, or other property as against the supplier's other creditors.
  - (2) The supplier will prepare any documents necessary to perfect liens on such property required in any jurisdiction in which any such property is kept. The documents must be approved by the contracting officer and, upon approval, filed with appropriate jurisdictions. The supplier must pay any fees required for filing.
  - (3) The supplier must identify, by marking or segregation, all property subject to a lien in favor of the Postal Service by virtue of this contract so as to indicate that it is subject to a lien and has been acquired for or allocated to performing the contract. If, for any reason, the property is not identified by marking or segregation, the Postal Service will have a lien to the extent of the Postal Service's interest under the contract on any mass of property with which the supplies, materials, or other property are commingled. The supplier must maintain adequate accounting control over the property on its books and records.
  - (4) If, under any termination clause in this contract, the contracting officer authorizes the supplier to sell or retain termination inventory, the approval constitutes a release of the Postal Service's lien to the extent that:
    - (a) The termination inventory is sold or retained; and
    - (b) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.
  - (5) If the supplier delivers to a third party any property on which the Postal Service has a lien, the supplier must notify the third party of the lien and obtain a receipt in duplicate acknowledging the existence of the lien. The supplier must give the contracting officer one copy of the receipt.
- g. *Insurance.* The supplier warrants that it maintains with responsible insurance carriers:
- (1) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;
  - (2) Adequate insurance against liability on account of damage to persons or property; and
  - (3) Adequate insurance under all applicable workers' compensation laws. The supplier agrees that, until work under this contract has been completed and all advance payments made under the

contract have been liquidated, it will maintain this insurance; maintain adequate insurance on all materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Postal Service lien under paragraph f above; and furnish any certificate with respect to its insurance that the contracting officer may require.

h. *Default*

- (1) By written notice to the supplier, the Postal Service may withhold further payments on this contract in the event of:
  - (a) Termination for default;
  - (b) A finding by the contracting officer that the supplier will be unable to perform or has failed to:
    - (i) Observe any conditions of the advance payment terms;
    - (ii) Comply with any material term of the contract;
    - (iii) Make progress or maintain a financial condition adequate for performance of the contract;
    - (iv) Limit inventory allocated to the contract to reasonable requirements; or
    - (v) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
  - (c) The appointment of a trustee, receiver, or liquidator for any substantial part of the supplier's property, or the institution of proceedings by or against the supplier for bankruptcy, reorganization, arrangement, or liquidation.
- (2) If any of the events described in subparagraph h.1 above continues for 30 days after the notice to the supplier, the Postal Service may take any of the following actions:
  - (a) Charge interest, in the manner prescribed in paragraph e above, on outstanding advance payments during the period of the event.
  - (b) Demand immediate repayment by the supplier of the unliquidated balance of advance payments.
  - (c) Take possession of and sell any property on which the Postal Service has a lien under the contract and, after deducting any expenses incident to the sale, apply the proceeds to reduce the unliquidated balance of advance payments or other claims against the supplier.
- (3) The actions described in this clause are in addition to any other rights of the Postal Service.

- i. *Prohibition Against Assignment.* Notwithstanding any other terms of this contract, the supplier may not assign it, any interest in it, or any claim under it to any party.

- j. *Information and Access to Records.* The supplier must furnish to the administering office (1) monthly (or at other intervals as required) signed or certified balance sheets and profit and loss statements in the form prescribed by the contracting officer; and (2) if requested, other information concerning the operation of the supplier's business. The supplier must provide authorized Postal Service representatives proper facilities for inspecting the supplier's books, records, and accounts.
- k. *Other Security.* If the contracting officer considers the security inadequate, the supplier must furnish additional security satisfactory to the contracting officer to the extent it is available.
- l. *Representations and Warranties*
  - (1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished the contracting officer fairly reflect the supplier's financial condition at the date shown or during the period covered, and there has been no subsequent materially adverse change;
  - (2) No litigation or proceedings are presently pending or threatened against the supplier, except as shown in the statements;
  - (3) The supplier has disclosed all contingent liabilities in the statements;
  - (4) None of the terms in this clause conflict with the authority under which the supplier is doing business or with the provision of any existing indenture, assignment, or agreement of the supplier;
  - (5) The supplier has the power to enter into this contract and to accept advance payments, and has taken all necessary action to authorize their acceptance under the terms of the contract;
  - (6) The supplier's assets are not subject to any lien or encumbrance except for current taxes not delinquent or as shown in the statements;
  - (7) All information furnished in connection with each request for advance payments is true and correct; and
  - (8) These representations and warranties are continuing and are considered to have been repeated by the submission of each invoice for advance payment.
- m. *Notice.* The supplier must notify the contracting officer in writing within 30 days of any material change in anything represented or warranted in paragraph 1 above.
- n. *Covenants.* While any advance payments made under this contract remain outstanding, the supplier, without the prior written consent of the contracting officer, may not:
  - (1) Mortgage, pledge, or otherwise encumber or allow to be encumbered any of the supplier's assets now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets allocated to performing this contract with respect to which the Postal Service has a lien under the contract;



- (2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for amounts due or to become due;
- (3) Sell, convey, or lease any substantial part of its assets;
- (4) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;
- (5) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;
- (6) Pay any remuneration to its directors, officers, or key employees at rates higher than provided in existing agreements;
- (7) Change substantially its management, ownership, or control;
- (8) Merge or consolidate with any other firm or corporation, change the type business, or engage in any transaction outside the ordinary course of the supplier's business as presently conducted;
- (9) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;
- (10) Create or incur indebtedness for advances (other than those to be made under the terms of this contract) or borrowings; or
- (11) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than 80 percent of the assets shown in the last quarterly financial statement issued before contract award.

### **Clause 1-3 Progress Payments (March 2006)**

Progress payments will be made to the supplier when requested as work progresses, but not more often than monthly, in amounts approved by the contracting officer, upon the following terms and conditions:

a. *Computation of Amounts*

- (1) No progress payments may exceed 80 percent of the amount of the supplier's total costs, plus the amount of progress payments that have been paid to supplier's subcontractors and other divisions.
- (2) The supplier's total costs must be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. These costs may not include:
  - (a) Any incurred by subcontractors or suppliers;
  - (b) Any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the supplier has acquired title and except for amounts paid under cost-reimbursement or time-and-materials subcontracts for work to which the supplier has acquired title; or

- (c) Costs ordinarily capitalized and subject to depreciation or amortization, except for the properly depreciated or amortized portion of such costs.
- (3) The aggregate amount of progress payments made must not exceed 80 percent of the total contract price.
- (4) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph a, the supplier must pay the excess to the Postal Service upon demand.
- b. *Liquidation.* Except as provided in the *Termination for Convenience* clause, all progress payments must be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 80 percent of the gross amount invoiced, whichever is less. Repayment to the Postal Service required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.
- c. *Reduction or Suspension.* The contracting officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in paragraph b above, or both, whenever the contracting officer finds, upon substantial evidence, that the supplier:
  - (1) Has failed to comply with any material requirement of this contract;
  - (2) Has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract;
  - (3) Has allocated inventory to this contract substantially exceeding reasonable requirements;
  - (4) Is delinquent in payment of the costs of performance of this contract in the ordinary course of business; or
  - (5) Has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
- d. *Title*
  - (1) Immediately upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids; and drawings and technical data (to the extent that their delivery is required by other provisions of this contract), previously acquired or produced by the supplier and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices, will be vested in the Postal Service. Title to all similar property afterwards acquired or produced by the supplier and allocated or properly chargeable to this contract as aforesaid will be vested in the Postal Service upon said acquisition, production, or allocation.

- (2) Notwithstanding that title to property is in the Postal Service through the operation of this clause, the handling and disposition of such property will be determined by the applicable provisions of this contract (e.g., paragraph h of this *Progress Payments* clause, and any termination clause included in the contract). Current production scrap may be sold by the supplier without approval of the contracting officer; in this case, the proceeds must be credited against the costs of contract performance. With the consent of the contracting officer, and on terms approved by the supplier, the supplier may acquire or dispose of property to which title is vested in the Postal Service under this clause, and, in that event, the costs allocable to the property so transferred from this contract must be eliminated from the costs of contract performance and the supplier must repay to the Postal Service (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred.
  - (3) Upon completion of performance of all the obligations of the supplier under this contract, including liquidation of all progress payments under this clause, title to all property (or the proceeds thereof) not delivered to, and accepted by, the Postal Service under this contract, or not incorporated in supplies delivered and accepted and to which title has been vested in the Postal Service under this clause, will be vested in the supplier. The provisions of this contract referring to or defining liability for Postal Service-furnished property do not apply to property to which the Postal Service acquires title solely by virtue of this clause.
- e. *Risk of Loss.* Except to the extent that the Postal Service otherwise expressly assumes the risk of loss of property, title to which is vested in the Postal Service by this clause, in the event of the loss, theft, or destruction of or damage to any such property before its delivery to, and acceptance by, the Postal Service, the supplier must bear the risk of loss and must repay the Postal Service an amount equal to the unliquidated progress payments on the basis of costs allocable to such lost, stolen, destroyed, or damaged property.
- f. *Control of Costs and Property.* The supplier must maintain an accounting system and controls adequate for the proper administration of this clause.
- g. *Reports — Access to Records.* The supplier must:
- (1) Furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the contracting officer; and
  - (2) Give the Postal Service reasonable opportunity to examine and verify the supplier's books, records, and accounts.

- h. *Special Provisions Regarding Default.* If this contract is terminated for default:
- (1) The supplier must, upon demand, pay the Postal Service the amount of unliquidated progress payments; and
  - (2) With respect to all property for which the Postal Service elects not to require delivery, title will be vested in the supplier upon full liquidation of progress payments, and the Postal Service will not be liable for payment.
- i. *Reservation of Rights.* The rights and remedies of the Postal Service provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title under this clause, will excuse the supplier from obligations under this contract or constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Postal Service in exercising any right, power, or privilege under this clause will affect any such right, power, or privilege; nor will any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power, or privilege of the Postal Service.
- j. *Progress Payments to Subcontractors*
- (1) Progress payments may include reimbursements for unliquidated progress payments paid by the supplier to subcontractors or other divisions under provisions which conform to subparagraph j.2 following.
  - (2) Provisions regarding progress payments must:
    - (a) Be substantially similar to and as favorable to the Postal Service as is this *Progress Payments* clause, no more favorable to the subcontractor or the other division than this clause is to the supplier, and on a basis of not more than 80 percent of total costs; and
    - (b) Make all rights of the subcontractor with respect to all property to which the Postal Service has title under the subcontract subordinate to the rights of the Postal Service to require delivery of such property to it in the event of default by the supplier under this contract or in the event of the bankruptcy or insolvency of the subcontractor.
  - (3) The Postal Service agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract must be applied to reduce the amount of unliquidated progress payments made by the Postal Service to the supplier under this contract. In the event that the supplier fully liquidates such progress payments made by the Postal Service to the supplier hereunder and there are unliquidated progress payments to any subcontractors, the supplier must be subrogated to all the Postal Service rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the supplier.

- k. *Requests.* Supplier's requests for progress payments under this clause must be submitted on Form 7305, *Supplier's Request for Progress Payment*.

**Clause 1-4 (Reserved) (March 2006)**

**Clause 1-5 Gratuities or Gifts (March 2006)**

- a. The Postal Service may terminate this contract for default if, after notice and a hearing, the Postal Service Board of Contract Appeals determines that the supplier or the supplier's agent or other representative:
  - (1) Offered or gave a gratuity or gift (as defined in 5 CFR 2635) to an officer or employee of the Postal Service; and
  - (2) Intended by the gratuity or gift to obtain a contract or favorable treatment under a contract.
- b. The rights and remedies of the Postal Service provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**Clause 1-6 Contingent Fees (March 2006)**

- a. The supplier warrants that no person or selling agency has been employed or retained to solicit or obtain this contract for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide, established commercial or selling agencies employed by the supplier for the purpose of obtaining business.
- b. For breach or violation of this warranty, the Postal Service has the right to annul this contract without liability or to deduct from the contract price or otherwise recover the full amount of the commission, percentage, brokerage fee, or contingent fee.

**Clause 1-7 Organizational Conflicts of Interest (March 2006)**

- a. *Warranty Against Existing Conflicts of Interest.* The supplier warrants and represents that, to the best of its knowledge and belief, it does not presently have organizational conflicts of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except for advantages flowing from the normal benefits of performing this agreement.

- b. *Restrictions on Contracting.* The supplier agrees that during the term of this agreement, any extensions thereto, and for a period of 2 years thereafter, neither the supplier nor its affiliates will perform any of the following:
- (1) Compete for any Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
  - (2) Contract (as the provider of a component or the provider of research or consulting services) with any offeror competing for any Postal Service contract for production of any product for which the supplier prepared any work statements or specifications or conducted any studies or performed any task under this agreement.
  - (3) Contract (as the provider of a component or the provider of research or consulting services) with the offeror which wins award of a Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
- c. *Possible Future Conflicts of Interest.* The supplier agrees that, if after award of this agreement, it discovers any organizational conflict of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except advantages flowing from the normal benefits of performing this agreement, the supplier will make an immediate and full disclosure in writing to the contracting officer, including a description of the action the supplier has taken or proposes to take to avoid, eliminate, or neutralize this conflict of interest.
- d. *Nondisclosure of Confidential Material*
- (1) The supplier recognizes that, in performing this agreement, it may receive confidential information. To the extent that and for as long as the information is confidential, the supplier agrees to take the steps necessary to prevent its disclosure to any third party without the prior written consent of the contracting officer.
  - (2) The supplier agrees to indoctrinate its personnel who will have access to confidential information as to the confidential nature of the information, and the relationship under which the supplier has possession of this information.
  - (3) The supplier agrees to limit access to the confidential information obtained, generated, or derived, and to limit participation in the performance of orders under this agreement to those employees whose services are necessary for performing them.
- e. *Postal Service Remedy.* If the supplier breaches or violates any of the warranties, covenants, restrictions, disclosures or nondisclosures set forth under this clause, the Postal Service may terminate this

agreement, in addition to any other remedy it may have for damages or injunctive relief.

**Clause 1-8 (Reserved) (March 2006)**

**Clause 1-9 Preference for Domestic Supplies (March 2006)**

- a. Proposals offering other than domestic end products or (subject to the eligibility thresholds set out in Figure 2.14 of the Evaluate Foreign and Domestic Proposals Topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources of the Postal Service *Supplying Practices*) end products mined, produced, or manufactured in (i) a country that has entered into the World Trade Organization Government Procurement Agreement (WTO GPA) or (ii) a country that has entered into a Free Trade Agreement (FTA) with the United States covering government purchases, will be evaluated in one of two ways against proposals of relatively equal value offering domestic end products or eligible WTO GPA or FTA country end products. This evaluation will depend on whether contract award will be based on price or on evaluation factors other than price. When an award will be based on price, a six percent differential is applied to the proposed price of the non-qualifying end product, and this adjusted price is used by the Proposal Evaluation Team and the Contracting Officer in the course of evaluation. If proposal evaluation factors will have a significant weight in proposal evaluation, domestic and WTO GPA or FTA end products will receive a preference in the case of closely-ranked proposals, but no price differential will be applied. For the purposes of this clause:
- (1) *End products means:* Articles, materials, and supplies to be acquired under this contract for Postal Service use;
  - (2) *Components means:* Articles, materials, supply incorporated directly into an end product or construction material) of foreign origin of the same class or kind as those that the Postal Service determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; and
  - (3) *Domestic-source end product means:* An un-manufactured end product mined or produced in the United States; or an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. Components (i.e., articles, materials, supply incorporated directly into an end product or construction material) of foreign origin of the same class or kind as those that the Postal Service determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a

satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

- (4) *End products from a designated WTO GPA or FTA country means:* Articles, materials, and supplies that are wholly the growth, product, or manufacture of producers in (i) countries that have entered into World Trade Organization Government Procurement Agreement (WTO GPA) or (ii) a country that has entered into a Free Trade Agreement (FTA) with the United States covering government purchasing; or in the case of articles that consist in whole or in part of materials from another country, have been substantially transformed in a WTO GPA or FTA country into new and different articles of commerce with names, characters, or uses distinct from that of the article or articles from which they were transformed.
- (5) *Cost of components means:* For components purchased by the Supplier, the purchase cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or for components manufactured by the Supplier, all costs associated with the manufacture of the component, including transportation costs as described above, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product. When a request for proposals (RFP) specifies that an award will be made on a group of line items, a domestic proposal means a proposal where the proposed price of the domestic end products exceeds fifty percent of the total proposed price of the group.
- (b) This domestic preferences does not apply to products set out in the list of non-available products in the Evaluate Foreign and Domestic Proposals Topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources of the Postal Service *Supplying Practices* or to purchases as to which the Vice President, Supply Management (VP, SM), has determined that the application of a domestic preference would be inconsistent with the interest of the Postal Service.

**Clause 1-10 Preference for Domestic Construction Materials (March 2006)**

- a. Preference will be given to domestic construction materials in accordance with the Evaluate Foreign and Domestic Proposals topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices*. For the purposes of this clause:
  - (1) *Components.* Those articles, materials, and supplies incorporated directly into construction materials;



- (2) *Construction materials.* Articles, materials, and supplies brought to the construction site for incorporation into the building or work; and
  - (3) *Domestic construction material.* This is (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those determined to be unavailable in the Evaluate Foreign and Domestic Proposals topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* will be treated as domestic.
  - (4) *Foreign construction material.* A construction material other than a domestic construction material.
- b. The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

**Clause 1-11 Prohibition Against Contracting with Former Officers or PCES Executives (March 2006)**

During the performance of this contract, former Postal officers or Postal Career Executive Service (PCES) executives are prohibited from employment by the contractor as key personnel, experts or consultants, if such individuals, within 1 year after their retirement from the Postal Service, would be performing substantially the same duties as they performed during their career with the Postal Service.

**Clause 1-12 Clause 1-12 Use of Former Postal Service Employees (March 2006)**

During the term of this contract, the supplier must identify any former Postal Service employees it proposes to be engaged, directly or indirectly, in contract performance. Such individuals may not commence performance without the contracting officer's prior approval. If the contracting officer does not provide such approval, the supplier must replace the proposed individual former employee with another individual equally qualified to provide the services called for in the contract.

**Clause 2-1 Inspection and Acceptance (March 2006)**

- a. The supplier must be able to demonstrate that the supplies and services being provided conform to contract requirements. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the

defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:

- (1) Acquire replacement supplies or services from other sources at the supplier's expense; or
  - (2) Accept the supplies or services at a reduced price.
- b. The Postal Service may revoke acceptance if nonconforming performance is accepted:
    - (1) because it has not been discovered before acceptance, as a result of the difficulty of discovery or because of the supplier' assurances, or
    - (2) on the basis of a reasonable assumption that it would be cured.
  - c. The Postal Service has the same rights and duties upon revocation as upon rejection. Revocation of acceptance must occur within a reasonable time after the contracting officer discovers the deficiency.
  - d. The Postal Service, at its option, may at any stage in the performance of this contract, monitor the supplier's activities and efforts in performing the contract, to assure itself that contract requirements are being met. Such Postal Service oversight in no way relieves the supplier from its responsibility to perform in accordance with contract requirements.

**Clause 2-2 Quality Management System (March 2006)**

- a. The supplier must use a documented quality management system to monitor and measure its performance against contract requirements. As a minimum, that quality assurance system must include all of the following:
  - (1) A process management system that includes documented work processes (including support processes), mechanisms to monitor and measure processes, systematic approaches for addressing nonconformance complaints with an emphasis on root cause analysis and corrective and preventative action, analysis of performance measurement, and regularly scheduled and documented quality management system reviews;
  - (2) A means of assessing customer satisfaction that includes scheduled customer satisfaction reviews or surveys, customer focus groups, or other means of securing ongoing customer feedback;
  - (3) Supplier management that includes supplier selection criteria and monitoring and assessing supplier performance; and
  - (4) A determination of the necessary competencies for personnel performing work during contract performance. Suppliers must:
    - (a) As necessary, provide training and take other actions to meet this requirement; and
    - (b) Maintain current records of education, training, skills, and experience.

- b. The Postal Service has the right to evaluate the acceptability and effectiveness of the supplier's quality management system prior to award, and to verify that it is in use and effective during contract performance.
- c. The supplier must maintain records and metrics pertaining to this quality management system in accordance with the record retention requirements of the contract.
- d. The supplier must be able to demonstrate that the supplies and services being purchased conform to contract requirements. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:
  - (1) Acquire replacement supplies or services from other sources at the supplier's expense; or
  - (a) Accept the supplies or services at a reduced price.

**Clause 2-3 (Reserved) (March 2006)**

**Clause 2-4 First Article Approval — Supplier Testing (March 2006)**

- a. The supplier must test the number of units specified in the Schedule of this contract. The supplier must give the notice specified in the Schedule to the contracting officer, in writing, of the time and location of the testing so that the Postal Service may witness the tests.
- b. By the date specified in the Schedule, the supplier must submit to the contracting officer the first article test report marked "First Article Test Report" and identifying the contract number and lot/item number. After the Postal Service receives the test report, the contracting officer will notify the supplier within the time period set forth in the Schedule, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.
- c. If the first article is disapproved, the supplier, upon request of the Postal Service, must repeat any or all first article tests. After each request for additional tests, the supplier must make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the supplier, including any and all costs for additional tests following a disapproval. The supplier must then conduct the tests and deliver another report to the Postal Service under the terms and conditions and within the time specified by the Postal Service. The Postal Service must take action on this report within the same time limit referred to in

paragraph b above. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Postal Service related to these tests.

- d. If the supplier fails to deliver any first article report on time, or the contracting officer disapproves any first article, the supplier will be deemed to have failed to make delivery within the meaning of the *Default* clause.
- e. Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the supplier may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.
- f. If the Postal Service does not act within the time limit referred to in paragraphs b and c above, the contracting officer will, upon timely written request from the supplier, equitably adjust under the *Changes* clause the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

#### **Clause 2-5 First Article Approval — Postal Service Testing (March 2006)**

- a. At the time specified for first article testing, the supplier must deliver the units specified in the Schedule to the Postal Service at the testing facility set forth in the Schedule. The shipping documentation accompanying the first article must contain the number of this contract and the lot/item identification. The performance or other characteristics that the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.
- b. The contracting officer must, by written notice to the supplier within the time specified in the Schedule, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.
- c. If the first article is disapproved, the supplier may be required, at the option of the Postal Service, to submit an additional first article for first article approval test. After each notification by the Postal Service to submit an additional first article, the supplier must at no additional cost to

the Postal Service make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. The additional first article must be furnished to the Postal Service under the terms and conditions and within the time specified in the notification. The Postal Service must take action on this additional first article within the same time limit referred to in paragraph b above. The costs of additional first article approval tests and all costs related to such tests must be borne by the supplier. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.

- d. If the supplier fails to deliver a first article on time, or if the contracting officer disapproves a first article, the contract may be terminated for default. Waiver of the right to terminate this contract for default does not relieve the supplier of responsibility to meet the delivery schedule for production quantities.
- e. When the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the supplier:
  - (1) May deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance; and
  - (2) Is responsible for removal and disposition of any first article from the Postal Service test site at the supplier's expense.
- f. The supplier is responsible for spare-parts support and repair of the first article during any first article approval test.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

#### **Clause 2-6 Delayed Acceptance (March 2006)**

- a. Acceptance under this contract will not occur until the supplier has successfully completed the preacceptance tests set forth in the Schedule.
- b. The supplier will remove any equipment and material not accepted under this contract and restore the Postal Service facility to its original condition, at no cost to the Postal Service.
- c. The supplier will pay the costs of testing for all equipment and materials rejected for failure to meet the preacceptance test requirements.

**Clause 2-7 Incorporation of Warranty (March 2006)**

The supplier's standard commercial warranty, as disclosed in the offeror's proposal, is incorporated as a part of this contract. However, any dispute concerning it will be resolved under the *Claims and Disputes* clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.

**Clause 2-8 Warranty (March 2006)**

- a. The supplier warrants, for the period specified in the Schedule, that all supplies furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.
- b. Within the time specified in the Schedule, the contracting officer must give written notice to the supplier of any breach of warranty and either:
  - (1) Require the prompt correction or replacement of any defective or nonconforming supplies; or
  - (2) Retain them, reducing the contract price by an amount equitable under the circumstances.
- c. When return for correction or replacement is required, the supplier is responsible for all costs of transportation and for risk of loss in transit.
- d. If the supplier fails or refuses to correct or replace the defective or nonconforming supplies, the contracting officer may correct or replace them with similar supplies and charge to the supplier any cost to the Postal Service. In addition, the contracting officer may dispose of the nonconforming supplies, with reimbursement from the supplier or from the proceeds for excess costs.
- e. Any supplies corrected or furnished in replacement are subject to this clause.
- f. Supplies, as used in this clause, includes related services.
- g. The rights and remedies of the Postal Service provided in this clause are in addition to, and do not limit, any rights afforded to the Postal Service by any other clause of the contract.

**Clause 2-9 Definition of Delivery Terms and Supplier's Responsibilities (March 2006)**

- a. If the contract specifies "f.o.b. destination," the following apply:
  - (1) "F.o.b. destination" means delivery to the specified delivery point. Transportation costs are included in the contract price.
  - (2) "F.o.b. destination, within the consignee's premises" means delivered free of expense to the Postal Service, within the doors of the specified building, including delivery to specific rooms when specified.

- (3) The supplier must:
  - (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;
  - (b) Prepare and distribute commercial bills of lading;
  - (c) Be responsible for loss or damage occurring before receipt at the specified point of delivery;
  - (d) Furnish a delivery schedule and designate mode of delivery;
  - (e) Bear all delivery costs to the specified point of delivery; and
  - (f) Deliver goods, that meet the prescribed physical limitations of the current U.S. Postal Service *Domestic Mail Manual*, either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement.
- b. If the contract specifies “delivered Postal Service facility, door, platform, or private siding,” the following apply:
  - (1) “Delivered postal facility, door, platform, or private siding” means delivery free of expense to the Postal Service:
    - (a) To the door of Postal Service facilities having no platforms or private siding;
    - (b) On the platform at Postal Service facilities having platforms but no private siding; or
    - (c) On the private siding at Postal Service facilities having private siding.
  - (2) In addition to fulfilling the requirements of the *Responsibility for Supplies* clause, the supplier must:
    - (a) Pack and mark shipments to protect the goods from normal transportation hazards, promote prompt delivery, and comply with packing and marking specifications of the contract;
    - (b) Unload material at the door or on the platform in the case of b.1(a) and (b) above, free of expense to the Postal Service;
    - (c) Properly prepare and distribute commercial bills of lading; and
    - (d) Be responsible for loss or damage occurring before delivery to the specified delivery point.
- c. If the contract specifies “f.o.b. origin,” the following apply:
  - (1) “F.o.b. origin” means delivery on board the indicated type of conveyance of the carrier (or of the Postal Service), at the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins. Transportation costs are borne by the Postal Service.

- (2) The supplier must:
- (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.
  - (b) Order specified carrier equipment when requested by the Postal Service. Otherwise, order appropriate carrier equipment not in excess of capacity to accommodate the shipment.
  - (c) When loaded by the supplier, load, stow, trim, block, and/or brace shipments as required by the carrier's rules and regulations.
  - (d) Be responsible for loss or damage occurring before delivery to the carrier; and for loss or damage due to improper packing/marking and, when loaded by the supplier, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment.
  - (e) Complete the government bill of lading supplied by the Postal Service or, when none is supplied, prepare a commercial bill of lading or other transportation receipt, to show:
    - (i) A description of the shipment in terms of the governing freight classification or tariff under which the lowest freight rates are applicable;
    - (ii) The seals affixed to the conveyance, including the serial number on them, or other identification;
    - (iii) The length and capacity of cars or trucks ordered and furnished;
    - (iv) Other pertinent information required to effect prompt delivery to the consignee, including the routing and the name, delivery, and postal address of the consignee;
    - (v) Special instructions or annotations requested by the Postal Service for commercial bills of lading (for example, "To be converted to a government bill of lading"); and
    - (vi) The signature of carrier's agent and the date the shipment is received.
  - (f) Distribute the bill of lading, or other transportation receipt, as directed by the Postal Service.
  - (g) (Supply with each invoice a memorandum copy of the government bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it must be annotated on the memorandum copy of



the government bill of lading along with the following:

"I certify that the weight information is that obtained from the carrier.

Signed: "

(3) Where delivery is to be made to points not included above, either of the following apply:

- (a) If the Postal Service has not specified otherwise, the supplier must ship on government bills of lading.
- (b) If the Postal Service specifies that shipment is to be made on endorsed commercial bills of lading the supplier will be required to prepay all transportation charges, as follows:
  - (i) Delivery to the door of the specified destination by freight or express common carriers on articles for which store-to-door delivery is provided free, or subject to a charge pursuant to published tariffs or schedules filed with the federal and/or state regulatory bodies governing such carriers.
  - (ii) Delivery to siding at destination if not covered under (1) above.
  - (iii) Delivery to the freight station nearest destination if not covered under (1) or (2) above.
  - (iv) The supplier must annotate the commercial bill of lading as follows: "Property of the United States Postal Service."
  - (v) The actual transportation costs will be added to the supplier's invoice as a separate item. The costs must be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They must be supported by freight or express receipts marked "prepaid." If the receipts are not obtainable, annotate the invoice as follows:

"I certify that the items identified on this invoice were shipped prepaid, and freight or express receipts in support thereof are not obtainable:

Name:

Destination:

Names of Carriers:

Weight of shipment:

Transportation charges claimed:"

- (4) The Postal Service reserves the right to specify the mode of transportation and routing to be employed.

### **Clause 2-10 Liquidated Damages (March 2006)**

- a. If the supplier fails to complete the work, deliver the supplies, or perform the services within the time specified in this contract, or any extension, the supplier must, in place of actual damages, pay to the Postal Service (*contracting officer insert amount*) for liquidated damages as agreed for each calendar day of delay.
- b. Alternatively, if completion, delivery, or performance is delayed beyond the contract dates, the Postal Service may terminate this contract in whole or in part under the *Termination for Default* clause, and the supplier will be liable for the agreed liquidated damages accruing until the time the Postal Service may reasonably obtain delivery or performance of similar facilities, supplies, or services. The liquidated damages will be in addition to excess costs of reprourement.
- c. The supplier will not be charged with liquidated damages when the delay in completion, delivery, or performance arises out of causes beyond the control and without the fault or negligence of the supplier.

### **Clause 2-11 Postal Service Property — Fixed-Price (March 2006)**

- a. *Postal Service-Furnished Property*
  - (1) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related information the supplier may request that may reasonably be required for the intended use of the property (hereinafter referred to as “Postal Service-furnished property”).
  - (2) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use (except for property furnished “as is”) will be delivered at the times stated in the Schedule or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates. If Postal Service-furnished property is not delivered by these times, the contracting officer will, upon timely written request from the supplier, make a determination of any delay occasioned the supplier and will equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay, in accordance with the *Changes* clause.
  - (3) Except for Postal Service-furnished property furnished “as is,” if the Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier must notify the contracting officer and (as directed by the contracting officer)

either (a) return it at the expense of the Postal Service or otherwise dispose of it, or (b) effect repairs or modifications. Upon the completion of (a) or (b), the contracting officer (upon written request from the supplier) will equitably adjust the delivery or performance dates or the contract price, or both, and any other affected contractual provision, in accordance with the *Changes* clause.

- (4) The provisions for adjustment in this paragraph are exclusive, and the Postal Service is not liable to suit for breach of contract by reason of any delay in delivery of Postal Service-furnished property or its delivery in a condition not suitable for its intended use.

b. *Changes in Postal Service-Furnished Property*

- (1) By written notice, the contracting officer may (a) decrease the property provided or to be provided by the Postal Service under this contract, or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service, or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal and shipping of the property covered by this notice.
- (2) In the event of any decrease in or substitution of property pursuant to subparagraph b.1 above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Postal Service had agreed in the Schedule to make available for the performance of this contract, the contracting officer, upon the supplier's written request (or — if substitution causes a decrease in the cost of performance — on the contracting officer's own initiative), will equitably adjust any contractual provisions affected by the decrease, substitution, or withdrawal, in accordance with the *Changes* clause.

- c. *Title.* Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested. All Postal Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.

- d. *Use of Postal Service Property.* The Postal Service property, unless otherwise provided in this contract or approved by the contracting officer, must be used only for performing this contract.
- e. *Utilization, Maintenance, and Repair of Postal Service Property.* The supplier must maintain and administer, in accordance with sound industrial practice, a program or system for the utilization, maintenance, repair, protection, and preservation of Postal Service property until it is disposed of in accordance with this clause. If any damage occurs to Postal Service property, the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs; provided, however, that if the supplier cannot effect these repairs within the time required, the supplier will dispose of the property in the manner directed by the contracting officer. The contract price includes no compensation to the supplier for performing any repair or replacement for which the Postal Service is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement made at the direction of the Postal Service, in accordance with the *Changes* clause. Any repair or replacement for which the supplier is responsible under the provisions of this contract must be accomplished by the supplier at the supplier's own expense.
- f. *Risk of Loss.* Unless otherwise provided in this contract, the supplier assumes the risk of, and becomes responsible for, any loss or damage to Postal Service property provided under this contract upon its delivery to the supplier or upon passage of title to the Postal Service as provided in paragraph c above, except for reasonable wear and tear and except to the extent that it is consumed in performing this contract.
- g. *Access.* The Postal Service, and any persons designated by it, must at reasonable times have access to premises where any Postal Service property is located, for the purpose of inspecting it.
- h. *Final Accounting for and Disposition of Postal Service Property.* Upon completion, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract (including any resulting scrap) or not previously delivered to the Postal Service, and will prepare for shipment, deliver f.o.b. origin, or dispose of this property, as the contracting officer may direct or authorize. The net proceeds of disposal will be credited to the contract price or will be paid in such other manner as the contracting officer may direct.
- i. *Restoration of Supplier's Premises and Abandonment.* Unless otherwise provided in this contract, the Postal Service:
  - (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation with regard to restoration or rehabilitation of the supplier's premises, either in case of abandonment, disposition on completion of need or of the contract, or otherwise, except for

restoration or rehabilitation costs properly included in an equitable adjustment under paragraph b or e above.

*Alternate Paragraph c (use when contract provides for reimbursement of costs for certain materials)*

c. *Title*

- (1) Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested.
- (3) Title to all material purchased by the supplier for whose cost the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon delivery of the material to the supplier by the vendor.
- (4) Title to other material whose cost is reimbursable to the supplier under this contract will pass to and vest in the Postal Service upon:
  - (a) Its issuance for use in the performance of this contract; or
  - (b) Reimbursement of its cost by the Postal Service, whichever occurs first.
- (5) All Postal Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.

**Clause 2-12 Postal Service Property — Short Form (March 2006)**

- a. The Postal Service will deliver to the supplier, at the time and locations stated in this contract, the Postal Service property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered timely to the supplier, the contracting officer must equitably adjust affected provisions of this contract in accordance with the *Changes* clause when:
  - (1) The supplier submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.

- b. Title to Postal Service property remains in the Postal Service. The supplier may use the Postal Service property only in connection with this contract. The supplier must maintain adequate property control records in accordance with sound industrial practice and must make them available for Postal Service inspection at all reasonable times.
- c. Upon delivery of Postal Service property to the supplier, the supplier assumes the risk and responsibility for its loss or damage, except:
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing the contract; or
  - (3) As otherwise provided in the contract.
- d. Upon completing this contract, the supplier must follow the contracting officer's instructions regarding the disposition of all Postal Service property not consumed in performing this contract or previously delivered to the Postal Service. The supplier must prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property, as directed or authorized by the contracting officer. The net proceeds of any such disposal will be credited to the contract price or will be paid to the Postal Service as directed by the contracting officer.

**Clause 2-13 Postal Service Property — Non-Fixed-Price (March 2006)**

- a. *Postal Service-Furnished Property*
  - (1) Supplier's managerial personnel, as used in paragraph g of this clause, means any of the supplier's directors and officers and any of the supplier's managers, superintendents, or equivalent representatives who have supervision or direction of:
    - (a) All or substantially all of the supplier's business;
    - (b) All or substantially all of the supplier's operation at any one plant or separate location at which the contract is being performed; or
    - (c) A separate and complete major industrial operation connected with performing this contract.
  - (2) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related data and information the supplier may request that may be reasonably required for the intended use of the property (hereinafter referred to as "Postal Service-furnished property").
  - (3) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use will be delivered at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates.

- (4) If Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier will, upon receipt, notify the contracting officer, detailing the facts, and, as directed by the contracting officer and at Postal Service expense, either effect repairs or modifications or return or otherwise dispose of the property. After the directed action is completed and upon written request from the supplier, the contracting officer will make an equitable adjustment as provided in paragraph h of this clause.
  - (5) If Postal Service-furnished property is not delivered by the required time or times, the contracting officer will, upon the supplier's timely written request, make a determination of any delay caused the supplier and will make an equitable adjustment in accordance with paragraph h of this clause.
- b. *Changes in Postal Service-Furnished Property*
- (1) The contracting officer may, by written notice, (a) decrease the property provided or to be provided under this contract or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
  - (2) Upon the supplier's written request, the contracting officer will make an equitable adjustment to the contract in accordance with paragraph h of this clause, if the Postal Service has agreed in the Schedule to make property available for performing this contract and there is any:
    - (a) Decrease or substitution in this property pursuant to subparagraph b.1 above; or
    - (b) Withdrawal of authority to use property, if provided under any other contract or lease.
- c. *Title*
- (1) The Postal Service retains title to all Postal Service-furnished property.
  - (2) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier.
  - (3) Title to all other property whose cost is reimbursable to the supplier will pass to and vest in the Postal Service upon:
    - (a) Issuance of the property for use in contract performance;
    - (b) Commencement of processing of the property or its use in contract performance; or
    - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.

- (4) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- d. *Use of Postal Service Property.* The Postal Service property must be used only for performing this contract, unless otherwise provided in this contract or approved by the contracting officer.
- e. *Property Administration*
  - (1) The supplier is responsible and accountable for all Postal Service property provided under the contract and must establish and maintain a program or system for the control, use, maintenance, repair, protection, and preservation of Postal Service property in accordance with sound business practice.
  - (2) If any damage occurs to Postal Service property the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs. However, if the supplier cannot affect these repairs within the time required, the supplier will dispose of the property as directed by the contracting officer. When any property for which the Postal Service is responsible is replaced or repaired, the contracting officer will make an equitable adjustment in accordance with paragraph h of this clause.
- f. *Access.* The Postal Service and its designees must have access at all reasonable times to the premises where any Postal Service property is located, for the purpose of inspecting it.
- g. *Limited Risk of Loss*
  - (1) The supplier is not liable for loss or destruction of, or damage to, the Postal Service property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs 2 and 3 below.
  - (2) The supplier is responsible for any loss or destruction of, or damage to, the Postal Service property provided under this contract (including expenses incidental to such loss, destruction, or damage):
    - (a) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
    - (b) That results from a risk that is in fact covered by insurance or for which the supplier is otherwise reimbursed, but only to the extent of such insurance or reimbursement;



- (c) For which the supplier is otherwise responsible under the express terms of this contract;
  - (d) That results from willful misconduct or lack of good faith on the part of the supplier's managerial personnel; or
  - (e) That results from a failure on the part of the supplier, due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel, to establish and administer a program or system of the control, use, protection, preservation, maintenance, and repair of Postal Service property as required by paragraph e of this clause.
- (3)
- (a) If the supplier fails to act, as described in g.2(e) above, after being notified (by certified mail addressed to one of the supplier's managerial personnel) of the Postal Service's disapproval, withdrawal of approval, or nonacceptance of the system or program, it will be conclusively presumed that this failure was due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel.
  - (b) In this event, any loss or destruction of, or damage to, the Postal Service property will be presumed to have resulted from such failure unless the supplier can establish by clear and convincing evidence that the loss, destruction, or damage:
    - (i) Did not result from the supplier's failure to maintain an approved program or system; or
    - (ii) Occurred while an approved program or system was maintained by the supplier.
- (4) If the supplier transfers Postal Service property to the possession and control of a subcontractor, the transfer does not affect the liability of the supplier for loss or destruction of, or damage to, the property. However, the supplier must require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the contracting officer, relieves the subcontractor from liability. In the absence of approval, the subcontract must contain appropriate provisions requiring the return of all Postal Service property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
- (5) Upon loss or destruction of, or damage to, Postal Service property provided under this contract, the supplier must so notify the contracting officer and communicate with any loss and salvage organization designated by the contracting officer. With the assistance of any such organization, the supplier must take all reasonable action to protect the Postal Service property from further damage, separate the damaged and undamaged Postal

Service property, put all the affected Postal Service property in the best possible order, and furnish to the contracting officer a statement of:

- (a) The lost, destroyed, and damaged Postal Service property;
  - (b) The time and origin of the loss, destruction, or damage;
  - (c) All known interests in commingled property of which the Postal Service property is a part; and
  - (d) Any insurance covering any part of or interest in the commingled property.
- (6) The supplier must repair, renovate, and take any other action with respect to damaged Postal Service property that the contracting officer directs. If the Postal Service property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the supplier's) that separation is impractical, the supplier may, with the approval of and subject to any conditions imposed by the contracting officer, sell the property for the account of the Postal Service. Such sales may be made in order to minimize the loss to the Postal Service, to permit the resumption of business, or to accomplish a similar purpose. The supplier is entitled to an equitable adjustment in the contract price for expenditures made in performing its obligations under subparagraph g.5 above and this subparagraph g.6 in accordance with paragraph h of this clause. However, the Postal Service may directly reimburse the loss and salvage organization for any of its charges. The contracting officer will give due regard to the supplier's liability under this paragraph g when making any such equitable adjustment.
- (7) The contract will not be reimbursed for, and may not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Postal Service property, except to the extent that the Postal Service may have expressly required the supplier to carry such insurance under another provision of this contract.
- (8) In the event the supplier is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Postal Service property, the supplier must use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Postal Service property or must otherwise credit the proceeds to, or equitably reimburse, the Postal Service, as directed by the contracting officer.
- (9) The supplier must do nothing to prejudice the Postal Service's rights to recover against third parties for any loss or destruction of, or damage to, Postal Service property. Upon the request of the contracting officer, the supplier will, at the Postal Service's expense, furnish to the Postal Service all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Postal

- Service) in obtaining recovery. In addition, when a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Postal Service property, the supplier must enforce this liability of the subcontractor for the benefit of the Postal Service.
- h. *Equitable Adjustment.* When this clause specifies an equitable adjustment, it will be made to any affected contract provision in accordance with the procedures of the *Changes* clause. When appropriate, the contracting officer may initiate an equitable adjustment in favor of the Postal Service. The right to an equitable adjustment shall be the supplier's exclusive remedy. The Postal Service is not liable to suit for breach of contract for:
- (1) Any delay in delivery of Postal Service-furnished property;
  - (2) Delivery of Postal Service-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of Postal Service-furnished property; or
  - (4) Failure to repair or replace Postal Service property for which the Postal Service is responsible.
- i. *Final Accounting for and Disposition of Postal Service Property.* Upon completing this contract, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract or delivered to the Postal Service. The supplier will prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property as the contracting officer may authorize or direct. The net proceeds of any disposal will be credited to the cost of the work covered by this contract or paid to the Postal Service as directed by the contracting officer. The foregoing provisions apply to scrap from Postal Service property; provided, however, that the contracting officer may authorize or direct the supplier to omit from the inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of this scrap in accordance with the supplier's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the supplier's established accounting procedures.
- j. *Abandonment and Restoration of Supplier's Premises.* Unless otherwise provided in this contract, the Postal Service:
- (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation to restore or rehabilitate the supplier's premises under any circumstances (for instance, abandonment, disposition upon completion of need, or contract completion). However, if the Postal Service-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use,

or if other Postal Service property is substituted, then the equitable adjustment under paragraph h of this clause may properly include restoration or rehabilitation costs.

- k. *Communications.* All communications under this clause must be in writing.

*Alternate Paragraph c (see the Material and Property Accountability topic of the General Practices, from the Postal Service Supplying Practices.)*

c. *Title*

- (1) The Postal Service retains title to all Postal Service-furnished property.
- (2) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of the contract, is to vest in the Postal Service, will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier. Title to all other property whose cost is to be reimbursed to the supplier under this contract and that under the contract provisions is to vest in the Postal Service, will pass to and vest in the Postal Service upon:
  - (a) Issuance of the property for use in contract performance;
  - (b) Commencement of processing of the property or its use in contract performance; or
  - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.
- (4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 will vest in the supplier upon acquisition or as soon thereafter as feasible; provided, that the supplier has obtained the contracting officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more will vest as set forth in the contract. If title to equipment vests in the supplier under this subparagraph c.4, the supplier agrees that no charge will be made to the Postal Service for any depreciation, amortization, or use under any existing or future Postal Service contract or subcontract thereunder. The supplier will furnish the contracting officer a list of all equipment to which title is vested in the supplier under this subparagraph c.4 within

10 days following the end of the calendar quarter during which it was received.

- (5) Vesting title under subparagraph c.4 above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract the supplier accepts and agrees that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the contemplated financial assistance (title to equipment).

#### **Clause 2-14 Postal Service Property Furnished “As Is” (March 2006)**

- a. The Postal Service makes no warranty whatsoever with respect to Postal Service property furnished “as is” except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the supplier pursuant to the solicitation or (if not inspected by the supplier) as when last available for inspection under the solicitation.
- b. The supplier may repair any property made available to the supplier “as is.” Repair will be at the supplier’s expense except as otherwise provided in this clause. Such property may be modified at the supplier’s expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished “as is” does not affect the title of the Postal Service.
- c. If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of Postal Service property furnished “as is” that will adversely affect the supplier, the supplier must, upon receipt of the property, notify the contracting officer of that fact, and (as directed by the contracting officer) either (1) return the property at the expense of the Postal Service or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation, or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the contracting officer, upon written request from the supplier, will equitably adjust any contractual provisions affected by the return, disposition, or repair, in accordance with the *Changes* clause. The foregoing provisions for adjustment are exclusive, and the Postal Service is not liable for any delivery of Postal Service property furnished “as is” in a condition other than that in which it was originally offered.
- d. Except as otherwise provided in this clause, Postal Service property furnished “as is” is governed by the *Postal Service Property* clause of this contract.

**Clause 2-15 Special Tooling (March 2006)**a. *Definition*

- (1) Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements so specialized that, without substantial modification or alteration, their use is limited to developing or producing particular supplies or performing particular services. The term includes all components of such items, but does not include:
- (a) Consumable property;
  - (b) Special test equipment; or
  - (c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.
- (2) For the purposes of this clause, special tooling does not include:
- (a) Items acquired by the supplier before the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or
  - (b) Items specifically excluded by the Schedule.

b. *Use of Special Tooling.* The supplier agrees not to use any items of special tooling purchased or manufactured by the supplier for the performance of this contract except in performing it, or as approved by the contracting officer.

c. *List of Special Tooling.* Within 60 days after delivery of the first production end items under this contract, or such later date as the contracting officer may prescribe, the supplier must (if the contracting officer so requests) furnish the contracting officer a list of all special tooling acquired or manufactured by the supplier for use in the performance of this contract. The list shall specify the nomenclature, tool number, and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract, the supplier must furnish a final list in the same form covering all items not previously reported under this paragraph c; provided, however, that the contracting officer may, by written notice, waive this requirement or extend it until the completion of this contract and other contracts and subcontracts for which approval has been obtained under paragraph b above. Special tooling that has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph d below.

d. *Changes in Design.* If any changes in design or specifications affect interchangeability of parts, the supplier will, unless otherwise agreed to by the contracting officer, give the contracting officer notice of any part that is not interchangeable with the new or superseding part; and the usable special tooling for each part covered in this notice will be

retained by the supplier, subject to the provisions of paragraph i below, pending disposition under paragraph f below.

- e. *Supplier's Offer to Retain Special Tooling.* When the supplier furnishes a list or notice under paragraph c or d above, the supplier may designate the items of special tooling (either specifically or by listing the particular products, parts, or services for which they were used or designed) the supplier desires to retain, together with a written offer to retain them:
  - (1) Free and clear of any Postal Service interest, for an amount designated in the offer that should ordinarily not be less than the fair value of the items, which fair value takes into account, among other things, their value to the supplier for use in further work; or
  - (2) For a period of time and under terms and conditions agreed to by the parties, subject to ultimate retention or disposition of these items in accordance with paragraph f below.
  
- f. *Disposition of Special Tooling*
  - (1) Within 90 days after receipt of any list or notice under paragraph c or d above, or such further period as may be agreed upon by the parties, the contracting officer will furnish to the supplier:
    - (a) A list specifying the particular products, parts, or services for which the Postal Service may require special tooling, together with a request that the supplier transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Postal Service all usable items of special tooling used or designed for the manufacture or performance of any designated portion of those products, parts, or services and on hand when production of the products or parts, or performance of the services, ceased;
    - (b) An acceptance or rejection of any offer made by the supplier under paragraph e above, or a request for further negotiation with respect to it;
    - (c) A direction to the supplier to sell, or to dispose of as scrap, for the account of the Postal Service, any or all of the special tooling covered by the list;
    - (d) A statement with respect to any or all of the special tooling covered by the list specifying that the Postal Service has no further interest in it and waives its rights in it; or
    - (e) Any combination of the foregoing, as the circumstances warrant.
  - (2) The supplier will promptly comply with any request by the contracting officer under subparagraph f.1 preceding to transfer title to any items of special tooling, and will:
    - (a) Immediately prepare them for shipment by proper packaging, packing, and marking, in accordance with any instruction issued by the contracting officer, promptly

delivering them to the Postal Service as directed by the contracting officer; or

- (b) If a storage agreement has been entered into, prepare them for storage in accordance with that agreement, as directed by the contracting officer.
- (3) To the extent that compliance with direction to ship or store under subparagraph f.2 preceding may occasion cost to the supplier for which the supplier will not otherwise be compensated, the contract price will be equitably adjusted in accordance with the *Changes* clause. Any items of special tooling delivered or stored must be accompanied by any operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed.
- (4) If the contracting officer has requested further negotiations under f.1(b) above, the supplier agrees to enter into them in good faith with the contracting officer. Any items of special tooling not disposed of by transfer of title and delivery to the Postal Service, or by acceptance of an offer of the supplier made under paragraph e above, or of such offer as modified in the course of negotiations, must be disposed of in the manner set forth in f.1(c) or (d) above. Any failure of the contracting officer to give the required direction within the specified period will be construed as a direction pursuant to f.1(c) above.
- g. *Proceeds of Retention or Disposition of Special Tooling.* If the contracting officer accepts an offer of the supplier to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds will be:
  - (1) Deducted from the amounts due to the supplier under this contract and the contract amended accordingly; or
  - (2) Otherwise paid as the contracting officer may direct.
- h. *Property Control.* The supplier agrees to follow normal industrial practice in maintaining property-control records on special tooling and to make them available for inspection by the Postal Service at all reasonable times. The supplier further agrees that, to the extent practicable, the supplier will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.
- i. *Maintenance Pending Disposition.* The supplier agrees that, between the date any usable items of special tooling are no longer needed by the supplier, within the meaning of this clause, and the date of their final disposition under this clause, the supplier will take all reasonable steps necessary to maintain their identity and existing condition, unless the contracting officer has directed that they be disposed of as scrap or has given notice under f.1(d) above. The supplier shall not be required to keep any such items in place.
- j. *Special Tooling Provisions for Subcontracts.* The supplier agrees, in placing any subcontracts or purchase orders under this contract that involve the use of special tooling whose full cost is charged to the



subcontract or purchase order, to include therein appropriate provisions to obtain rights comparable to those granted to the Postal Service by this clause, unless the contracting officer determines, upon the supplier's request, that with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Postal Service. The supplier further agrees to exercise any rights for the benefit of the Postal Service as the contracting officer may direct.

#### **Clause 2-16 Special Test Equipment (March 2006)**

- a. *Definition.* Special test equipment means electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment so specialized that, without substantial modification or alteration, their use (if they are to be used separately) is limited to testing in the development or production of particular supplies or in the performance of particular services. The term includes all components of any assemblies of such equipment, but does not include:
  - (1) Consumable property;
  - (2) Special tooling; or
  - (3) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.
- b. *Supplier Notice of Intent to Acquire Special Equipment.* This contract provides that the supplier will acquire special test equipment for the Postal Service but does not specify its exact nature. Before acquiring any special test equipment or components having an item acquisition cost of \$1,000 or more, the supplier must give the contracting officer 30 days' notice of intention to do so, including a full description of all such items and a list of alternative items that could be used. The Postal Service may elect within the 30-day period to furnish the special test equipment or any components. If the supplier has not received written notice within the period prescribed, the supplier may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract.
- c. *Postal Service-Furnished Special Test Equipment.* If the Postal Service elects to furnish special test equipment or any components pursuant to paragraph b preceding, these items will be furnished subject to the *Postal Service Property* clause of this contract; provided, however, that the Postal Service is not obligated to deliver them any sooner than the supplier could have procured them after expiration of the 30-day notice period prescribed in paragraph b.
- d. *Equitable Adjustment.* If the Postal Service furnishes any special test equipment or components under paragraph c preceding, any affected provision of this contract will be equitably adjusted in accordance with the *Changes* clause.

- e. *Subcontracts.* If special test equipment or components having an item acquisition cost of \$1,000 or more are to be acquired for the Postal Service by a subcontractor under this contract, the Postal Service's rights to receive 30 days' advance notice from the supplier, and to furnish the items to the supplier and obtain an equitable adjustment of the prime contract therefore, in accordance with paragraphs b, c, and d above, will be preserved.

**Clause 2-17 Option for Increased Quantity (March 2006)**

The Postal Service may increase the quantity of supplies called for in this contract by the amounts stated in the Schedule and at the unit prices specified in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-18 Option Item (March 2006)**

The Postal Service may increase the quantity of supplies called for in this contract by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-19 Option to Extend (Services Contract) (March 2006)**

The Postal Service may require the supplier to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. The rates set forth in the Schedule will apply to any extension made under this option clause.

**Clause 2-20 Option to Renew (with Preliminary Notice) (March 2006)**

This contract is renewable, at the option of the Postal Service, by the contracting officer giving written notice of renewal to the supplier within the period specified in the Schedule; provided that, the contracting officer will have given preliminary notice of the Postal Service's intent to renew at least 60 days before this contract is to expire (such a preliminary notice will not be deemed to commit the Postal Service to renewals). If the Postal Service exercises this option for renewal, the contract as renewed includes this option

clause. The duration of this contract, including renewals, may not exceed the time limit set forth in the Schedule.

### **Clause 2-21 Component Parts (March 2006)**

The description of any component parts in the specification by use of brand or manufacturer's names indicates that there are no other acceptable sources for those components known to the Postal Service. Such descriptions are not meant to be restrictive, however, and the supplier may ask the contracting officer to recognize a supplier-proposed component not included in the specifications as equal to one of the specified components and permit its substitution; provided that the supplier submits any request for substitution in a timely manner and with sufficient information to enable the contracting officer to ascertain readily whether the proposed component is in fact equal to the component described in the specifications. The contracting officer's approval or disapproval of the request for substitution is final and not subject to the *Claims and Disputes* clause.

### **Clause 2-22 Value Engineering Incentive (March 2006)**

- a. *General.* The supplier is encouraged to develop and submit Value Engineering Change Proposals (VECPs) voluntarily. The supplier will share in savings realized from an accepted VECP as provided in paragraph (h) below.
- b. *Definitions*
  - (1) *Value Engineering Change Proposal (VECP).* A proposal that:
    - (a) Requires a change to the instant contract;
    - (b) Results in savings to the instant contract; and
    - (c) Does not involve a change in:
      - (i) Deliverable end items only;
      - (ii) Test quantities due solely to results of previous testing under the instant contract; or
      - (iii) Contract type only.
  - (2) *Instant Contract.* The contract under which a VECP is submitted. It does not include additional contract quantities.
  - (3) *Additional Contract Quantity.* An increase in quantity after acceptance of a VECP due to contract modification, exercise of an option, or additional orders (except orders under indefinite-delivery contracts within the original maximum quantity limitations).
  - (4) *Postal Service Costs.* Costs to the Postal Service resulting from developing and implementing a VECP, such as net increases in the cost of testing, operations, maintenance, logistics support, or property furnished. Normal administrative costs of processing the VECP are excluded.

- (5) *Instant Contract Savings.* The estimated cost of performing the instant contract without implementing a VECP minus the sum of (a) the estimated cost of performance after implementing the VECP and (b) Postal Service costs.
  - (6) *Additional Contract Savings.* The estimated cost of performance or delivering additional quantities without the implementation of a VECP minus the sum of (a) the estimated cost of performance after the VECP is implemented and (b) Postal Service cost.
  - (7) *Supplier's Development and Implementation Costs.* Supplier's cost in developing, testing, preparing, and submitting a VECP. Also included are the supplier's cost to make the contractual changes resulting from the Postal Service acceptance of the VECP.
- c. *Content.* A VECP must include the following:
- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
  - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - (3) A separate, detailed cost estimate for (a) the affected portions of the existing contract requirement and (b) the VECP. The cost reduction associated with the VECP must take into account the supplier's allowable development and implementation costs.
  - (4) A description and estimate of costs the Postal Service may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - (5) A prediction of any effects the proposed change would have on Postal Service costs.
  - (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
  - (7) Identification of any previous submissions of the VECP to the Postal Service, including the dates submitted, purchasing offices, contract numbers, and actions taken.
- d. *Submission.* The supplier must submit VECPs to the contracting officer.
- e. *Postal Service Action*
- (1) The contracting officer will give the supplier written notification of action taken on a VECP within 60 days after receipt. If additional time is needed, the contracting officer will notify the supplier, within the 60-day period, of the expected date of a decision. The Postal Service will process VECPs expeditiously but will not be liable for any delay in acting upon a VECP.

- (2) If a VECP is not accepted, the contracting officer will so notify the supplier, explaining the reasons for rejection.
- f. *Withdrawal.* The supplier may withdraw a VECP, in whole or in part, at any time before its acceptance.
- g. *Acceptance*
- (1) Acceptance of a VECP, in whole or in part, will be by execution of a supplemental agreement modifying this contract and citing this clause. If agreement on price (see paragraph h below) is reserved for a later supplemental agreement, and if such agreement cannot be reached, the disagreement is subject to the *Claims and Disputes* clause of this contract.
  - (2) Until a VECP is accepted by contract modification, the supplier must perform in accordance with the existing contract.
  - (3) The contracting officer's decision to accept or reject all or any part of a VECP is final and not subject to the *Claims and Disputes* clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).
- h. *Sharing.* If a VECP is accepted, the supplier's share is \_\_\_ percent of the contract savings. If options are included in the contract, the supplier's share for the additional quantity is \_\_\_ percent of the contract savings. The contract savings are calculated by subtracting the estimated cost of the performing the contract with the VECP, Postal Service costs, and the allowable development and implementation costs from the estimated cost of performing the contract with out the VECP. Profit is excluded when calculating contract savings. (Contracting officer inserts the negotiated percentage of shared savings. See the Shared Lessons Learned topic of the Manage Delivery and Contract Performance task of Process Step 5: Measure and Manage Supply, from the Postal Service *Supplying Practices*.)
- i. *Data*
- (1) The supplier may restrict the Postal Service's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering Incentive clause of contract, may not be disclosed outside the Postal Service or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Postal Service's right to use information contained in these data if it has been obtained or is otherwise available from the supplier or from another source without limitation."
  - (2) If a VECP is accepted, the supplier hereby grants the Postal Service unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Postal Service will have the rights specified in the contract modification implementing the VECP and

will appropriately mark the data. (The terms “unlimited rights” and “limited rights” are defined in the Clarify Data Rights and Intellectual Property Issues topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources of the *Supplying Practices*.)

*Additional Paragraph j (see the Clarify Data rights and Intellectual Property topic of Process Step 2: Evaluate sources, of the Postal Service Supplying Practices.)*

- j. *Subcontracts.* The supplier must include an appropriate value engineering incentive clause in any firm-fixed-price subcontract of \$100,000 or more. In calculating any price adjustment for savings under this contract, the supplier’s allowable VECP development and implementation costs include any subcontractor’s allowable development and implementation costs. Subcontract savings are subject to the sharing arrangements in paragraph h of this clause, and will be taken into account in determining the savings under this contract.

**Clause 2-23 Reimbursement — Postal Service Testing (March 2006)**

- a. The supplier will be charged at the rate of \$60 per work-hour for:
  - (1) The total time, including round-trip travel time, lost by Postal Service representatives when the supplier is not ready for inspection at the time inspection and testing is requested by the supplier; and
  - (2) The total time, including round-trip travel time, required by Postal Service representatives for reinspection and retesting resulting from rejection.
- a. Other out-of-pocket expenses incurred by the Postal Service as a consequence of the activities described in this clause will be billed to the supplier.

**Clause 2-24 (Reserved) (March 2006)**

**Clause 2-25 Unpriced Options (March 2006)**

The Postal Service may elect to exercise the unpriced option described in the schedule. The contracting officer may exercise this option at any time within the period specified in the Schedule by giving written notice to the supplier. The price for this option will be negotiated at the time the option is exercised.

**Clause 2-26 Payment — Fixed Price (March 2006)**

The Postal Service will pay the supplier, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for work or supplies

delivered and accepted or services rendered and accepted, less any deductions provided for by the contract. Unless the contract otherwise specifies, payment will be made on partial deliveries accepted by the Postal Service if:

- a. The amount due on the deliveries warrants it; or
- b. The supplier requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price, whichever is less.

### **Clause 2-27 Incentive Price Revision (March 2006)**

- a. *General.* The supplies or services identified in the Schedule as items (*Contracting officer insert Schedule line numbers*) are subject to price revision in accordance with the provisions of this clause. In no event may the total final price of such items exceed \$ (*Contracting officer insert ceiling price*).
- b. *Definition.* Costs means allowable costs in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices*.
- c. *Submission of Data*
  - (1) Within days (*Contracting officer insert number of days*) after the end of the month in which the supplier has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph a above, the supplier must submit, in such form as the contracting officer may require:
    - (a) A detailed statement of all costs incurred up to the end of that month in performing all work under those items;
    - (b) An estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to them; and
    - (c) Any other relevant data the contracting officer may reasonably require.
  - (2) If the supplier fails to submit the data required within the time specified and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the *Interest* clause of this contract.
- d. *Price Revision.* Upon receipt by the contracting officer of the data required by paragraph c above, the parties will establish the total final price in accordance with the following:
  - (1) On the basis of the information required by paragraph c above, together with any other pertinent information, the parties will negotiate the total final cost incurred or to be incurred for the

supplies delivered (or services performed) and accepted by the Postal Service that are subject to price revision under this clause.

- (2) The total final price will be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:
    - (a) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
    - (b) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit less \_\_\_\_\_ percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost exceeds the total target cost.
    - (c) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost is less than the total target cost.
  - (3) The total final price of the items specified in a above must be evidenced by a modification to this contract, signed by the supplier and the contracting officer. This price is not subject to revision, regardless of any changes in the cost of performing the contract, except to the extent that:
    - (a) The parties agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and
    - (b) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.
- e. *Adjusted Billing Price*
- (1) Pending execution of the contract modification described in subparagraph d.3 above, the supplier must submit invoices or vouchers in accordance with the billing price as provided in this paragraph e. The billing price will be the target price shown in this contract.
  - (2) If at any time it appears that the then current billing price will be substantially greater than the estimated final price, the parties must negotiate a reduction in the billing price. Similarly, the parties may negotiate an increase in the billing price by any or all of the difference between the target price and the ceiling price, upon the supplier's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.
  - (3) Any billing price adjustment must be reflected in a contract modification and will not affect the determination of the total final price under paragraph d above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers must be adjusted to



reflect the total final price, and any resulting additional payments, refunds, or credits must be made promptly.

- f. *Limitations on Payments.* This paragraph f applies until final price revision under this contract has been completed.
- (1) Within 45 days after the end of each quarter of the supplier's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Postal Service under this contract, and for each quarter thereafter, the supplier must submit to the contracting officer a statement, cumulative from the beginning of the contract, showing:
    - (a) The total contract price of all supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have been established;
    - (b) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have not been established;
    - (c) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph f) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Postal Service for which final prices have not been established — increased or decreased in accordance with subparagraph d.2 above, when the amount stated under f.1(b) above differs from the aggregate target cost of the supplies or services; and
    - (d) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Postal Service (including amounts applied or to be applied to liquidate progress payments).
  - (2) Regardless of any provision of this contract authorizing greater payments, if on any quarterly statement the amount under f.1(d) above exceeds the sum due the supplier, as computed in accordance with f.1(a), (b) and (c) above, the supplier must immediately refund or credit to the Postal Service the amount of the excess. The supplier may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the *Progress Payments* clause. The supplier must provide complete details to support any claimed reductions in refunds.
  - (3) If the supplier fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless

- repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the *Interest* clause.
- g. *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The supplier must:
- (1) Insert in each subcontract other than a firm-fixed-price subcontract the substance of paragraph f above, and of this paragraph g, modified to omit mention of the Postal Service and to reflect the position of the supplier as purchaser and of the subcontractor as vendor; and
  - (2) Include in each cost-reimbursement subcontract a requirement that each subcontract other than a firm-fixed-price subcontract contain the substance of paragraph f above and of this paragraph g modified as required by subparagraph g.1 above.
- h. *Disagreements*. If the supplier and the contracting officer fail to agree upon the total final price within 60 days (or within such other period as the contracting officer may specify) after the date on which the data required by paragraph c above are to be submitted, the contracting officer must promptly issue a decision in accordance with the *Claims and Disputes* clause.
- i. *Termination*. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision must be established in accordance with this clause for completed supplies and services accepted by the Postal Service and those supplies and services not terminated under a partial termination. All other elements of the termination must be resolved in accordance with other applicable clauses of this contract.
- j. *Equitable Adjustment Under Other Clauses*. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment must be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price may be adjusted.
- k. *Exclusion from Target Price and Total Final Price*. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price may include any amount for that purpose.
- l. *Separate Reimbursement*. If any clause of this contract expressly provides that the cost of performance of an obligation will be at Postal Service expense, that expense may not be included in any target price or in the total final price, but must be reimbursed separately.

- m. *Taxes.* As used in the *Federal, State, and Local Taxes* clause of this contract or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the supplier to pay or bear the burden of certain taxes or duties, the increase or decrease will be made in the total target price or, if it has been established, in the total final price, so that it will not affect the supplier's profit or loss on this contract.
- n. *Provisioning and Options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Postal Service option are subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Postal Service option will be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

**Clause 2-28 Economic Price Adjustment — Labor and Materials  
(March 2006)**

- a. If at any time during the performance of this contract the rates of pay for labor or unit prices for materials set forth in the Schedule increase or decrease, the supplier must notify the contracting officer within 60 days or within such further period as may be approved in writing by the contracting officer, but in any event not later than final payment under the contract. The notice must include the supplier's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph b below and must be accompanied by data, in such form as the contracting officer may require, explaining:
  - (1) The causes;
  - (2) The effective date; and
  - (3) The amount of the increase or decrease and of the supplier's proposal for an equitable adjustment.
- b. Promptly upon receipt of any notice and data described in paragraph a above, the supplier and the contracting officer will negotiate an equitable adjustment (and its effective date) in the contract unit prices to reflect any change in the cost of performance of this contract due to changes in rates of pay for labor or unit prices for materials set forth in the Schedule; provided, however, that negotiations may be postponed by the contracting officer until an accumulation of changes results in an adjustment allowable under subparagraph c.5 below. The equitable adjustment, and its effective date, will be set forth in an amendment to this contract that also revises the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increases or decreases. Pending agreement on, or determination of, any such

adjustment and its effective date, the supplier shall continue performance.

- c. Notwithstanding any other provision of this clause, any price adjustments under this clause are subject to the following limitations:
  - (1) There will be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule.
  - (2) There will be no adjustment other than for changes in the rates of pay for labor or unit prices of materials set forth in the Schedule.
  - (3) There will be no adjustment for any change in the quantities of labor or materials set forth in the Schedule for each item to be delivered.
  - (4) No upward adjustment will apply to supplies required by the delivery schedule to be delivered before the effective date of the adjustment but actually delivered later, unless the supplier's failure to deliver in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the supplier within the meaning of the *Default* clause, in which case the contract will be amended to make an equitable extension of the delivery schedule.
  - (5) Except as provided in paragraph d below, there will be no adjustment for any change in rates of pay for labor or unit prices for materials that would not result in a net change of at least 3 percent of the then-current total contract price.
  - (6) The aggregate of the increases in any contract unit price made under this clause may not exceed percent (*Contracting officer insert percentage no higher than ten percent*) of the original contract unit price.
- d. If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to paragraph b above, the limitations of subparagraph c.5 above do not apply.
- e. The final invoice submitted under this contract must include a certification that the supplier has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that the supplier has given notice of all such decreases in compliance with paragraph a above.
- f. The contracting officer may examine the supplier's books, records, and other supporting data relevant to the cost of labor and materials during all reasonable times until the expiration of 3 years from the date of final payment under the contract.
- g. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

**Clause 2-29 Economic Price Adjustment (Index Method) (March 2006)**

Regardless of actual changes in the cost of labor and material during the performance period of this contract, price adjustments necessitated by such changes shall be made only as provided in this clause. The contracting officer shall place in the contract Schedule an adjustment formula that describes the elements that will be used to determine the adjusted contract price. The adjustment formula may identify some or all of the following as appropriate:

- (1) Contract line items, cycles, production runs or such other portion of the contract that will be subject to adjustment according to this clause;
- (2) Base unit price to be adjusted;
- (3) Portion of the base unit price subject to adjustment;
- (4) Index that will be used for the adjustment, paying particular attention to describe the index to avoid confusion over which release (i.e., preliminary, seasonally adjusted, subsequently revised, or final), issue, or date will be applicable;
- (5) Percent of the price governed by the chosen index;
- (6) Adjustment period;
- (7) Base period; and
- (8) Degree of specificity of the result (i.e., number of decimal places to be used).
- (9) Should the selected index be discontinued or substantially altered, both parties shall agree upon an appropriate replacement.

**Clause 2-30 Allowable Cost and Payment (March 2006)**

- a. *Invoicing.* The Postal Service will make payments to the supplier when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* in effect on the date of this contract, and the terms of this contract. The supplier must submit an invoice or voucher to the address specified in the Schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.
- b. *Reimbursement*
  - (1) For the purpose of reimbursing allowable costs, the term costs includes only:
    - (a) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

- (b) When the supplier is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (i) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
    - (ii) Direct labor;
    - (iii) Direct travel;
    - (iv) Other direct in-house costs; and
    - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts.
  - (c) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
  - (2) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph e below, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph c below.
  - (3) Any statements in specifications or other documents incorporated by reference in this contract that designate performance of services or furnishing of materials at the supplier's expense or at no cost to the Postal Service will be disregarded for purposes of cost reimbursement under this clause.
- c. *Final Indirect Cost Rates*
- (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* in effect for the period covered by the indirect cost rate proposal.
  - (2) The supplier must, within 90 days after the end of each of its fiscal years, or by a later date approved by the contracting officer, submit to the contracting officer or contracting officer's representative proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates must be based on the supplier's actual cost experience for that period. The contracting officer or contracting officer's representative and the supplier must establish the final indirect cost rates as promptly as practical after receipt of the supplier's proposal.

- (3) Agreement on final indirect cost rates must be set forth in a written understanding. The understanding may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution. The understanding must specify:
    - (a) The agreed upon final annual indirect cost rates;
    - (b) The bases to which the rates apply;
    - (c) The periods for which the rates apply;
    - (d) Any specific indirect cost items treated as direct costs in the settlement; and
    - (e) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.
  - (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the *Claims and Disputes* clause of this contract.
- d. *Billing Rates.* Until final annual indirect cost rates are established for any period, the Postal Service will reimburse the supplier at billing rates established by the contracting officer or the contracting officer's representative, subject to adjustment when the final rates are established. These billing rates:
- (1) Must be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- e. *Audit.* At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
- (1) Reduced by amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.
- f. *Final Payment*
- (1) The supplier must submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but not later than one year (or longer, as the contracting officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the supplier's compliance with all terms of this contract, the Postal Service will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The supplier must pay to the Postal Service any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the supplier or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the supplier has been reimbursed by the Postal Service.

Reasonable expenses incurred by the supplier for securing refunds, rebates, credits, or other amounts are allowable costs if approved by the contracting officer. Before final payment under this contract, the supplier and each assignee whose assignment is in effect at the time of final payment must execute and deliver:

- (a) An assignment to the Postal Service, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including any interest) properly allocable to costs for which the supplier has been reimbursed by the Postal Service under this contract; and
- (b) A release discharging the Postal Service and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:
  - (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (ii) Claims (including reasonable incidental expenses) based upon liabilities of the supplier to third parties arising out of the performance of this contract, but only if the claims are not known to the supplier on the date of the execution of the release, and only if the supplier gives notice of the claims in writing to the contracting officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
  - (iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the supplier under the patent clauses of this contract, excluding, however, any expenses arising from the supplier's indemnification of the Postal Service against patent liability.

**Clause 2-31 Limitation of Cost (March 2006)**

- a. The parties estimate that the cost to the Postal Service for performing this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed the estimated cost then set forth in the Schedule, the supplier must notify the contracting officer in writing to that effect, giving its revised estimate of the total cost for performing the contract.



- c. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the estimated cost set forth in the Schedule, and the supplier is not obligated to continue performance (including actions under the *Termination* clause) or otherwise to incur costs in excess of that estimated cost, unless the contracting officer notifies the supplier in writing that the estimated cost has been increased. No notice, communication, or representation in any other form or from any person other than the contracting officer may affect the estimated cost. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the estimated cost set forth in the Schedule, whether incurred during the course of the contract or as a result of termination. To the extent that the estimated cost set forth in the Schedule is increased, any costs incurred in excess of the estimated cost before the increase will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.
- d. Change orders issued under the *Changes* clauses are not an authorization to exceed the estimated cost set forth in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the estimated cost.
- e. If this contract is terminated or the estimated cost not increased, the Postal Service and the supplier must negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

**Clause 2-32 Limitation of Funds (March 2006)**

- a. The parties estimate that the cost to the Postal Service for performing this contract will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. The amount presently available for payment and allotted to this contract, the items covered by this amount, and the period of performance it is estimated the allotted amount will cover are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The supplier agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Postal Service under this contract approximates but does not exceed the total actually allotted to the contract.
- c. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days (see note 1), when added to all costs previously incurred, will exceed

75 percent (see note 2) of the total amount then allotted to the contract, the supplier must notify the contracting officer in writing to that effect. The notice must state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. No later than 60 days (see note 1) before the end of the period specified in the Schedule, the supplier must advise the contracting officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after this notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefore, the contracting officer will, upon written request by the supplier, terminate this contract on that date, under the *Termination* clause. If the supplier, exercising reasonable judgment, estimates that the funds available will allow it to continue to discharge its obligations for a period extending beyond that date, the supplier must specify the later date in the request, and the contracting officer, in the contracting officer's discretion, may terminate the contract on that later date.

- d. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the total amount from time to time allotted to the contract, and the supplier is not obligated to continue performance (including actions under the contract's *Termination* clause) or otherwise to incur costs in excess of that amount, unless the contracting officer notifies the supplier in writing that the amount has been increased, specifying an increased amount constituting the total amount then allotted to the contract. To the extent that the amount allotted exceeds the estimated cost set forth in the Schedule, the estimated cost must be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the contracting officer may affect the amount allotted. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the total amount then allotted, whether incurred during the course of the contract or as a result of termination. To the extent that the amount allotted is increased, any costs incurred in excess of the amount previously allotted will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.
- e. Change orders issued under the *Changes* clause are not an authorization to exceed the amount allotted in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the amount allotted.
- f. Nothing in this clause affects the right of the Postal Service to terminate this contract. If the contract is terminated, the Postal Service and the supplier must negotiate an equitable distribution of all property

produced or purchased under the contract, based upon the share of costs incurred by each.

- g. If sufficient funds are not allotted to this contract to allow completion of the work contemplated, the supplier will be entitled to a percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

**Note:**

- 1. May be varied by contracting officer from 30 to 90 days.
- 2. May be varied by contracting officer from 75 to 85 percent.

**Clause 2-33 Cost Contract — No Fee (March 2006)**

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the total estimated cost shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 (see note), whichever is less.

**Note:** May be changed by the contracting officer to \$10,000 in contracts with nonprofit organizations.

**Clause 2-34 Cost-Sharing Contract — No Fee (March 2006)**

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the Postal Service share of the total estimated cost of performance shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the Postal Service's share of total estimated cost shown in the Schedule or \$100,000, whichever is less.

**Clause 2-35 Incentive Fee (March 2006)**

- a. *General.* The Postal Service will pay the supplier for performing this contract a fee determined as provided in the contract.
- b. *Target Cost and Target Fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph d below.
  - (1) Target cost means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph d below.

- (2) Target fee means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph d below.
- c. *Withholding Payment.* Normally, the Postal Service will pay the fee to the supplier as specified in the Schedule. However, when the contracting officer considers that performance or cost indicates that the supplier will not achieve target, the Postal Service will pay on the basis of an appropriate lesser fee. When the supplier demonstrates that performance or cost clearly indicates that the supplier will earn a fee significantly above the target fee, the Postal Service may, at the discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. The reserve may not exceed 15 percent of the applicable fee or \$100,000, whichever is less.
- d. *Equitable Adjustments.* When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, must be stated in a supplemental agreement to this contract.
- e. *Fee Payable*
  - (1) The fee payable under this contract will be the target fee increased by cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than percent or less than percent (*contracting officer insert percentages*) of the target cost.
  - (2) The fee will be subject to adjustment, to the extent provided in paragraph d above, and within the minimum and maximum fee limitations in subparagraph e.1 above, when the total allowable cost is increased or decreased as a consequence of:
    - (a) Payments made under assignments; or
    - (b) Claims excepted from the release required by subparagraph f.2 of the *Allowable Cost and Payment* clause.
  - (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph e. The termination will be accomplished in accordance with other applicable clauses of this contract.

- (4) For the purpose of fee adjustment, total allowable cost does not include cost arising out of:
  - (a) Any of the causes covered by the *Excusable Delays* clause, to the extent that they are beyond the control and without the fault or negligence of the supplier or any subcontractor;
  - (b) The taking effect, after the target cost is negotiated, of a statute, court decision, written ruling, or regulation that results in the supplier's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (c) Any direct cost attributed to the supplier's involvement in litigation as required by the contracting officer under a clause of this contract, including furnishing evidence and information requested under the *Notice and Assistance Regarding Patent and Copyright Infringement* clause;
  - (d) The purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons under the *Insurance* clause; or
  - (e) Any claim, loss, or damage resulting from a risk for which the supplier has been relieved of liability by the *Postal Service Property* clause.
- (5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph e, unless this contract specifically provides otherwise.
- f. *Contract Modification*. The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the supplier and the contracting officer.
- g. *Inconsistencies*. In the event of any inconsistencies between this clause and provisioning documents or Postal Service options under this contract, compensation for spare parts or other supplies and services ordered under those documents or options will be determined in accordance with this clause.

### **Clause 2-36 Fixed Fee (March 2006)**

- a. The Postal Service will pay the supplier for performing this contract the fixed fee specified in the Schedule.
- b. Payment of the fixed fee will be made as specified in the Schedule. After payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

**Clause 2-37 Award Fee (March 2006)**

The estimated cost for this contract is \$\_\_\_\_\_.

The base fee is \$\_\_\_\_\_.

The award fee is \$\_\_\_\_\_.

The total estimated cost plus base and award fees is \$\_\_\_\_\_.

This contract will be modified to reflect the award fee as award fee determinations are made.

The amount of award fee the supplier earns, if any, is based on a subjective evaluation by the Postal Service of the quality of the supplier's performance in accordance with the award fee plan. The Postal Service will determine the amount of award fee at the intervals stated in the award fee plan that is applicable to this contract. The Fee Determination Official (FDO), who is identified in the award fee plan, will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the supplier and is not subject to the *Disputes* clause. The Postal Service may unilaterally change the award fee plan at any time, and will provide such changes in writing to the supplier prior to the beginning of the applicable evaluation period. The supplier must submit a voucher or invoice for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

**Clause 2-38 Payment (Time-and-Materials and Labor-Hour Contracts) (March 2006)**

The Postal Service will pay the supplier as follows upon submission of invoices or vouchers approved by the contracting officer:

a. *Hourly Rate*

- (1) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number or direct labor hours performed. The rates will include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour will be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals if approved by the contracting officer). The supplier will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the contracting officer. Promptly after receipt of each substantiated voucher, the Postal Service will, except as otherwise provided in this contract, and subject to the terms of paragraph e below, pay the voucher as approved by the contracting officer.
- (2) Unless otherwise prescribed in the Schedule, the contracting officer will withhold five percent of the amounts due under this paragraph a, but the total amount withheld may not exceed

\$50,000. The amounts withheld will be retained until the execution and delivery of any required release by the supplier.

- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule must not be varied by virtue of the supplier having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the contracting officer, overtime rates may be negotiated. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the contracting officer.
- b. *Materials and Subcontracts*
- (1) Allowable costs of direct materials will be determined by the contracting officer in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources of the Postal Service *Supplying Practices* in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate.
  - (2) The actual costs of subcontracts that are authorized under the *Subcontracts* clause of this contract are reimbursable; provided, they are consistent with subparagraph 3 following.
  - (3) To the extent possible, the supplier must:
    - (a) Obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and
    - (b) Take all available cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the supplier will promptly notify the contracting officer and give the reasons. Credit will be given to the Postal Service for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the supplier, or would have accrued except for the fault or neglect of the supplier. The benefits lost without fault or neglect on the part of the supplier, or lost through no fault of the contracting officer, will not be deducted from gross costs.
- c. *Total Cost.* It is estimated that the total cost for performing this contract will not exceed the ceiling price set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work within this ceiling price. Whenever the supplier has reason to believe that the hourly rate payments and material costs that will accrue in performing the contract in the next 60 days, if added to all other payments and costs previously accrued, will exceed the ceiling price, the supplier must notify the contracting officer, giving any revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the supplier has reason to believe that the

total price for this contract will be greater than or substantially less than the then stated ceiling price, the supplier must notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the Postal Service has reason to believe that the work required will be greater than or substantially less than the then stated ceiling price, the contracting officer will advise the supplier, giving a revised estimate of the total amount of effort to be required under the contract.

- d. *Ceiling Price.* The Postal Service is not obligated to pay the supplier any amount in excess of the ceiling price in the Schedule, and the supplier is not obligated to continue performance if to do so would exceed the ceiling price, until the contracting officer notifies the supplier in writing that the ceiling price has been increased, specifying a revised ceiling price for performance under the contract. When the ceiling price is increased, any hours expended or material costs incurred in excess of the ceiling price before the increase will be allowable to the same extent as if expended or incurred afterwards.
- e. *Audit.* At any time or times before final payment, the contracting officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the supplier as the completion voucher or completion invoice and substantiating material, and upon compliance by the supplier with any required release and all other terms of this contract, the Postal Service will promptly pay any balance due. The completion invoice or voucher, and substantiating material, must be submitted by the supplier as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

### **Clause 2-39 Ordering (March 2006)**

- a. Supplies or services to be furnished under this contract will be ordered by authorized Postal Service credit card, or issuance of delivery orders, during the period and by the activities specified in the Schedule.
- b. Orders may be issued in writing, by written telecommunication, electronic data interchange (EDI), or orally. Oral orders, other than authorized Postal Service credit card orders, must be confirmed in writing. Orders sent by mail are considered issued when placed in the mail.
- c. The supplier must report to the contracting officer in the format and intervals specified in the Schedule all orders charged to an authorized Postal Service credit card.



- d. All orders are subject to the terms and conditions of this contract. If there is any conflict between an order and this contract, the contract is controlling.

**Clause 2-40 Delivery-Order Limitations (March 2006)**

- a. When the Postal Service requires supplies or services covered by this contract in an amount less than \_\_\_\_\_ (*Contracting officer insert minimum dollar amount or quantity*), the Postal Service is not obligated to purchase, and the supplier is not obligated to furnish, those supplies or services under this contract.
- b. The supplier is not obligated to honor:
  - (1) Any order for a single item in excess of \_\_\_\_\_ (*Contracting officer insert maximum dollar amount or quantity*);
  - (2) Any order for a combination of items in excess of \_\_\_\_\_ (*Contracting officer insert maximum dollar amount or quantity*); or
  - (3) A series of orders from the same ordering office in the course of \_\_\_\_\_ days (*Contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph b.1 or b.2 above.
- c. If this is a requirements contract, the Postal Service is not required to order a part of any one requirement from the supplier if that requirement exceeds the limitations stated in paragraph b above.
- d. If it is the supplier's intent not to honor an order received that exceeds the limitations stated in paragraph b above, the supplier must return the order to the ordering office within \_\_\_\_\_ days (*Contracting officer specify*) after issuance, with a written notice rejecting the order and giving the reasons; the Postal Service may then obtain the supplies or services from another source. If the supplier does not return the order with a notice of rejection as required, the supplier must honor the order as issued.

**Clause 2-41 Definite Quantity (March 2006)**

- a. This is a definite-quantity contract. The Postal Service will order the quantity of supplies or services specified in the Schedule, and the supplier must furnish those supplies or services when ordered. Delivery or performance must be made at locations designated in orders issued in accordance with the *Ordering* clause and the contract Schedule. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- b. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

**Clause 2-42 Indefinite Quantity (March 2006)**

- a. This is an indefinite-quantity contract; the quantities of supplies or services specified in the Schedule are not purchased until ordered. If this contract resulted from multiple awards under a single solicitation for the same or similar supplies or services to two or more sources, some or all of the orders issued will be subject to the competitive procedures described in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Postal Service must order at least the quantity of supplies or services designated in the Schedule as the minimum. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- c. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

**Clause 2-43 Requirements (March 2006)**

- a. This is a requirements contract for supplies or services described in the Schedule for the period specified. The supplies or services are not purchased until ordered. If the Postal Service's requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact may not be the basis for an equitable price adjustment unless specifically provided elsewhere in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies or services specified in the Schedule, subject to any limitations in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- c. Except as otherwise provided in this contract, the Postal Service must order from the supplier all the supplies or services specified in the Schedule that are required to be purchased by the activity or activities identified in the *Ordering* clause or the Schedule.
- d. The Postal Service is not required to purchase from the supplier requirements in excess of any limit on total orders under this contract.
- e. If the Postal Service urgently requires delivery or performance before the earliest date specified under this contract, and if the supplier will not accept an order providing for the accelerated delivery or performance,

the Postal Service may purchase the urgently required supplies or services from another source.

- f. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

*Alternate Paragraph c. (see the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources from the Supplying Practices)*

*c. The estimated quantities are not the total requirements of the activities specified in the Ordering clause or the Schedule, but are estimates of either specified portions of requirements or of requirements in excess of the quantities that the activities can themselves furnish within their own capabilities. Except as this contract otherwise provides, the Postal Service must order from the supplier either the portion of a designated activity's requirements for supplies and services specified in the Schedule or the requirements that exceed the quantities the activity can itself furnish within its own capabilities.*

#### **Clause 2-44 Contract Definitization (March 2006)**

- a. A \_\_\_\_\_ (*Contracting officer insert type of contract contemplated*) definitive contract is contemplated. The supplier agrees to submit a fixed-price or cost-reimbursement proposal as appropriate, and to negotiate with the contracting officer the terms of a definite contract that will include:
  - (1) All clauses required by the Postal Service *Supplying Practices* on the date of execution of this letter contract;
  - (2) All clauses required by law on the date of the execution of the definitive contract; and
  - (3) Other mutually agreeable clauses, terms, and conditions.
- b. The schedule for definitizing this contract is as follows:
  - (1) Proposal submission date:\_\_\_\_\_.
  - (2) Beginning of negotiations:\_\_\_\_\_.
  - (3) Definitization target date:\_\_\_\_\_.
- c. If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph b above or any extension of that date by the contracting officer, the contracting officer may determine a reasonable price or fee in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices*, subject to appeal by the supplier as provided in the *Claims and Disputes* clause. In any event, the supplier must proceed with a completion of the contract, subject only to the *Limitation of Postal*

*Service Liability* clause. After the date of the contracting officer's determination of price or fee, the contract will be governed by:

- (1) All clauses required by the Postal Service *Supplying Practices* on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph c;
  - (2) All clauses required by law as of the date of the contracting officer's determination;
  - (3) Other clauses, terms, and conditions mutually agreed upon; and
  - (4) To the extent consistent with c.1, 2, and 3 above, all other clauses, terms, and conditions included in this letter contract, except those that by their nature are applicable only to a letter contract.
- d. The price of the definitive contract resulting from this letter contract will in no event exceed \$\_\_\_\_\_. (See the Select Contract Type topic of the Develop Sourcing Strategy task of Process Step 2: Evaluate Sources from the *Supplying Practices*.)

**Clause 2-45 Execution and Commencement of Work (March 2006)**

The supplier must indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than \_\_\_\_\_ (*Contracting officer insert date*). Upon acceptance by both parties, the supplier must proceed with performance of the work, including purchase of necessary materials.

**Clause 2-46 Limitation of Postal Service Liability (March 2006)**

- a. The supplier is not authorized to make expenditures or to incur obligations in performing this contract exceeding \$ \_\_\_\_\_ (*Contracting officer insert limit*).
- b. The maximum amount for which the Postal Service will be liable if this contract is terminated is \$ \_\_\_\_\_ (*Contracting officer insert maximum liability*).

**Clause 2-47 Payment of Allowable Costs Before Definitization (March 2006)**

- a. Pending the definitization of this letter contract, the Postal Service will promptly reimburse the supplier for all allowable costs under the contract at the following rates:
  - (1) 100 percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts, but not exceeding 80 percent of the allowable costs of those subcontractors.

- (2) 100 percent of approved costs representing cost reimbursement subcontracts, but not exceeding 85 percent of the allowable costs of those subcontractors.
  - (3) 85 percent of all other approved costs.
- b. To determine amounts payable to the supplier under this letter contract, allowable costs will be determined by the contracting officer in accordance with the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Step 2: Evaluate Sources, of the Postal Service *Supplying Practices* in effect on the date of this contract. The total reimbursement made under this clause may not exceed 85 percent of the maximum amount of the Postal Service liability stated in the *Limitation of Postal Service Liability* clause.
- c. Once each month (or more often if approved by the contracting officer), the supplier may submit to the contracting officer or an authorized representative, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of claimed allowable costs incurred by the supplier in performance of this contract.
- d. For the purpose of determining allowable costs, the term costs includes only:
  - (1) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
  - (2) When the supplier is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (a) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
    - (b) Direct labor;
    - (c) Direct travel;
    - (d) Other direct in-house costs; and
    - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts; and
  - (3) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
- e. At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
  - (1) Reduced by any amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.

**Clause 2-48 Most Favored Customer Pricing (March 2006)**

During the term of this contract, prices for the goods and services required under this contract must be the equal to or lower than those offered the most favorable customer for similar quantities under comparable terms and conditions. When requested by the contracting officer, the supplier must show that the prices offered the Postal Service match or are less than those offered the supplier's most favored customers for those quantities under those terms and conditions, and such pricing data must be available for review by the Postal Service throughout the term of the contract. Any price reductions offered to other customers must be offered to the Postal Service if similar item quantities are involved.

**Clause 2-49 Cost/Price Reduction (March 2006)**

During the term of this contract, the Postal Service reserves the right to negotiate price reductions for any good or service being purchased. During the term of this contract, the Postal Service expects the supplier to continually seek to improve production and performance processes and method, and to report on these efforts to the Postal Service. Additionally, price reductions may be sought by the Postal Service as a result of changes in market conditions, industry trends and indexes, or in cost/price indexes, and their impact on the supplier's cost elements or overall cost. The Postal Service may terminate this contract for convenience if it feels price reductions are warranted, but the parties cannot reach an agreement on such price reductions.

**Clause 3-1 Small, Minority, and Woman-owned Business Subcontracting Requirements (March 2006)**

- a. All suppliers except small businesses must submit a subcontracting plan that is specific to this contract, and that separately addresses subcontracting with small, minority, and woman-owned businesses. A plan approved by the Postal Service must be included in and made a part of the contract. Lack of an approved plan may make the supplier ineligible for award. A subcontract is defined as any agreement (other than one involving an employer-employee relationship) entered into by a Postal Service supplier or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- b. The supplier's subcontracting plan must include the following:
  - (1) Goals, in terms of percentages of the total amount of this contract that the supplier will endeavor to subcontract to small, minority, and woman-owned businesses. The supplier must include all subcontracts that contribute to contract performance, and may include a proportionate share of supplies and services that are normally allocated as indirect costs.

- (2) A statement of the:
    - (a) Total dollars planned to be subcontracted under this contract; and
    - (b) Total of that amount planned to be subcontracted to small, minority, and woman-owned businesses.
  - (3) A description of the principal types of supplies and services to be subcontracted under this contract, identifying the types planned for subcontracting to small, minority, and woman-owned businesses.
  - (4) A description of the method used to develop the subcontracting goals for this contract.
  - (5) A description of the method used to identify potential sources for solicitation purposes and a description of efforts the supplier will make to ensure that small, minority, and woman-owned businesses have an equitable opportunity to compete for subcontracts.
  - (6) A statement as to whether the offer included indirect costs in establishing subcontracting goals for this contract and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, minority, and woman-owned businesses.
  - (7) The name of the individual employed by the supplier who will administer the subcontracting program and a description of the individual's duties.
  - (8) Assurances that the supplier will require all subcontractors receiving subcontracts in excess of \$1,000,000 to adopt a plan similar to the plan agreed to by the supplier.
  - (9) A description of the types of records the supplier will maintain to demonstrate compliance with the requirements and goals in the plan for this contract. The records must include at least the following:
    - (a) Source lists, guides, and other data identifying small, minority, and woman-owned businesses;
    - (b) Organizations contacted in an attempt to locate sources that are small, minority, and woman-owned businesses;
    - (c) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating whether small, minority, or woman-owned businesses were solicited and if not, why not; and
    - (d) Records to support subcontract award data, including the name, address, and business size of each subcontractor.
- c. *Reports.* The supplier must provide reports on subcontracting activity under this contract on a calendar-quarter basis. The report must be one of the types described in Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses.*

### Clause 3-2 Participation of Small, Minority, and Woman-owned Businesses (March 2006)

- a. The policy of the Postal Service is to encourage the participation of small, minority, and woman-owned business in its purchases of supplies and services to the maximum extent practicable consistent with efficient contract performance. The supplier agrees to follow the same policy in performing this contract.
- b. Subject to the agreement of the supplier and the Postal Service, the supplier will report subcontracting activity on one of the following bases:
  - (1) Showing the amount of money paid to subcontractors during the reporting period;
  - (2) Showing subcontracting activity that is allocable to this contract using generally accepted accounting practices; or
  - (3) A combination of the methods listed above.
- c. The supplier will submit a report to the contracting officer within 15 calendar days after the end of each calendar-year quarter, describing all subcontract awards to small, minority, or woman-owned businesses. The contracting officer may require more frequent reports.

### Clause 4-1 General Terms and Conditions (July 2007)

- a. *Inspection and Acceptance.* The supplier will only tender for acceptance those items that conform to the requirements of this contract. The Postal Service reserves the right to inspect or test supplies or services that have been tendered for acceptance. The Postal Service may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Postal Service must exercise its post acceptance rights (1) within a reasonable period of time after the defect was discovered or should have been discovered and (2) before any substantial change occurs in the condition of the items, unless the change is due to the defect in the item.
- b. *Assignment.* If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:
  - (1) The contracting officer;
  - (2) The surety or sureties upon any bond; and



- (3) The office, if any, designated to make payment, and the contracting officer has acknowledged the assignment in writing.
- (4) Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.

c. *Changes*

- (1) The contracting officer may, in writing, without notice to any sureties, order changes within the general scope of this contract in the following:
  - (a) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for the Postal Service in accordance with them;
  - (b) Statement of work or description of services;
  - (c) Method of shipment or packing;
  - (d) Places of delivery of supplies or performance of services;
  - (e) Delivery or performance schedule;
  - (f) Postal Service furnished property or facilities.
- (2) Any other written or oral order (including direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this paragraph, provided that the supplier gives the contracting officer written notice stating (a) the date, circumstances, and source of the order and (b) that the supplier regards the order as a change order.
- (3) If any such change affects the cost of performance or the delivery schedule, the contract will be modified to effect an equitable adjustment.
- (4) The supplier's claim for equitable adjustment must be asserted within 30 days of receiving a written change order. A later claim may be acted upon — but not after final payment under this contract — if the contracting officer decides that the facts justify such action.
- (5) Failure to agree to any adjustment is a dispute under Clause B-9, *Claims and Disputes*, which is incorporated into this contract by reference (see paragraph s). Nothing in that clause excuses the supplier from proceeding with the contract as changed.

d. *Reserved*

e. *Reserved*

f. *Reserved*

g. *Invoices*

- (1) The supplier's invoices must be submitted before payment can be made. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
  - (a) Any services being billed for have been performed in accordance with the contract requirements; and
  - (b) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with the instructions issued by the contracting officer and that the supplies are in the quantity and of the quality designated in the contract.
- (2) To ensure prompt payment, an original invoice (or electronic invoice, if authorized) must be submitted to the address designated in the contract to receive invoices for each destination and shipment. An invoice must contain:
  - (a) The supplier's name, remit to address (including ZIP+4\_) and phone number;
  - (b) Unique invoice number and invoice date;
  - (c) Any applicable task or delivery order number;
  - (d) A description of the supplies or services and the dates delivered or performed;
  - (e) contract — if the contracting officer decides that the facts justify such action. The point of shipment or delivery;
  - (f) Quantity, unit of measure, unit price(s) and extension(s) of the items delivered;
  - (g) Shipping and payment terms, including GBL number if applicable; and
  - (h) Any additional information required by the contract.

h. *Patent Indemnity.* The supplier will indemnify the Postal Service and its officers, employees and agents against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the supplier is reasonably notified of such claims and proceedings.i. *Payment*

- (1) Payment will be made for items accepted by the Postal Service that have been delivered to the delivery destinations set forth in this contract. The Postal Service will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR 1315. Payments under this contract may be made by the Postal Service either by electronic funds transfer (EFT), check, or government credit card at the option of the Postal Service. When the EFT payment method is selected, the Postal Service will provide the supplier with Form 3881, Supplier's Electronic Funds Transfer Enrollment Form, at contract award. The supplier must complete the form and submit it to the designated Postal

- Accounting Service Center to ensure the proper routing of payments..
- (2) In conjunction with any discount offered for early payment, time will be computed from the date of the invoice. For purposes of computing the discount earned, payment will be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.
- j. *Risk of Loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract will remain with the supplier until, and will pass to the Postal Service upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin, or;
- (2) Delivery of the supplies to the Postal Service at the destination specified in the contract, if transportation is f.o.b. destination.
- k. *Taxes.* The contract price includes all applicable federal, state, and local taxes and duties.
- l. *Termination for the Postal Service's Convenience.* The Postal Service reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the supplier must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the supplier will be paid a percentage of the work performed prior to the notice of termination, plus reasonable charges the supplier can demonstrate to the satisfaction of the Postal Service using its standard record keeping system, have resulted from the termination. The supplier will not be paid for any work performed or costs incurred which reasonable could have been avoided.
- m. *Termination for Default.* The Postal Service may terminate this contract, or any part hereof, for default by the supplier, or if the supplier fails to provide the Postal Service, upon request, with adequate assurances of future performance. In the event of termination for default, the Postal Service will not be liable to the supplier for any amount for supplies or services not accepted, and the supplier will be liable to the Postal Service for any and all rights and remedies provided by law. The debarment, suspension, or ineligibility of the supplier, its partners, officers, or principal owners under the Postal Service's procedures (see 39 CFR Part 601) may constitute an act of default under this contract, and such act will not be subject to notice and cure pursuant to any termination of default provision of this contract. If it is determined that the Postal Service improperly terminated this contract for default, such termination will be deemed a termination for convenience.
- n. *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract will pass to the Postal Service upon acceptance, regardless of when or where the Postal Service takes physical possession.

- o. *Warranty.* The supplier warrants and implies that the items delivered under this contract are merchantable and fit for the use for the particular purpose described in this contract.
- p. *Limitation of Liability.* Except as otherwise provided by an express or implied warranty, the supplier will not be liable to the Postal Service for consequential damages resulting from any defect or deficiencies in accepted items.
- q. *Other Compliance Requirements.* The supplier will comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- r. *Order of Precedence.* Any inconsistencies in this solicitation or contract will be resolved by giving precedence in the following order; (1) the schedule of supplies and services; (2) the Assignment, Disputes, Payments, Invoice, Other Compliances and Compliance with Laws Unique to the Postal Service Contracts paragraphs of this clause; (3) the clause at 4-2 *Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders*; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) Form 8203; (8) other documents, exhibits, and attachments, and (9) the specifications.
- s. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service Supplying Practices and its date. The text of incorporated terms may be found at <http://www.usps.com/purchasing/purchasingpubs/pubsmenu>. The following clauses are incorporated in this contract by reference:
  - (1) B-1, *Definitions*
  - (2) contract — if the contracting officer decides that the facts justify such action. B-9, *Claims and Disputes*
  - (3) B-15, *Notice of Delay*
  - (4) B-16, *Suspensions and Delays*
  - (5) B-19, *Excusable Delays*
  - (6) B-30, *Permits and Responsibilities*
- t. *Shipping.* The supplier must deliver goods that meet the prescribed physical limitations of the current U.S. Postal Service *Domestic Mail Manual* either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement. The supplier is responsible for ensuring that the packing and packaging are sufficient to protect the goods and ensure usability upon receipt.

**Clause 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders (March 2006)**

a. *Incorporation by Reference*

(1) Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service *Supplying Practices*. The text of incorporated terms may be found at <http://www.usps.com/purchasing/purchasingpubs/pubsmenu> The following clauses are incorporated in this contract by reference:

- (1) Clause 1-5, *Gratuities or Gifts*
- (2) Clause B-9, *Claims and Disputes*
- (3) Clause B-25, *Advertising of Contract Awards*
- (4) Clause 9-1, *Convict Labor*
- (5) Clause 9-5, *Contract Work Hours and Safety Standards Act — Safety Standards*

(2) If checked, the following additional clauses are also incorporated in this contract by reference:  
(Contracting officer will check as appropriate.)

- (1) Clause 1-1, *Privacy Protection* \_\_\_\_
- (2) Clause 1-6, *Contingent Fees* \_\_\_\_
- (3) Clause 1-9, *Preference for Domestic Supplies* \_\_\_\_
- (4) Clause 1-10, *Preference for Domestic Construction Materials* \_\_\_\_
- (5) Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements* \_\_\_\_
  
- (6) Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses* \_\_\_\_
- (7) Clause 9-2, *Contract Work Hours and Safety Standards Act — Overtime Compensation* \_\_\_\_
- (8) Clause 9-3, *Davis-Bacon Act* \_\_\_\_
- (9) Clause 9-6, *Walsh-Healey Public Contracts Act* \_\_\_\_
- (10) Clause 9-7, *Equal Opportunity* \_\_\_\_
- (11) Clause 9-10, *Service Contract Act* \_\_\_\_
- (12) Clause 9-11, *Service Contract Act — Short Form (March 2006)* \_\_\_\_
- (13) Clause 9-12, *Fair Labor Standards Acts and Services Contract Act — Price Adjustments* \_\_\_\_
- (14) Clause 9-13, *Affirmative Action for Handicapped Workers* \_\_\_\_
- (15) Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* \_\_\_\_

- b. *Examination of Records.*
- (1) *Records.* "Records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
  - (2) *Examination of Costs.* If this is a cost-type contract, the supplier must maintain, and the Postal Service will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination includes inspection at all reasonable times of the supplier's plants, or parts of them, engaged in the performance of this contract.
  - (3) *Cost or Pricing Data.* If the supplier is required to submit cost or pricing data in connection with any pricing action relating to this contract, the Postal Service, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, will have the right to examine and audit all of the supplier's records, including computations and projections, related to:
    - (a) The proposal for the contract, subcontract, or modification;
    - (b) The discussions conducted on the proposal(s), including those related to negotiating;
    - (c) Pricing of the contract, subcontract, or modification; or
    - (d) Performance of the contract, subcontract or modification.
  - (4) *Reports.* If the supplier is required to furnish cost, funding or performance reports, the contracting officer or any authorized representative of the Postal Service will have the right to examine and audit the supporting records and materials, for the purposes of evaluating:
    - (a) The effectiveness of the supplier's policies and procedures to produce data compatible with the objectives of these reports; and
    - (b) The data reported.
  - (5) *Availability.* The supplier must maintain and make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a) through (d) of this clause, for examination, audit, or reproduction, until three years after final payment under this contract or any longer period required by statute or other clauses in this contract. In addition:
    - (a) If this contract is completely or partially terminated, the supplier must make available the records related to the work terminated until three years after any resulting final termination settlement; and
    - (b) The supplier must make available records relating to appeals under the claims and disputes clause or to litigation or the settlement of claims arising under or related to this

contract. Such records must be made available until such appeals, litigation or claims are finally resolved.

**Note:** (Note to contracting officers: Any contemplated changes to this paragraph (b.) may not be made before (1) consulting with assigned counsel and the Office of the Inspector General and (2) a deviation has been reviewed and approved by a higher level than the contracting officer who holds deviation approval authority.

**Clause 4-3 (Reserved) (March 2006)**

**Clause 4-4 Nondisclosure (Professional Services) (March 2006)**

The supplier acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the supplier's code of ethics, the supplier specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The supplier further agrees to assert any privilege allowed by law and to defend vigorously Postal Service rights to confidentiality.

**Clause 4-5 Inspection of Professional Services (March 2006)**

- a. The contracting officer may, at any time or place, inspect the services performed and the products, including documents and reports. No matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement, the contracting officer may reject any services or products that do not meet the highest standards of professionalism. No payment will be due for any services or products rejected under this clause.
- b. Acceptance of any product or service does not relieve the supplier of the duties imposed by supplier's code of professional ethics, and the supplier remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance.

**Clause 4-6 Invoices (Professional Services) (March 2006)**

- a. In addition to the information required elsewhere in this agreement, all invoices for services under this agreement must indicate in detail the following:
  - (1) Person performing service each day by hour and part of an hour.
  - (2) Services performed each day by hour and part of an hour.
  - (3) Rates and charges for each service so detailed.
  - (4) Individual expenses charged, if allowed under this agreement.

- b. Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

#### **Clause 4-7 Records Ownership (March 2006)**

Notwithstanding any state law providing for retention of rights in the records, the supplier agrees that the Postal Service may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The supplier must turn over all such records upon request but may retain copies of documents produced by the supplier.

#### **Clause 4-8 Key Personnel (March 2006)**

- a. To the extent that the statement of work provides for services to be performed by key personnel, those services must be performed by the personnel identified in the supplier's proposal to perform them unless substitutes have been approved in writing by the contracting officer. Use of junior personnel, even under key personnel supervision (for example, associates or student workers), is not authorized unless they are identified in the supplier's proposal by name or position, with a description of their duties.
- b. This agreement may be terminated if the key personnel named in the supplier's proposal become unavailable for any reason. If the unavailability of key personnel is not the fault of the supplier, the contracting officer may terminate by giving notice of termination. The supplier will be paid for service performed up to the date of termination. If the contracting officer finds that the supplier is at fault for the unavailability of key personnel, the agreement may be terminated for default.

#### **Clause 4-9 Inspection and Acceptance — Systems (March 2006)**

- a. *System Acceptance Performance Criteria — Postal Service Testing.* The proposed system will be considered acceptable to the Postal Service when the Postal Service's personnel have verified that the system has been installed and made ready for use and the performance test has been conducted in accordance with the acceptance performance criteria specified. No system will be certified as ready for use until all equipment and software for that site, as specified on the delivery order, are ready for use.
- b. *Standard of Performance and Acceptance of System.* A standard of performance must be met before any system (equipment, software, or other material) is accepted by the Postal Service. These procedures



also apply to replacement of substituted equipment, and software, or other material added or field modified after a successful performance trial has been completed on the system.

- (1) The performance period begins when the supplier has certified that the system and software are ready for use and ends when the system has met the standard of performance period of 30 consecutive calendar days by operating at an effectiveness level of 95 percent or more.
- (2) In the event the system does not meet the standard of performance during the initial 30 days, the test must continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days.
- (3) If the system hardware or software fails to meet the standard of performance after 90 calendar days from the installation date, the Postal Service may, at its option, request a replacement or terminate the contract.
- (4) The effectiveness level for a system (as a percentage) is computed by dividing the operational use time by the sum of that time plus system failure downtime and multiplying by 100.
- (5) The effectiveness level for an added, field-modified, substituted, or replacement machine is a percentage figure. This figure is determined by dividing the operational use time of the machine by the sum of that time plus downtime resulting from equipment or software failure of the machine being tested and multiplying by 100.
- (6) Operational use time for performance testing of a system is defined as the accumulated time during which the system is in actual operation in accordance with the acceptance test plan.
- (7) Operational use time for performance testing of a machine added, field-modified, substituted, or replaced is defined as the accumulated time during which the machine is in actual use in accordance with the acceptance test plan.
- (8) System failure downtime is that period of time when any machine in the system is inoperable because of equipment or software failure.
- (9) During a period of system downtime, the Postal Service may use operable equipment when such action does not interfere with maintenance of the inoperable equipment. The entire system will be considered down during such periods.
- (10) Downtime for each incident begins at the time the Postal Service makes a bona fide attempt to contact the supplier's designated representative, at the prearranged contact point, and ends when the system or machine is again operating. Downtime excludes actual travel time required by the supplier's maintenance personnel in excess of two hours on the day the service was requested.

- (11) As a basis for computing the effectiveness level, a minimum of 100 hours of operation use time for a system with productive or Postal Service-provided simulated work will be required during the performance period. However, in computing the effectiveness level, the actual number of operational hours must be used when in excess of the minimum of 100 hours.
  - (12) The Postal Service maintains appropriate daily records to satisfy the performance requirements and will notify the supplier, in writing, the date of the first day of a successful performance period.
  - (13) Equipment, software, or other material will not be accepted and payment will not be made until the standard of performance is met. The date of acceptance and payment begins the first day of a successful performance period.
  - (14) Operational use time and downtime will be measured in hours and whole minutes.
- c. *Acceptance Test Plan.* The offeror's proposal must provide a preliminary version (detailed outline) of an acceptance test plan. A completed plan must be submitted 5 working days after contract award. The Postal Service will review the plan within 10 working days after submission. The Postal Service reserves the right to disapprove the plan, and the offeror must correct unacceptable areas before resubmission. The approved acceptance test plan will form the basis for testing during the performance period. The supplier-furnished plan must include rerunning those portions of the test demonstration applicable to the configuration. The plan must provide for running actual Postal Service work as it is available during the performance period. The execution of the test plan must meet the performance criteria specified in this contract.
- d. *Inspection and Acceptance of Maintenance*
- (1) All services (includes services performed, materials furnished or used in performance or service, and workmanship in the performance of services) is subject to inspection and test by the Postal Service, to the extent practicable at all times and places during the term of the contract. The Postal Service must conduct inspections in such a manner as not to delay work.
  - (2) If any services performed do not conform to the requirements of this contract, the Postal Service may require the supplier to perform the services again in conformity with the contract requirements at no additional increase in total contract price. When the services to be performed are such that the defect cannot be corrected by reperformance, the Postal Service may:
    - (a) Require the supplier to immediately take all necessary steps to ensure future performance of the services in conformity with the contract requirements;
    - (b) Reduce the contract price to reflect the reduced value of the services performed; or

- (c) Terminate this part of the contract
- (3) In the event the supplier fails to promptly perform the services again or to take the necessary steps to ensure future performance of the services in conformity with the contract requirements, the Postal Service may terminate this contract for default as provided in the Default clause.
- (4) The supplier must provide and maintain an inspection system acceptable to the Postal Service covering the services to be performed. The supplier's records of all inspection work must be kept complete and must be available to the Postal Service during the term of this contract and for such longer period as may be specified elsewhere in this contract.

**Clause 4-10 Liquidated Damages — Industrial Supply or Service Items Not Ready for Use (March 2006)**

If individual supply or service items are not ready for use or not delivered but the total system is operational, the supplier will be assessed liquidated damages for each individual item of \$ \_\_\_\_\_ (*Contracting officer insert amount*) for each day's delay or \_\_\_\_\_ (*Contracting officer insert fraction*) of the total monthly charges for that item, whichever is greater.

**Clause 4-11 Use of Hardware or Software Monitors (March 2006)**

- a. The supplier must permit inclusion or attachment of such devices as the Postal Service may choose to employ for the purpose of examining or measuring the activity within the computer system. These devices include hardware monitors physically connected to the computer system and software monitors that may require portions of the computer system's control software to be displaced.
- b. The supplier may not prohibit the installation of these devices unless the particular device will cause significant or permanent damage to the computer system. The supplier must assist the Postal Service in identifying and locating device connections when requested by the Postal Service if the supplier provides the services to other customers. If attachments cause equipment failure, the Postal Service is liable for any damage, and any maintenance credit provisions contained in this contract do not apply.

**Clause 4-12 Site Preparation (March 2006)**

- a. The supplier must furnish in writing site preparation specifications, including communications requirements, as part of the systems proposal. These specifications must be in such detail as to ensure that the system to be installed will operate in accordance with the requirements of this contract.

- b. At the request of the Postal Service and within one week after notification, the supplier must prepare, in cooperation with the Postal Service, a detailed site plan tailored to the Postal Service's facility. The detailed site plan supplements the general specifications furnished as part of the systems proposal.
- c. The Postal Service will prepare the site as its own expense in accordance with the supplier's specifications and will maintain these site requirements throughout the contract term.
- d. If any alterations or modifications in site preparation are required involving additional expense to the Postal Service and are due to incomplete or erroneous specifications of the detailed site plan provided by the supplier, those expenses will be assessed to the supplier.
- e. Unless specified otherwise in the supplier's proposal, the Postal Service will be responsible for purchasing, installation, and maintenance of nonsupplier communication media necessary for the remote transmission of data.
- f. The supplier must inspect the site and furnish the Postal Service an inspection report 15 days before the scheduled installation.

**Clause 4-13 Software License Warranty and Indemnification  
(March 2006)**

- a. The supplier warrants that it has full power and authority to grant the rights contained in this contract with respect to the software without the consent of any other person. Neither the performance of the services by the supplier nor the license to and use by the Postal Service of the software and documentation (including copying) will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party.
- b. The supplier indemnifies and holds harmless (including reasonable attorney's fees) the Postal Service and its employees or agents against all liability to third parties arising from the negligence of the supplier or its agents and the license to or use by the Postal Service of the software, including but not limited to the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with the licensing of the software. The Postal Service may, at this option, conduct the defense in any third-party action, and the supplier promises fully to cooperate with this defense. This indemnification is limited to the software delivered to the Postal Service or as modified by the supplier, and does not cover third-party claims arising from modifications by the Postal Service not authorized by the supplier.

- c. If a third-party claim causes the Postal Service's quiet enjoyment and use of the software to be seriously endangered or disrupted, the supplier must either:
  - (1) Replace the software, without additional charge, by a compatible, functionally equivalent, and noninfringing product;
  - (2) Modify the software to avoid the infringement;
  - (3) Obtain a license for the Postal Service to continue use of the software for the term of this contract, and pay for any additional fee required for the license; or
  - (4) If none of these alternatives is possible even after the supplier's best efforts, return a pro rata portion of the license, or ten years, whichever is less.

#### **Clause 4-14 Software Development Warranty (March 2006)**

If at any time during the 12-month period immediately following acceptance, the supplier or the Postal Service discovers defects or errors in the software or any respect in which the software fails to conform to the provisions of any other warranty contained in this contract, the supplier must, entirely at its own expense, promptly correct the defects, errors, or nonconformity by, among other things, supplying the Postal Service with corrective codes and making additions, modification, or adjustments to the package as may be necessary to keep the software in operating order in conformity with the warranties in this contract.

#### **Clause 4-15 Warranty Exclusion and Limitation of Damages (March 2006)**

- a. Except as specifically provided in this contract, there are no warranties express or implied. In no event will the supplier be liable to the Postal Service for consequential damages, which are defined as:
  - (1) Any loss resulting from general or particular requirements and needs known to the supplier at the time of contracting that could not reasonably be prevented by cover or otherwise; and
  - (2) Injury to person or property in proximity resulting from any breach of warranty.
- b. The provisions of this clause do not apply to the supplier's obligation to indemnify the Postal Service from third-party claims.

#### **Clause 4-16 Substitution of Information Technology (March 2006)**

This clause acknowledges that some of the contracted for equipment may not be readily available or may permanently go out of production. Based on the authority of this clause, the supplier may request a one-time or permanent substitution of one or more contract line items. Such requests must be made in writing to the contracting officer, with a copy to the COR.

The following conditions must be met:

- a. The replacement item(s) must meet or exceed all contract specifications that were applicable to the items being replaced.
- b. The replacement item(s) must be priced equal to, or less than, the item(s) being replaced.
- c. The replacement item(s) must be reviewed, and be determined to be acceptable by the Postal Service technical representative.
- d. The replacement item(s) must be approved in writing by the contracting officer and incorporated into the contract.

The supplier's request for a replacement may not exceed the required delivery time of any items. Upon formal acceptance of a replacement, the contracting officer may grant a day-to-day extension to the delivery schedule for the time the Postal Service took to approve the replacement. No extension may be granted in the case of unaccepted proposed replacements.

#### **Clause 4-17 Technology Enhancement (March 2006)**

- a. *Definitions*
  - (1) Enhancement, replacement, and upgrade are used interchangeably throughout this clause.
  - (2) Cost to performance ration is a form of comparative measurement and means the contracts costs of a given item or configuration per a quantifiable unit of performance or capability, such as (but not limited to) storage capacity (in megabytes), speed (in megahertz), energy consumption efficiency, etc.
- b. The supplier must propose technology enhancement of information technology equipment, firmware, or software configurations being provided under this contract whenever product lines of newer technology become available that may save money, improve performance, or save energy. All proposed upgrades must meet the following requirements:
  - (1) All mandatory requirements of the contract must continue to be met.
  - (2) Overall contract life cycle costs may not increase as a result of the upgrade.
  - (3) The proposed upgrade or enhancement will: (1) either afford a better cost to performance ration compared to existing contract offerings/configurations; or (2) at minimum, must result in at least equal operability, maintainability, reliability, and overall system performance while providing some additional benefit or advantage to the Postal Service.
  - (4) The replacement configuration proposal must be acceptable to the COR.

- c. As a minimum, the following information must be submitted by the supplier with each proposal:
  - (1) A description of the difference between the existing contract requirement and the proposed change along with the comparative advantages and disadvantages of each.
  - (2) Suggested contract requirements which should be changed if the proposed technology enhancement is adopted.
  - (3) A complete pricing proposal that evidences the commerciality of the pricing. (The price for the upgraded product, or configuration, can be no greater than the standard commercial price of the replacement product less a discount factor equal at least to the discount afforded the Postal Service in the supplier's final proposal for the original, taking into account the age of the original product in its life cycle.
  - (4) An evaluation of the proposed change's effect on collateral costs, costs of related items, and costs of maintenance and operation.
  - (5) Timing as to when the modification adopting the technology enhancement must be issued to ensure the maximum benefit to the Postal Service.
  - (6) Identify any effect on the contract completion or delivery schedule.
  - (7) Any other information that may be required by the contracting officer.
- d. Technology enhancements, as contemplated by this clause, will not be added to the contract except by written, bilateral modification to the contract.
- e. The decision by the contracting officer to accept or reject any proposal under this contract is final and not subject to the *Disputes* clause.

**Clause 4-18 Information Technology Accessibility Standards  
(March 2006)**

- a. Information technology purchased under this contract or order must conform to the applicable provisions of the Architectural and Transportation Barriers Compliance Board's Electronic and Information Technology Accessibility Standards (36 CFR part 1194) at the time of delivery, except when the contracting officer has advised that compliance is not required.
- b. At the time of delivery, the supplier must provide documentation of the commercial availability of accessibility features incorporating the standards of the applicable provisions of 36 CFR part 1194 for the commercial off-the-shelf products ordered under this contract.

**Clause 4-19 Application Information Security Requirements  
(August 2008)**

The Postal Service is committed to creating and maintaining an environment that protects Postal Service application systems from accidental or intentional unauthorized use, modification, disclosure, or destruction. Handbook AS-805, *Information Security*, establishes Postal Service information security policies. Handbook AS-805-A, *Application Information Security Assurance (ISA) Process*, provides the process for identifying the sensitivity and criticality of the application system, determining information security requirements for protecting the application system, and ensuring appropriate, cost-effective information security controls, mechanisms, and procedures are implemented to protect the application system. If the supplier has not already performed the following, it must, following contract award and before beginning contract performance:

- Comply with the policies delineated in Handbook AS-805, *Information Security*, and processes defined in Handbook AS-805-A, *Application Information Security Assurance (ISA) Process*.
- Cooperate with the Postal Service in completing the application Business Impact Assessment (BIA) to identify the sensitivity and criticality of the application and to determine the information security requirements.
- Include and comply with the information security requirements generated by the BIA and included in the contract or agreement.
- Coordinate ISA activities with the Postal Service's Corporate Information Security Office (CISO).
- Complete ISA templates and provide applicable documentation and deliverables to the CISO.

Supplier(s) are responsible for mitigating all security vulnerabilities identified from site security reviews conducted by the Postal Service Inspection Service and CISO, or audits conducted by the Office of the Inspector General.

Postal Service data may not be stored outside of postal premises or placed onto laptops or other mobile media without the prior consent of the CO. Requests to store Postal Service data on laptops or other mobile media are sent to the CO. The CO will coordinate such requests with the CISO.

**Clause 5-1 Price Reduction for Defective Cost or Pricing Data  
(March 2006)**

- a. If any price, including profit or fee, negotiated in connection with this contract, or modification to this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
  - (1) The supplier or subcontractor furnished cost or pricing data that were not complete, accurate, and current as of the date of the final agreement on price;



- (2) A subcontractor or prospective subcontractor furnished the supplier cost or pricing data that were not complete, accurate, and current as of the date of final agreement on price; or
  - (3) Any of these parties furnished data of any description that were not accurate — then the price or cost will be reduced accordingly and the contract will be modified to reflect the reduction.
- b. Any reduction in the contract price under paragraph a above due to defective data from a prospective subcontractor that was not awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the supplier if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the supplier (provided that the actual subcontract price was not itself affected by defective cost or pricing data).

### **Clause 5-2 Subcontractor Cost or Pricing Data (March 2006)**

- a. Before awarding any subcontract or pricing any subcontract modification, the supplier must require the subcontractor to submit cost or pricing data whenever cost or pricing data are required by the Conduct Price/Cost Analysis topic of the Evaluate Proposals task of Process Sep 2: Evaluate Sources, of the Postal Service *Supplying Practices*.
- b. If the subcontractor is required to submit cost or pricing data under paragraph a above, then the supplier must insert the substance of this clause, including this paragraph b, in the subcontract.

### **Clause 5-3 Predetermined Indirect Cost Rates (March 2006)**

- a. Notwithstanding the *Allowable Cost and Payment* clause of this contract, allowable indirect costs under this contract will be determined by applying predetermined indirect cost rates established in accordance with Postal Service *Supplying Practices*.
- b. Predetermined rate agreements must be incorporated into the contract Schedule and must specify:
  - (1) The predetermined indirect cost rates;
  - (2) The bases to which the rates apply;
  - (3) The fiscal year (or other period) for which the rates apply; and
  - (4) The specific terms treated as direct costs or any changes in the items previously treated as direct costs.
- c. The predetermined indirect cost rate agreement may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.
- d. Allowable indirect costs for the period from the beginning of performance until the end of the supplier's fiscal year must be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

**Clause 6-1 Contracting Officer's Representative (March 2006)**

The contracting officer will appoint a contracting officer's representative (COR), responsible for the day-to-day administration of the contract, who will serve as the Postal Service's point of contact with the supplier on all routine matters. A copy of the notice of appointment defining the COR's authority will be furnished to the supplier upon award of the contract.

**Clause 7-1 Patent Infringement Bond Requirements (March 2006)**

The supplier may be required to submit a patent infringement bond in a penal amount set by the contracting officer and in a form acceptable to the Postal Service. Failure to submit an acceptable bond may be cause for termination of the contract for default.

**Clause 7-2 Additional Bond Security (March 2006)**

If any surety furnishing a bond in connection with this contract becomes unacceptable to the Postal Service or fails to furnish reports on its financial condition as requested by the contracting officer, or if the contract price increases to the point where the security furnished becomes inadequate in the contracting officer's opinion, the supplier must promptly furnish additional security as required to protect the interests of the Postal Service and of persons supplying labor or materials in performance of this contract.

**Clause 7-3 Deposit of Assets Instead of Surety Bonds (March 2006)**

- a. If the supplier has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the supplier's benefit.
- b. Upon contract completion, the supplier's funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the Postal Service for costs it incurs as a result of the supplier's delay, default, or failure to perform. In such a case, the entire account will be available to compensate the Postal Service.

**Clause 7-4 Insurance (March 2006)**

- a. During the term of this contract and any extension, the supplier must maintain at its own expense the insurance required by this clause. Insurance companies must be acceptable to the Postal Service. Policies must include all terms and provisions required by the Postal Service.

- b. The supplier must maintain and furnish evidence of workers' compensation, employers' liability insurance, and the following general public liability and automobile liability insurance:

	<b>Bodily Injury</b>	<b>Property Damage</b>
<b>General Liability</b>	\$100,000 per person*	Per occurrence (as set forth in the Schedule)
	\$500,000 per accident*	Aggregate (as set forth in the Schedule)
<b>Automobile Liability</b>	\$100,000 per person*	\$100,000 per occurrence
	\$500,000 per accident*	\$100,000 aggregate*

\*Unless modified in the Schedule

- c. Each policy must include substantially the following provision: "It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy."
- d. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.
- e. The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be ground for termination for default.

**Clause 7-5 Errors and Omissions (March 2006)**

- a. The supplier warrants that it is insured for \$200,000 (unless a greater amount is set forth in the Schedule) for errors and omissions per claim in the performance of this contract.

- b. Unless the supplier's policy is prepaid, noncancelable, and issued for a period at least equal to the term of this contract on an occurrence basis, the supplier must have the policy amended to include substantially the following provision:  
 "It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy."
- c. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.

**Clause 7-6 Federal, State, and Local Taxes (March 2006)**

- a. *Definitions*
  - (1) *Contract Date.* The effective date of this contract or modification.
  - (2) *All Applicable Federal, State, and Local Taxes and Duties.* All taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
  - (3) *After-imposed Federal Tax.* Any new or increased federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption is revoked or reduced during the contract period, on the transactions or property covered by this contract that the supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.
  - (4) *After-relieved Federal Tax.* Any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (5) *Local Taxes.* Includes taxes imposed by a possession of the United States or by Puerto Rico.
- b. The contract price includes all applicable federal, state, and local taxes and duties.
- c. The contract price will be increased by the amount of any after-imposed federal tax, provided the supplier warrants in writing that no amount for a newly imposed federal excise tax or duty or rate increase was included in the contract price as contingency reserve or otherwise.
- d. The contract price will be decreased by the amount of any after-relieved federal tax.

- e. The contract price will be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
- f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
- g. The supplier must promptly notify the contracting officer of all matters relating to any federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and must take appropriate action as the contracting officer directs.
- h. The Postal Service will, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests such evidence and a reasonable basis exists to sustain the exemption.

**Clause 7-7 Federal, State, and Local Taxes (Short Form) (March 2006)**

Except as this contract may otherwise provide, the contract price includes all applicable federal, state, and local taxes and duties in effect on the contract date but does not include any taxes from which the Postal Service, the supplier, or this transaction is exempt. Upon request of the supplier, the Postal Service must furnish a tax exemption certificate or similar evidence of exemption from any tax not included in the contract price. Contract date means the date of the supplier's proposal or quotation, or, if no proposal or quotation, the date of this purchase order.

**Clause 7-8 Federal, State, and Local Taxes (Noncompetitive Contract) (March 2006)**

- a. *Definitions*
  - (1) *Contract Date.* The effective date of this contract or modification.
  - (2) *All Applicable Federal, State, and Local Taxes and Duties.* All taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
  - (3) *After-imposed Tax.* Any new or increased federal, state or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (4) *After-relieved Tax.* Any amount of federal, state, or local tax or duty, other than excepted tax, that would otherwise have been payable on the transactions or property covered by this contract,

- but which the supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (5) *Excepted Tax.* Social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. Excepted tax does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the supplier's possession of, interest in, or use of property to which the Postal Service has title.
  - (6) *Local Taxes.* Includes taxes imposed by a possession of the United States or by Puerto Rico.
- b. Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.
  - c. The contract price will be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract, that the supplier is required to pay or bear, including any interest or penalty, if the supplier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
  - d. The contract price will be decreased by the amount of any after-relieved tax. The Postal Service will be entitled to interest received by the supplier incident to a refund of taxes, to the extent that such interest was earned after the supplier was paid by the Postal Service for such taxes. The Postal Service will be entitled to repayment of any penalty refunded to the supplier, to the extent that the penalty was paid by the Postal Service.
  - e. The contract price will be decreased by the amount of any federal, state, or local tax, other than exempted tax, that was included in the contract price and that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
  - f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
  - g. The supplier must promptly notify the contracting officer of all matters relating to any federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price, and the supplier must take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the supplier at the direction of the contracting officer, including any interest, penalty, and reasonable attorney's fees.

- h. The Postal Service will furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests an exemption and states in writing that it applies to a tax excluded from the contract price, and a reasonable basis for the exemption exists.

**Clause 7-9 State and Local Taxes (Indefinite Delivery Equipment Rental) (March 2006)**

Notwithstanding the terms of the *Federal, State, and Local Taxes* clause of this contract, the contract price excludes all state and local taxes levied on or measured by the supplier or rental price of leased equipment furnished under this contract. The supplier will state separately on its invoices any such taxes levied and paid, and the Postal Service agrees either to reimburse the supplier for the amounts of taxes paid or provide evidence necessary to sustain an exemption.

**Clause 8-1 Patent Rights (March 2006)**

a. *Definitions Used in This Clause*

- (1) *Subject Invention.* Any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term includes, but is not limited to, any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, that is or may be patentable under the patent laws of the United States of America or any foreign country.
- (2) *Postal Service Purposes.* The right of the Postal Service to practice and have practiced (make or have made, use or have used, sell or have sold) any subject invention throughout the world by or on behalf of the U.S. Postal Service.
- (3) *Contract.* Any contract, agreement, or other agreement or subcontract entered into, with, or for the benefit of the Postal Service.
- (4) *Subcontract and Subcontractor.* Any subcontract or subcontractor of the supplier under this contract and any lower-tier subcontract or subcontractor under the contract.
- (5) *To Bring the Invention to the Point of Practical Application.* To manufacture (in the case of a composition or product), practice (in the case of a process), or operate (in the case of a machine or system) under such conditions as to establish that the invention works and that its benefits are reasonably accessible to the public.

- b. *Rights Granted to the Postal Service.* The supplier agrees to grant the Postal Service title in and to each subject invention. Nothing contained in this *Patent Rights* clause grants any rights with respect to any invention other than a subject invention.
- c. *Subject Invention Disclosure and Reports*
  - (1) With respect to subject inventions, the supplier must furnish the contracting officer the items described in (a) through (b) below:
    - (a) A written disclosure of each invention promptly after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete in technical detail to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and (to the extent known) the physical, chemical, or electrical characteristics of the invention. When unable to submit a complete disclosure, the supplier must, within three months, submit a disclosure that includes all such technical detail then known; and unless the contracting officer authorizes a different period, submit all other technical detail necessary to complete the disclosure within three additional months.
    - (b) Before final settlement of this contract, a final report listing each invention, including all those previously listed, or certifying that there are no unreported inventions. (This final report and any interim report under (a) above must be in a form acceptable to the contracting officer.)
    - (c) Information in writing, as soon as practicable, of the date and identity of any (1) public use, sale, or publication of the invention made by or known to the supplier or (2) contemplated publication by the supplier.
    - (d) Upon request, any duly executed instruments and other papers (prepared by the Postal Service) necessary to (1) vest in the Postal Service the rights granted it under this clause and (2) enable the Postal Service to apply for and prosecute any patent application, in any country covering the invention, where the Postal Service has the right under this clause to file such an application.
    - (e) Upon request, an irrevocable power of attorney to inspect and make copies of each United States patent application filed by, or on behalf of, the supplier covering the invention.
  - (2) With respect to each subject invention in which the supplier has been granted rights, under license or otherwise, the supplier agrees to provide written reports at reasonable intervals, when requested by the Postal Service, as to:
    - (a) The commercial use being or intended to be made of the invention;
    - (b) Royalties payable to the Postal Service; and



- (c) The steps taken by the supplier to bring the invention to the point of practical application, or to make the invention available for licensing.
- d. *Subcontracts*
  - (1) The supplier must, unless otherwise authorized or directed by the contracting officer, include a patent rights clause containing all the provisions of this *Patent Rights* clause except paragraph g below in any subcontract where a purpose of the subcontract is the conduct of experimental, developmental, research, or engineering work. If a subcontractor refused to accept this clause, the supplier:
    - (a) Must promptly submit a written report to the contracting officer setting forth the subcontractor's reasons for the refusal and any other pertinent information that may expedite disposition of the matter; and
    - (b) May not proceed with the subcontract without the written authorization of the contracting officer. The supplier may not, in any subcontract, or by using subcontract as consideration thereof, acquire any rights to subject inventions for its own use (as distinguished from rights required to fulfill its contract obligations to the Postal Service in the performance of this contract). Reports, instruments, and other information required to be furnished by a subcontractor to the contracting officer under a patent rights clause in a subcontract may, upon mutual consent of the supplier and the subcontractor (or by direction of the contracting officer), be furnished to the supplier for transmission to the contracting officer.
  - (2) The supplier, at the earliest practicable date, must notify the contracting officer in writing of any subcontract containing a patent rights clause, furnish to the contracting officer a copy of the subcontract, and notify the contracting officer when the subcontract is completed. The Postal Service is a third-party beneficiary of any subcontract granting rights to the Postal Service in subject inventions, and the supplier hereby assigns to the Postal Service all the rights that the supplier would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. the supplier is not obligated to enforce the agreements of any subcontractor relating to the obligation of the subcontractor to the Postal Service regarding subject inventions.
- e. *Domestic Filing of Patent Applications by Supplier*
  - (1) If, pursuant to paragraph h below, greater rights are granted in a subject invention to the extent that the supplier may claim the invention, the supplier must file in due form and within six months of the granting of these rights a United States patent application claiming the invention and furnish, as soon as practicable, the serial number and filing date of the application and the patent

- number of any resulting patent. As to each invention in which the supplier has been given greater rights, the supplier must notify the contracting officer at the end of six-month period if it has failed to file or cause to be filed a patent application covering the invention. If the supplier has filed or caused to be filed such an application within the six-month period, but elects not to continue prosecution of the application, it must notify the contracting officer not less than 60 days before the expiration of the response period. In either of these situations, the supplier forfeits all rights previously granted.
- (2) The following statement must be included in the first paragraph of any patent application filed or patent issued on an invention made under a Postal Service contract or a subcontract under a Postal Service contract: "The invention herein described was made in the course of or under a contract or subcontract thereunder with the United States Postal Service."
- f. *Foreign Filing of Patent Applications*
- (1) If the supplier acquires greater rights in a subject invention and has filed a United States patent application claiming the invention, the supplier, or any party other than the Postal Service deriving rights from the supplier, has the exclusive rights, subject to the rights of the Postal Service, to file applications on the inventions in each foreign country within:
- (a) Six months from the date a corresponding United States patent application is filed; or
- (b) Such longer period as the contracting officer may approve.
- (2) The supplier must notify the contracting officer of each foreign application filed and, upon written request of the contracting officer, furnish an English translation of the application and convey to the Postal Service the entire right title and interest in the invention in each foreign country in which an application has not been filed within the time specified in subparagraph f.1. preceding.
- g. *Withholding Payment*
- (1) Final payment under this contract will not be made until the supplier delivers to the contracting officer the reports required by paragraph c above and all information as to subcontracts required by paragraph d above.
- (2) If action is deemed warranted because of the supplier's performance under the *Patent Rights* clause of this contract or of other Postal Service contracts, the contracting officer may withhold from payment such sum as considered appropriate, not exceeding \$50,000, or ten percent of the amount of this contract, whichever is less, to be held as a reserve until the supplier delivers all the reports, disclosures, and information specified in paragraph c above.

- h. *Supplier's Request for Greater Rights.* The supplier, at the time of first disclosing a subject invention pursuant to paragraph c.1(a) above, but not later than three months thereafter, may submit in writing to the contracting officer a request for rights by license or otherwise in any invention. The contracting officer will review the supplier's request for rights and will notify the supplier whether it is granted in whole or in part. Any rights granted the supplier will be subject to, but not necessarily limited to, the provisions of paragraph i following.
- i. *Reservation of Rights to the Postal Service*
  - (1) If rights in any subject invention are vested in or granted to the supplier, such rights will, as a minimum, be subject to an irrevocable, nonexclusive, and royalty-free license to practice and have practiced the invention throughout the world for Postal Service purposes, including its practice:
    - (a) In the manufacture, use, and disposition of any article or material;
    - (b) In the use of any method; or
    - (c) In the performance of any service, acquired by or for the Postal Service or with funds otherwise derived through the Postal Service.
  - (2) If rights are vested in the supplier, the supplier agrees to, and grants to the Postal Service the rights to, require the granting of a license to an applicant under any such invention:
    - (a) On a nonexclusive basis, unless the supplier, a licensee, or an assignee demonstrates to the Postal Service, at its request, that (1) effective steps have been taken within 3 years after a patent issues on the invention to bring the invention to the point of practical application or (2) the invention has been made available for licensing on terms that are reasonable in the circumstances, or can show cause why the title should be retained for a further period of time; or
    - (b) On terms that are reasonable in the circumstances to the extent that the invention is required for public use by Postal Service regulations or as may be necessary to fulfill health needs, or for other public purposes stipulated in the Schedule of this contract.
- j. *Right to Disclose Subject Inventions.* The Postal Service may duplicate and disclose reports and disclosures of subject inventions required to be furnished by the supplier pursuant to this *Patent Rights* clause.
- k. *Forfeiture of Rights in Unreported Subject Inventions.* The supplier forfeits to the Postal Service all rights in any subject invention that it fails to report to the contracting officer when or before it:
  - (1) Files or causes to be filed a United States or foreign application thereon; or

- (2) Submits the final report required by c.1(b) above, whichever occurs later, provided, that the supplier will not forfeit rights in a subject invention if:
  - (a) Contending that the invention is not a subject invention, it nevertheless reports the invention and the facts pertinent to its contention to the contracting officer within the time specified in k.1 or k.2 above; or
  - (b) It establishes that failure to report was due entirely to causes beyond its control and without its fault or negligence. The supplier is deemed to hold any such forfeited subject invention, and the patent applications and patents pertaining to it, in trust for the Postal Service pending written assignment of the invention. The rights accruing to the Postal Service under this paragraph k are in addition to, and do not supersede, any other rights the Postal Service may have in relation to unreported subject inventions. Nothing contained in this clause may be construed to require the supplier to report any invention that is not in fact a subject invention.
- I. *Examination of Records Relating to Inventions.* The contracting officer, or an authorized representative, until the expiration of 3 years after final payment under this contract, has the right to examine any books, records, documents, and other supporting data of the supplier that the contracting officer or authorized representative reasonably deems directly pertinent to the discovery or identification of subject inventions or to compliance by the supplier with the requirements of this clause.

**Clause 8-2 Authorization and Consent (March 2006)**

- a. *Research and Development Work.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in the performance of research, development, or experimental work called for, or performed as a necessary activity, in the performance of this contract or any subcontract, at any tier.
- b. *Supplies and Construction.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in performing this contract or subcontract, at any tier, that is:
  - (1) Embodied in the structure or composition of any article, the delivery of which is accepted by the Postal Service under this contract; or
  - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the supplier or subcontractor with (a) specifications or written provisions forming a part of this contract or specific written instructions given by the contracting officer directing the manner of performance.

- c. *Determination of Liability.* The liability of the Postal Service for patent infringement or for the unauthorized use of any patent will be determined by the provisions of any patent indemnity clause included in this contract or in any subcontract under this contract (at any tier) and by any indemnification or warranty (express or implied) otherwise provided by the supplier or subcontractor for similar products or services when supplied to commercial buyers.
- d. *Flowdown.* The supplier must include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts under this contract at any tier that are expected to exceed \$50,000.

**Clause 8-3 Notice and Assistance Regarding Patent and Copyright Infringement (March 2006)**

- a. The supplier must report to the contracting officer, in writing, promptly and in reasonable detail, any notice, claim, or suit regarding patent or copyright infringement (or unauthorized use of a patent or copyright) based on performance of this contract.
- b. At the contracting officer's request, the supplier must furnish all evidence and information in its possession pertaining to the suit or claim. The evidence and information will be furnished at the expense of the Postal Service except when the supplier has agreed to indemnify the Postal Service.
- c. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-4 Patent Indemnity (March 2006)**

- a. Except as provided in paragraph d below, the supplier indemnifies the Postal Service, its employees, and its agents against liability, including costs and fees, for patent infringement (or unauthorized use) arising from the manufacture, use, or delivery of supplies, the performance of service, the construction or alteration of real property, or the disposal of property by or for the Postal Service, if the supplies, service, or property (with or without relatively minor modifications) have been or are being offered for sale or use in the commercial marketplace by the supplier.
- b. The Postal Service must promptly notify the supplier of any claim or suit subject to the indemnity of paragraph a above alleging patent infringement or unauthorized use of a patent.
- c. To the extent allowed by law, the supplier may participate in the defense of any suit to which this clause applies.
- d. This indemnification does not apply to:
  - (1) Infringements for the unauthorized use of a private patent covered by this indemnity resulting from the contracting officer's specific written direction, compliance with which requires an infringement; or

- (2) Infringement or unauthorized use claims that are unreasonably settled without the supplier's consent before litigation.
- e. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-5 Waiver of Indemnity (March 2006)**

- a. The Postal Service authorized the making and use, solely in performing the contract, of any invention covered by the below listed patents and waives indemnification by the supplier solely with respect to these patents.
- b. The specific patents to which this waiver applies are as follows:  
*(Contracting officer list each patent.)*

**Clause 8-6 Rights in Technical Data (March 2006)**

- a. *Definitions*
  - (1) *Data.* Recorded information, regardless of the form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
  - (2) *Form, Fit, and Function Data.* Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
  - (3) *Limited Rights Data.* Data other than computer software developed at private expense, including minor modifications of these data.
  - (4) *Technical Data.* Data other than computer software, of a scientific or technical nature.
  - (5) *Unlimited Rights.* The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. *Allocation of Rights*

- (1) Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
  - (a) Technical data first produced in the performance of this contract (except to the extent that they constitute minor modifications of data that are limited rights data);
  - (b) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
  - (c) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
  - (d) All other technical data delivered under this contract, unless provided otherwise in paragraph g below.
- (2) The allocation of rights in any computer programs, data bases, and documentation will be determined by the *Rights in Computer Software* clause, except that limited rights data formatted as computer data bases for delivery to the Postal Service are to be treated as limited rights data under this *Rights in Technical Data* clause.

c. *Copyright*

- (1) Unless provided otherwise in paragraph d below, the supplier may establish, without prior approval of the contracting officer, claim to copyright in scientific and technical articles based on, or containing, technical data first produced in the performance of this contract and published in academic, technical, or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to establish claim to copyright in all other technical data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401 or 402. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
- (2) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in subparagraph c.1 above.

- (3) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this paragraph c, and to include such notices on all reproductions of the data.
- d. *Release, Publication, and Use of Technical Data*
- (1) The supplier has the right to use, release to others, reproduce, distribute, or publish any technical data first produced by the supplier in the performance of this contract, except to the extent these data may be subject to the federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph d.2 following or expressly set forth in this contract.
  - (2) The supplier agrees that if it receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.
- e. *Unauthorized Marking of Data*
- (1) If any technical data delivered under this contract are marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the data bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of a final disposition of the matter by a court of competent jurisdiction.



- f. *Omitted or Incorrect Markings*
- (1) Technical data delivered to the Postal Service without limited rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data, permission to have notices placed on qualifying technical data at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Indemnifies the technical data to which the omitted notice is to be applied;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and
    - (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data made before the addition of the notice or resulting from the omission of the notice.
  - (2) The contracting officer may also (a) permit correction at the supplier's expense of incorrect notices if the supplier identifies the technical data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Limited Rights Data.* When technical data other than data listed in b.1(a), (b), and (c) above are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs e and f above, in accordance with the Notice:

LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

- (1) Use (except for manufacture) by support service suppliers.
- (2) Evaluation by Postal Service evaluators.

- (3) Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.
- (4) Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part.

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the supplier's obligations under the contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

#### **Clause 8-7 Withholding Payment (Technical Data and Computer Software) (March 2006)**

- a. Final payment under this contract will not be made until the supplier delivers all data (technical data and computer software) required by the contract.
- b. If the contracting officer determines at any time that the supplier is not in full compliance with contract requirements for the delivery or, and rights in, any technical data or computer software, the contracting officer may withhold from payment up to \$50,000 as security for the supplier's performance. Withholding may not be made if the failure to make timely delivery or the deficiencies relating to delivered data arise out of causes beyond the control of the supplier and without fault or negligence of the supplier.
- c. Any amount withheld under this clause not finally paid to the supplier is mitigation of damages and in no way affects the right of the Postal Service to collect actual damages for breach of this contract, including profits from exploitation of any rights in data.
- d. Nonperformance by a subcontractor does not excuse any failure to comply with this clause.

#### **Clause 8-8 Additional Data Requirements (March 2006)**

- a. In addition to the data specified elsewhere in this contract to be delivered, the contracting officer may, at any time during contract performance or within a period of 3 years after acceptance of all items

to be delivered under this contract, order any first generated or produced in the performance of this contract.

- b. The *Rights in Technical Data* and the *Rights in Computer Software* clauses, or other equivalent data clauses if included in this contract, apply to all data ordered under this *Additional Data Requirements* clause. Nothing in this clause requires the supplier to deliver any data specifically identified in this contract as not subject to this clause.
- c. When data are to be delivered under this clause, the supplier will be compensated for converting the data into the prescribed form for reproduction and delivery.
- d. The contracting officer may release the supplier from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph a above.

### **Clause 8-9 Rights in Computer Software (March 2006)**

- a. *Definitions*
  - (1) *Computer Software*. Computer programs, computer data bases, and their documentation.
  - (2) *Form, Fit, and Function Data*. Data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
  - (3) *Restricted Computer Software*. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
  - (4) *Restricted Rights*. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph g below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
  - (5) *Unlimited Rights*. The rights of the Postal Service in computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b. *Allocation of Rights*. Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
  - (1) Computer software first produced in the performance of this contract (except to the extent that it constitutes minor modifications of computer software that is restricted computer software);

- (2) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
  - (3) All other computer software delivered under this contract, except for restricted computer software provided in accordance with paragraph g below.
- c. *Copyright*
- (1)
    - (a) The prior, express written permission of the contracting officer is required to establish claim to copyright in all computer software or other data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform and display the computer software and other data publicly.
    - (b) If the Postal Service desires to obtain copyright in the computer software first produced in the performance of the contract and permission has not been granted pursuant to c.1(a) above, the contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the computer software and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
  - (2) The supplier may not, without prior written permission of the contracting officer, incorporate in computer software delivered under this contract any computer software not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401, unless the supplier identifies the computer software and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in c.1.(a) above or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
  - (3) The Postal Service agrees not to remove the supplier's copyright notice placed on computer software pursuant to this paragraph c, and to include such notices on all reproduction of the computer software.
- d. *Release, Publication, and Use of Computer Software*
- (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any computer software first produced by the supplier in the performance of the contract.

- (2) The supplier agrees that to the extent it receives or is given access to computer software necessary for the performance of this contract that contains restrictive markings, the supplier will treat the computer software in accordance with these markings unless otherwise specifically authorized in writing by the contracting officer.
- e. *Unauthorized Marking of Computer Software*
- (1) If any computer software delivered under this contract is marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the computer software bears any other unauthorized restrictive markings, the contracting officer may at any time either return the computer software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on computer software, unless this action occurs as a result of a final disposition of the matter by a court of competent jurisdiction.
- f. *Omitted or Incorrect Markings*
- (1) Computer software delivered to the Postal Service without the restricted rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclose, use or reproduction of such computer software. However, the extent the computer software has not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the computer software, permission to have notices placed on qualifying computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Identifies the computer software involved;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and

- (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such computer software made before the addition of the notice or relisting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction, at the supplier's expense, of incorrect notices if the supplier identifies the computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Restricted Computer Software*
  - (1) When computer software other than that listed in subparagraphs b.1 and b.2 above is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, subject to paragraphs e and f above, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ and subcontract , if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- (b) This computer software may be:
  - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation at which the computer or computers may be transferred;
  - (ii) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup purposes;
  - (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
  - (v) Disclosed to and reproduced for use by support service suppliers in accordance with i through iv above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  - (vi) Used or copied for use in or transferred to a replacement computer.

- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.
  - (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - (e) This Notice must be marked on any reproduction of this computer software, in whole or in part.
- (2) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service's rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

**RESTRICTED RIGHTS NOTICE (SHORT FORM)**

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with

\_\_\_\_\_ (Name of supplier and subcontractor)."

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and rights in it necessary to fulfill the supplier's obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.

**Clause 8-10 Rights in Data — Special Works (March 2006)**

- a. *Definition.* Works means literary works, including technical reports, studies, and similar documents; musical and dramatic works; and recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract

administration, such as financial, administrative, cost or pricing, or management information.

b. *Rights*

- (1) All works first produced in the performance of this contract are the sole property of the Postal Service. The supplier agrees not to assert or authorize others to assert any rights or establish any claim of copyright in these works.
- (2) The supplier assigns all right, title, and interest to the Postal Service in all works first produced in performance of this contract that are not otherwise “works for hire” for the Postal Service under Section 201(b) of Title 17, United States Code. The supplier, unless directed otherwise by the contracting officer, must place on all such works delivered under this contract the following notice:

“Copyright (year of delivery) United States Postal Service”

- (3) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of a work that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the work finished under this contract, and to authorize others to do so for Postal Service purposes.
- (4) Unless the contracting officer’s written approval is obtained, the supplier may not include in any works prepared for or delivered to the Postal Service under this contract any works of authorship in which copyright is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.3 above.
- (5) Except as otherwise specifically provided for in this contract, the supplier may not use for purposes other than the performance of this contract, or release, reproduce, distribute, or publish, any work first produced in the performance of this contract, or authorize others to do so.

c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. These provision do not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.



**Clause 8-11 Rights in Data — Existing Works (March 2006)**

- a. Except as otherwise provided in this contract, the supplier grants to the Postal Service, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, and perform and display publicly all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.
- b. The supplier indemnifies the Postal Service, its employees, and its agents against any liability, including costs and fees, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. This paragraph b does not apply unless the Postal Service notifies the supplier as soon as practicable of any claim or suit, affords the supplier an opportunity under applicable laws or regulations to participate in the defense of it, and obtains the supplier's consent to its settlement (which consent may not be unreasonably withheld). These provisions do not apply to material furnished to the supplier by the Postal Service and incorporated in data to which this clause applies.

**Clause 8-12 Refund of Royalties (March 2006)**

If for any reason before final payment is made on this contract, the supplier does not have to pay part or all of the royalties anticipated, or receives a refund of any royalties paid, the Postal Service must be given a credit equal to the amount not paid or refunded, if the contract price was based on a contingency that the royalties would be payable or if the Postal Service, in fact, reimbursed the supplier for royalties. The credit must be applied to the first invoice submitted to the Postal Service after the supplier learns that the royalty is not payable or is refunded.

**Clause 8-13 Intellectual Property Rights (March 2006)**

All intellectual property rights evolving from studies, reports, or other data delivered under this contract are the sole property of the Postal Service. The supplier agrees to make, execute, and deliver to the Postal Service any papers or other instruments in such terms and contents as may be required for the filing of any required instrument necessary for preserving an intellectual property right and does hereby assign and transfer to the Postal Service the entire right, title, and interest in and to the intellectual property rights. Before final settlement of this contract, a final report must be submitted on Form 7398, *Report of Inventions and Subcontracts*, or other format acceptable to the contracting officer.

**Clause 8-14 Acquisition of Additional Rights in Data (March 2006)**

- a. *Unlimited Rights.* The supplier grants the Postal Service unlimited rights in all data (technical data and computer software) listed in the Schedule as falling within this clause's unlimited rights provisions. The rights of the parties to these data are governed by the *Rights in Technical Data* clause of this contract with regard to technical data, and the *Rights in Computer Software* clause of this contract with regard to computer software.
- b. *Directed License Rights*
  - (1) At the contracting officer's direction, the supplier must license other firms or organizations to use all data (technical data and computer software) listed in the Schedule as falling within this clause's directed license rights provisions, for the purpose of performing Postal Service contracts. If necessary, the supplier will provide a reasonable amount of technical assistance to these firms or organizations to enable them to use the data to perform Postal Service contracts. The contracting officer will direct that licenses and technical assistance agreements be given under this clause only to firms and organizations competent to perform the specific Postal Service contracts to which the direction applies.
  - (2) Upon entering into licenses under this clause, the supplier may restrict the use of the data for all other purposes, and may include any other provisions for trade secret or copyrighted material restrictions that are normally found in commercial licenses. Subject to the contracting officer's approval, the license may provide for payment of reasonable amounts for use of the data, in the form of a lump-sum payment, royalties, or both. The contracting officer will withhold approval of the payment only if it is at variance with normal commercial practice.
  - (3) Subject to the contracting officer's approval, any technical assistance agreement under this clause will provide for full compensation of the supplier's costs of providing the assistance, plus a reasonable profit. The contracting officer will withhold approval of the profit only if it is at variance with normal commercial practice.
- c. *Other Rights.* Any specific rights other than the unlimited rights or directed license rights treated in paragraphs a and b above are as set forth in the Schedule.

**Clause 8-15 Patent Rights — Supplier Retention (March 2006)**

- a. *Definitions*
  - (1) "Subject Invention" means any invention or discovery of the supplier conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of

plant, which is or may be patentable under the patent laws of the United States of America or any foreign country.

- (2) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Postal Service where a purpose of the contract is the conduct of experimental, developmental, or research work.
- (3) "States and Domestic Municipal Governments" means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.
- (4) "To Bring to the Point of Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

b. *Allocation of Principal Rights*

- (1) The supplier may retain the entire right, title, and interest throughout the world or any country thereof in and to each subject invention disclosed pursuant to paragraph e.2.(a) of this clause, subject to the rights obtained by the Postal Service in paragraph c of this clause. The supplier must include with each subject invention disclosure an election as to whether he will retain the entire right, title, and interest in the invention throughout the world or any country thereof.
- (2) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire domestic right, title, and interest in any subject invention when the supplier:
  - (a) Does not elect under paragraph b.1 of this clause to retain such rights; or
  - (b) Fails to have a United States patent application filed on the invention in accordance with paragraph j of this clause, or decides not to continue prosecution of such application; or
  - (c) At any time, no longer desires to retain title.
- (3) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire right, title, and interest in any subject invention in any foreign country when the supplier:
  - (a) Does not elect under paragraph b.1 of this clause to retain such rights in the country; or
  - (b) Fails to have a patent application filed in the country on the invention in accordance with paragraph k of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the supplier must notify

the contracting officer not less than 60 days before the expiration period for any action required by the foreign patent office.

- (4) A conveyance, requested pursuant to paragraph b.2 or b.3 of this clause, must be made by delivering to the contracting officer duly executed instruments (prepared by the Postal Service) and such other papers as are deemed necessary to vest in the Postal Service the entire right, title and interest to enable the Postal Service to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of such invention.
- c. *Minimum Rights Acquired by the Postal Service.* With respect to each subject invention to which the supplier retains principal or exclusive rights, the supplier:
- (1) Hereby grants to the Postal Service a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by or on behalf of the Postal Service;
  - (2) Agrees to grant to responsible applicants, upon request of the Postal Service, a license on terms that are reasonable under the circumstances;
    - (a) Unless the supplier, his licensee, or his assignee, demonstrates to the Postal Service that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time, or
    - (b) To the extent that the invention is required for public use by governmental regulations or for other public purposes stipulated in this contract.
  - (3) Must submit written reports at reasonable intervals, upon request of the Postal Service during the term of the patent on the subject invention regarding:
    - (a) The commercial use that is being made or is intended to be made of such invention; and
    - (b) The steps taken by the supplier or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing.
  - (4) Agrees to arrange, when licensing any subject inventions, to avoid royalty charges on purchases involving the Postal Service and to refund any amounts received as royalty charges on any subject invention in purchases for, or on behalf of, the Postal Service and to provide for such refund in any instrument transferring rights in such invention to any party; and

- (5) Agrees to provide for the Postal Service's paid-up license pursuant to paragraph c.1 of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by c.2 of this clause, and for the reporting of utilization information as required by paragraph c.3 of this clause whenever the instrument transfers principal or exclusive rights in any subject invention.
  - (a) Nothing contained in this paragraph c will be deemed to grant to the Postal Service any rights with respect to any invention other than a subject invention.
- d. *Minimum Rights to the Supplier*
  - (1) The supplier reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Postal Service acquires title. The license must extend to the supplier's domestic subsidiaries and affiliates, if any, within the corporate structure of which the supplier is a part and must include the right to grant sublicenses of the same scope to the extent the supplier was legally obligated to do so at the time the contract was awarded. The license must be transferable only with approval of the contracting officer, except when transferred to the successor of that part of the supplier's business to which the invention pertains.
  - (2) The supplier's domestic nonexclusive license retained pursuant to paragraph d.1 of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The license will not be revoked in that field of use and/or the geographical areas in which the supplier has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The supplier's nonexclusive license in any foreign country reserved pursuant to paragraph d.1 of this clause may be revoked or modified at the discretion of the contracting officer to the extent the supplier or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.
  - (3) Before modification or revocation of the license, pursuant to paragraph d.2 of this clause, the supplier will be given written notice of the intent to modify or revoke the license and will be allowed 30 days or such longer period as may be authorized by the contracting officer for good cause shown in writing by the supplier after such notice to show cause why the license should not be modified or revoked. The supplier will have the right to contest any decision concerning the modification or revocation of the license in accordance with the *Claims and Disputes* clause of this contract.

e. *Invention Identification, Disclosures and Reports*

- (1) The supplier must establish and maintain active and effective procedures to assure that subject inventions are promptly identified and timely disclosed. These procedures must include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, suppliers must furnish contracting officers a description of such procedures so that they may evaluate and determine their effectiveness.
- (2) The supplier must furnish the contracting officer:
  - (a) A complete technical disclosure for each subject invention, within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the supplier. The disclosure must identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
  - (b) Interim reports, preferably on PS Form 882, at least every twelve months from the date of the contract listing subject inventions during that period and certifying that:
    - (i) The supplier's procedures for identifying and disclosing subject inventions as required by this paragraph e have been followed throughout the reporting period; and
    - (ii) All subject inventions have been disclosed or that there are no such inventions; and
  - (c) A final report, preferably on PS Form 882, within three months after completion of the contract work, listing all subject inventions or certifying that there were no such inventions.
- (3) The supplier must obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.
- (4) The supplier agrees that the Postal Service may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

- f. *Forfeiture of Rights in Unreported Subject Inventions*
- (1) The supplier must forfeit to the Postal Service all rights in any subject invention which he fails to disclose to the contracting officer within six months after the time he:
    - (a) Files or causes to be filed a United States or foreign application thereon, or
    - (b) Submits the final report required by paragraph e.2.(c) of this clause.
  - (2) However, the supplier must not forfeit rights in a subject invention if, within the time specified in 1.(a) or 1.(b) of this paragraph f, the supplier:
    - (a) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or
    - (b) Contending that the invention is not a subject invention, he nevertheless discloses the invention and all facts pertinent to his contention to the contracting officer; or
    - (c) Establishes that the failure to disclose did not result from his fault or negligence.
  - (3) Pending written assignment of the patent applications and patents on a subject invention determined by the contracting officer to be forfeited (such determination to be a final decision under the *Claims and Disputes* clause), the supplier will be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Postal Service. The forfeiture provision of this paragraph f will be in addition to and must not supersede other rights and remedies which the Postal Service may have with respect to subject inventions.
- g. *Examination of Records Relating to Inventions*
- (1) The contracting officer or his authorized representative will, until the expiration of 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the supplier which the contracting officer reasonably deems pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.
  - (2) The contracting officer or his authorized representative will have the right to examine all books (including laboratory notebooks), records, and documents of the supplier relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are subject inventions if the supplier refuses or fails to:
    - (a) Establish the procedures of paragraph e.1 of this clause; or
    - (b) Maintain and follow such procedures; or

- (c) Correct or eliminate any material deficiency in the procedures within 30 days after the contracting officer notifies the supplier of such a deficiency.
- h. *Withholding of Payment (Not Applicable to Subcontracts)*
- (1) Any time before final payment of the amount of this contract, the contracting officer may, if he deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or five percent of the amount of this contract, whichever is less, will have been set aside if in his opinion the supplier fails to:
    - (a) Establish, maintain and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph e.1 of this clause; or
    - (b) Disclose any subject invention pursuant to paragraph e.2.(a) of this clause; or
    - (c) Deliver acceptable interim reports pursuant to paragraph e.2.(b) of this clause; or
    - (d) Provide the information regarding subcontracts pursuant to paragraph i.5 of this clause.
  - (2) Such reserve or balance will be withheld until the contracting officer has determined that the supplier has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
  - (3) Final payment under this contract will not be made before the supplier delivers to the contracting officer all disclosures of subject inventions required by paragraph e.2.(a) of this clause, an acceptable final report pursuant to e.2.(c) of this clause and all past due confirmatory instruments.
  - (4) The contracting officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the supplier is a nonprofit organization, the maximum amount that may be withheld under this paragraph will not exceed \$50,000 or one percent of the amount of this contract, whichever is less. No amount will be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof will not be construed as a waiver of any rights accruing to the government under this contract.
- i. *Subcontracts*
- (1) For the purpose of this paragraph, the term "supplier" means the party awarding a subcontract and the term "subcontractor" means the party being awarded a subcontract, regardless of tier.



- (2) The supplier must include this patent rights clause in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless directed by the contracting officer to include another particular clause. In the event of a refusal by a subcontractor to accept such clause, the supplier:
  - (a) Must promptly submit a written notice to the contracting officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and
  - (b) Must not proceed with the subcontract without the written authorization of the contracting officer.
- (3) The supplier must not, in any subcontract or by using a subcontract as consideration therefore, acquire any rights in his subcontractor's subject invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Postal Service in the performance of this contract).
- (4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the contracting officer under the provisions of a patent rights clause in any subcontract hereunder may, at the discretion of the contracting officer, be furnished to the supplier for transmission to the contracting officer.
- (5) The supplier must promptly notify the contracting officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the contracting officer, the supplier must furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report must be included in the final report submitted pursuant to paragraph e.2.(c) of this clause.
- (6) The supplier must identify all subject inventions of the subcontractor of which he acquires knowledge in the performance of this contract and must notify the contracting officer promptly upon the identification of the inventions.
- (7) It is understood that the Postal Service is a third party beneficiary of any subcontract clause granting rights to the Postal Service subject inventions, and the supplier hereby assigns to the Postal Service all rights that he would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. The supplier will not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Postal Service in regard to subject inventions.

j. *Filing of Domestic Patent Applications*

- (1) With respect to each subject invention in which the supplier elects to retain domestic rights pursuant to paragraph b of this clause, the supplier must have a domestic patent application filed within six months after submission of the invention disclosure pursuant to paragraph e.2.(a) of this clause, or such longer period as may be approved in writing by the contracting officer for good cause shown in writing by the supplier. With respect to such invention, the supplier must promptly notify the contracting officer of any decision not to file an application.
- (2) For each subject invention on which a patent application is filed by or on behalf of the supplier, the supplier must:
  - (a) Within two months after such filing, or within two months after submission of the invention disclosure if the patent application previously has been filed, deliver to the contracting officer a copy of the application as filed, including the filing date and serial number;
  - (b) Include the following statement in the second paragraph of the specification of the application and any patents issued on the subject invention:

“The U.S. Postal Service has rights in this invention pursuant to Contract No. \_\_\_\_\_”

- (c) Within six months after filing the application, or within six months after submitting the invention disclosure if the application has been filed previously, deliver to the contracting officer a duly executed and approved instrument on a form specified by the contracting officer fully confirmatory of all rights to which the Postal Service is entitled, and provide the Postal Service an irrevocable power to inspect and make copies of the patent application file;
  - (d) Provide the contracting officer with a copy of the patent within two months after a patent issues on the application; and
  - (e) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the contracting officer of any decision not to continue prosecution of the application and deliver to the contracting officer executed instruments granting the government a power of attorney.
- (3) For each subject invention in which the supplier initially elects not to retain principal domestic rights, the supplier must inform the contracting officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the supplier, or any contemplated action of this nature.

- k. *Filing of Foreign Patent Applications*
- (1) With respect to each subject invention in which the supplier elects to retain principal rights in a foreign country pursuant to paragraph b.1 of this clause, the supplier must have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:
    - (a) Eight months from the date of a corresponding United States application filed by or on behalf of the supplier, or if such an application is not filed, six months from the date the invention is submitted in a disclosure pursuant to paragraph e.2.(a) of this clause;
    - (b) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or
    - (c) Such longer period as may be approved in writing by the contracting officer.
  - (2) The supplier must notify the contracting officer promptly of each foreign application filed and, upon written request, must furnish an English version of such foreign application without additional compensation.

**Clause 8-16 Postal Service Title in Technical Data and Computer Software (March 2006)**

- a. *Definitions*
- (1) *Data*. Data means technical data including drawings, technical reports, studies, and similar documents; computer software and computer software documentation, including but not limited to source code, object code, algorithms, formulas, and, other data that describe design, function, operation, or capabilities, and other recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
  - (2) *Form, Fit, and Function Data*. Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

- (3) *Limited Rights Data.* Data other than computer software developed at private expense, including minor modifications of these data.
- (4) *Technical Data.* Data other than computer software, of a scientific or technical nature.
- (5) *Restricted Computer Software.* Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
- (6) *Restricted Rights.* The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph h below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
- (7) *Unlimited Rights.* The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. *Rights*

- (1) The Postal Service has title to all data first produced in the performance of this contract. Accordingly, the supplier assigns all rights, title, and interest to the Postal Service in all data first produced in performance of this contract. The supplier, unless directed otherwise by the contracting officer, must place on all such data delivered under this contract the following notice:

“This data is the confidential property of the U.S. Postal Service and may not be used, released, reproduced, distributed or published without the express written permission of the U.S. Postal Service.”

- (2) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of data that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the data furnished under this contract, and to authorize others to do so for Postal Service purposes.
- (3) Unless the contracting officer’s written approval is obtained, the supplier may not include in any data prepared for or delivered to the Postal Service under this contract any data which is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.2.

- c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. This provision does not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.
- d. *Additional Rights in Technical Data*
  - (1) Except as provided in paragraph b, the Postal Service has unlimited rights in:
    - (a) Form fit, and function data, including such data developed at private expense, delivered under this contract, and
    - (b) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract.
  - (2) *Copyright*
    - (a) The contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the technical data and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
    - (b) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 176 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
    - (c) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this section d, and to include such notices on all reproductions of the data.
- e. *Release, Publication, and Use of Technical Data and Computer Software*
  - (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any technical data or computer software first produced by the supplier in the performance of the contract.

- (2) The supplier agrees that if it receives or is given access to data or software necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data or software in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.
- f. *Unauthorized Marking of Data or Computer Software*
- (1) If any technical data or computer software delivered under this contract are marked with the notice specified in paragraph h and the use of such a notice is not authorized by this clause, or if the data or computer software bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on data or computer software, unless this action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.
- g. *Omitted or Incorrect Markings*
- (1) Technical data or computer software delivered to the Postal Service without the limited rights notice or restricted notice authorized by paragraph h, or the data rights notice required by paragraph b, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure, use, or reproduction of such data or computer software. However, to the extent the data or software have not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data or software, permission to have notices placed on qualifying technical data or computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Identifies the technical data or computer software to which the omitted notice is to be applied;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and

- (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data or software made before the addition of the notice or resulting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction of incorrect notices, at the supplier's expense, if the supplier identifies the technical data or computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.

h. *Protection of Rights*

- (1) *Protection of Limited Rights Data.* When technical data other than data listed in section d, above, are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs f and g above, in accordance with the Notice:

"LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

1. Use (except for manufacture) by support service suppliers.
2. Evaluation by Postal Service evaluators.
3. Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and in connection with the work performed under each contract.
4. Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part."

- (2) *Protection of Restricted Computer Software*
  - (a) When computer software is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, and

the Postal Service will thereafter treat the computer software, subject to paragraphs f and g above, in accordance with the Notice:

“RESTRICTED RIGHTS NOTICE

- a. This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- b. This computer software may be:
  1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation to which the computer or computers may be transferred;
  2. Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  3. Reproduced for safekeeping (archives) or backup purposes;
  4. Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
  5. Disclosed to and reproduced for use by support service suppliers in accordance with 1 through 4 above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  6. Used or copied for use in or transferred to a replacement computer.
- c. Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.
- d. Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.



- e. This Notice must be marked on any reproduction of this computer software, in whole or in part.”
- (b) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service’s rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

“RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with \_\_\_\_\_ (name of supplier and subcontractor).”

- i. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and technical data and the rights therein necessary to fulfill the supplier’s obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- j. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier’s standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.
- k. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

**Clause 8-17 Delivery of Limited Rights and Restricted Computer Software (March 2006)**

To the extent that the supplier has, in its proposal, identified pre-existing proprietary data or restricted computer software pursuant to the “Representation of Rights in Data” of the solicitation, the contracting officer, or a duly authorized representative, until the expiration of 3 years after final payment of this contract, will have the right to examine any books, records,

documents or other data supporting the supplier's claim(s) hereunder. Notwithstanding the supplier's rights and claims of, and the Postal Service's agreement to protect, pre-existing proprietary data or software, the Postal Service will have unlimited or unrestricted rights without additional supplier compensation, to any data or software identified above, that is:

- (1) Obtained independent of this contract;
- (2) In the public domain; or
- (3) Determined, subsequent to the effective date of this contract, to not have qualified as pre-existing data or software or a derivative of pre-existing data or software to which the supplier would have such proprietary rights.

### **Clause 8-18 Manufacture of Repair Parts (March 2006)**

In addition to the Postal Service rights specified in the "Limited Rights Notice" of the clause entitled "Rights in Technical Data" paragraph g, the Postal Service has the unilateral right to use competitive procedures to procure repair parts or assemblies for the equipment or supply items being developed under this contract. If the repair parts or assemblies have been identified as being subject to protection under "Limited Data Rights" or "Restricted Computer Software" provisions of this contract, the Postal Service will obtain a nondisclosure agreement from interested offerors prior to releasing any drawings, specifications or other descriptive documentation suitable for manufacturing or reproducing such repair parts of assemblies.

### **Clause 9-1 Convict Labor (March 2006)**

In connection with the work under this contract, the supplier agrees not to employ any person undergoing sentence of imprisonment, except as provided by E.O. 11755, December 28, 1973, as amended and 18 USC 3621 and 3622.

### **Clause 9-2 Contract Work Hours and Safety Standards Act — Overtime Compensation (March 2006)**

- a. *Overtime Requirements.* No supplier or subcontractor contracting for any part of the contract work may require or permit any laborer or mechanic to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer's or mechanic's basic rate of pay for all such hours worked in excess of 40 hours.
- b. *Violation, Liability for Unpaid Wages, and Liquidated Damages.* In the event of any violation of paragraph a above, the supplier and any subcontractor responsible for the violation are liable to any affected employee for unpaid wages. The supplier and subcontractor are also liable to the Postal Service for liquidated damages, which will be

computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of paragraph a above.

- c. *Withholding for Unpaid Wages and Liquidated Damages.* The contracting officer may withhold from the supplier, from any moneys payable to the supplier or subcontractor under this or any other contract with the same supplier, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act held by the same supplier, sums as may administratively be determined necessary to satisfy any liabilities of the supplier or subcontractor for unpaid wages and liquidated damages pursuant to paragraph b above.
- d. *Records.* The supplier or subcontractor must maintain for 3 years from the completion of the contract for each laborer and mechanic (including watchmen and guards) working on the contract payroll records which contain the name, address, social security number, and classification(s) of each such employee, hourly rates of wages paid, number of daily and weekly hours worked, deductions made, and actual wages paid. The supplier or subcontractor must make these records available for inspection, copying, or transcription by authorized representatives of the contracting officer and the Department of Labor, and must permit such representatives to interview employees during working hours on the job. (The Department of Labor information collection and record keeping requirements in this paragraph d have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)
- e. *Subcontracts.* The supplier must insert paragraphs a through d of this clause in all subcontracts, and must require their inclusion in all subcontracts at any tier.

### **Clause 9-3 Davis-Bacon Act (March 2006)**

- a. *Minimum Wages*
  - (1) All mechanics and laborers employed in the contract work (other than maintenance work of a recurring, routine nature necessary to keep the building or space in condition to be continuously used at an established capacity and efficiency for its intended purpose) must be paid unconditionally, and not less than once a week, without deduction or rebate (except for deductions permitted by the Copeland Regulations (29 CFR Part 3)), the amounts due at the time of payment computed at rates not less than the aggregate of the basic hourly rates and rates of payments, contributions, or costs for any fringe benefits contained in the wage-determination decision of the Secretary of Labor, attached hereto, regardless of any contractual relationship alleged to exist between the lessor (for construction contracts, use "supplier" instead of "lessor"), or subcontractor and these laborers and mechanics. A copy of the wage-determination decision must be

- kept posted by the lessor at the site of the work in a prominent place where it can easily be seen by the workers.
- (2) The lessor may discharge its obligation under this clause to workers in any classification for which the wage-determination decision contains:
    - (a) Only a basic hourly rate of pay, by making payment at not less than that rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or
    - (b) Both a basic hourly rate of pay and fringe-benefit payments, by paying in cash, by irrevocably contributing to a fund, plan, or program for, or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by 40 U.S.C. 276a, or by a combination of these.
  - (3) Contributions made, or costs assumed, on other than a weekly basis (but not less often than quarterly) are considered as having been constructively made for a weekly period. When a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the lessor pays a cash equivalent or provides an alternative fringe benefit, the lessor must furnish information with the lessor's payrolls showing how the lessor determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage-determination fringe benefits. When the lessor provides a fringe benefit different from that contained in the wage determination, the lessor must show how the hourly rate was arrived at. In the event of disagreement as to an equivalent of any fringe benefit, the contracting officer must submit the question, together with the contracting officer's recommendation, to the Secretary of Labor for final determination.
  - (4) If the supplier does not make payments to a trustee or other third person, the supplier may consider as payment of wages the costs reasonably anticipated in providing bona fide fringe benefits, but only with the approval of the Secretary of Labor pursuant to a written request by the lessor. The Secretary of Labor may require the lessor to set aside assets in a separate account, to meet the lessor's obligations under any unfunded plan or program.
  - (5) The contracting officer will require that any class of laborers or mechanics not listed in the wage-determination but to be employed under the contract will be classified in conformance with the wage determination and report the action taken to the  
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION  
EMPLOYMENT STANDARDS ADMINISTRATION  
US DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

for approval. The contracting officer will approve an additional classification and wage rate and fringe benefits therefore only if:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (b) The classification is utilized in the area by the construction industry; and
  - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (6) If the lessor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate and fringe benefits therefore, the contracting officer must submit the question, together with the views of the interested parties and the contracting officer's recommendation, to the Wage and Hour Administrator for final determination. The Administrator or an authorized representative will, within 30 days of receipt, approve, modify, or disapprove every proposed additional classification action, or issue a final determination if the parties disagree, and so advise the contracting officer or advise that additional time is necessary. The finally approved wage rate (and fringe benefits if appropriate) must be paid to all workers performing work in the classification under the contract from the first day work is performed in the classification. The lessor must post a copy of the final determination of the conformance action with the wage determination at the site of the work. (The Department of Labor information collection and reporting requirements contained in subparagraph a.5 above and in this subparagraph a.6 have been approved by the Office of Management and Budget under OMB control number 1215-0140.)

b. *Apprentices and Trainees*

- (1) Apprentices may be permitted to work only when
  - (a) Registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, or, if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training; or
  - (b) If not individually registered in the program, certified by the Bureau of Apprenticeship and Training or state agency (as appropriate) to be eligible for probationary employment as an apprentice. Trainees may be permitted to work only if individually registered in a program approved by the Employment and Training Administration, U.S. Department of Labor.

- (2) The ratio of apprentices to journeymen or trainees to journeymen in any craft classification must not be greater than that permitted for the lessor's entire work force under the registered apprenticeship or trainee program. Apprentices and trainees must be paid at least the applicable wage rates and fringe benefits specified in the approved apprenticeship or trainee program for the particular apprentice's or trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. If the apprenticeship or trainee program does not specify fringe benefits, apprentices or trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification unless the Administrator of the Wage and Hour Division determines that a different practice prevails. Any employee listed on a payroll at an apprentice or trainee wage rate but not registered, or performing work on the job site in excess of the ratio permitted under the registered program, must be paid the wage rate on the wage determination for the classification or work actually performed.
  - (3) If the Bureau of Apprenticeship and Training or the state agency recognized by the Bureau (as appropriate) withdraws approval of an apprenticeship program, or if the Employment and Training Administration withdraws approval of a trainee program, the supplier will no longer be permitted to utilize apprentices or trainees (as appropriate) at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (See 29 CFR 5.16 for special provisions that apply to training plans approved or recognized by the Department of Labor prior to August 20, 1975.)
  - (4) The utilization of apprentices, trainees, and journeymen must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- c. *Overtime Compensation*
- (1) The lessor may not require or permit any laborer or mechanic employed on any work under this contract to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer's or mechanic's basic rate of pay for all such hours worked in excess of 40 hours.
  - (2) For violations for subparagraph c.1 above, the lessor is liable for liquidated damages, which will be computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of subparagraph c.1 above.

- (3) The contracting officer may withhold from the lessor sums as may administratively be determined necessary to satisfy any liabilities of the lessor for unpaid wages and liquidated damages pursuant to subparagraph c.2 above.

d. *Payroll and Other Records*

- (1) For all laborers and mechanics employed in the work covered by this clause, the lessor must maintain payrolls and related basic records and preserve them for a period of 3 years after contract completion. The records must contain the name, address, and social security number of each employee, the employee's correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), the daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the lessor has obtained approval from the Secretary of Labor to assume a commitment to bear the cost of fringe benefits under subparagraph a.4 above, the lessor must maintain records showing the commitment and its approval, communication of the plan or program to the employees affected, and the costs anticipated or incurred under the plan or program. Lessors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (The Department of Labor information collection and record keeping requirements in this subparagraph d.1 have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017).
- (2) The lessor must submit weekly, for each week in which any work covered by this clause is performed, a copy of all payrolls to the contracting officer. The lessor is responsible for the submission of copies of payrolls of all subcontractors. The copy must be accompanied by a statement signed by the lessor indicating that the payrolls are correct and complete, that the wage rates contained in them are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Submission of the Weekly Statement of Compliance (see 29 CFR 5.5(a)(3)(ii)) required under this agreement satisfies this requirement. As required by this clause, the lessor must submit a copy of any approval by the Secretary of Labor. (The Department of Labor information collection and reporting requirements in this subparagraph d.2 have been approved by the Office of Management and Budget under OMB control number 1215-0149.)
- (3) The lessor's records required under this clause must be available for inspection by authorized representatives of the contracting officer and the Department of Labor, and the lessor must permit

- the representative to interview employees during working hours on the job.
- (4) The lessor must comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3), which are hereby incorporated in this contract by reference.
- e. *Withholding of Funds.* The contracting officer may withhold from the lessor under this or any other contract with the lessor so much of the accrued payments or advances as is considered necessary to pay all laborers and mechanics the full amount of wages required by this contract or any other contract subject to the Davis-Bacon prevailing wage requirements that is held by the lessor.
- f. *Subcontracts*
- (1) If the lessor or any subcontractor fails to pay any laborer or mechanic employed on the site of the work any of the wages required by the contract, the contracting officer may, after written notice to the lessor, suspend further payments or advances to the lessor until violations have ceased.
- (2) The lessor agrees to insert this clause, including this paragraph f, in all subcontracts hereunder. The term "lessor" as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.
- g. *Compliance with Davis-Bacon and Related Acts Requirements.* All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.
- h. *Certification of Eligibility*
- (1) By entering into this contract, the lessor certifies that neither it or any person or firm having an interest in the lessor is ineligible to be awarded contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract will be subcontracted to any person or firm ineligible for contract award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- i. *Contract Termination and Debarment.* A breach of this Davis-Bacon Act clause may be grounds for termination of the contract and debarment as a supplier and subcontractor as provided in 29 CFR 5.12.
- j. *Disputes Concerning Labor Standards.* Disputes arising out of the labor standards provisions of this contract are not subject to the Claims and Disputes clause. They will be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5,6, and 7. Disputes within the meaning of this clause include disputes between the lessor (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.



**Clause 9-4 Compliance by States with Labor Standards (March 2006)**

- a. The supplier agrees to comply with the *Contract Work Hours and Safety Standards Act — Overtime Compensation* and *Davis-Bacon Act* clauses of this contract, to provide for similar compliance in subcontracts with states or political subdivisions thereof, and to insert the clauses in all subcontracts with private persons or firms.

**Clause 9-5 Contract Work Hours and Safety Standards Act — Safety Standards (March 2006)**

- a. To the extent that the work includes construction, alteration, repair, painting, or decorating, the lessor (for construction contracts, use “supplier” instead of “lessor”) may not require any laborer or mechanic to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to the laborer’s or mechanic’s health or safety, as provided under standards promulgated by the Secretary of Labor under the authority of 40 U.S.C. 333 (see 29 CFR 1910 and 1926).
- b. If the lessor fails to comply with this clause, the Postal Service, at its discretion, may cancel this contract, contract for the balance of the work or term, and charge to the lessor any additional costs incurred.
- c. The lessor agrees to insert this clause, including this paragraph c, in all subcontracts and to require its inclusion in all subcontracts at any tier. The term “lessor,” as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.

**Clause 9-6 Walsh-Healey Public Contracts Act (March 2006)**

- a. All representations and stipulations required by the Act and related regulations issued by the Secretary of Labor (41 CFR Chapter 50) are hereby incorporated in this contract by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor.
- b. All employees whose work relates to this contract must be paid at least the minimum wage prescribed by the Secretary of Labor (41 CFR 50-202.2), except that learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent as permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**Clause 9-7 Equal Opportunity (March 2006)**

- a. The supplier may not discriminate against employees or applicants because of race, color, religion, sex, or national origin. The supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. This action must include, but not

be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The supplier agrees to post in conspicuous places, available to employees and applicants, notices provided by the contracting officer setting forth the provisions of this clause.

- b. The supplier must, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will be considered for employment without regard to race, color, religion, sex, or national origin.
- c. The supplier must send to each union or workers' representative with which the supplier has a collective bargaining agreement or other understanding, a notice, provided by the contracting officer, advising the union or workers' representative of the supplier's commitments under this clause, and must post copies of the notice in conspicuous places available to employees and applicants.
- d. The supplier must comply with all provisions of Executive Order (EO) 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The supplier must furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary, and must permit access to the supplier's books, records, and accounts by the Postal Service and the Secretary for purposes of investigation to ascertain compliance with these rules, regulations, and orders.
- f. If the supplier fails to comply with this clause or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part; the supplier may be declared ineligible for further contracts in accordance with the Executive Order; and other sanctions may be imposed and remedies invoked under the Executive Order, or by rule, regulation, or order of the Secretary, or as otherwise provided by law.
- g. The supplier must insert this clause, including this paragraph g, in all subcontracts or purchase orders under this contract unless exempted by Secretary of Labor rules, regulations, or orders issued under the Executive Order. The supplier must take such action with respect to any such subcontract or purchase order as the Postal Service may direct as a means of enforcing the terms and conditions of this clause (including sanctions for noncompliance), provided, however, that if the supplier becomes involved in, or is threatened with, litigation as a result, the supplier may request the Postal Service to enter into the litigation to protect the interest of the Postal Service.
- h. Disputes under this clause will be governed by the procedures in 41 CFR 60-1.1.

**Clause 9-8 Affirmative Action Compliance Requirements for Construction (March 2006)**

a. *Definitions*

- (1) *Covered Area.* The geographical area described in the solicitation for this contract.
- (2) *Director.* Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) *Employer Identification Number.* The federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) *Minority* means:
  - (a) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
  - (b) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  - (c) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and
  - (d) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

b. If the supplier, or subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 must include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this.

c. If the supplier is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) must comply with the plan for those trades that have unions participating in the plan. Suppliers must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each supplier or subcontractor participating in an approved plan is also required to comply with its obligations under the *Equal Opportunity* clause, and to make a good-faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other suppliers or subcontractors toward a goal in an approved plan does not excuse any supplier's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

d. The supplier must implement the affirmative action procedures set forth in paragraph g below. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the

supplier should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the supplier performs construction work in a geographical area located outside of the covered area, it must apply the goals established for the geographical area where that work is actually performed. The supplier is expected to make substantially uniform progress toward its goals in each craft.

- e. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the supplier has a collective bargaining agreement, to refer minorities or women will excuse the supplier's obligations under this clause, Executive Order (EO) 11246, as amended, or the regulations under the Executive Order.
- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the supplier during the training period, and the supplier must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- g. The supplier must take affirmative action to ensure equal employment opportunity. The evaluation of the supplier's compliance with this clause will be based upon its effort to achieve maximum results from its actions. The supplier must document these efforts fully and implement affirmative action steps at least as extensive as the following:
  - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the supplier's employees are assigned to work. The supplier, if possible, will assign two or more women to each construction project. The supplier must ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the supplier's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the supplier or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and was not referred back to the supplier by the union or, if referred back, not employed by the supplier, this fact must be documented in the file, along with whatever additional actions the supplier may have taken.

- (4) Immediately notify the Director when the union or unions with which the supplier has a collective bargaining agreement have not referred back to the supplier a minority or woman sent by the supplier, or when the supplier has other information that the union referral process has impeded the supplier's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the supplier's employment needs, especially those programs funded or approved by the Department of Labor. The supplier must provide notice of these programs to the sources compiled under subparagraph 2 above.
- (6) Disseminate the supplier's equal employment policy by:
  - (a) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the supplier in meeting its contract obligations;
  - (b) Including the policy in any policy manual and in collective bargaining agreements;
  - (c) Publicizing the policy in such publications as the company newspaper and annual report;
  - (d) Reviewing the policy with all management personnel and with all minority and female employees at least one a year; and
  - (e) (Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the supplier's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the supplier's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other suppliers and subcontractors which with the supplier does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the supplier's recruitment area and

- employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. When feasible, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the supplier's workforce.
  - (11) Validate all tests and other selection requirements when required under 41 CFR 60-3.
  - (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training and other activities, opportunities for promotion.
  - (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the supplier's obligations under this contract are being carried out.
  - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Maintain a record of solicitations for subcontracts for minority and female construction suppliers and suppliers, including circulation of solicitations to minority and female supplier associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the supplier's equal employment policy and affirmative action obligations.
- h. The supplier is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraph g above. The efforts of a supplier association, joint supplier-union, supplier-community, or similar group of which the supplier is a member and participant may be asserted as fulfilling one or more of its obligations under paragraph g above, provided the supplier:
- (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the supplier's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and

- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the supplier. The obligation to comply is the supplier's, and failure of such a group to fulfill an obligation will not be a defense for the supplier's noncompliance.
- i. A single goal for minorities and a separate single goal for women must be established. The supplier is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the supplier may be in violation of EO 11246, if a particular group is employed in a substantially disparate manner.
- j. The supplier may not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- k. The supplier may not enter into any subcontract with any person or firm debarred from government contracts under EO 11246.
- l. The supplier must carry out such sanctions and penalties for violation of this clause and of the *Equal Opportunity* clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under EO 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered will be a violation of this clause and EO 11246.
- m. The supplier in fulfilling its obligations under this clause must implement affirmative action procedures at least as extensive as those prescribed in paragraph g above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the supplier fails to comply with the requirements of EO 11246, the implementing regulations, or this clause, the contracting officer will take action as prescribed in 41 CFR 60-4.8.
- n. The supplier must designate a responsible official to:
  - (1) Monitor all employment-related activity to ensure that the supplier's equal employment policy is being carried out;
  - (2) Submit reports as may be required; and
  - (3) Keep records that at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- o. Nothing contained in this clause may be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other

area residents (for example, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**Clause 9-9 Equal Opportunity Preaward Compliance of Subcontracts (March 2006)**

The supplier may not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the contracting officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore eligible for award.

**Clause 9-10 Service Contract Act (March 2006)**

- a. This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.), and to the following provisions and all other applicable provisions of the Act and regulations of the Secretary of Labor issued under the Act (29 CFR Part 4).
- b.
  - (1) Each service employee employed in the performance of this contract by the supplier or any subcontractor must be (a) paid not less than the minimum monetary wages and (b) furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.
  - (2)
    - (a) If a wage determination is attached to this contract, the contracting officer must require that any class of service employees not listed in it and to be employed under the contract (that is, the work to be performed is not performed by any classification listed in the wage determination) be classified by the supplier so as to provide a reasonable relationship (that is, appropriate level of skill comparison) between the unlisted classifications and the classifications in the wage determination. The conformed class of employees must be paid the monetary wages and furnished the fringe benefits determined under this clause. (The information collection requirements contained in this paragraph b have been approved by the Office of Management and Budget under OMB control number 1215-0150.)
    - (b) The conforming procedure must be initiated by the supplier before the performance of contract work by the unlisted class of employees. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized



representative of the employees involved or, if there is no authorized representative, the employees themselves, must be submitted by the supplier to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer must review the proposed action and promptly submit a report of it, together with the agency's recommendation and all pertinent information, including the position of the supplier and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. Within 30 days of receipt, the Wage and Hour Division will approve, modify, or disapprove the action, render a final determination in the event of disagreement, or notify the contracting officer that additional time is necessary.

- (c) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who must promptly notify the supplier of the action taken. The supplier must give each affected employee a written copy of this determination, or it must be posted as a part of the wage determination.
- (d)
  - (i) The process of establishing wage and fringe benefit rates bearing a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from determination to determination, depending on the circumstances. Standard wage and salary administration practices ranking various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way various jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of conformable wage rates is the concept that a pay relationship should be maintained between job classifications on the basis of the skill required and the duties performed.
  - (ii) If a contract is modified or extended or an option is exercised, or if a contract succeeds a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (that is, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase change in the wages and fringe

benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. If these conforming actions are accomplished before the performance of contract work by the unlisted class of employees, the supplier must advise the contracting officer of the action taken, but the other procedures in b.2(c) above need not be followed.

- (iii) No employee engaged in performing work on this contract may be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (e) The wage rate and fringe benefits finally determined pursuant to b.2(a) and (b) above must be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date the class of employees began contract work is a violation of the Service Contract Act and this contract.
- (f) Upon discovery of failure to comply with b.2(a) through (e) above, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits that will be retroactive to the date the class of employees commenced contract work.
- (3) If, as authorized pursuant to section 4(d) of the Service Contract Act, the term of this contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished to service employees will be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor.
- c. The supplier or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably to it by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.
- d.
  - (1) In the absence of a minimum-wage attachment for this contract, neither the supplier nor any subcontractor under this contract may pay any person performing work under the contract (regardless of

whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision relieves the supplier or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2)

- (a) If this contract succeeds a contract subject to the Service Contract Act, under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth collectively bargained wage rates and fringe benefits, neither the supplier nor any subcontractor under this contract may pay any service employee performing any of the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in the agreement, to which the employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under the agreement.
- (b) No supplier or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of section 4.1(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or an authorized representative finds, after a hearing as provided in section 4.10 of 29 CFR Part 4, that the wages and/or fringe benefits provided for in the agreement vary substantially from those prevailing for services of a similar character in the locality, or determines, as provided in section 4.11 of 29 CFR Part 4, that the agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations.
- (c) If it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that wages and/or fringe benefits in a predecessor supplier's collective bargaining agreement vary substantially from those prevailing for services of a similar character in the locality, and/or that the agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. This determination will be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be,

irrespective of whether its issuance occurs before or after award (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, it will be effective as of the date of the final administrative decision.

- e. The supplier and any subcontractor under this contract must notify each service employee starting work on the contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or must post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) must be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
- f. The supplier or subcontractor may not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the supplier or subcontractor that are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the supplier or subcontractor must comply with the safety and health standards applied under 29 CFR Part 1925.
- g.
  - (1) The supplier and each subcontractor performing work subject to the Act must maintain for 3 years from the completion of the work records containing the information specified in (a) through (f) following for each employee subject to the Service Contract Act and must make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor (approved by the Office of Management and Budget under OMB control numbers 1215-0017 and 1215-0150):
    - (a) Name, address, and social security number of each employee.
    - (b) The correct work classification, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
    - (c) The number of daily and weekly hours so worked by each employee.
    - (d) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
    - (e) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for whom wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized

representative pursuant to paragraph b above. A copy of the report required by b.2(b) above is such a list.

- (f) Any list of the predecessor supplier's employees furnished to the supplier pursuant to section 4.6(1)(2) of 29 CFR Part 4.
  - (2) The supplier must also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
  - (3) Failure to make and maintain or to make available the records specified in this paragraph g for inspection and transcription is a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification of the supplier, must take action to suspend any further payment or advance of funds until the violation ceases.
  - (4) The supplier must permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- h. The supplier must unconditionally pay to each employee subject to the Service Contract Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under the Act may not be of any duration longer than semimonthly.
  - i. The contracting officer must withhold or cause to be withheld from the Postal Service supplier under this or any other contract with the supplier such sums as an appropriate official of the Department of Labor requests or the contracting officer decides may be necessary to pay underpaid employees employed by the supplier or subcontractor. In the event of failure to pay employees subject to the Act wages or fringe benefits due under the Act, the Postal Service may, after authorization or by direction of the Department of Labor and written notification to the supplier, suspend any further payment or advance of funds until the violations cease. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In this event, the Postal Service may enter into other contracts or arrangements for completion of the work, charging the supplier in default with any additional cost.
  - j. The supplier agrees to insert this clause in all subcontracts subject to the Act. The term "supplier," as used in this clause in any subcontract, is deemed to refer to the subcontractor, except in the term "supplier."
  - k. Service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as of July 30, 1976, and any subsequent revision of those regulations. The term includes all

such persons regardless of any contractual relationship that may be alleged to exist between a supplier or subcontractor and them.

- I.
  - (1) If wages to be paid or fringe benefits to be furnished service employees employed by the supplier or a subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the supplier must report this fact to the contracting officer, together with full information as to the application and accrual of these wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and furnish a copy of the agreement. The report must be made upon starting performance of the contract, in the case of collective bargaining agreements effective at the time. In the case of agreements or provisions or amendments thereof effective at a later time during the period of contract performance, they must be reported promptly after their negotiation. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
  - (2) Not less than 10 days before completion of any contract being performed at a Postal facility where service employees may be retained in the performance of a succeeding contract and subject to a wage determination containing vacation or other benefit provisions based upon length of service with a supplier (predecessor) or successor (section 4.173 of Regulations, 29 CFR Part 4), the incumbent supplier must furnish to the contracting officer a certified list of the names of all service employees on the supplier's or subcontractor's payroll during the last month of contract performance. The list must also contain anniversary dates of employment on the contract, either with the current or predecessor suppliers of each such service employee. The contracting officer must turn over this list to the successor supplier at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
- m. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.
- n.
  - (1) By entering into this contract, the supplier and its officials certify that neither they nor any person or firm with a substantial interest in the supplier's firm are ineligible to be awarded government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
  - (2) No part of this contract may be subcontracted to any person or firm ineligible for award of a government contract pursuant to section 5 of the Act.
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

- o. Notwithstanding any of the other provisions of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act before its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of government business:
  - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, or physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
  - (2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
  - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.
- p. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency recognized by the U.S. Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee not registered as an apprentice in an approved program must be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices may not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification may not be greater than the ratio permitted to the supplier for its entire workforce under the registered program.

- q. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of this credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:
  - (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1214-0017); and
  - (4) The use of tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- a. Disputes arising out of the labor standards provisions of this contract are not subject to the *Claims and Disputes* clause but must be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the supplier (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.

**Clause 9-11 Service Contract Act — Short Form (March 2006)**

Except to the extent that an exemption, variation, or tolerance would apply if this contract were more than \$2,500, the supplier and any subcontractor must pay employees engaged in performing work on the contract at least the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

**Clause 9-12 Fair Labor Standards Act and Service Contract Act — Price Adjustment (March 2006)**

- a. The supplier warrants that the contract prices do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- b. The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 by the Department of Labor, current at the beginning of each renewal period, applies to any



renewal of this contract. When no such determination has been made as applied to this contract, the minimum wage established in accordance with the *Service Contract Act* clause applies to any renewal of this contract.

- c. When, as a result of the determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or when an increased or decreased wage determination is otherwise applied to this contract, or when as a result of any amendment to the Fair Labor Standards Act enacted after award that affects minimum wage, and whenever such a determination becomes applicable to this contract under law, the supplier increases or decreases wages or fringe benefits of employees working on the contract to comply, the contract price or unit price labor rates will be adjusted accordingly. This adjustment is limited to increases or decreases in wages or fringe benefits, and the concomitant increases or decreases in Social Security, unemployment taxes, and workers' compensation insurance, but may not otherwise include any amount for general and administrative costs, overhead, or profit.
- d. The supplier must notify the contracting officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless the contracting officer extends this period in writing. In the case of any decrease under this clause, the supplier must promptly notify the contracting officer of the decrease, but nothing herein precludes the Postal Service from asserting a claim within the period permitted by law. The notice must state the amount claimed and give any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or unit price labor rates will be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the supplier must continue performance.
- e. The contracting officer or the contracting officer's authorized representative must, for 3 years after final payment under the contract, be given access to and the right to examine any directly pertinent books, papers, and records of the supplier.

**Clause 9-13 Affirmative Action for Handicapped Workers (March 2006)**

- a. The supplier may not discriminate against any employee or applicant because of physical or mental handicap, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).

- b. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.
- c. In the event of the supplier's noncompliance with this clause, action may be taken in accordance with the rules and regulations and relevant orders of the Secretary of Labor.
- d. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants, and the rights of applicants and employees.
- e. The supplier must notify each union or worker's representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of section 503 of the Act and is committed to taking affirmative action to employ, and advance in employment, handicapped individuals.
- f. The supplier must include this clause in every subcontract or purchase order over \$10,000 under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.

**Clause 9-14 Affirmative Action for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (March 2006)**

- a. The supplier must comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C 4211 and 4212).
- b. The supplier may not discriminate against any employee or applicant because that employee or applicant is a special disabled veteran, veteran of the Vietnam era, or other eligible veteran, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).

- c. The supplier agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the supplier other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the state employment service where the opening occurs. State and local government agencies holding Postal Service contracts of \$25,000 or more will also list their openings with the appropriate office of the state employment service.
- d. Listing of employment openings with the employment service system will be made at least concurrently with the use of any recruitment source or effort and will involve the normal obligations attaching to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular applicant or hiring from any particular group of applicants, and nothing herein is intended to relieve the supplier from any other requirements regarding nondiscrimination in employment.
- e. Whenever the supplier becomes contractually bound to the listing provisions of this clause, it must advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state. The supplier may advise the state system when it is no longer bound by this clause.
- f. Paragraphs c, d, and e above do not apply to openings the supplier proposes to fill from within its own organization or under a customary and traditional employer/union hiring arrangement. But this exclusion does not apply to a particular opening once the supplier decides to consider applicants outside its own organization or employer/union arrangements for that opening.
- g. *Definitions*
  - (1) *All Employment Openings.* This includes all positions except executive and top management, those positions that will be filled from within the supplier's organization, and positions lasting 3 days or less. This also includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations in which the needs of the Postal Service cannot reasonably be otherwise supplied, when listing would be contrary to national security. or when listing would not be in the best interest of the Postal Service.
  - (2) *Appropriate Office of the State Employment Service.* This means the local office of the federal/state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

- (3) *Positions That Will Be Filled From Within the Supplier's Own Organization.* This means employment openings for which no consideration will be given to persons outside the supplier's organization (including any affiliates, subsidiaries and parent companies) and includes any openings which the supplier proposes to fill from regularly established recall lists.
- (4) *Openings the Supplier Proposes to Fill Under a Customary and Traditional Employer/Union Hiring Arrangement.* Employment openings the supplier proposes to fill from union halls as part of the customary and traditional hiring relationship existing between it and representatives of its employees.
- (5) *Special Disabled Veterans.*
  - (a) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:
    - (i) Rated at 30 percent or more; or
    - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
  - (b) A person who was discharged or released from active duty because of a service-connected disability.
- (6) *Veteran of the Vietnam Era.*
  - (a) A veteran who served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred:
    - (i) In the Republic Vietnam between February 28, 1961, and May 7, 1975; or
    - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
  - (b) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed:
    - (i) In the Republic Vietnam between February 28, 1961, and May 7, 1975; or
    - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.
- (7) *Other Eligible Veterans.*  
 Any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

## Contract Clauses

- h. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended.
- i. The supplier must include this clause in every subcontract or purchase order of \$25,000 or more under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.
- j. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and the rights of applicants and employees.
- k. The supplier must notify each union or workers' representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of the Act and is committed to taking affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

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