BONNEVILLE **P**URCHASING **I**NSTRUCTIONS

APPENDICES

TRANSMITTAL 13-4

ISSUED BY THE HEAD OF CONTRACTING ACTIVITY
BONNEVILLE POWER ADMINISTRATION
DOE/BP – 3109
125

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 2-A

CERTIFICATION AND APPOINTMENT AS A BONNEVILLE POWER ADMINISTRATION CONTRACTING OFFICER

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SECTION 1 GENERAL INFORMATION.

1.1 General.

(a) This Appendix describes the minimum qualifications for nominees to achieve certification and be delegated Contracting Officer authority, and the processes for achieving certification and delegation of authority.

(b) The authority to negotiate and enter into contracts, in the name of the United States, is given to the Administrator by the Bonneville Project Act. The Administrator has delegated the authority to purchase goods and services to the Head of the Contracting Activity (HCA), with the power of redelegation. Appointment of individuals to act as Contracting Officers is accomplished by redelegation of authority by the HCA to individuals as prescribed in Sub-Chapter 20.10 of the BPA Manual (BPAM).

(c) A CO is an individual authorized to contractually bind BPA as evidenced by a certificate of appointment issued by the Head of the Contracting Activity. The HCA and Supply Chain Services organization have jointly established the qualification program, including education, job specific training, and experience criteria leading to certification and appointment of Contracting Officers.

(d) The Supply Chain Services organization will manage certification levels and assess the demonstrable proficiencies of personnel before requesting a delegation of authority and appointment as a CO. A Purchasing Agent or Contract Specialist must be certified to Level I, II, or III prior to obtaining a delegation of authority as a Contracting Officer (CO).

(e) The HCA will review the purchasing manager's request for appointment as a Contracting Officer, and will approve such qualifications before any individual is authorized to serve as a Contracting Officer. Only those persons who have been delegated Contracting Officer authority in this manner may commit the expenditure of BPA funds via the BPI or BFAI.

1.2 Coverage.

The qualifications outlined in this Appendix also apply to persons who will be authorized to execute the types of contracts or financial assistance instruments for which guidance is provided in the BPI or the Bonneville Financial Assistance Instructions (BFAI).

1.3 Exclusions.

The requirements of this Appendix do not apply to persons who are authorized to execute contracts for the following:

Purchases made under Field Purchase authority (See BPI 2.3.2);

Contracts for purchase, disposal, or lease of all interests in real property and facilities;

Contracts involving power, such as purchase, wheeling, or sale of power, (except power for consumption by BPA) purchasing of energy savings, or loans and loan guarantees for the purchasing of power or energy savings;

Commercial utility service purchases by those granted a limited, written delegation by the HCA (See BPI 2.2.2(g) and 11.2);

Purchases made by credit cards.

Order placement or contract modification by BPA employees to whom the Contracting Officer has redelegated specific, limited authority pursuant to the terms of a contract or agreement, whenever such redelegation is permitted by the BPI. Examples of such redelegated authority include, but are not limited to, order placement authority pursuant to terms and conditions of a master agreement or master contract; and limited, contract specific authority of a COTR or field inspector to make construction contract "field modifications."

1.4 Standards.

(a) BPA complies with the Office of Personnel Management qualification standard for personnel working in the GS1102 Contract Specialist professional job series. Refer to the OPM Standards for detailed information regarding appointment, selection, qualification, and promotion requirements. Personnel in job series GS1102 Contract Specialist or Procurement Analyst, grades GS5 through GS12, who do not meet the OPM minimum standard, may retain their current grade and position if

achieved prior to January 1, 2000, and may advance in the career path to grade GS12 as deemed appropriate and necessary by Supply Chain Services management.

(b) For all personnel selected for a GS1102 Contract Specialist position after January 1, 2000, the individual must have obtained a baccalaureate degree in any field of study, or earned 24 semester hour credits in business courses of accounting, business, finance, law, contract, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. Promotion to grade GS13 requires a baccalaureate degree in business, or in any other field of study supplemented by at least 24 semester hours in the business courses named above. The Supply Chain Services organization may only request HCA waiver from the above requirements in extreme circumstances as may be necessary for continuity of operations, and will provide to the HCA an action plan and timeline for meeting these minimum standards.

(c) BPA requires training and certification of its acquisition workforce, which provides a common foundation of knowledge, tools, and capabilities necessary to fulfill the needs and expectations of a highly skilled acquisition workforce that supports the agency mission. In addition to the above OPM standard, the minimum standards established in this Appendix must also be met before an individual may be certified to any level or delegated authority as a Contracting Officer at BPA.

1.5 General Skills and Experience for Purchasing Professionals.

(a) The purchasing knowledge, skills, and abilities necessary for a Contracting Officer designation are those required in the applicable Office of Personnel Management (OPM) Qualification Standards for GS-1102 and GS-1105 series positions, although the Contracting Officer function is not strictly limited to persons in those series.

(b) The following general skills and experience requirements apply to purchasing personnel at all levels of Certification and CO Authority.

(1) Communications skills to complete actions within a reasonable time, including oral, interpersonal, and business writing.

(2) Ethical conduct in business dealings as required by Federal Personnel Manual (5 C.F.R. 2635).

(3) Ability to understand and assist purchasing and program management personnel and to exercise consistently sound and fair business judgment.

(4) Proficiency in essential business computer skills, including word-processing, simple spreadsheets, and familiarity with enterprise system applications and tools.

1.6 Position Descriptions.

Any position description that includes Contracting Officer functions shall contain a clear statement of the Contracting Officer duties, responsibilities, and functions. Where these functions are performed as a collateral duty, an addendum to the position description is to be prepared with the requisite information and is to be maintained in the employee's personnel file.

1.7 Annual Conflict of Interest Certification.

(a) All Contracting Officers must comply with conflict of interest and ethical conduct regulations in Appendix 3-A, Standards of Conduct Regarding Purchasing and Assistance, and BPI 3.1. The Head of the Contracting Activity (HCA) is responsible for standards of conduct regarding BPA purchasing and assistance activities. Annually, all Contracting Officers and other BPA employees who are

personally and substantially involved in BPA purchasing and assistance activities must familiarize themselves with these purchasing and assistance standards of conduct.

(b) In coordination with BPA General Counsel, the HCA relies upon the annual certification by all BPA employees regarding ethical standards of conduct for employees of the Executive Branch (5 CFR Part 2635, as well as those specific to DOE included in 5 CFR Part 3301 and 10 CFR Part 1010 and 48 CFR Subpart 903.1, as supplemented by subpart 3.1 of this Appendix 2-A and BPI Appendix 3-A as the basis for BPA employee certification of standards of conduct for purchasing and financial assistance activities of BPA. Therefore, the HCA does not maintain separate annual certifications for standards of conduct regarding purchasing and assistance, relying instead upon the annual ethics briefing and certifications maintained by BPA General Counsel.

SECTION 2 CERTIFICATION

2.2 Certification.

(a) Certification is the program designed to ensure that appropriate training is obtained and experience gained by all individuals who may be delegated authority to purchase on behalf of BPA. The process ensures consistency for all purchasing personnel to meet the same essential training and experience criteria and thus mitigates risk to the agency in execution of awards.

(b) All individuals who will execute purchases as part of their job duties must be certified prior to requesting a delegation of authority as a Contracting Officer. The certification levels are:

NOMINAL Reserved for personnel who are not in the GS 1105 or 1102 job series, but who conduct purchasing as a portion of their job duties, and may be assigned to other organizations outside Supply Chain Services. This certification is limited to commercial goods and services.

LEVEL I Entry level purchasing agents and contract specialists. Generally for purchasing personnel who are in a training mode or mainly purchasing commercial goods and services.

LEVEL II Increasing complexity of award actions at higher dollar values. Requires purchasing agents and contract specialists to possess greater skill in negotiation, price/cost analysis, contract execution and administration.

LEVEL III Highest level of complex and major procurements, requiring comprehensive, advanced procurement skills. Reserved for Contract Specialists in the GS1102 job series.

(c) The Supply Chain Services organization will manage and monitor the required training and experience activities and records for certification Levels I, II, and III for all purchasing personnel working in the Supply Chain Services organization. The HCA may review the certification files at any time.

(d) A limited number of individuals in BPA who are not in the GS1105 Purchasing Agent or GS1102 Contracting Specialist job series may conduct purchasing as a part of their job duties. These individuals may only achieve NOMINAL certification and obtain Contracting Officer Authority of no more than $10,000 for commercial supplies or services. The HCA will coordinate with the individual's performance manager and with the Supply Chain Services organization regarding any requests for purchasing authority that arise from outside the supply chain organization. The individual's performance organization will be responsible to manage and monitor NOMINAL certifications and associated documentation, and submit the subsequent request for CO authority directly to the HCA, providing a copy of the request to the Supply Chain Services organization. The HCA will advise

Supply Chain Services organization if a CO delegation is granted outside of Supply Chain Services. The HCA may also certify and issue CO warrants as necessary to qualified (trained and experienced) HCA office staff that are in any job series. The HCA will follow the guidelines of this Appendix to certify staff.

(e) Effective January 1, 2006, all newly hired contract specialists must meet the criteria to obtain a Level I, II, or III Certification as described in Attachment I to this Appendix 2-A prior to requesting a CO Certificate of Appointment. All purchasing personnel on staff on that date must meet all elements of the certification criteria prior to requesting more authority than they currently possess on that date.

(f) The certification program both is sequential and progressive, with the training and experience required for each Level building upon prior Certification Level requirements. That is, a Level I certified contract specialist will work toward obtaining certification at Level II, then to Level III. The increasing difficulty of the coursework and progressive complexity of work assignments also build upon prior requirements. Continuing education for COs below Level III should include training creditable toward the next Level. Upon achieving Level III, COs should attend other training suitable for their particular area of contracting expertise.

(g) Certification to a certain Level makes a CO eligible for a Certificate of Appointment and certain dollar thresholds, but it is not a guarantee that the CO will be issued the highest authority within that level. The purchasing and process managers assess the determination of need for various levels of authority, based upon staffing and workload management, and other factors. The HCA retains the discretion to assign warrant authority to meet BPA's business needs.

(h) The grades associated with each Certification Level in Attachment I to this Appendix are a guide to indicate the grades that would generally be expected at each level of certification. They are not intended to supersede the OPM standards for each grade level, or to direct the performance organization's workforce and staff management activity.

(i) Effective June 1, 2011, only prior relevant federal procurement work experience for a federal agency may be credited as an equivalency for CO certification purposes as identified in Attachment 1.

(j) Effective June 1, 2011, nominees for CO certification must be on non-probationary status for BPA employment purposes as of the date of their certification nomination.

2.3 Specific Training Requirements

2.3.1 General.

(a) The training requirements outlined in this Section must be met by nominee Contracting Officers before a recommendation for a Certificate of Appointment is submitted to the HCA (except see 3.2, Interim Certificate). Training must be directly related to the body of knowledge of contract formation and management, as defined in Attachment I of this Appendix. Equivalency tests may be considered acceptable substitutes for purchasing training only with prior approval from the HCA.

2.3.2 Qualification of Training Courses.

(a) Courses sponsored by a professional organization such as Institute for Supply Management (ISM), secondary education institution such as a university or community college, and/or certain commercial training companies are acceptable. Supply Chain Services and HCA will jointly approve the training entities to ensure relevant and thorough course content.

(b) Training courses that are developed and conducted within the purchasing groups, must be pre-approved by the HCA in order to qualify as meeting any education/training requirement. Informal discussions or "brown bag" sessions are insufficient. Courses previously approved by the HCA do not require resubmission.

(c) Bonneville Enterprise System (BES) courses for the agency's electronic purchasing system focus on use of the software application(s) rather than on purchasing fundamentals. Although these courses may be required to obtain access to the application(s) to generate and execute awards, none of these training courses will be credited toward certification.

2.3.3 Required Training.

See the table in Attachment 1 of this Appendix for the detailed list of required training courses at each level of certification, and the associated levels of contracting officer authority.

2.3.3.1 Special Requirements.

(a) Occasionally some limited authorities are required for specialized types of contracts. This section outlines those specializations and the additional requirements to qualify for that authority.

(1) Construction: In additional to the standard educational requirements for Level II or III Certification and commensurate warrant authority, the nominee must have obtained at least 40 hours of training in construction contracting.
(2) Financial Assistance: Effective December 21, 2012, in addition to the standard educational requirements for Level I, II or III Certification and commensurate warrant authority, the nominee must have obtained at least 40 hours of training in financial assistance.

2.3.3.2 Equivalencies.

(a) The HCA may determine that a nominee's prior experience, training, or other professional qualifications fulfill the work experience and/or training requirements for Nominal, Level I, or Level II Certification. A purchasing manager may request an HCA decision if the nominee has obtained:

(1) professional level certification awarded by a nationally-recognized professional purchasing, contract management, logistics management, or supply chain management organization;

(2) Bachelor's or graduate degree from a nationally-accredited college or university, in the fields of purchasing or contract management;

(3) Graduate degree from a law school accredited by the American Bar Association; or

(4) documented, substantially extensive work experience and related training in a federal contracting or supply management for a federal.agency.

(b) The purchasing manager shall submit the request for HCA consideration in writing, including:

(1) a brief business analysis of the merits for granting equivalency;
(2) a full discussion of the nominee's relevant training and experience with a crosswalk to the BPI criteria;
(3) the specific, desired level of certification; and
(4) a description of the potential negative impact on the contracting activity if disapproved.

(c) The HCA may concur with the purchasing manager's request, grant a different level of certification based on the documentation presented, or reject the request with an explanation thereof.

2.4 Continuous Learning

(a) To improve and maintain currency of knowledge and skills, contracting officers who have satisfied the mandatory training requirements are strongly encouraged to obtain at least 80 hours of continuing education or training every two years. This can be obtained through attending courses designated as highly desired/elective in Attachment 1 to this Appendix, attendance at training developed and conducted within the purchasing organization that is pre-approved by HCA, or attendance at professional association meetings or seminars.

(b) Contracting officers are encouraged to have an individual development plan in place that includes, but is not limited to, the following:

short-term (1-year) and long-term career goals and objectives;
courses scheduled;
rotational, on-the-job training, details, and mentoring assignments;
other professional development; and
refresher training.

(c) The Contracting Officer may submit the Individual Development Plan as part of the application package to support any requested deviations from the stated requirements.

(d) Membership and certification in professional organizations are highly encouraged and recommended, but not required for certification or delegation of CO authority.

2.5 Required Length of Experience.

(a) The table in Attachment 1 to this Appendix defines the minimum required length of relevant working experience at various Certification Levels and corresponding eligibility for warrant authority. Length of Experience assessments are subject to BPI 2.2(i) above.

(b) The length of experience requirement is inclusive for the supplies and services contract categories. For example: six months of experience, which included transactions from both contract categories will suffice to request a Certificate of Appointment for those categories. A buyer does not have to acquire a full six months of experience in each separate category. See Section 2.5.1 for experience requirements for financial assistance and construction.

2.5.1 Special Requirements.

(a) Occasionally some limited authorities are required for specialized types of contracts. This section outlines those specializations and the modifications needed or permissible to qualify for that authority. For Certificates of Appointment for an unlimited dollar value, these special requirements may be waived by the HCA on a case-by-case basis.

(1) Construction: The same experience requirements must be met as for other types of contracting, except that a minimum of six months of experience must have been acquired through working with construction contracts.

(2) Financial Assistance: This authority requires the same experience as for purchasing, except that a minimum of three months of must have been acquired through working with grants and cooperative agreements.

SECTION 3 CONTRACTING OFFICER NOMINATION AND APPOINTMENT.

3.1 Certificate of Appointment.

After a contract specialist has been certified to a certain Level and Supply Chain management has determined a need for Contracting Officer authority, the HCA can appoint an individual as a Contracting Officer by issuance of a "Certificate of Appointment" (warrant). The warrant shall state any limitation on the scope of authority, other than limitations contained in applicable laws or regulations. The Certificate of Appointment shall be prominently displayed in the Contracting Officer's work area.

3.2 Interim Certificate.

(a) Where the applicant does not meet the minimum qualifications, the HCA may issue an interim certificate, valid for no more than twelve months. This interim certificate will be issued based upon the purchasing manager's plan for the nominee CO to attain the minimum requirements within the interim period. During this interim period, the CO working under the interim certificate must have their work products reviewed by a Contracting Officer who possesses a warrant of equal or higher dollar limits and categories of authority. The HCA will not issue interim certificates for unlimited authority; however the HCA retains the discretion to assign interim warrant authority levels to meet BPA's business needs.

(b) When purchasing management affirms in writing to the HCA that the minimum requirements have been met, the HCA can issue an unconditional Certificate of Appointment to replace the interim certificate.

(c) If the HCA does not receive confirmation that the CO has met the minimum requirements to obtain a permanent unconditional Certificate at the higher authority level(s), the interim Certificate will expire and the CO's authority will revert to the most recent permanent Certificate.

3.3 Performance Evaluation.

When conducting individual performance appraisals, the supervisor shall consider the Contracting Officer's performance of purchasing and administration duties. Satisfactory or better performance is required to maintain a CO Certificate of Appointment.

3.4 Suspension or Termination of a Certificate.

The Contracting Officer's Certificate of Appointment may be suspended or terminated by the HCA at any time. Termination of a Contracting Officer Appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Reasons for such suspension or termination include:

(a) Failure to comply with applicable certification requirements, Statutes, Bonneville Purchasing Instruction guidelines, or delegated responsibilities.

(b) Failure to maintain required training standards after appointment.

(c) Violation of a material portion of Appendix 3-A, Standards of Conduct Regarding Purchasing and Assistance.

(d) The supervisor indicates that the need for a Contracting Officer no longer exists.

(e) Reassignment of the appointee to a position where the need for the authority does not exist.

(f) Retirement, resignation, or other termination of the appointee's employment.

(g) At the request of the CO's supervisor or second level manager, for reasons such as but not limited to: less than satisfactory performance as considered during a management and employee performance appraisal, or temporary reassignment to other duties that do not require a CO Certificate of Appointment.

3.5 Contracting Officer Files.

The HCA maintains properly secured files on each Contracting Officer that include all information submitted and considered for initial appointment as a CO, plus all supplemental information received for a change or increase in authority.

3.6 Documentation.

(a) The Supply Chain Services organization will maintain the files necessary to verify purchasing experience and training requirements education for each individual who is certified at Level, I, II, or III. The HCA may request to review these files when considering requests for appointment as a Contracting Officer.

(b) Nominations for a Contracting Officer Certificate of Appointment (warrant) shall be prepared by the performance manager, reviewed and approved by both the second level manager of the nominee senior business process or procurement analyst (or designee), in accordance with the format shown in Exhibit 2-A-1, Request for Appointment As A Contracting Officer.

3.7 Categories of Contracting Authority.

Contracting authority is limited to what is needed by the Contracting Officer to operate effectively during a specific assignment. For example, only those Contracting Officers who need construction contracting authority will be granted such authority. When contracting authority is being requested, the category of authority required shall be clearly stated in the nomination request. The specific and customary categories of delegated authority are:

Supply;
Service;
Construction; and
Financial Assistance.

3.8 Amount of Contracting Authority.

Contracting authority is also defined by dollar amount. The dollar amount of delegated authority is dependent upon the qualifications of the nominee Contracting Officer, as well as the needs of a specific position assignment as determined by the purchasing managers. The dollar amount of authority requested shall be clearly stated in the memorandum nominating the Contracting Officer. The specific dollar amounts of authority for each certification level are shown in Attachment 1 to this Appendix.

(c) Nominees requesting unlimited certificates of appointments may be requested to present a portfolio of work products to the HCA to affirm proficiency and competency.

3.9 Waivers and Interim Certificates.

A request for waiver from specific requirements mentioned in this Appendix may be submitted for consideration by the HCA. Such requests shall be made in the memorandum nominating the Contracting Officer (Exhibit 2-A-1) and must specify the requirements not met and the plans for meeting them. If the HCA approves the request, an interim certificate will be issued as described in 3.2.

3.10 Preparation of the Nomination.

3.10.1 General.

(a) Prior to submitting a request for Contracting Officer Authority, Supply Chain management should consider several factors:

(1) Dollar value of typical contract;

(2) Type of contracts to be involved;

(3) Frequency and number of anticipated contracts;

(4) Impact of contracting officer responsibilities on the nominee's program responsibilities.

(5) An affirmative determination that the nominee meets the OPM qualification standards for the position and is not on probationary status as a BPA employee.

(b) If consideration of all of these factors results in the decision to request Contracting Officer Authority, the following steps shall be followed.

3.10.2 Specific Steps.

(a) Supply Chain management shall:

(1) Determine the category of authority required to handle the majority of the anticipated workload (see 3.7).

(2) Determine the amount of authority required to handle the majority of the anticipated workload (see Attachment 1).

(3) Determine whether the nominee Contracting Officer is qualified per the OPM Qualification Standard, (see 1.4 of this Appendix). If he or she is not fully qualified, an interim certificate may be requested (see 3.2). If an interim certificate is requested, and the nominee and management anticipate requesting a subsequent unconditional Certificate of Appointment, the nominee and immediate supervisor should jointly develop a plan to bring the nominee's qualifications up to the required standard within one year. This plan, which may be all or part of the nominee’s Individual Development Plan, should accompany the nomination.

(4) Prepare and sign the Request for Appointment memo according to the notes and instructions in Exhibit 2-A-1.

(b) If this is the first request for Contracting Officer Authority, the nominee must complete a Confidential Financial Disclosure Report (OGE Form 450.0) and submit it to BPA Office of General Counsel (OGC). The nominee will receive all future disclosure forms from OGC and must return them to OGC. Do not send the disclosure report to the HCA.

(c) The HCA shall review the request for appointment and may request to review the supporting documentation prior to approval. The HCA will notify Supply Chain Services management of the decision. This entire process should take approximately 10 working days.

EXHIBIT 2-A-1 - TEMPLATE TO REQUEST APPOINTMENT AS A CONTRACTING OFFICER

(INSTRUCTION: Prepare as a BPA Memorandum.)

TO: ***Name***, Head of the Contracting Activity – (Routing Code)

THRU: ***Name*** of Second Level Performance Manager– (Routing Code)

FROM: ***Name*** of Performance Manager of Nominee Contracting Officer – (Routing Code)

SUBJECT: Request for Appointment as a Contracting Officer - **(*INSTRUCTION: insert name of nominee CO*)**

1. There is a clear and convincing need to appoint a Contracting Officer for the following reason(s): ***(explain why contracting officer authority is needed.)***

2. The type of warrant and dollar amount requested is identified below

Supplies _____	Amount _____
Services _____	Amount _____
Construction _____	Amount _____
Financial Assistance _____	Amount _____

The basis for the type of warrant and dollar amount requested is: ***(explain why a particular warrant type is required, and explain, based on transactional data, the dollar level requested)***.

3. The nominee is currently certified at ***(check one)***:

Level I _____
Level II _____
Level III _____

The nominee either:

_____ meets or exceeds the OPM Qualification Standard, possesses the pertinent knowledge, skills, and abilities, and has obtained training and experience for Certification; or

_____ does not meet the minimum qualifications in education and/or experience. An interim certificate for the period of **(*fill in time period*)** is requested, and the enclosed plan indicates how the minimum requirements will be met (if a subsequent unconditional certificate of appointment is desired).

4. The nominee's conflict of interest disclosure statement (OGE Form 450.0) is on file with BPA Office of General Counsel (OGC).

5. By signing below the supervisor is attesting to:

   a. The nominee's knowledge of and ability to implement the requirements of the Bonneville Purchasing Instructions (BPI) and/or the Bonneville Financial Assistance Instructions (BFAI);

   b. The nominee's business acumen, judgment, character, reputation and ethics;

   c. The nominee's proficiency in each of the competencies identified in the nominees SEDI plan; and

   d. The nominee is not in probationary status as a BPA employee.

The control utilized by the supervisor to make such attestation is: ***(explain the control that is utilized).***

Signature of Supervisor:_____(date)

Concurrence of Supervisor:_____ (date)

ATTACHMENT 1, BPI APPENDIX 2-A
CO CERTIFICATION and WARRANT AUTHORITY MATRIX

BPA CERTIFICATION LEVEL (from Supply Chain)	**WARRANT AUTHORITY ELIGIBILITY** (from HCA)	**SERIES & GRADE LEVEL** (generally)	**REQUIRED COURSES - HOURS** Desire or elective courses	**EDUCATION** MINIMUM HOURS/	**EXPERIENCE** MINIMUM MONTHS/ YEARS	**CONTINUOUS LEARNING**
NOMINAL	**COMMERCIAL $10,000**	**Non GS1105 & 1102; all grades**	**Fundamentals of Purchasing-– 16** **HCA Intro to BPI – 3**	**19 hours**	**6 MONTHS**	**ENCOURAGED** 24 hours every year
I **ENTRY**	**$50,000** **$100,000** **$250,000**	**1105: GS 5-8** **1102: GS 5-9**	**Fundamentals of Purchasing – 16** **HCA Intro to BPI – 3** **Mission Support Planning (CON 110) or equivalent – 40** **Mission Planning Execution (CON 111) or equivalent – 40** **Mission Performance Assessment (CON 112) or equivalent – 40**	**139 hours**	**1 YEAR**	**ENCOURAGED** 80 hours every 2 years
II **INTERMEDIATE**	**$500,000** **$1,000,000**	**1105: GS 8-10** **1102: GS 9-12**	**Legal Considerations in Contracting (CON 216) or equivalent – 40** **Cost Analysis and Negotiation Techniques (CON 217) or equivalent – 40** **Electives (minimum 80 hours)** **May include BPA COTR training, Mission Focused Contracting (CON 120) or equivalent – (80 hours) or other intermediate level courses on contracting and/ or financial assistance**	**160 hours**	**3 YEARS**	**ENCOURAGED** 80 hours every 2 years
III **ADVANCED**	**$5,000,000** **$UNLIMITED**	**1105: N/A** **1102: GS 12 and above**	**Electives – 120 hours** **May include Advanced Business Solutions for Mission Support (CON 353) or equivalent – (80 hours), and other intermediate to advanced level courses in contracting, financial assistance, and project management**	**120 Hours**	**5 YEARS**	**ENCOURAGED** 80 hours every 2 years

ATTACHMENT 1, BPI APPENDIX 2-A
CO CERTIFICATION and WARRANT AUTHORITY MATRIX

Descriptions of required courses. The descriptions below list the key topics that should be covered during the training.

NOMINAL:

Purchasing Fundamentals or equivalent – Basics of commercial purchasing: legal agency and contracts; specifications and quality issues; supplier selection and managing supplier relationships; fundamentals of inventory and logistics management; economic order quantities; transportation and third party logistics; performance measurement.

HCA Introduction to BPI – Define the legal authorities and origin of the Bonneville Purchasing Instructions; policy manual organization and content; key concepts that are similar or dissimilar to the FAR; application of commercial purchase practices.

LEVEL I:

Mission Support Planning (CON 110) or equivalent – The knowledge and skills necessary to perform planning and pre-solicitation activities during the acquisition planning phase of the acquisition process, from forecasting requirements through receipt of procurement request.

Mission Planning Execution (CON 111) or equivalent – Basic procedures for acquisition of both commercial and noncommercial requirements, effectively conduct price analysis to determine when a price is fair and reasonable, conduct basic competitive acquisitions, process awards, and handle protests before and after contract award.

Mission Performance Assessment (CON 112) or equivalent – The knowledge and skills necessary to use appropriate performance metrics when evaluating contractor performance and to work with their customers to ensure contract performance is satisfying mission needs. Students will also explore assessment strategies and performance remedies, how to make and price contract modifications, deal with disputes, and close out completed contracts.

LEVEL II:

Legal Considerations in Contracting (CON 216) or equivalent –The basic principles and sources of law relevant to procurement, including fiscal law. Also addresses other legal issues that may arise during the course of a contract such as protests, assignment of claims, disputes, fraud, contractor debt, performance issues, and contract termination.

Cost Analysis and Negotiation Techniques (CON 217) or equivalent – Advanced pricing methods and techniques in order to analyze a contractor's proposal and develop government negotiation objectives. Also introduces the concepts necessary for successful negotiations.

Electives Level II (minimum 80 hours)

May include **BPA COTR training (24 hours), Mission Focused Contracting (CON 120, 80 hours)** Spans the entire acquisition process from mission support planning through contract closeout. Use of integrated case studies provides students the opportunity to apply leadership, problem solving, and negotiation skills plus the knowledge and skills they have gained in this and the prerequisite courses.

– Or other intermediate level courses on contracting and/or financial assistance.

LEVEL III:

Electives Level III – (minimum 120 hours)

May include **Advanced Business Solutions for Mission Support (CON 353, 80 hours), or comprehensive Project Management (minimum 40 hours).** Through realistic scenario-based learning, students are provided the opportunity to work in teams to practice developing sound business solutions as a valued strategic and expert business advisor.

– And/or other intermediate to advanced level courses in contracting and/or financial assistance.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 3-A

STANDARDS OF CONDUCT REGARDING PURCHASING AND ASSISTANCE

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SECTION 1 GENERAL PRINCIPLES.

It is BPA policy that all BPA purchasing and financial assistance activities shall be conducted in a manner that complies with the ethical standards of conduct for employees of the Executive Branch, including those specific to DOE, as supplemented by BPI 3.1 and this appendix. All BPA employees who are personally and substantially involved in purchasing and assistance activities, not just purchasing and assistance personnel, must clearly understand the scope of ethical standards which must be met. This appendix is not, however, a definitive discussion of all possible ethical dilemmas and the proper course of action to be taken in a given instance. Except for questions regarding standards of conduct regarding purchasing and assistance activities, the Agency Ethics Official in General Counsel is responsible for advising employees regarding standards of conduct and should be contacted immediately whenever questions arise.

The following general “Principles of Ethical Conduct, included in Executive Order 12674 of April 12, 1989 (as modified by E.O. 12731) apply to every employee and form the basis for the standards of conduct. Where a situation is not covered specifically by a rule, employees shall apply these principles in determining whether their conduct is proper and/or the situation should be discussed with the Agency Ethics Official.

(a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(b) Employees shall not hold financial interests that conflict with the conscientious performance of their duties.

(c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(d) An employee shall not, except as permitted, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(e) Employees shall put forth honest effort in the performance of their duties.

(f) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind BPA.

(g) Employees shall not use public office for private gain.

(h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes, that are imposed by law.

(m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

SECTION 2 DEFINITIONS.

“BPA assistance” or “BPA financial assistance” means any form of assistance instrument where the principle purpose of the relationship is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute rather than of acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of BPA. Specific types of financial assistance instruments include, but are not limited to grants, cooperative agreements, and loans (see Bonneville Financial Assistance Instructions, BFAI 1.4).

"BPA purchase" means the procedures to solicit and award a contract by BPA of supplies or services (including construction).

"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

"Contractor proposal information" means any information submitted to BPA as part of or in connection with a proposal to enter into a BPA purchase of property or services (including construction) or assistance, if that information has not been previously made available to the public or disclosed publicly, including:

(a) Cost or pricing data;

(b) Indirect costs and direct labor rates;

(c) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

"Competing contractor," with respect to any purchase means any entity legally capable of entering into a contract that is, or is reasonably likely to become, a competitor for or recipient of a BPA contract under such purchase, and includes any other person acting on behalf of such an entity.

"Participating personally and substantially during the conduct of a BPA purchase" means active and significant involvement of an individual in any activity directly related to a purchase or assistance,

beginning upon the earliest date upon which an authorized BPA official orders commencement of such activities, and ending upon award of a contract; and

(a) Activities directly related to a purchase or assistance include:

(1) Drafting, reviewing, or approving the specification or statement of work for the purchase or assistance;

(2) Preparing or developing the solicitation;

(3) Evaluating proposals or selecting a source;

(4) Negotiating price or terms and conditions of the contract; and

(5) Reviewing and approving the award of the contract.

(b) Generally, an individual will not be considered to have participated personally and substantially in a purchase or assistance activity solely by participating in the following activities:

(1) BPA-wide or Business Line boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(2) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular purchase, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular purchase or assistance;

(3) Clerical functions supporting the conduct of a particular purchase or assistance; and

(4) For purchases to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

"Participating personally" means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

"Participating substantially" means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort or on the degree of the employee’s influence on the outcome. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of purchase documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a purchase.

"Proprietary information" means:

(a) Information contained in a proposal;

(b) Cost or pricing data;

(c) Any other information submitted to BPA by a contractor and designated as proprietary.

"Source selection information" means information which is prepared or developed for use by BPA to conduct a particular purchase or assistance, and--

(a) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the purchase or assistance concerned, such as:

(1) Proposed costs or prices submitted in response to a BPA solicitation or lists of those proposed costs or prices;

(2) Source selection plans;

(3) Evaluation plans;

(4) Technical evaluation of proposals;

(5) Cost or price evaluations of proposals;

(6) Rankings of proposals or competitors;

(7) The reports and evaluations of source selection teams;

(8) Other information marked as "SOURCE SELECTION INFORMATION."

(b) The originator of information designated as source selection information may mark the cover page and each page that contains such information with the legend, "SOURCE SELECTION INFORMATION." The material listed in (a)(1)-(8) above is considered to be source selection information whether or not marked, and/or;

(c) Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure.

SECTION 3 CONDUCT OF PURCHASING AND ASSISTANCE ACTIVITIES.

BPA purchasing and assistance activities shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to maintain the integrity of purchasing and assistance practices, strictly avoiding any conflict of interest or even the appearance of a conflict of interest in BPA-contractor relationships. Employees' conduct must be such that they would not hesitate to make full public disclosure of their actions at any time.

During the conduct of any BPA purchase or financial assistance activity, no BPA employee who participates personally and substantially during its conduct shall knowingly:

(a) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with a competing contractor, except as provided in BPI 3.1.4 (also see Section 6 of this appendix);

(b) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any compensation, gratuity, or other thing of value from any competing contractor for such purchase; or

(c) Disclose any contractor proposal information or source selection information regarding such purchase directly or indirectly to any person other than a person authorized by the CO to receive such information.

SECTION 4 UNAUTHORIZED RECEIPT OF INFORMATION.

During the conduct of any BPA purchase or assistance activity, any person other than those authorized by the CO to receive such information shall not, other than as provided by law, knowingly obtain contractor proposal information or source selection information before the award of a BPA contract to which the purchase information relates.

SECTION 5 ANNUAL CERTIFICATION BY BPA EMPLOYEES.

The Head of the Contracting Activity (HCA) is responsible for standards of conduct regarding BPA purchasing and assistance activities. Employees who are personally and substantially involved in BPA purchasing and assistance activities must, each year, familiarize themselves with these purchasing and assistance standards of conduct and BPI 3.1.

In coordination with BPA General Counsel, the HCA relies upon the annual certification by all BPA employees regarding ethical standards of conduct for employees of the Executive Branch (5 C.F.R. Part 2635, as well as those specific to DOE included in 5 C.F.R. Part 3301 and 10 C.F.R. Part 1010 and 48 C.F.R. Subpart 903.1, as supplemented by this BPI Appendix 3-A and BPI Subpart 3.1) as the basis for BPA employee certification of standards of conduct for purchasing and financial assistance activities of BPA. Therefore, the HCA will not maintain separate annual certifications for standards of conduct regarding purchasing and assistance, relying instead upon the annual ethics briefing and certifications maintained by BPA General Counsel.

The standards of conduct regarding purchasing and assistance specifically applies to BPA employees, as follows:

(a) All GS-1101, 1102, 1105, and GS-1106 series employees;

(b) All employees delegated contracting officer authority that are not included in category (1) above;

(c) All COTRs and Field Inspectors; and

(d) All employees who “participate personally and substantially in the conduct of a BPA purchase,” as defined in Section 2 of this appendix.

SECTION 6 DISQUALIFICATION.

A BPA employee who wishes to discuss future employment or business opportunities with a competing contractor must undertake measures to recuse (withdraw) himself/herself from the conduct of the purchase or assistance activity. Such employee must submit to the HCA, prior to initiating or engaging in such discussions, a written proposal of disqualification from further participation in the purchase which relates to that competing contractor (see BPI 3.1.4). The proposal shall:

(a) Identify the purchase involved;

(b) Describe the nature of the employee’s participation in the purchase and specify the approximate dates or time period of participation; and

(c) Identify the competing contractor and describe its interest in the purchase.

If the HCA determines that the employee’s further participation is not essential to the activity's conduct of the purchase and that disqualification will not jeopardize the integrity of the purchasing process, the HCA may grant written approval of the disqualification proposal.

SECTION 7 PROCESSING VIOLATIONS OR POSSIBLE VIOLATIONS.

Any person who receives or obtains information of a violation of the purchasing and assistance standards of conduct must promptly report such information to the CO. The CO is responsible for determining whether the reported violation has any impact on the pending award or selection of the source.

If the CO concludes that there is no impact on the purchase, the CO shall discuss that conclusion with his/her First Level performance manager. With the concurrence of that individual, the CO may, without further approval, proceed with the purchase. However, whenever the First Level performance manager does not agree with that conclusion, he or she shall advise the CO to withhold award and shall promptly forward the information and documentation to the HCA.

The HCA upon receiving any information describing a violation (per BPI 3.1) shall review all information available and take appropriate action. If the HCA determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of BPA, the contracting officer may be authorized to award the contract.

SECTION 8 QUESTIONS REGARDING STANDARDS OF CONDUCT.

Other than the HCA procedures in Section 6 and 7 of this appendix (BPI subparts 3.1.4 and 3.1.5, respectively), should any BPA employee, in his or her judgement, be confronted with any situation where a violation of ethical standards of conduct and business practices is an issue, such person needs to review the standards of conduct and seek the advice of the Agency Ethics Official in General Counsel, as necessary.

In addition to the standards of ethical conduct set forth in this appendix, there are various statutes that must be taken into consideration in determining whether conduct is proper. Employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally, or as employees of DOE. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction such as this one. Instead the employee should refer to the statute itself and obtain the advice of the Agency Ethics Official as needed. In many cases, disciplinary action for violating an ethics regulation will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 6-A

REQUISITIONERS' GUIDE TO PREAWARD ACTIVITIES

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SECTION 1 INTRODUCTION TO THIS GUIDE.

1.1 Quick Start Guidance for Requisitioners.

While this Guide contains a wealth of information for the requisitioner, here are six hot tips to get you started with your purchase.

1. Meet the Contracting Officer (CO) who supports your organization. See Exhibit 1 for a listing of purchasing organizations and the program offices they support.

2. Maintain an ongoing dialog with the CO about your purchasing needs. Confer with the CO at the soonest possible time to discuss your purchase. It opens more purchasing alternatives for you.

3. Utilize commercial supplies and services whenever practicable.

4. Verify that funds are available for the purchase.

5. Be as specific as possible about what you want.

6. Rely upon the guidance of the CO. While purchasing is a team effort, let the CO do his/her job of assisting you in meeting your needs. The CO can guide you with the details of what is required to complete your purchase.

1.2 Purpose of the Guide.

An important part of BPA's program is carried out through the purchase of goods and services. Project and purchasing personnel, operating as a team, must have a full understanding of their respective responsibilities, and must be committed to open communication if they are to meet BPA's goals in a sound and credible fashion.

The requisitioner is the person in the program office who is responsible for developing the project or objective that will be supported by a specific contract. The program office can be easily identified because it is responsible for the source of funds for the contract. Frequently, the requisitioner will be designated as the Contracting Officer's Technical Representative (COTR) to administer a contract, but this is not always necessary or required. Construction contracts, for example, utilize the skills of specially trained individuals to perform the contract administration role for the program office after award.

Purchasing personnel are required to maintain specialized knowledge of the marketplace, business practices, laws, policy, and regulations necessary to effectively award and administer contracts. They are

responsible to assist the requisitioner in bringing the purchasing effort to a successful completion within the existing framework of applicable laws and regulations.

Whether you are new to the purchasing process or just need a refresher, this Guide has been developed to help requisitioner personnel better understand BPA's pre-award acquisition procedures and requirements. The procedures outlined in the Guide will assist you in the preparation of purchase requisitions and related documents in a manner which will assure a more efficient and timely acquisition of goods or services to meet your program needs.

Additional copies of this Guide may be obtained from the Head of the Contracting Activity (HCA) or a Contracting Officer (CO).

1.3 How to Use This Guide.

This Guide has been designed specifically for requisitioner personnel to lead you through the steps necessary to purchase goods and services needed to fulfill BPA's mission and goals. In it you will find information including charts, tables, and diagrams that describe various aspects of the purchasing process governed by the Bonneville Purchasing Instructions (BPI). The BPI should be considered the source document if you need information more detailed than is contained in this Guide. Since the BPI is updated more frequently than this supplement, any conflict between the two shall be construed in favor of the BPI. The most effective way to obtain expert advice regarding any contracting matter is to contact a CO. (See Exhibit 6-A-1 for COs and their areas of program responsibility.)

Exhibit 6-A-1

COGNIZANT CONTRACTING OFFICERS

To determine the appropriate Contracting Officer (CO) for your purchase, contact the purchasing manager or designated CO in the purchasing organization assigned to the commodity you are planning to buy or to your organization. The purchasing manager or CO will be able to direct you to a purchasing staff member for your team.

PURCHASING ORGANIZATION	BPA CLIENT ORGANIZATIONS & SUPPLIES/SERVICES PURCHASED
Supply Chain Services Located in BPA Headquarters Building, Portland, OR	BPA CLIENT ORGANIZATIONS: Provides purchasing, financial assistance and related internal client consultation service support for the Executive Office and other Corporate offices; Finance; Power Business Line; Energy Efficiency; Environment, Fish and Wildlife; Office of General Counsel; and Internal Business Services. (All offices except Transmission Business Line.) SERVICES / SUPPLIES PURCHASED: Services purchased: Professional, technical, clerical, and construction services for all offices except TBL. Supplies purchased: Information Technology hardware and software used throughout BPA, and general non-power system supplies, furniture, and equipment.
Supply Chain Services Located at Ross Complex in Vancouver, WA, with field offices in Pasco and Spokane.	BPA CLIENT ORGANIZATIONS: Provides purchasing, financial assistance and related internal client consultation; transmission materials and equipment; IT hardware and software for Grid Operations, and inventory management service support for the Transmission Business Line. SERVICES / SUPPLIES PURCHASED: Services purchased (including construction): Transmission system related professional, technical, clerical, and construction services. Supplies purchased: Transmission system maintenance and operating materials and equipment, including substation equipment and materials, communications and control equipment, and construction supplies and materials.

SECTION 2 GENERAL INFORMATION.

2.1 Definitions.

"CO" means Contracting Officer.

"COR" means Contracting Officer's Representative.

"COTR" means Contracting Officer's Technical Representative, who has been formally trained and certified as such by Supply Chain Services.

"Contract" means a legal instrument reflecting a relationship between BPA and another party where the principal purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of BPA. In the context of this Guide, the terms "contract" and "contract administration" also apply to Intergovernmental Contracts.

"Field inspector" means one or more individuals who are authorized by the COTR to assist in monitoring the performance of the contractor.

"General Scope of the Contract" means the work which was fairly and reasonably within the contemplation of the parties when they entered into the contract. This can be defined by determining what each party planned to do as a result of the contract. Generally, changes to specific elements or parts of the work would be considered "within the scope" if the end product of the contract was essentially the same as that contracted for initially. A change that is beyond the scope of the contract is considered as a new purchase that requires a new contract, unless the CO determines and the contractor agrees to add such change to the contract, subject to mutual agreement of the parties.

"Program Office" generally means the office that is the source of funds for the contract. This office determines major program goals and policies, and allocates funds, personnel, and other resources among the programs for which it is responsible, and determines other major facets of the contract effort. The requisitioner may not be the source of the funds, such as funds from another business line. The requisitioner may, however, retain project control if the provider of funds agrees. As an example, training classes may be requested by Human Resources, but charged to the business line whose employees are being trained.

"Requisitioner" means the person in the program office who is responsible for developing the project supported by a specific award, and the person who concurs with any proposed program-type modifications to agreements before action by the CO. The requisitioner recommends to the CO an individual to serve as COTR for the contract. The individual must meet minimum formal training requirements and possess BPA COTR certification issued by Supply Chain Services. The important considerations are the technical and contract administration knowledge of the individual to ensure effective technical compliance monitoring of the contractor’s work, and receipt and acceptance of the supplies/services. In the case of construction, the CO typically makes final acceptance. The CO will evaluate the recommendation(s), and designate the individual nominated as a COTR. If the qualifications of the individual(s) nominated to be COTR are not met, the CO will ask for additional recommendations. The requisitioner may be designated as the COTR on a contract, but this is neither necessary nor required. (Note: For some contracts, the COTR may not be an employee of the program office, i.e., work performed for another business line.)

2.2 Contracting Officer's Role.

Authority to contract for required supplies, services, or construction is assigned to the BPA CEO (BPA Administrator) by the Bonneville Project Act. The CEO has delegated that authority to the HCA, with the authority to redelegate to contracting officers. The HCA redelegates authority in writing with specific limitations on that authority. COs are appointed in accordance with theprocedures outlined in BPI 2.2.1. Purchases on behalf of BPA may be entered into and signed only by the CEO, the HCA or a contracting officer who has been delegated the requisite authority as described above. Contracting officers may bind BPA only to the extent of the authority delegated to them. Contracting officer delegations include the authority to administer and terminate contracts.

COs are responsible for ensuring performance of all actions required for effective purchasing, ensuring compliance with the terms of the contract, and safeguarding the interests of BPA in its contractual relationships. Frequently, COs utilize COTRs to provide technical inspection and contract surveillance services in technical areas associated with specific contracts. During the course of administering the awarded contracts, the CO:

Monitors the financial and administrative aspects of the award during the performance period through the COTR;

Maintains the official award files;

Handles correspondence and reports (other than technical) relating to the terms and conditions of the award instrument;

Maintains copies of all correspondence between the COTR and the contractor;

Reviews BPA furnished property management activities per the terms of contract, and, unless otherwise assigned to the COTR, arranges for disposition of returned and excess property after completion or termination of the project;

Orders changes within the scope of the contract;

Handles any claims and appeals resulting from an award; and

Closes the contract.

Except where the contract provides otherwise (i.e., construction field modifications) the CO is responsible for making all modifications to the contract. Such modifications must be in writing, comply with, and cite the contract, regulatory or legal basis to authorize the modification. The provisions of the award will govern some modifications, while others may not have been anticipated by the original terms and conditions. Most modifications are initiated by a requisition prepared by the COTR or program manager.

2.3 Contracting Officer's Representative's Role.

A CO may designate a contract specialist (also called Contracting Officer's Representative or COR) to perform contract preparation and non-technical contract administration work. Requisitioner contacts will be primarily with the COR if one is designated. The duties of a CO described in 2.2 above may be performed to some extent by a COR, if one has been appointed.

2.4 Contracting Officer's Technical Representative's Role.

Contracting Officer's Technical Representatives (COTRs) are individuals who have been formally trained in COTR duties and possess BPA COTR certification, and are designated and authorized by the CO to perform technical contract administration activities on behalf of the CO, within limits specified by the CO. These limits are stated either in a contract clause such as "Contracting Officer's Representatives " or by letter, signed by the CO. COTRs are appointed to perform those functions only for a specific contract. At the end of the contract, the COTR designation automatically expires.

Normally COTRs do not have authority to commit BPA; however, COTRs who administer construction contracts may be granted field modification authority. The COTR, assisted by Field Inspector(s), serves as the CO's eyes and ears on the contract. The COTR’s role is vital to ensure that BPA receives, in a timely manner, the goods or services that conform to the technical requirements as set forth in the contract.

The COTR monitors performance and compliance with the contract, and keeps the CO apprised of the contractor's performance. The COTR advises the CO whenever anything occurs that may or does endanger successful completion of the contract. COTRs perform their contract administration duties on behalf of and under the authority of the CO, and with regard to the performance of their contract administration duties, are responsible only to the CO. Whenever the intent of program personnel and the requirements of the contract differ, the COTR is responsible for administering the contract the way it is written, but also for facilitating any official changes to the contract that are necessary. Any deviation from the way the contract is written requires written approval of the CO.

The COTR will normally be responsible to:

Provide the CO with copies of all correspondence to and from the contractor;

Maintain a record and log of all communications with the contractor;

Participate in post-award orientation conferences, when required;

Monitor the contractor's performance;

Assists contractor in interpreting technical requirements of the contract, while ensuring internal BPA coordination of technical requirements with design or other organizations, as necessary or otherwise required by policy;

Monitor the financial and administrative aspects of the award during the performance period;

Review and evaluate technical progress and financial reports and other documents;

Review invoices and certifying them for payment;

Notify the CO of reports or other deliverables that have been rejected;

Advise the contractor to submit in writing to the CO any requests for modifications;

Assure that modifications of work to be performed under the award are not implemented before a written modification is issued by the CO;

Follow up on reports and invoices;

Evaluate and justify desired changes in writing to the CO;

Keep the CO informed of situations that could become a basis for future claims, and coordinate with CO on measures to mitigate and document costs and other data to support defense against spurious claims;

Make site visits to the contractor's facility or place of contract performance as may be required;

Review and approving or disapproving the contractor's requests for payments under the progress payments clause;

Advise the CO of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts;

Advise the CO of knowledge of the contractor's financial condition which may jeopardize performance;

Report to the CO any inadequacies noted in specifications or performance;

Perform technical analyses of contractor cost proposals;

Review engineering change proposals for proper classification and when required, for need and technical adequacy;

Perform environmental, health and safety surveillance to assist compliance with associated laws, regulations, and contractual terms.

Perform Government property administration functions;

Review contractor compliance with contractual quality assurance requirements to include inspection and acceptance of personal or real property or services;

Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production;

Ensure timely submission of required reports;

Assist in evaluating and making recommendations for acceptance or rejection of contractor-requested waivers and deviations; and,

Perform production surveillance and submitting written status reports, including timely reporting of potential and actual slippages in contract delivery schedules.

The COTR cannot, either in fact or by inference:

Modify the contract (unless specific authority has been delegated, i.e., construction contract field modifications) to change price, technical requirements, or contract performance time;

Take action to terminate the contract;

Grant extension of time (unless specific authority has been delegated, i.e., construction field modifications);

Order the contractor to suspend work under the contract, except for unsafe conditions or safety violations per the Safety clause of the contract; or

Make final decisions on any matter subject to appeal, as provided by the disputes clause of the contract.

The COTR needs to exercise extreme care to avoid the release of information related to the contract to parties other than those directly involved in the project or with a "need to know." While much of the information in the contract is a public record and is frequently accessible under the Freedom of Information Act, the decision to release any data to third parties is made by the CO.

COTRs must complete a minimum of formal training and be certified as a BPA COTR. Supply Chain Services approves the COTR training coursework, which can be BPA or vendor provided, and issues the certifications. COTRs must have at least six months of experience in the technical field of activity that is the subject of the contract before they may be assigned to that role.

A more thorough discussion of the COTR’s authorities and responsibilities can be found in BPI Appendix 14-A, Contracting Officer's Technical Representatives' Guide for Contract Administration.

2.5 Field Inspector's Role.

Field inspectors are authorized representatives of the COTR. They are appointed in a letter written by the COTR with the CO's review and concurrence. The field inspector is normally responsible for functions such as inspection and review of the work performed under the contract, witnessing of tests, interpretation of technical specifications, and recommending approval of reports, materials, or services. These duties are clearly defined in the Field Inspector designation memorandum, Exhibit 14-A-2 in BPI Appendix 14-A. A person who is a BPA certified COTR and is designated as such on one or more contracts may also perform the duties of Field Inspector for other COTRs.

2.6 Ethical Considerations.

Every BPA employee has a responsibility to adhere to the ethical standards for Federal employees. In addition to these standards, those involved in the purchasing process must adopt even higher standards during the purchasing process.

Requisitioners are considered purchasing officials when they are participating in writing specifications or statements of work, developing a requisition, evaluating proposals, or negotiating with offerors. During the time period that a specific purchase is in any stage of the process, purchasing officials must not knowingly:

Solicit or accept any promise of or engage in any discussion of future employment or business opportunity from a competing contractor;

Ask for or receive any money, gratuity or other thing of value from a competing contractor (unsolicited items with a market value under $20 are excluded); or

Disclose any proprietary or source selection information to a competing contractor or the public.

If you need advice to determine the appropriateness of any specific activity, contact the BPA Ethics Officer in the Office of General Counsel.

SECTION 3 INTRODUCTION TO PURCHASING.

3.1 Purchasing - A Team Process.

BPA's organizational Strategic Business Objectives (SBOs) require all employees to demonstrate a personal commitment to effective teamwork and treating each other as customers. This commitment is essential in purchasing quality goods and services to carry out BPA's business purpose in a way that gives best value to our ratepayers.

The first step, therefore, in making any purchase with BPA funds is to determine (a) who should be members of your team and (b) where does accountability lie for each element of the process.

The simplest buys will involve only the requisitioner, staff responsible for funds, approving official, and the CO. The most complex may include, in addition, a purchasing strategy board, safety, a technical evaluation team, and a contracting officer's representative (COR). Early contact with the CO will define the team for your particular purchase.

3.2 Sources of Assistance.

Defining program needs and obtaining funding and approvals are the exclusive responsibility of the program office. Your own chain of command, and administrative staff, and/or technical specialists will provide the necessary procedures for you to follow during the initial planning phase of a purchasing effort.

Conducting market research is a joint responsibility of the requisitioning and the purchasing offices. Refer to Section 5.5 of this Guide for help in performing this process.

Personnel in BPA's purchasing offices have been organized by commodity or service purchased and by program office served. To seek assistance of the appropriate CO, refer back to the chart shown in Exhibit 1.

Certain commodities or services have unique regulations pertaining to their purchase, which are outside the scope of this guide. See BPI 6.6 for a list of procurements that require additional approvals and the organization in BPA that should be consulted before proceeding.

3.3 Typical Purchasing Cycle.

Requisitioner:

- Defines need
- Secures approvals and funding
- Contacts appropriate CO early in planning process (See Exhibit 1)
- Participates in Purchasing Strategy Panel, if needed
- Prepares documentation:
  - Market survey results
  - Statement of work (SOW) or Technical specifications
  - Purchase Request (requisition)
  - Recommended sources to solicit
- Sends documentation to CO
- Works with CO to award the contract
  - Evaluates technical merit of offers
  - Helps negotiate technical details of contract

Purchasing Office:

- Facilitates Purchasing Strategy Panel, if needed
- Assists with documentation by requisitioner, as needed
- Receives completed REQUISITION package
- Determines contracting method in consultation with requisitioner
- Selects sources to solicit
- Prepares and issues solicitation
- Receives and evaluates offers
- Negotiates terms of the contract
- Awards contract

3.4 Authority to Purchase on Behalf of BPA

The Bonneville Project Act vests BPA's purchasing authority in the Administrator/CEO. The line of delegation of this authority goes from the CEO to the Head of the Contracting Activity (HCA) to warranted COs. Only employees in this chain of delegation can commit BPA funds to purchase goods and services. Along with this authority to commit BPA funds goes the responsibility to negotiate prices, terms, and conditions of the contracts. Also included with the delegation is the responsibility for issuing solicitations, signing contracts, modifying contracts, and making business decisions on contractor compliance with contract provisions.

BPA is not bound by your actions if you or another employee perform contract negotiations or make contract commitments independently, or appear to the supplier to have done so without having been warranted as a CO, or acting on the direction of a warranted CO. In legal terms, you are acting outside the scope of your employment, and you may be held personally liable for amount of the purchase or commitment. Such unauthorized acquisitions or commitments may also result in disciplinary actions against you, including termination of employment. You may also significantly delay the eventual purchase of the good or service. If the team process described in this Guide is working properly, there is no reason to make such an unauthorized commitment. If the process is not working properly, bring the matter to the attention of the CO so that it can be improved. (See Sections 4.3, 6.2, and 7.2 in this Guide, and BPAM 21.24 for expedited or emergency purchases.)

3.5 Ratification Process.

If you discover that you or another employee has made an unauthorized commitment, immediately contact the Supply Chain Services organization. You should also contact your administrative office, or

staff in your organization, who are authorized to execute requisitions to determine whether funds are available for the purchase. See BPA Manual Chapter 21 for delegation of requisitioning authority. See BPI Part 2.4 for agency policy on unauthorized commitments and for CO's procedural guidance.

The CO will review the circumstances of the purchase or commitment and assess the risk to BPA. The CO, in consultation with the affected organization - and HCA, legal counsel, and Risk Management if needed - shall determine whether work should be stopped or the commitment suspended or terminated. The CO shall order the Contractor to immediately stop delivery of goods or services if funds are not available to cover the unauthorized purchase, or if it appears that the goods or services are not appropriate or will not meet BPA needs.

You will be required by the CO to thoroughly summarize the unauthorized commitment and to submit the following information, through your supervisor to the CO, within 5 days of the commitment or discovery of the unauthorized commitment. You may be required to submit this information sooner if the CO and others in BPA need the information to make a determination whether to suspend, stop, or terminate contractor performance. Information to submit is as follows:

(a) List of sources considered. Include the basis for selection of the contractor, names, dates, and summary of discussions with the contractors' representatives.

(b) Estimated or agreed contract price

(c) Description of work performed or products furnished.

(d) Mitigating circumstances.

(e) Other background information. Include all records, documents, and correspondence concerning the commitment.

(f) Purchase request and Statement of Work (SOW), specifications, and other applicable documents.

The CO may approve the information and ratify the unauthorized commitment up to $50,000 for commercial goods and services (consistent with BPI Part 2) without further approvals. If the CO does not approve the unauthorized commitment, the individual who made the unauthorized commitment may be responsible to the company, and subject to disciplinary action by their performance managers.

The HCA and Supply Chain Services will monitor ratification actions. If a pattern of unauthorized commitments emerges, the matter will be referred to the appropriate office for corrective action. If the unauthorized commitment exceeds $50,000 or is for non-commercial goods or services of any dollar value, ratification may only come from the HCA. Copies of ratified awards will also be sent to your supervisor and business line Vice President.

SECTION 4 TYPES AND METHODS OF PURCHASING TECHNIQUES.

4.1 Types of Purchasing or Contracting.

BPA's mission encompasses a broad range of purchasing options to accomplish its various objectives. Several of these options are outside the scope of this guide. The focus here is the acquisition of goods and services for the direct benefit or use of BPA.

4.2 Purchasing, Assistance, or Power Marketing.

"Purchasing" refers to any of the methods of acquiring goods and services for BPA's use. Examples of typical BPA purchases are tower steel, transformers, engineering services, construction of transmission lines, clerical services, and fish studies.

"Assistance" refers to grants and cooperative agreements which are methods for BPA to support projects which contribute to the Region but are not for BPA's direct benefit. Grants are used whenever the principal purpose of transferring funds to the recipient is to accomplish a public purpose of support without substantial involvement by BPA during performance of the project. Cooperative agreements, in contrast, do anticipate substantial involvement of BPA. Examples of financial assistance agreements are the energy efficiency or fish program grants. Financial assistance agreements are governed by the Bonneville Financial Assistance Instructions. Consult this source if you believe your project would best be accomplished through such arrangements.

Contracts for the purchase, wheeling, or sale of power, and contracts for the acquisition of power or capability through energy efficiency measures under the Pacific Northwest Electric Power Planning and Conservation Act, as well as real property and real property leasing (i.e., right-of-way agreements) are not covered in this guide.

4.3 Supply, Services, or Construction Purchases.

The nature of the goods or services to be purchased determines the process to be followed. For supply contracts see Section 7; for services, see Section 8; and for construction contracts see Section 9. Low dollar value transactions can generally be made quickly using the purchasing methods found in Subsections 4.4.2 through 4.4.6 of this guide. In particular, the Purchase Card is a very effective means for completing low dollar value transactions. (See Subsection 4.4.6 and Exhibit 5. Also, refer to Exhibit 2, for guidance on items that require special approvals or consultations prior to purchase).

4.4 Types of Purchasing Techniques.

BPA uses a variety of purchasing techniques depending on the nature of the goods or services to be purchased and on the complexity of the buy. Sections 4, 6, 7, and 8 in this Guide give specific information about the various buying methods.

Quick-response contracts are used in extraordinary circumstances when a definitive contract cannot be executed in time to meet BPA program needs. This type of contract commits BPA funds immediately but leaves most terms and conditions to be specified by modification later. Basic information about the contract requirements will be needed when you discuss using such an arrangement with the CO. A requisition will be needed before the CO can execute the contract.

Free trial agreements allow BPA to use a product such as new tools or laboratory equipment without payment or obligation. The Office of the Chief Information Officer (OCIO) must review and approve all free trials for computer hardware or software, without exception. No one in BPA is permitted to download any software at his or her desktop PC without OCIO pre-approval. The CO executes a written agreement when property or proprietary data rights must be protected, or either party wants bilateral agreement of specific terms of the free trial. If you make your own arrangement, you may be approaching an unauthorized commitment. (See Subsection 3.5 in thisGuide.) If you need a formalized free trial agreement, send a written request to the CO with a full description of the product and the time period of the trial.

4.4.1 Purchases Executed by a Contracting Officer.

Although COs have authority to make a purchase using purchase card or imprest funds, they more often use written contracts. COs are responsible for the following transactions, such as, but not limited to:

Architect-Engineering services
Master (task order or delivery order) contracts
Master agreements
Intergovernmental contracts
Construction services contracts

Service contracts
Supply and equipment contracts
Turnkey contracts

4.4.2 Purchases Executed by Personnel who are Not COs.

Requisitioning personnel are generally limited to purchase cards, orders against master agreements, field purchasing, and emergency or urgent purchases in the field. These type of purchases are defined in BPI 2.3, which also prescribes the “PO None” process. While cash purchases may be made, BPA has limited the use of imprest funds in favor of other preferred methods of purchase, such as purchase cards (Purchase Card Program).

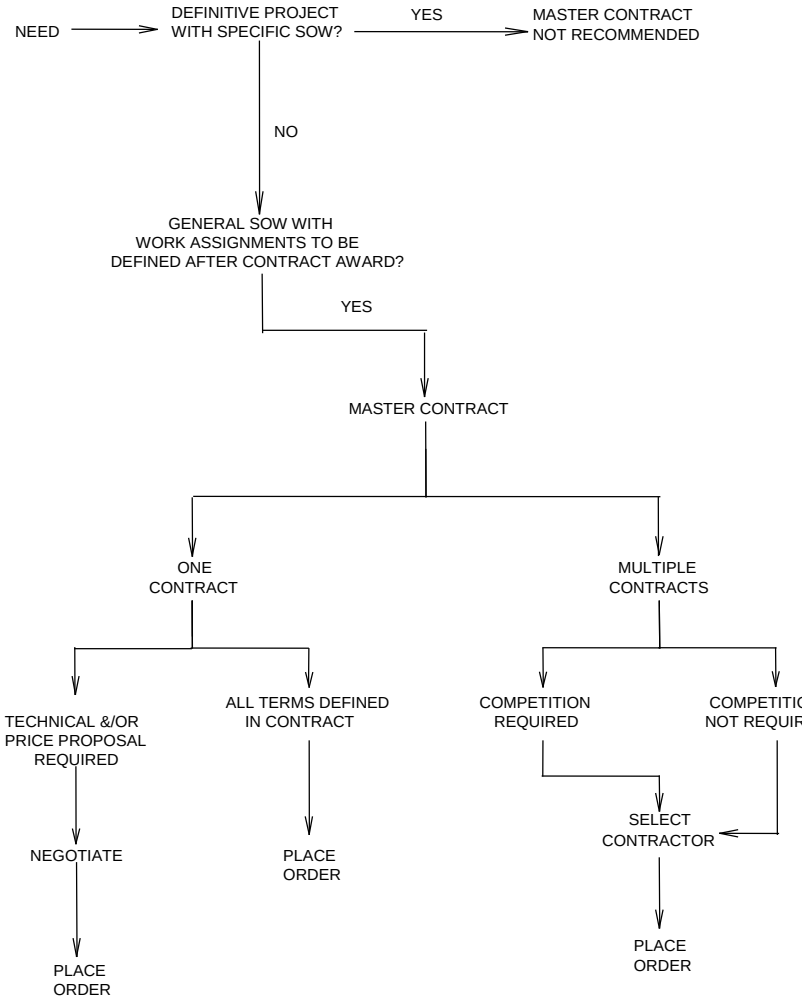
4.4.3 Master Contracts.

Master contracts are used when the exact times and/or quantities of future deliveries cannot be specified at the time of award. These contracts can be used for supplies, services or construction. When specific quantities of supplies, or services or construction work are needed, orders can be placed against a master contract in accordance with its terms and conditions. Master contracts can either contain very exacting specifications or statements of work, or can be established with very general statements of work that describe the types of assignments the contractor can expect to perform for BPA. Individual orders for supplies are referred to as delivery orders, whereas orders for services or construction are referred to as task orders. Funds are contractually committed once a delivery or task order is issued. Authority to issue task orders may be delegated to requisitioners depending on the terms established by the contract.

Exhibit 6-A-3 shows the steps involved in placing either a delivery or task order. However, each master contract is unique. If you are delegated responsibility to issue orders, the contract you are administering will delineate the procedure to be followed. The CO can help you strategize which type of master contract will be most effective for your needs.

Exhibit 6-A-3

MASTER CONTRACT ORDERS

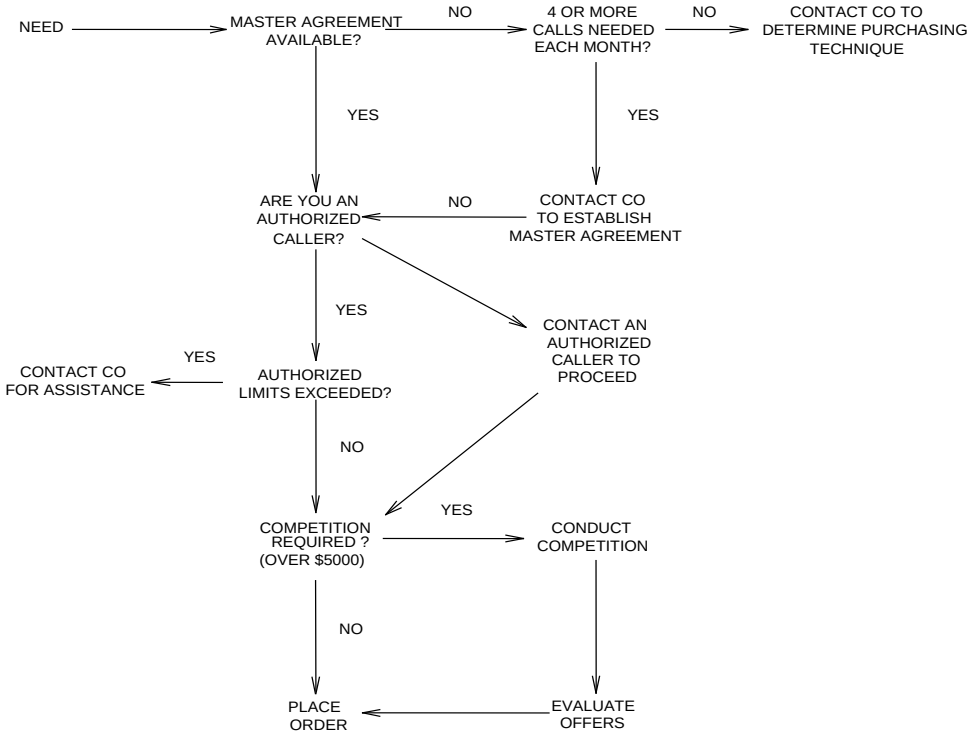


4.4.4 Master Agreements.

Master agreements are not contracts, but rather agreements in writing as to the terms of use should BPA place an order against the agreement. Since a master agreement is not a contract, BPA is not committed to buy a guaranteed minimum amount, as is the case with master contracts. The primary purpose of these agreements is to reduce the processing time and paperwork in preparing requisitions and purchase orders for items frequently ordered. It is typically used for low dollar value, high volume requirements when BPA has a frequent need for supplies or services, but the exact timing for delivery cannot be anticipated. Master agreements are not limited, however, by the dollar value of purchases to be made. Examples for use of master agreements are court-reporting services, interpreting services for the hearing-impaired, equipment enclosures, licenses, cables, commercially available software, and commonly available hardware items. Exhibit 6-A-4 displays the steps in using a master agreement.

Exhibit 6-A-4

MASTER AGREEMENT ORDERS



4.4.5 Imprest Fund (Cash) Transactions.

BPA makes limited the use of imprest funds. Other purchasing methods, such as purchase cards, are the preferred method of purchase. Refer to the Disbursement Operations “Cashier Manual” for more details on use of imprest funds.

4.4.6 Purchase cards.

Policy for the agency Purchase Card (P-Card) Program is found in BPI Part 26. Purchase Cards are the preferred method for making small purchases, particularly for off-the-shelf items. BPA's Purchase Card program should be used whenever it is an available option. Examples of items that should be purchased with a p-card are conference room space, small hardware items, auto supplies, switchboard equipment, electronic modules, training registration, etc. Exhibit 6-A-5 is a flowchart describing this method.

The P-Card Program:

Streamlines the purchasing process by reducing paperwork, improving lead-time, and expedites payment.

Reduces administrative costs associated with low dollar value purchases and imprest fund activities.

Offers an alternative to the use of purchase orders, imprest funds, and third party drafts.

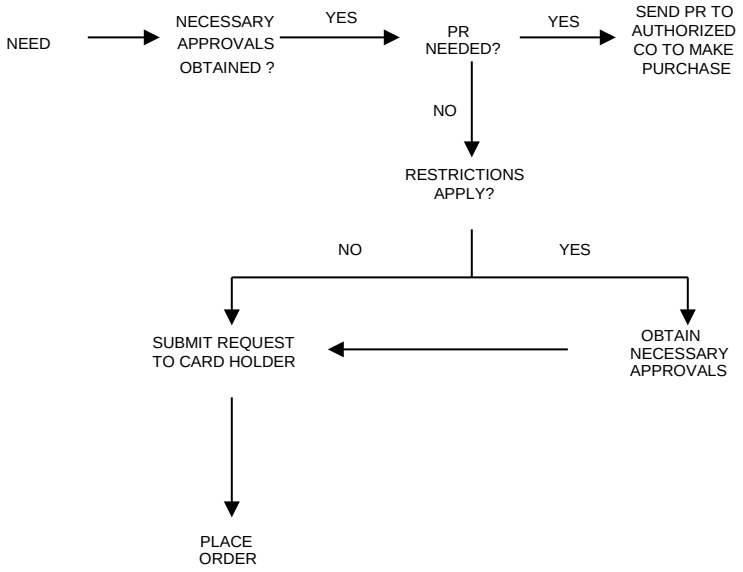
The P-Card is used like any commercial purchase card by the employee to whom it is issued. Any BPA employee who has a continuing need to make p-card purchases may apply for a card. Contact the P-Card Program Manager for instruction on how to meet the criteria, apply for, and receive a card. Also, see the P-Card Manual published by Supply Chain Services.

To make a p-card purchase if you are not a cardholder, determine who in your organization is authorized to do so. Purchase cards may be used either for "over-the-counter" purchases or for telephone orders. Contact your supervisor and/or administrative staff to obtain necessary approvals for the purchase. Refer to the P-Card Manual for list of restrictions and conditions for its use. When all necessary approvals are obtained, the cardholder can place the order. See, also, Exhibit 2 in this Guide for a list of items requiring special approvals or consultations before purchase.

NOTE: P-cards may not be used to purchase certain types of items without express permission of the responsible program office. Refer to Personal Property Instructions (PPI) 1.7 for specific policy.

Exhibit 6-A-5

P-CARD PURCHASES



SECTION 5 BEFORE YOU BEGIN A PURCHASING ACTION.

5.1 General.

BPA's financial well-being depends on every employee. Before beginning a purchasing action, consider whether the purchase is in BPA's best interest, for both the short and long term. Then defining exactly what you need to purchase is the first step in the process. Your management will want a precise description of the proposed contracting action in order to approve it and allocate funding. You will also want to be clear about what you need in order to write the SOW or specifications.

Once a project has been defined, it must be approved by management, budgeted for by the responsible organization, and have funds allocated to that organization. Project approval is accomplished through a budget authorization process developed by Financial Services. Allocation of funds occurs through the annual and quarterly budget allocation process. Funds are accrued at the time of disbursement. Contact your administrative staff or budget support personnel in Financial Services for further assistance

5.2 Identify What is Needed.

Identifying clearly and specifically what you need will reduce the time required to purchase it. This is also the first step toward developing a SOW or technical specification. As you contemplate the scope of the proposed contract, you should consider the following:

What are the specific identifying designations, such as part numbers, model numbers, etc., needed to purchase the item?

What is BPA's need? What program objective of what specific BPA program will be achieved through this purchase?

What are the specific, measurable results to be achieved? (Services)

What are BPA's requirements in terms of quality, performance characteristics, tolerances, etc.? What are the environmental and safety considerations? (Supplies)

Is it appropriate to fulfill BPA’s requirements utilizing products or services that are in compliance with the BPA Sustainability Plan?

What is the time schedule for project performance or product delivery? What will be the effect if the proposed purchase is not completed on schedule? What will be the effect if the purchase is completed ahead of schedule?

5.3 Assessing the Risks of the Purchase.

Purchasing goods or services creates risks for BPA and for the contractor. In the context of purchases, risk is the probability of loss or damage borne by BPA and the contractor, usually described in terms of its cost impact. Risk can arise from all aspects of a purchase—adequacy of purchase description or specifications, contractor’s technical and business competency, contract performance conditions (weather, location, etc.), state-of-the art verses standard commercially available items or services, market price stability, labor and material availability, etc.—all of which have an affect on the risk of loss borne by BPA and the contractor. BPA employees must assess these various kinds of risks involved in a purchase. This assessment should involve both requisitioning personnel and the CO.

Using a purchasing strategy developed by the CO and the purchasing team, the CO selects proposed contract terms and conditions to distribute the risks of contract performance between BPA and the contractor. If more of the risk is borne by the contractor, the contractor may suffer a loss or include an allowance for its assumption of this risk in its contract price. Conversely, if more of the risk is borne by BPA, our costs may likely increase by assuming more cost sharing risk. Therefore, it is important to balance the risk so that neither party bears a disproportionate share of the risk while attempting to keep BPA's total cost reasonable.

Some of the factors that may be relevant to the assumption of risk on a particular contract are listed below. The CO has the lead responsibility to determine if the level of risk to BPA in a given contract is prudent. You may be asked to discuss these or any other pertinent issues with the CO when planning the purchasing method or strategy.

Degree of confidence in your Statement of Work (SOW)

Is the product or service commercially available?

Are hazardous materials or other environmental issues, such as manufacturing processes and end-of-life disposal or recyclables, involved?

Is a system of records on individuals involved in the SOW?

Which potential contractors are most likely to provide the best buy?

How experienced in such performance are the potential suppliers?

Are patents or copyrightable material likely to be developed?

Are there potential organizational conflicts of interest?

Does performance combine supply, service, and construction work?

Is the proposed delivery schedule reasonable from an industry viewpoint?

5.4 Purchasing Strategy Issues.

Some purchases are so complex or sensitive that it is beneficial to convene a Strategy Panel to discuss how best to accomplish the objectives. A panel may be convened whenever a purchase meets policy criteria.

5.5 Market Research.

Market research is performed to find out:

How requirements can best be stated?

What supplies or services are available to meet a requirement?

What sources are available to furnish the supplies or perform the services?

Market research is carried out both by requisitioners and purchasing personnel. Ideally, it should be conducted as a team effort. Market research methods include as many of the following as are appropriate to the requirement (the party primarily responsible is noted):

Assessing the suitability of commercially available products, and whether they can be adapted to BPA requirements or incorporated into design requirements. (Requisitioner)

Address environmental issues.

- Research websites for products with recycled content: http://www.epa.gov/epaoswer/non-hw/procure/products.htm.
- Research websites for energy and water using products: http://www.eere.energy.gov/femp/technologies/eep_eerecommendations.cfm

Determining the status of the applicable technology, the extent and success of commercial application, and the availability of sources. (Requisitioner)

Conducting industry briefings and pre-solicitation briefings or conferences with prospective contractors to discuss requirements and to obtain recommendations. These should be held as early as practicable, so that substantive suggestions can be incorporated into the process. (CO)

Publicizing new specifications and, when appropriate, circulating draft solicitations far enough in advance to permit consideration of industry comments. (CO)

Issuing solicitations for informational or planning purposes. (CO)

Attending industry and scientific conferences, and acquiring literature about commercial products, industry trends, product availability, reliability, and prices. (Requisitioner and CO)

Testing and evaluating commercial products in order to develop reliable performance data, determine any necessary modifications, and develop operational cost information. (Requisitioner)

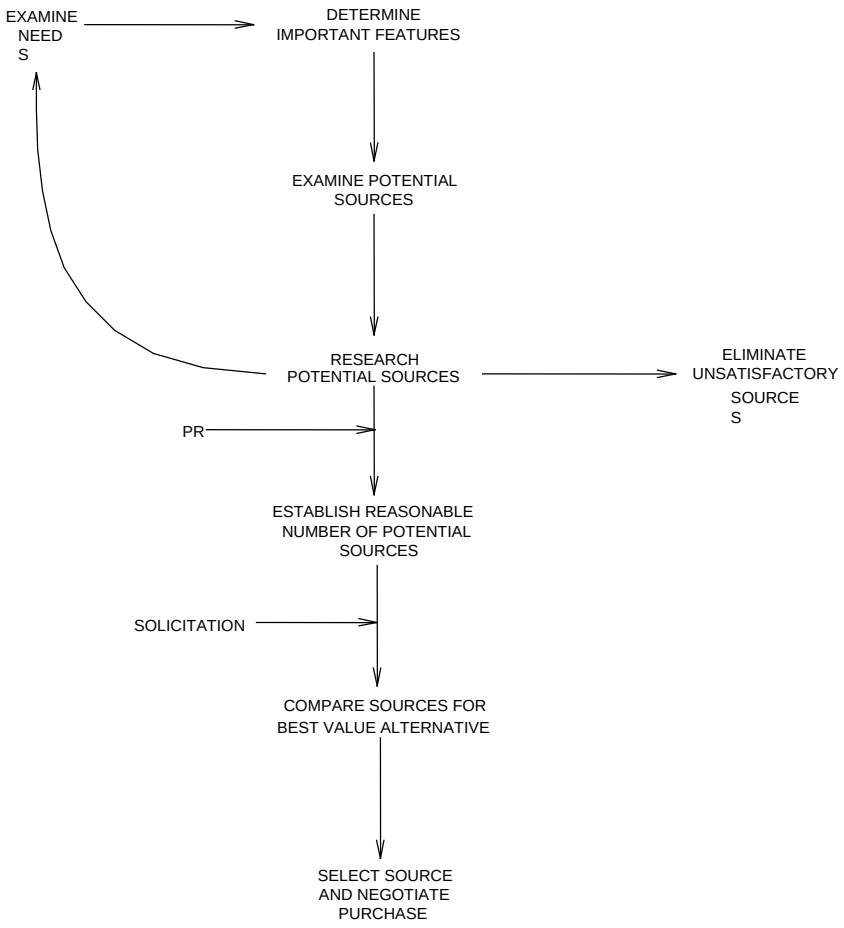
Analyzing the purchase history of specific requirements in terms of extent and quality of competition, prices, and performance results. (CO)

Requisitioners must comply with their own organizational policies and procedures regarding release of agency Critical Program Information (CPI) during the market research phase. The requisitioner should also contact the CO and proceed according to the policy and procedure guidance found in BPI Part 11.4.

Exhibit 6-A-6 shows the steps normally followed in conducting market research.

Exhibit 6-A-6

MARKET RESEARCH



5.6 Purchasing Alternatives.

During the market research process, information should be assessed in terms of what kind of contracting method will be most appropriate for the particular transaction. Appropriate BPA contracting methods are those described in Section 4 of this Guide and BPI 7.1, Exhibit 7A.

5.7 Competition Considerations.

Competition is one of the principal ways to obtain the best value for BPA. Best value is a business judgment that maximizes quality while minimizing BPA's total cost incurred by BPA over the expected life of the purchase (total cost of ownership), not just the initial purchase price. BPA's purchasing process promotes and provides for sufficient competition during source selection to achieve these goals.

Competition helps BPA meet its responsibility to purchase quality goods and services at the most reasonable price and in the most efficient manner possible, given the expenses involved in the

competitive process. Competition is not limited to price alone. Other factors, such as quality or time of delivery or safety performance records, may be more important than price in a given instance.

The CO has the discretion to determine the extent of competition useful in a specific transaction. Competition will normally be limited to the number of offerors that will assure BPA the best buy.

The information obtained by purchasing personnel and requisitioners in the course of their work is vital to BPA's ability to use competition effectively in the contracting process. You are encouraged to submit suggested sources for your purchase to the CO early in the process. If you know of potential sources, you are encouraged to submit all relevant information concerning each firm considered. The CO may request additional information from you regarding potential sources.

5.8 Noncompetitive Transactions.

Some purchases may be made without competition. Different documentation requirements apply to the various types of noncompetitive transactions. (Refer to BPI 11.7 for complete regulations.)

No written explanation or citation is needed for purchases under $10,000, subscriptions under $10,000, utility services, purchases from other Federal agencies and Government printing contracts.

Unique source purchasing means contracting for supplies or services from the only feasible source which can meet BPA requirements. This form of contracting is acceptable when no other option is available. The CO is responsible for including an explanation of the nature of the unique source and why no other sources were considered. You will be asked to provide information to the CO for this purpose.

Certain other situations allow limiting competition to specific sources. Formal explanations are not required, but a citation to the appropriate BPI section, and enough information to indicate that the section applies must be noted on the requisition by either the CO or the requisitioner. Examples of these circumstances include:

Repair parts, accessories, or supplemental equipment or services required for supplies or services previously furnished or contracted for which are available from only one source. (BPI 11.7.1.2 (a))

Services from an entity that has the responsibility to manage the property or resource to be affected by the contract performance. (BPI 11.7.1.2 (c))

Supplies or services furnished by firms certified as eligible under the Small Business Administration (SBA) 8(a) program. (BPI 11.7.1.2 (d))

A more detailed explanation will be required for the following noncompetitive purchases:

Services from an educational, other nonprofit institution, or a federally funded research and development center, when BPA is establishing or maintaining an essential engineering, research, or development capability. (BPI 11.7.1.3 (a))

Specific projects offered to BPA on a cost-sharing basis where BPA's participation is a minor part of the funding for the entire project. (BPI 11.7.1.3 (b))

If noncompetitive purchasing appears to be the best approach to meet your needs, contact the appropriate CO. Requisitioners will be asked to provide information to help the CO document such a purchase.

5.9 Processing Unsolicited Proposals.

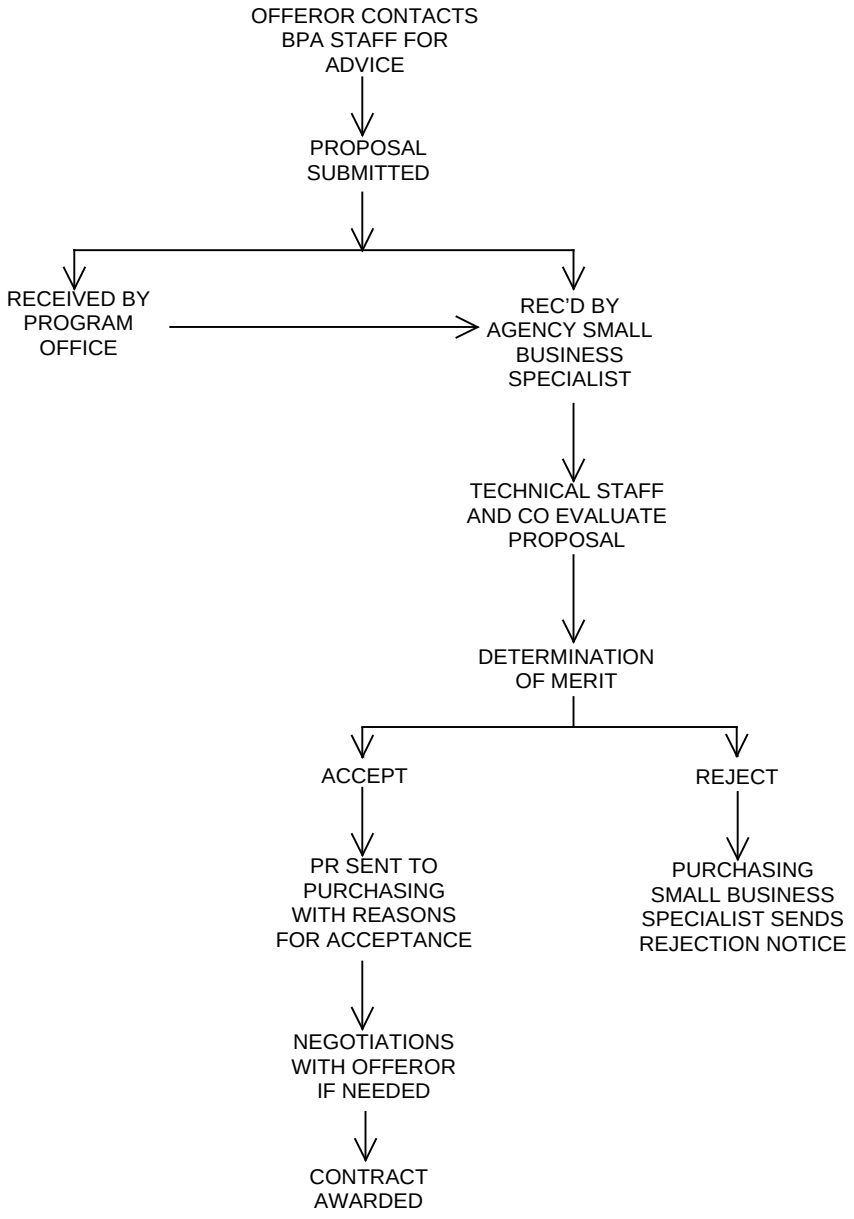
Occasionally, individuals or firms submit unsolicited proposals to BPA offering to meet needs that have not yet been identified by requisitioners. BPA provides a public information booklet (BPI Appendix 12-A) to potential offerors explaining how to submit such proposals.

BPA encourages offerors to submit ideas that will benefit the agency and its customers. It is, therefore, important to make a good-faith evaluation of all unsolicited proposals to determine their merits. The CO and one or more technical experts function as a team to evaluate the merits of an unsolicited proposal.

The flowchart in Exhibit 6-A-7 shows the process to be followed when an unsolicited proposal is received. As in other purchasing activities, your responsibility is to work with the CO to respond to the offeror.

Exhibit 6-A-7

UNSOLICITED PROPOSALS



5.10 Contact with the Contracting Officer.

Meet with the CO at the soonest possible time to discuss your purchase. BPA has many rules, administrative procedures and regulations governing the purchase of goods and services. Requisitioners should contact a CO at the beginning of the planning process to assure the most efficient and timely purchase. It may turn out that a contract already exists for the item or service you require, or that BPA already has it in stock at the warehouse.

For significant or unusual transactions, the CO may be able to facilitate a creative approach to the purchase, or recommend a deviation from existing practices if there are sound business reasons for doing so.

5.11 Planning for Purchase Action.

Prior to preparing and submitting a requisition to the CO, you should consider the following factors:

Are single or multiple sources desired?

Is insurance to be required of the contractor?

What is the urgency of the need?

What is the extent of detail needed in the specifications or SOW?

How will we evaluate the contractor's eligibility to perform the work?

Can small or disadvantaged businesses perform the work adequately?

Are there known suppliers?

Are special qualifications required?

What reports are needed during the project?

What types of termination rights are to be retained? (patent, copyright, etc.)

Should royalties be collected if the project is commercially successful?

Is there similar equipment to be traded in?

What are the future needs for the same or similar items?

Some of these factors will be incorporated when you write the SOW or the specifications. Others will be discussed in your team meetings with the CO.

5.12 Socioeconomic Considerations.

BPA policy is to take all reasonable action to place a fair portion of its purchases with small, disadvantaged and women-owned businesses. BPA-wide progress in meeting those goals is measured and periodically reported by the Small Business Specialist to the HCA and senior management in BPA and DOE.

COs are responsible for ensuring that full consideration is given to such businesses when evaluating potential contractors. You can help in this process by being alert to opportunities for preference purchasing.

5.13 Preparation of BPA Cost Estimates.

With the exception of construction, formal BPA cost estimates generally are not necessary when sending a PR to the CO. In the course of your market research and discussions with the CO, you should be able to get some idea of how much the supplies or services you need will cost. This information is used to get the appropriate funding and other approvals for the purchase. You may

be requested to help develop a detailed cost estimate at some stage of the purchasing action to prepare for negotiations. The CO will provide guidance on content and format if such a cost estimate will be needed, and it will be prepared as a team effort.

Suppliers of services are usually required to provide a detailed cost proposal. You will be expected to review the proposal for reasonableness and to determine if adequate funds are available to cover the estimated costs. The CO, with your assistance, should resolve any cost proposal issues with the contractor and, if necessary, revise the estimated cost on the PR.

The cost proposal should generally include the following:

Labor (specify the various types and rates)

Materials (major items should be separately identified and estimated)

Equipment (major items should be separately identified and estimated)

Travel (foreign travel must be specifically identified and estimated)

Other direct expenses (be specific)

Overhead (general and administrative costs, indirect expenses)

Profit

SECTION 6 SUPPLY CONTRACTS.

6.1 General.

Purchasing supplies for BPA involves both personal property management and purchasing considerations. Please review the following checklist before submitting a supply contract PR to the CO:

Is the item available in the BPA warehouse? (Use stores requisition.)
Is it a BPA specification item?
Is it included in a BPA catalog? If so, which catalog and what is the item number?
Is the item one that needs coordination or special approvals? (See Exhibit 2-A- in this Guide)
Is it something that should be made in-house rather than purchased?
Is a trade-in appropriate? (See BPI 6.12 and BPI 7.2.10)

6.2 Supplies Requiring Special Attention.

BPI 6.6 lists supplies that require special attention before purchase. A requisition cannot be submitted for such supplies until the preliminary steps noted have been completed. Some items may be restricted for environmental reasons; they are manufactured with environmentally unfriendly processes or create environmental hazard upon disposal. Examples of such items are most types of electronic devices (computers, cell phones, photocopy and fax machines, handheld personal digital devices, handheld digital testing equipment, etc.) and many chemical cleaning products. Some of these items also have property management aspects involved.

6.3 Purchase Requests.

A purchase request (or requisition), and associated documents communicate to the CO information needed in the preparation of the solicitation, the conduct of negotiations (if necessary), and the execution of contract award. There are many items of information which, if not communicated, will result in problems and/or delays in the award process. The CO will require, for example, instructions concerning

any special terms or conditions which the requisitioner wants included in the contract. Such instructions might involve reporting requirements, deliverables, anticipated contract period or delivery dates, patent or data rights, access to BPA property or data during performance, the needed award schedule, lists of recommended sources, and the need for pre-proposal conferences with potential offerors.

The BES electronic requisition system shall be used to generate either a contract requisition (CR) or material request (MR), in lieu of paper requisition forms previously used. The information that the CO requires to adequately serve program objectives must be communicated to the CO and attached to the purchase request via the BES system. The automated requisition system provides for keyboard entry of requisition data. The CO will use this information to make significant decisions concerning the transaction, such as method of solicitation, contract type, and payment terms.

The requisition is generally used to initiate, modify, or cancel action on purchases in process, contracts, and intergovernmental contracts. The requisition must be complete, and exactly describe the action or items required. When inadequate data is submitted with the requisition, substantial follow-up between the CO and requisitioner will be needed. The requisition provides documentation and precise instructions to the CO, with the goal of selecting an optimum purchasing strategy and an acceptable lead-time to award.

Employees are granted requisitioning authority through a management request for application access and requisitioning authority at specified dollar amounts, submitted to the agency BES system administration team on BPA form 1450.053 Asset Suite Security/Agent Profile Request.

6.4 Specifications.

While the purchase of commercially available supplies and services are preferred, purchase requests for material and equipment may contain specifications or a general description of the items to be purchased. Specifications may also be used for services in conjunction with a Statement of Work. Work statements, described in subsection 7.4, are not normally required for materials and equipment.

Specifications must outline the essential elements (i.e., form, fit and function) of the objects required, such as:

- Dimensions;
- Color;
- Electrical or mechanical characteristics; and
- Other required features.

The specifications should describe the requirements or characteristics that will result in the best value for BPA. The goal is to provide the proper balance of quality and cost needed to meet BPA's requirements. Specifications should not be written for higher standards than are actually needed for a best value purchase or so restrictively that suppliers are unnecessarily prevented from offering their products.

6.5 Award Planning and Lead Time.

There are no standard or average lead times for purchase transactions. The optimum lead-time allows both the requisitioner and CO sufficient time to conduct a "best buy" purchase. The goods or services are received at the right place at the right time, without significant undue stress placed on any participant in the process, including the vendor who may signify its stress through additional cost to the government to meet tight delivery requirements.

Requisitioning offices are required to submit annual purchase forecasts to the purchasing groups (see BPI 6.2). This enables purchasing management to adequately staff their offices to meet the anticipated workload. The purchasing groups are committed to providing best possible client service, and rely on requisitioners' early contact to form the purchase team.

Many factors can influence the amount of time necessary to complete the transactions:

(a) Simple, commercial buys of readily available items from a variety of suppliers can be accomplished in one to several days' time. If master contracts or blanket agreements are in place, the purchasing process can be accomplished quicker than if each buy must be treated as a separate transaction.

(b) More complex or unique procurements that include BPA Specifications or detailed Statements of Work and require technical review of offers followed by negotiations will require a few to many months' time. Requisitioners are strongly encouraged to contact the purchase group as early as possible in the needs identification process. Large, complex, or unique procurements may require the CO to convene a strategy panel, or to contact the risk management committee. Such activities add to the lead-time. The CO can then assist the requisitioner to define the scope of the purchase, including any need for market research and determining the timeline from solicitation to evaluation to award.

(c) Some purchase transactions are legitimate unforeseen emergencies. In those instances, the purchasing groups will take necessary actions to re-prioritize work to accommodate the client's needs.

SECTION 7 SERVICE CONTRACTS.

7.1 General.

The following checklist should be reviewed before submitting a service contract requisition to the CO:

Does the statement of work accurately describe the services to be purchased?

Which sources should be solicited?

Are there sources that should be excluded from offering? Examples of reasons for exclusion: significant credit risk, poor past performance, suspension or debarment, insufficient capacity.

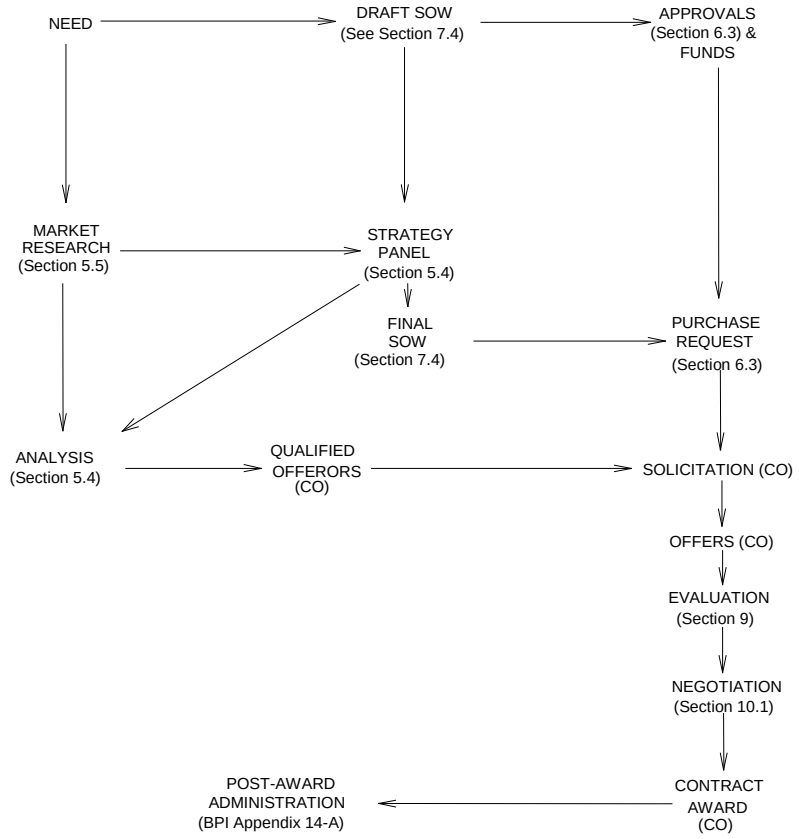
Are there work or safety hazards that need to be described?

Are there unique aspects of the purchase that should be discussed with the CO? (Technical data rights, etc.)

Exhibit 6-A-8 shows the typical process for service contracts.

Exhibit 6-A-8

SERVICE CONTRACTS



7.2 Services Requiring Special Attention.

Some services require special approvals or consultations before purchasing activities may begin. Refer to Exhibit 2 in this Guide for directions to the appropriate BPA organization.

Use of private sector temporary help service firms requires a statement on the requisition documenting the need for such services. The statement must explain the nature of the short-term situation that exists i.e., an employee is absent for a temporary period due to personal need, or BPA has a temporary, critical workload.

Services contracts which create employer-employee relationships between BPA and contractor personnel are not permitted. (See BPI 23.1.4)

Inherently governmental functions are those that typically involve the discretionary exercise of Government authority or monetary transactions and entitlements. Such activities may not be performed by contractors. (See BPI 23.1.5 for examples of inherently governmental functions.)

Contracting for the services of former BPA employees on a noncompetitive basis requires the approval (electronic or hand signature) of your Vice President on the requisition. (See BPI 6.17.2)

If the services you need are available from a unique source, you will be expected to discuss the purchase with the CO and provide information that supports making the buy on a noncompetitive basis. (See 5.8 in this Guide.)

7.3 Purchase Request Form.

See Section 6.3 of this Guide for information on completing an electronic requisition.

7.4 Statement of Work.

The statement of work (SOW) is the core of a services contract. The requisitioner uses the SOW to describe the tasks, responsibilities, and results to be produced through the services of the contractor. An accurate and well-written SOW allows potential contractors to present better proposals and BPA to negotiate better prices. A solid SOW also makes it easier to administer the resulting contract.

Exhibit 6-A-9 is a sample SOW format which has been used for several years at BPA. The format is optional and may be revised to meet your needs.

Exhibit 6-A-9

STATEMENT OF WORK

Part A -- General

A.1 Goal of this Contract.

The objective of this Contract is to

A.2 Background.

A.3 Location of Project.

A.4 BPA-Furnished Property or Services.

Description	Point of Delivery	Date

A.5 Contractor-Furnished Property or Services.

A.6 Definitions.

A.7 Documentation.

Part B -- Technical Approach/Tasks

B.1 General Requirements.

B.2 Methods to be Used.

B.3 Specific Requirements.

a. Basic Statement of Work.

b. Miscellaneous Items to be Included.

B.4 Deliverables.

B.5 Time Schedule.

A more detailed explanation of how to prepare the various sections of the SOW follows:

The SOW describes the objectives, purpose, nature and, to the extent they are available, the detailed requirements for the work to be accomplished. In service contracts it may also specify the desired approach for performance of the work and include a means of determining that the work has been performed; e.g., final report or other deliverables. In construction contracts the statement of work takes the form of technical requirements.

The SOW serves two separate and important purposes in a negotiated purchase. In the Request for Offers, it communicates BPA's requirements to potential proposers. It establishes resource needs--personnel, materials, equipment, facilities, time, and capital. In the resultant contract it constitutes the definition of the contractor's performance obligation, and identifies what BPA is buying as deliverables. It constitutes BPA's Project Management tool by establishing performance measurement milestones, describing acceptable methods of performance, and establishing BPA-contractor technical interface.

The degree of specificity in the SOW, and the way in which the project is structured, in large part determine the method of purchase and the contract type.

A SOW which is clearly written will allow proposers to understand BPA's requirements and respond with detailed plans and approaches for accomplishment of the tasks specified. A well-written SOW will allow proposers to make reasonable estimates of the resources which will be required to satisfy BPA's needs. Poorly written SOWs are misleading to proposers and prevent BPA from obtaining the best value available. When BPA's needs are not clearly identified, the award process is delayed by the need for more lengthy negotiations to clarify the positions of the parties.

When program needs are divisible into logical and identifiable stages of accomplishment, BPA may require completion and approval of each successive stage before proceeding to the next. This technique, known as phased contracting, should be carefully considered as it requires additional time and administrative effort, and the potential for increased costs.

The SOW, as it appears in the contract, should clearly define the performance obligation of the contractor. Administration problems are created after award by SOWs which are unclear. Such problems include: wasted expenditures for work not desired by BPA; disputes between the parties concerning what constitutes satisfaction of the performance obligation; delays in meeting performance milestones; and disagreements about the methodology to be employed in performing the work.

In preparing a SOW, the primary consideration should be the creation of:

A precise statement of the objective sought.

A clear statement of the tasks to be performed in reaching these objectives.

A description of the area of investigation or research required in performing tasks identified.

A clear statement regarding the standards for acceptance.

Disputes concerning contract performance will be arbitrated by third parties. For this reason, the SOW should be written for reading by an independent third party. A few examples of techniques which will aid in third party understanding of the SOW are:

Prepare task descriptions which are specific. They must contain all of the details which will permit the tasks to be performed. They should include a clear identification of the objectives or technical problem toward which the contractor's efforts are to be directed.

Use terms consistently. It is confusing if terms such as "data collection", "field sampling", and "surveys" are used interchangeably. The same word or phrase should be used consistently to convey the same meaning. If necessary, define key terms.

Properly use mandatory and permissive language. Whenever a binding provision is to be expressed, use the word "shall" rather than "may", "will", or "should."

Use abbreviations only after first defining them.

Define who is responsible. The statement "Samples shall be selected for analysis" raises the question, selected by whom--the contractor or the project manager? Normally the contractor is responsible, but occasionally it may be BPA. It should be very clear who has the responsibility.

Avoid establishing a requirement that is dependent on actions by a third person, not a party to the contract. This is especially important where BPA has not, by separate contract, bound the third party to performance.

Use short sentences with simple and concise language. Start each task or sub-task statement with an action verb: "Develop", "investigate", "analyze", etc. The expected results of each task may be described in subsequent statements as a way to better define the task (or sub-task).

When preparing SOWs for contract modifications or follow-on contracts, remember that each SOW must be able to stand alone as an expression of the contractor's obligation. Modifications must clearly delineate areas of change from the original SOW.

Review the completed SOW to determine if it can "stand alone" as a statement of the contractor's obligation.

As an aid to preparing and evaluating the adequacy of SOWs, Exhibit 6-A-10, Contents of a Statement of Work, may be helpful. In addition, assistance on the preparation of a specific SOW may be obtained from the appropriate CO or COR.

Exhibit 6-A-10

CONTENTS OF A STATEMENT OF WORK

A statement of work should address each of the following topics in the sequence presented below. In the event that a topic is not relevant to a specific acquisition action, it need not be covered.

Part A General

A.1 Goal of this contract.

The general objective and goal of the contract should be outlined in a few brief sentences. For example, "The objective of this contract is to obtain an analysis of the materials management system currently in use at BPA. A further objective is to obtain specific recommendations for improving the accountability for material by BPA property custodians". This is often considered the scope of the contracted activity.

A.2 Background.

Briefly explain the general program or project being supported, in order to place the purchase in the context of the overall BPA program. How did the need for the project develop? This explanation should not go into excessive detail but should provide a general frame of reference. Length should not exceed two paragraphs.

A.3 Location of Project (required only if work is site-specific).

The location of the project should be described. For example, "This project will be performed in the BPA service area of the Pacific Northwest", "This project will be performed at BPA Headquarters in Portland, Oregon", "This project will be performed at the Celilo Converter Station, two miles east of The Dalles, Oregon", or a similar statement.

A.4 BPA-Furnished Property or Services.

Indicate the nature and extent of property or services to be provided to the contractor by BPA in support of this contract. Also provide the location at which the property will be delivered to the contractor, and the date and time it will be provided, in the format below:

Description	Point of Delivery	Date

A.5 Contractor-Furnished Property or Service.

Generally this will be phrased "The Contractor is required to provide all property and services in support of this contract, except those mentioned under A.4 above". The main purpose of this section is to point out major property or services which may be unique in nature.

A.6 Definitions.

New terms or acronyms within the work statement, particularly those of a specialized or technical nature, should be defined in this section. It is not necessary to define such common terms as BPA, Regional Act, etc.

A.7 Documentation.

Specifications and standards (either Federal or industry-wide) which are to be used in the performance of work are listed here, for incorporation by reference into the contract.

Part B Technical Approach/Tasks

B.1 General Requirements

A one paragraph description of the general requirements to be accomplished in this contract should be provided here, expanding on the description in A.1 above.

B.2 Methods to be Used

Generally, BPA should specify the end results to be achieved, and leave the choice of methods to the contractor. However, any methods essential to BPA's mission may be specified. Care should be taken to ensure that these specific methods do not prevent the accomplishment of the requirements described below.

For cost-type contracts, the contract may be identified as either a "level-of-effort" or "completion" contract. A completion contract is one in which the scope of work is a clearly defined task or job with a definite goal and a specific end product. A level of effort contract describes the desired effort in sufficient detail to assure that BPA receives the effort it requires, but gives contractors enough flexibility to adjust to new circumstances without the need for repeated contract modifications. The required effort can be expressed in the amount of time to be devoted to performance through the use of terms such as person-hours, person-days or person-months.

B.3 Specific Requirements

The specific steps or activities to be accomplished by the contractor will be described in sufficient detail for the prospective contractor to prepare thorough proposals. If BPA approval or review is required at specific points, they should be defined in this Subpart. In general, this section should include the following:

a. Basic Statement of Work

1. SOW elements (in Chronological order)

a. Phases may contain go, no go, decision points at end of each phase).

b. Tasks (may contain go, no go decision points).

c. Sub tasks.

d. Detailed activities.

Note: Include any task interdependencies. Example: Task 3.5 "Use the results of task 1.4 to determine the size of sample to be used in conducting the survey."

b. Miscellaneous Items to be Included.

1. Project management tasks.

a. Maintain budgets and schedules within limits.

b. Identify and resolve technical and management problems.

c. Maintain communications with all parties.

2. Reporting tasks. For example, "Submit the periodic and final reports specified in the attached Reporting Requirements and Distribution Checklists".

B.4 Deliverables.

Specific material items which are to be delivered to BPA should be listed in this section. Deliverables could be specific products such as computer disks or printouts, copies of a publication or a report, presentation of workshops or briefings, test plans, specifications, drawings, test data, or other types of measurable results. Clearly identify deadlines for approval by BPA (determined by contractor's capabilities and nature of work; usually about 4 weeks) in the schedule.

B.5 Time Schedule

A specific time schedule should be required and detailed in the SOW. Time schedules should be chronological listings of the specific tasks detailed under B.3 above. If BPA has reserved the authority to approve or disapprove the contractor's actions, that activity should also be scheduled. Schedules should be expressed in elapsed days after award, not in specific calendar dates. A typical schedule would be formatted as follows:

Task 1: Analyze cost savings and submit preliminary report --	210 days after award
Task 1a: BPA review and comment on preliminary report --	240 days after award
Task 2: Presentation of final data in workshop for BPA managers --	270 days after award
Task 3: Presentation of final report --	300 days after award

Part C Inspection and Acceptance (Quality Assurance)

This section should clearly state the manner in which BPA will determine whether the contractor has met the requirements of the contract. The contractor should be able to understand how the work will be evaluated and accepted. If BPA reserves the right to reject a report as incomplete or inaccurate, the criteria by which that decision will be made should be outlined. Indicate the minimum quality level, and the range of deviation acceptable. Variances outside this acceptable range of deviation may reduce payments for less than full service, and will put the contractor on notice of deficient performance. For example, "Buses must run within 2 minutes of schedule to provide adequate service."

Part D Technical Exhibits

In some instances, voluminous and detailed data is required to provide the contractor with sufficient information to develop a proposal. Such detail should be appended as exhibits to the work statement.

SECTION 8 CONSTRUCTION CONTRACTS.

8.1 General.

The following checklist should be reviewed before submitting a construction contract requisition:

Does the specification or SOW accurately describe the work to be performed?

Are the necessary drawings, attachments, and supporting information correctly identified and included?

Have the necessary permits, environmental clearances, and property rights been obtained?

Are the contractor-furnished supplies and services identified in sufficient detail?

Are the BPA-furnished supplies and services clearly identified?

Has the constructability review been coordinated?

8.2 Construction Projects Requiring Special Attention.

Requisitioners should contact the appropriate office, see Section 1 and Exhibit 1, for assistance on projects requiring special attention (i.e. projects requiring expedited time-frames or involving hazardous materials).

8.3 Purchase Request Form.

See Section 7.3 of the Guide for requisition preparation instructions. Construction requisitions must also contain a certification that all necessary permits, environmental clearances, and land rights to be acquired have been obtained.

8.4 Purchase Submittals.

The documents usually required for a construction purchase consists of a signed requisition, BPA estimate (if limited competition is anticipated), liquidated damages information (if required), final specifications and drawings, a statement covering the adequacy of the specifications and drawings, and a coordinated milestone schedule for the purchase. Commercial construction purchases will likely require less detailed submittals.

8.5 Construction Specifications.

The requisitioner is responsible for ensuring that the specifications or other purchase description of work to be performed accurately reflects BPA's requirements, do not unduly restrict competition, and are presented in sufficient detail. A constructability review will be required to ensure its adequacy and completeness. The requisition may contain a statement covering the adequacy of the specifications and drawings, or the statement may be in memorandum form and accompany the requisition.

Construction specifications may be expressed in design, performance, or functional terms at the discretion of the CO.

Design specifications set forth precise measurements, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other specific information. Under this type of specification, BPA is responsible for design and related omissions, errors, and deficiencies in the specifications and drawings.

Performance specifications set forth operational characteristics required for the item. In such specifications, design measurements and other specific details are not stated nor considered important, so long as the performance requirements are met. The contractor has general discretion and election as to meet the performance requirements. The shop drawings are subject to BPA's reserved rights of inspection and rejection if performance requirements are not adequately addressed.

Functional specifications set forth a description of a product in terms of its performance characteristics and intended use. They may include a statement of the qualitative nature of the product and, when necessary, will contain those minimum essential characteristics to which the product must conform in order to satisfy its intended use. BPA will review the contractor’s definitive plan, once it is developed.

SECTION 9 EVALUATION OF OFFERS.

9.1 General Conduct of the Evaluation Process.

The goal of the proposal evaluation process, negotiations with offerors and selection for award is to obtain the best buy for BPA. Best buy includes not only the overall cost, but the quality of the contractor and the suitability of the product or service for BPA's intended use.

9.2 Evaluation Team.

The CO determines the optimum number of persons to serve on proposal evaluation teams. Larger teams are needed when the complexity of the supply or service being purchased warrants review and evaluation by persons in addition to the CO. The evaluation shall be performed by the CO, as the source selection official, or by a designated evaluation team pursuant to BPI 12.4. For simple purchases, the requisitioner and the CO comprise the evaluation team.

The evaluation team shall identify and document the methodology for rating each evaluation factor, describing the target performance level that an offer must achieve in order to meet the factor or subfactor. Such methodology shall be identified and recorded prior to beginning evaluation.

The basis for the award decision shall be either lowest price technically acceptable or a tradeoff as identified in the subject procurement. Requisitioners are expected to provide expert evaluation of technical merit; however, they also provide input on the reasonableness of cost.

Confidentiality and integrity are essential to BPA's evaluation process. Members of evaluation teams are held to rigorous ethical standards in making purchasing decisions. The CO will review these standards with you before an evaluation begins.

9.3 Specific Items to be Reviewed.

BPA will work with the supplier community to ensure that proposals are evaluated in an objective and timely manner. Evaluation team members must consider all information to reach a sound business decision. Examples of specific items to be reviewed include the following:

The perceived quality of the goods or services described in the proposal.

The quality of the offeror's management

The past performance record of the offeror

The safety record of the offeror

Prior experience with projects similar to the one being considered

Subcontracting plans

Relative administrative costs to BPA

Probability of change orders or claims

Probability the contractor will offer innovative suggestions which result in increased quality or decreased costs to BPA

Probable start-up costs

The environmental performance/qualification of the offeror

9.4 Evaluation Team Report.

The evaluation team will prepare a record of major decisions made during evaluation meetings and the rationale for these decisions. The CO is responsible for preparing documentation of the award decision (DAD) that will incorporate this record. (See BPI 12.8.2) Members of the evaluation team and/or negotiation team may also be asked to contribute additional information to the DAD.

9.5 Selection of a Supplier.

After evaluation of proposals, the CO will generally select only the top-ranked firm for final negotiations. This process does not preclude the CO from communicating with more than one firm to obtain the information needed to accurately assess proposals, or from negotiating with more than one firm.

SECTION 10 NEGOTIATION, AWARD AND DEBRIEFING.

10.1 Negotiations.

Negotiation is the process by which BPA and the offeror discuss the proposal, terms, conditions, price, BPA specifications and other requirements to be incorporated into the final contract. The goal of negotiations is to establish a clear understanding of both parties' positions leading to contractual agreement.

Most negotiations take the form of person-to-person meetings. Oral presentations by offerors or written questions and answers may also be used in appropriate circumstances. Emphasis should be given to techniques that will assure high levels of understanding between the parties, and a best buy for BPA.

10.2 Award of the Contract.

At the conclusion of negotiations, the CO is responsible for assuring that the contract accurately reflects the agreement of the parties and is properly documented according to the requirements of BPI 12.8.2. The contractor will usually be asked to sign the contract first. The contractor will then return the document to the CO for signature which commits BPA.

The CO distributes copies of the contract to the requisitioner, to the individuals responsible for administration duties, and to those responsible for payment.

10.3 Notice and Debriefing.

Notice of BPA purchasing decisions will vary depending on the type of goods and services and the expectations of the supplier community. The CO is responsible for notifying unsuccessful offerors, and for the timing of such notice.

BPA also has a policy to debrief unsuccessful offerors at their request after award of a contract. Debriefing allows BPA to discuss with offerors the weaknesses of their proposal, and to suggest ways for them to be more competitive for BPA's contracts in the future.

COs usually debrief unsuccessful offerors; however, you may be asked to contribute technical expertise, either to the CO or directly to the offeror.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 10-A

LABOR LAWS AND PROCEDURES

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SECTION 1 INTRODUCTION.

This Appendix sets forth procedural matters relating to BPA's implementation of the Service Contract Act and the Davis Bacon Act. For policy and related guidance, Part 10 of the BPI should be utilized. The Contracting Officer is not discouraged from contacting the Department of Labor directly through their websites at: http://www.wdol.gov/aam.aspx or http://www.dol.gov/esa/whd/programs/dbra/faqs.htm for any questions or concerns regarding the implementation of the Service Contract Act or Davis Bacon Act requirements.

SECTION 2 SERVICE CONTRACT ACT PROCEDURES.

2.1 Some Examples of Contracts Covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment.

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

2.2 Exemptions created by the Secretary of Labor.

(a) In addition to the statutory exemptions cited in BPI Subpart 10.4.2, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly-established routes and accounts for an insubstantial portion of the carrier's revenues.

(2) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(3 Contracts principally for the maintenance, calibration, or repair of the following types of equipment, subject to the restrictions in paragraphs (b) and (c) below:

(A) Automated data processing equipment and office information/word processing systems.

(B) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" and Class 6665, "Geographical and Astronomical Instruments," are largely composed of the types of components hereunder).

(C) Office/business machines not otherwise exempt pursuant to paragraph (a)(3)(A) above, if such services are performed by the manufacturer or supplier of the equipment.

(b) The exemption set forth in subparagraph (a) above shall apply only under the following circumstances:

(1) If the items of equipment are items which are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(2) If the contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such commercial items.

(3) If the contractor utilizes the same compensation (wage and health and welfare benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment for commercial customers.

(c) Determinations of the applicability of the Secretarial exemption shall be made by the CO before contract award. In determining that the exemption applies, the CO shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(d) If the Department of Labor determines after contract award that any of the requirements for exemption have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

2.3 Wage Determinations Based on Prevailing Rates.

Contractors performing on service contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies shall pay their employees at least the wages and health and welfare benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

2.4 Wage Determinations Based on Collective Bargaining Agreements.

(a) Successor contractors performing on contracts in excess of $2,500 for substantially the same services performed in the same locality must pay wages and health and welfare benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement will not apply if the Department of Labor determines as a result of a hearing that the wages and health and welfare benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

(b) Subparts in this Section 2 which deal with this statutory requirement and the Department of Labor's implementing regulations are at 2.8(b), concerning applicability of this requirement and the forwarding of a collective bargaining agreement with a Notice (SF 98, 98a); 2.8(c), concerning notification of purchase dates to contractors and bargaining representatives; 2.11(b), explaining when a collective bargaining agreement will not apply due to late receipt by the CO; and 2.14, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

(c) BPA or other interested parties may request a hearing on an issue involving the review of a wage determination based upon a collective bargaining agreement. To obtain a hearing for BPA, the CO shall submit a request through the HCA to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, with sufficient data to support a prima facie showing that the rates at issue vary substantially from those prevailing for similar services in the same locality. The request shall also include (1) the number of the wage determinations at issue, (2) name of contracting agency, (3) status of the acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance), and (4) names and addressees, if known, of interested parties.

(d) Unless the DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-up option period, as the case may be.

2.5 Requesting Wage Rate Determinations.

(a) The CO shall obtain the appropriate wage determinations either by going to the Department of Labor website at http://www.wdol.gov/aam.aspx or electing to submit Standard Form 98 and 98a in accordance with instructions found at the website for the following service contracts.

(1) Each new solicitation and contract in excess of $2,500.

(2) Each contract modification which brings the contract value above $2,500, which--

(A) Extends the existing contract pursuant to an option clause or otherwise; or

(B) Changes the scope of the contract whereby labor requirements are affected significantly.

(3) Each multiple-year contract in excess of $2,500,.

(b) Successor ship with Incumbent Contractor Collective Bargaining Agreement.

(1) Early in the acquisition cycle, the CO shall determine whether section 4(c) of the Act involving successor ship affects the new acquisition. The CO shall determine whether there is a predecessor contract and, if so, whether the incumbent prime contractor or its subcontractors, and any of their employees, have a collective bargaining agreement.

(2) Section 4(c) of the Act provides that a successor contractor must pay wages and health and welfare benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(A) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(B) The services will be performed in the same locality.

(C) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and health and welfare benefits are the subject of one or more collective bargaining agreements.

(3) The application of section 4(c) of the Act is subject to the following limitations:

(A) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(B) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i) BPA receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the Act applies, the CO shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent's contractor's collective bargaining agreement may involve coordination with the CO responsible for administering the predecessor contract. (Clause 10-3, Service Contract Act of 1965, requires the incumbent prime contractor to furnish the CO a copy of each collective bargaining agreement.) The CO shall submit a copy of each collective bargaining agreement together with any related documents specifying the wage rates and health and welfare benefits currently or prospectively payable under each agreement with the Notice.

(5) Section 4(c) of the Act will not apply if the Secretary of Labor determines after a hearing that the wages and health and welfare benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the same locality, or that they are not the result of arm's length bargaining.

(6) If the services are being furnished at more than one location and the collectively bargained wage rates and health and welfare benefits are different at different locations or do not apply to one or more locations, the CO shall identify the locations to which the agreements apply.

(7) If the collective bargaining agreement does not apply to all service employees under the contract, the CO shall separate the service employee classifications (1) subject to the collective bargaining agreement and (2) not subject to any collective bargaining agreement and ensure that those in category (2) are covered by an appropriate wage determination as part of the contract.

(c) Notification to Interested Parties Under Collective Bargaining Agreements.

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO shall give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(A) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of offers, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(B) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(C) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(2) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of-receipt limitations to apply. The CO shall retain a copy of the notification in the contract file.

2.6 Awarding a contract without a Wage Determination.

If the CO awards a contract without an applicable wage determination, they shall make an equitable adjustment immediately following incorporation of the wage determination or revision, unless the

incorporated wage determination or revision is based on the economic terms of the collective bargaining agreement previously submitted to the Department of Labor.

2.7 Review of Wage Determination.

(a) Based on incumbent collective bargaining agreement.

(1) If wages, health and welfare benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the CO shall consider instituting the procedures in 2.5(c).

(2) If the CO believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the CO shall contact the HCA to determine appropriate action.

(b) Based on other than incumbent collective bargaining agreement. Upon receiving a wage determination not predicated upon a collective bargaining agreement, the CO shall ascertain:

(1) Whether the wage determination does not conform with wages and health and welfare benefits prevailing for similar services in the locality; or

(2) Whether the wage determination contains significant errors or omissions.

(c) If either subparagraph (b) (1) or (b) (2) of this section is evident, the CO shall contact the Department of Labor to determine appropriate action.

2.8 Delay of Acquisition Dates Over 60 Days.

If any award was delayed, for whatever reason, more than 60 days beyond the anticipated award date, the CO shall obtain a revised wage determination from the DOL website and allow the contractor adequate time to revise their rates and contract price if appropriate.

2.9 Errors Discovered by the Department of Labor.

If the Department of Labor determines, either before or after a contract award, that a CO made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 10-3, Service Contract Act of 1965, and any applicable wage determination issued by the DOL. If the contract is subject to section 10 of the Act (41 U.S.C. 358), the DOL may require retroactive application of that wage determination. The CO shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

2.10 Post Award Discussions.

The CO shall take steps to:

(a) Ensure that service contractors notify their employees of minimum wages and health and welfare benefits.

(b) At the time of award, direct the contractor to the Department of Labor website at http://www.dol.gov/esa/whd/ to download posters entitled, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and health and welfare benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at 10-3, Service Contract Act of 1965, As Amended.

(c) During the award process, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

2.11 Additional Classes of Service Employees.

(a) If the CO is aware that contract performance involves classes of service employees not included in the wage determination, the CO shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 10-3, Service Contract Act of 1965, As Amended). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work, following CO and DOL instructions.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Sub-minimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at 10-3, Service Contract Act of 1965, As Amended.

2.12 Seniority Lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment. (See paragraph (n) of the clause at 10-3, Service Contract Act of 1965, as Amended.) At the commencement of the succeeding contract, the CO shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other health and welfare benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

SECTION 3 CONSTRUCTION CONTRACT PROCEDURES.

3.1 Information.

The Davis-Bacon Act requires contractors and subcontractors to comply with wage determinations issued by the Department of Labor on all contracts in excess of $2,000 for construction, alteration or repair of public works or public buildings. As interpreted, this law also applies to contracts for construction activities funded by federal monies whether the property is public or privately owned. Providing funds to tribal governments or other entities, for construction-related activities on privately owned property is covered by this Act. Construction, alteration and repair are broad and inclusive terms. Painting and decorating are included in this definition. Other activities, such as fence building and environmental alterations, are covered by this Act.

3.2 General Requirements.

(a) The published wage determinations shall either be incorporated into applicable solicitations with their most current modification or included by reference. (Decision number, date, modification number and date must be included when incorporating by reference.)

(b) The CO shall ensure that only the appropriate wage determinations are incorporated in solicitations and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO shall indicate the work to which each wage determination or part thereof applies.

(c) If the wage determination contains more than one rate schedule, the CO shall either include only the rate schedules that apply to the specific types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied.

(d) The following general guidelines for use in selecting the proper schedule(s) of wage rates shall be used:

(1) Building construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary. It includes BPA's maintenance complexes, headquarters buildings and fish hatcheries.

(2) Residential construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) Highway construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(4) Heavy construction includes those projects that are not otherwise classified as either "building," "residential," or "highway," and is of a catch-all nature, such as, construction of BPA substations, transmission lines and access roads. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., "dredging," "water and sewer line," "dams," flood control," etc.

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally-established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance shall be sought before incorporation. (Further guidance can be found at the DOL websites: http://www.dol.gov/esa/whd/ and http://www.wdol.gov/aam.aspx .

3.3 Davis-Bacon Act Wage Determinations.

The DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wages, including health and welfare benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination. The CO obtains the appropriate and applicable wage determination by following the guidance on the Department of Labor

website at http://www.wdol.gov/aam.aspx and the DOL Employment Standards website at http://www.dol.gov/esa/whd .

3.4 Award of Contract without Required Wage Determination.

If it is discovered after award that the wrong wage determination or rate schedules were specified, the CO shall modify the contract to incorporate the corrected wage determination, retroactive to the date of award, and if appropriate, equitably adjust the contract price.

3.5 Posting Wage Determinations and Notice.

The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place where it can be easily seen by the workers. The CO shall furnish the contractor with Department of Labor, Notice to Employees Working on Federal and Federally Financed Construction Projects, to be posted with the wage rates. The contractor shall ensure that the posting includes the name, address, and telephone number of the BPA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

3.6 Wage Determination Appeals.

The Secretary of labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. BPA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the DOL has been sought pursuant to 29 CFR 1.8 and denied.

3.7 Additional Classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the CO, pursuant to the clause at 10-7, Davis-Bacon Act, shall require that the contractor submit, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any health and welfare benefits payments.

(b) Upon receipt of the SF 1444, the CO shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any health and welfare benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c) If the criteria in paragraph (b) of this section are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the CO approves, the CO shall submit a report (including a copy of SF 1444) of that action to the DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for health and welfare benefits); or

(d) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CO do not agree on the proposed additional classification, or if the criteria are not met, the CO shall submit a report (including a copy of SF 1444) giving the views of all interested

parties and the CO's recommendation to the DOL, Wage and Hour Division, for determination of appropriate classification and wage rate.

(e) Within 30 days of receipt of the report, the DOL, Wage and Hour Division, will complete action and so advise the CO, or will notify the CO that additional time is necessary.

(f) Upon receipt of the Department of Labor's action, the CO shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 10-7, Davis Bacon Act, and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

3.8 Apprentices and Trainees.

(a) The CO or COR may review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause 10-10, Apprentices, Trainees and Helpers, the CO shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

3.9 Subcontracts. Reserved.

3.10 Payrolls and Statements.

(a) Contractor and subcontractors are required to submit payrolls only if required by Contracting Officer, typically when compliance is challenged or the contractor has a record of labor violations. When the Contracting Officer requires submission of a payroll, the contractor must submit or cause to be submitted payrolls and basic records described in clause at 10-9, Payrolls and Basic Records.

(b) The CO, or his or her representative, shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to --

(1) The correctness of classifications and rates;

(2) Health and welfare benefits payments;

(3) Hours worked;

(4) Deductions; and

(5) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

(c) Health and welfare benefits payments, contributions made or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved.

(d) Disclosure of payroll records: Contractor payroll records in BPA's possession must be carefully protected from any public disclosure which is not required by law since payroll records may contain information in which the contractor's employees have a privacy interest as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

3.11 Site Compliance Checking.

(a) The CO or his or her representative may do research as necessary to ensure compliance with the labor standards requirements of the contract. As stated, submission of weekly payrolls is not required unless specified by the CO.

(b) When submitted, compliance checks should be performed and should include the following activities:

(1) Employee interviews to determine correctness of classifications and rates of pay, health and welfare benefits payments, and hours worked.

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls they submitted are on time and complete, as well as in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

3.12 Investigations.

(a) The CO shall promptly refer, in writing, to the appropriate regional office of the DOL, (1) any complaints received, (2) any apparent violations which have significant impact, (3) any recurring violations and (4) any failures to promptly correct identified violations. When there is question of whether a contractor's performance is in violation or not, the matter shall be discussed with the regional office of the DOL. Any contractor employee complaints received shall not be discussed directly with the employer.

(b) The DOL may conduct labor standards investigations or request BPA to do so.

(c) The BPA CO shall inform the HCA and then contact the Department of Labor for instruction if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. Investigations normally include all aspects of the contractor's compliance with contract labor standards requirements, not to be limited to specific areas raised in a complaint or uncovered during compliance checks. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, shall not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, the DOL, Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to the DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of the DOL.

(d) The DOL will make preliminary findings regarding the contractor. Adverse findings normally require more corroborating evidence than employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(e) The CO shall work cooperatively with DOL and follow their guidance for investigating, withholding funds, and reporting on the results of the review. These activities could result in the following actions:

(1) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the

findings be made available, and to submit written rebuttal information within a reasonable period of time.

(2) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. The identity of any employee who filed a complaint or who was interviewed shall not be disclosed without the prior consent of that employee.

(3) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings shall be considered final.

(4) The contractor may be requested to make restitution for underpaid wages and liquidated damages determined by the investigation, whether or not the violation is considered willful. If the request includes liquidated damages, it shall also contain a written statement that the contractor may request relief from such assessment, within 60 days.

(f) Ultimately a final report, including findings and supporting evidence shall be written and distributed to all involved parties.

3.13 Withholding From or Suspension of Contract Payments.

(a) Suspension of contract payments. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, BPA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from the DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(b) Returning of withheld funds to contractor. When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds shall be paid the contractor in an expeditious manner.

(c) Limitation on forwarding or returning funds. If the withholding was requested by DOL or if the findings are disputed, the CO shall not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

3.14 Disposition of Disputes Concerning Contract Labor Standards Enforcement.

(a) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Payment of overtime;

(5) Withholding practices; and

(6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from DOL.

(c) When requesting the contractor to take corrective action in labor violation cases, the CO shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are to be resolved by the DOL, not by the Disputes clause of the contract.

(2) The contractor may appeal the CO's findings or part thereof by furnishing the CO a complete statement of the reasons for the disagreement with the findings.

(d) The CO shall promptly transmit the CO's findings and the contractor's statement to the DOL, Wage and Hour Division.

(e) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to BPA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the DOL Wage Appeals Board are conducted in accordance with 29 CFR Part 7.

(f) The DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

3.15 Contract Terminations.

In an instance where a contract may be terminated for violations of the labor standards clauses, a report to the DOL, Wage and Hour Division, Department of Labor, shall be prepared. The report shall include --

(a) The number of the terminated contract;

(b) The name and address of the terminated contractor or subcontractor;

(c) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(d) The amount and number of the replacement contract, if any; and

(e) A description of the work.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 12-A

HOW TO SUBMIT AN UNSOLICITED PROPOSAL

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SECTION 1 INTRODUCTION

BPA encourages submission of unsolicited proposals which offer unique or particularly innovative ideas which support BPA's mission. Proposals may be for research, investigations, projects, or products. If the proposal is accepted, BPA may award a contract, grant, or cooperative agreement to the proposer.

This guide is for anyone interested in submitting such "unsolicited proposals". It describes the procedure for preparing and submitting an unsolicited proposal. It also describes the process BPA uses to evaluate the proposal.

SECTION 2 WHAT IS AN "UNSOLICITED PROPOSAL?"

An unsolicited proposal is a written proposal submitted by an offeror:

1. Which was not submitted in response to a known BPA requirement (i.e., where BPA is not already planning to purchase the type of supply or service offered in the unsolicited proposal), and
2. Which was not solicited by BPA (However, BPA encourages preliminary discussions - See Section 3)

The following are <u>not</u> considered to be unsolicited proposals:

1. Advertising materials
2. Commercial product offerings

An unsolicited proposal can only be accepted by BPA if it meets <u>all</u> of the following criteria:

1. The offered goods or services may not be within the scope of a pending BPA solicitation (i.e., where BPA is already planning to purchase the type of supply or service offered in the unsolicited proposal.)
2. The proposal must be unique, the proposer must propose a particularly innovative idea which was originated by them, or the proposer must have unique qualifications. The proposal cannot be accepted if it contains an approach which is available to BPA without restriction from another source, or is commercially available from more than one source.
3. The proposal's basic concept must support BPA's mission and be acceptable, both technically and from a budget standpoint, to:
   A. BPA's technical/program staff (referred to as a "subject matter specialist"), and
   B. BPA's Contracting Officer.
4. Potential conflicts of interest, if any, must be resolved.

SECTION 3 PRELIMINARY DISCUSSIONS

BPA encourages you to make preliminary contact with BPA's subject matter specialists before preparing a detailed unsolicited proposal. Preliminary contact promotes understanding between the proposer and BPA, and reduces paperwork and loss of time.

For assistance in locating the appropriate BPA subject matter specialist, contact BPA's Supply Chain Services Small Business Specialists. (see SECTION 4):

SECTION 4 WHERE TO SUBMIT

Submit your proposal to: UnsolicitedProposal@bpa.gov.

This email address is BPA's clearinghouse for the receipt, distribution, accountability, and status reporting of unsolicited proposals. All proposals received are assigned a BPA identification number, and acknowledged in writing to the originator of the proposal. The BPA identification number appears in the acknowledgment letter, and should be referenced in all subsequent communications pertaining to the proposal.

SECTION 5 WHAT TO SUBMIT

Proposals should be succinct, but sufficiently detailed to allow for an adequate analysis of the costs and benefits. There is no required format. Your proposal should cover the following points, if applicable:

1. BASIC INFORMATION - See Exhibit 12-A-1

2. TECHNICAL INFORMATION

   A. A title and an abstract of the proposed project. The abstract should be in language that can be understood by an intelligent layperson. The abstract is the reviewer's introduction to the proposed project.
   B. Explain why the proposal is either particularly innovative, or why the proposer is uniquely qualified to perform the project (capabilities, experience, facilities, techniques, etc.)
   C. A detailed workplan: The objectives, phase-by-phase procedures to be followed, and expected results and their significance. The general approach should be outlined, and specific methods and procedures to be used should be adequately described. A list of tasks and a proposed schedule with intermediate completion dates should be included. It is understood that detailed plans may require modification during negotiation or the course of the project.

   D. Available facilities and major items of equipment especially adapted or suited to the proposed project should be described, with a clear statement of who will provide such items and/or equipment.

   E. Names of proposer's key project personnel, including the project leader, along with brief biographical information on each.

   F. Economic assumptions, cost, and technical analysis methodologies. All assumptions used in economic and technical analyses should be explicitly stated, references to support all numerical values and cost assumptions should be cited, and sample calculations and equations used to derive economic results should be provided. Claims made about your ideas or proposed technology must be substantiated or verified by calculations and suitable references.

3. BUSINESS AND FINANCIAL INFORMATION

   A. State whether you propose to be paid on a firm fixed price basis, time and materials basis, or cost reimbursement basis.

   B. Submit a detailed cost estimate. Exhibit 12-A-2 may be used for this purpose, or you may use a different format which provides the same level of detail. You may contact the Small Business Specialist to have this fillable form e-mailed to you. Where a cost-sharing arrangement is proposed, each share should be separately identified and similarly detailed.

   C. Provide a brochure describing your organization, if available.

D. Include a brief description of your facilities, if they will be used to perform the project.

E. If you represent an educational institution, state whether you wish to establish stipulated salary support amounts as the basis for charges for personal services of any professional staff members to be used on the project. If you wish to establish such stipulated salary support amounts, the proposal should include the following information for each professional staff member: (a) academic year salary; (b) other research projects or proposal for which salary is allocated; and (c) any other duties, such as teaching assignments, administrative assignments, supervision of graduate students, or other institutional activities.

F. Include evidence of your financial ability to complete the project.

See Exhibit 12-A-3 for a checklist which may be helpful to ensure that you haven't forgotten any required information.

SECTION 6 HOW BONNEVILLE EVALUATES YOUR PROPOSAL

The Supply Chain Services organizationation serves as a clearinghouse for all unsolicited proposals received by BPA. This office will notify you that they have received your proposal, and will send copies to the subject matter specialist(s) and Contracting Officer.

The time required for evaluation, negotiation, and a final decision may take three (3) months, but will vary depending on the particular circumstances of the project.

Your proposal will be used only for purposes of evaluation. BPA will treat your proposal confidentially, with the exception of:

A. Information which is incorporated into the final award, unless specifically excepted,
B. Information available under the Freedom of Information Act,
C. Information required by a court of law or another Federal agency,
D. Information publicly available from other sources.

Bear in mind that a proposal may be rejected if there are significant omissions or deficiencies in the Basic Information, Technical Information, or Business and Financial Information categories outlined in Section 5, above.

The subject matter specialist and Contracting Officer will review the unsolicited proposal to determine whether it meets the criteria shown in Section 2, above. Proposals which do not meet these criteria will either be declined without further consideration, or competitively negotiated along with other qualified contractors. Copies of unsolicited proposals which have been declined will not normally be returned, except upon the written request of the submitter.

If your proposal meets the criteria shown in Section 2, above, the Contracting Officer and subject matter specialist will contact you and negotiate details and other terms and conditions. Determination of the appropriate award instrument (purchasing or power contract, grant, or cooperative agreement) will be made at this time. No commitment of funds may be made by the proposer until formal award is made. BPA may discontinue negotiations at any time prior to award and is under no obligation to pay proposers any costs of preparation or negotiation.

SECTION 7 OTHER CONSIDERATIONS

1. Reports

BPA will generally negotiate reporting requirements prior to award The reports required will depend upon the needs of BPA and the particular circumstances of the project. The contractor will be required to submit a satisfactory final report of the work.

2. Release of Information

BPA recognizes that, during the course of the project, the contractor may desire to publish information regarding scientific or technical developments made in the course of the project. BPA may require advance approval or otherwise restrict the release or publication of information regarding the project.

3. Data and Patent Rights

BPA may establish data and copyrights to awards which result from unsolicited proposals. BPA's policy regarding patents is to grant to the contractor title to the patents made in whole or in part with BPA funds. In exchange, BPA receives royalty-free use on behalf of itself and other Federal agencies. The specific terms and conditions regarding patents, data, and copyrights will be negotiated for each proposal.

Exhibit 12-A-1 - COVER PAGE FORMAT

UNSOLICITED PROPOSAL SUBMITTED TO
THE BONNEVILLE POWER ADMINISTRATION

Name Of Institution, Organization, Individual:
_____

Address:
_____

_____

_____

For: _____
Title Of Proposal And A Brief Description:
_____

_____

Name(s) Of BPA Personnel With Whom The Proposer Has Had Preliminary Discussions
On The Proposed Work_____
_
Requested Starting Date:_____

Proposed Duration: _____

Total Cost Of Proposal: _____

Amount Requested From BPA: _____

If Renewal, Give Contract Or Grant Number: _____

Small Business _____Minority _____ Profit _____ Nonprofit _____
Educational _____ Other: _____

Principal Investigator: _____ Phone: _____

Business Contact: _____ Phone: _____

Date Of Submission: _____

Signature Of Proposer: _____

Exhibit 12-A-2 - PRICE/COST PROPOSAL

BPA F 4220.42e
(06-99)

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION
PRICE/COST PROPOSAL

Electronic Form Approved by Forms Mgmt. 08/01/2005

Instructions. Complete all categories or state "NA" *(not applicable)* if appropriate BPA may require more detail.

☐ 1. Required
(Offeror shall use this form.)

☐ 2. Optional *(Offerors may use a different format but must submit comparable information.)*

3. NAME OF OFFEROR

4. BPA SOLICITATION NUMBER

5. DIRECT LABOR *(List Name/Labor Category)*	RATE PER HOUR	EST. HOURS	EST. COST	TOT. EST. COST
Total Direct Labor				

6. LABOR OVERHEAD	OVERHEAD RATE	X BASE	EST. COST	
Total Labor Overhead				

7. TRAVEL *(Itemized Estimated Costs, e.g., Transportation, Per Diem, Subsistence, etc.)*	EST. COST	
Total Travel		

8. SUBCONTRACTS *(Itemized Subcontract Costs)*	EST. COST	
Total Subcontracts		

9. OTHER DIRECT COSTS *(Materials, etc.)*	EST. COST	
Material Overhead *(Rate % x $ Base)*		
Total Other Direct Costs		

10. OVERHEAD/GENERAL ADMIN. EXPENSES *(G&A)*	RATE	X BASE	EST. COST	
Total Overhead/G&A				
11. Total *(Excluding Profit)*				
12. Fee or Profit				
13. Total *(Including Profit)*				

14A. NAME AND TITLE	14B. SIGNATURE	14C. DATE *(MM/DD/YYYY)*

FILE CODE: SU-12-11 RETENTION: TSM/CP = SEE DISPOSITIOI

Exhibit 12-A-3 - CHECKLIST FOR PROPOSAL SUBMISSION

___1. BASIC INFORMATION, including information required by Exhibit 12-A-1

___2. TECHNICAL INFORMATION

___A. Abstract of the proposed project.

___B. Explanation of the project's innovative aspects or proposer's unique qualifications.

___C. A detailed work plan.

___D. Facilities and Equipment.

___E. Key project personnel.

___F. Economic assumptions, cost, and technical analysis methodologies.

___3. BUSINESS AND FINANCIAL INFORMATION

___A. State whether you propose to be paid on a firm fixed price basis, time and materials basis, or cost reimbursement basis.

___B. Detailed cost estimate.

___C. Organizational brochure, if available.

___D. Description of your facilities, if they will be used to perform the project.

___E. Salary support arrangements and details (education institutions.)

___F. Evidence of financial ability to complete the project.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 13-A

CONTRACT COST PRINCIPLES FOR COMMERCIAL ORGANIZATIONS

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SECTION 1 ADVANCE AGREEMENTS.

(a) The extent of allowability of the costs covered in this Section applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness and allocability of certain costs may be difficult to determine, particularly for firms or their divisions that may not be under effective competitive restraints. To avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, COs and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement, and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness or allocability of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The CO is not authorized to agree to a treatment of costs inconsistent with this Appendix. For example, an advance agreement may not provide that, notwithstanding 8.20, interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract or a group of contracts.

SECTION 2 CONTRACTS WITH COMMERCIAL ORGANIZATIONS

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated on the basis of cost with organizations other than educational institutions, State and local governments and nonprofit organizations.

(a) The cost principles and procedures in this Appendix shall be used in pricing contracts and contract modifications with commercial organizations whenever cost analysis is performed.

(b) In addition, the CO shall incorporate these cost principles and procedures by reference in contracts with commercial organizations as the basis for -

(1) Determining reimbursable costs under cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations, and the cost-reimbursement portion of time-and-materials contracts, except when material is priced on a basis other than at cost;
(2) Negotiating indirect cost rates;
(3) Proposing, negotiating or determining costs under terminated contracts;
(4) Price revision of fixed-price incentive contracts;
(5) Price redetermination of price redetermination contracts; and
(6) Pricing changes and other contract modifications.

SECTION 3 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS.

Except as otherwise provided in this paragraph, the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with this Appendix.

(a) Because of widely varying factors such as the nature, size, duration, and location of the construction site, advance agreements under Section 1 for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs are particularly important in construction and architect-engineer contracts. When appropriate they serve to express the parties' understanding and to avoid subsequent disputes or disallowances.

(b) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor, or by the subcontractor at any tier, or obtained from a commercial rental source, and furnished for its use under BPA contracts.

(1) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, BPA may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (b)(1)(B) and (1)(C) below). However, costs otherwise unallowable under this Section shall not become allowable through the use of any schedule (see 1(c)). For example, schedules need to be adjusted for contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. COs should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not included in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry-sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(2) Reasonable costs of renting construction equipment are allowable (but see paragraph (c) below).

(A) Costs such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate, are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 8.36(b)(3).

(c) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility cost, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(d) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

SECTION 4 COMPOSITION OF TOTAL COST.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money (see 8.10). Any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used to ascertain total costs.

4.1 Determination of Allowability.

The following factors shall be considered in determining whether a cost is allowable:

(a) Reasonableness.

(b) Allocability.

(c) Generally accepted accounting principles and practices appropriate to the particular circumstances.

(d) Terms of the contract.

(e) Any limitations set forth in this Appendix.

4.2 Determining Reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the CO or the CO's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including --
(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or contract performance;
(2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations.
(3) The contractor's responsibilities to BPA, other customers, the owners of the business, employees, and the public at large; and
(4) Any significant deviations from the contractor's established practices.

4.3 Determination of Allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to the contract if it --

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

4.4 Credits.

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to BPA either as a cost reduction or by cash refund.

SECTION 5 DIRECT COSTS.

(a) A direct cost is any cost that can be identified specifically with a specific final cost objective. No cost shall be allocated as a direct cost to a final cost objective, if the same cost is allocated as an indirect cost and has been included in any indirect final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives.

(b) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment --

(1) Is consistently applied to all final cost objectives; and
(2) Produces substantially the same results as treating the cost as a direct cost.

SECTION 6 INDIRECT COSTS.

(a) An indirect cost is any cost not directly identified with a specific, single, final cost objective, but instead is identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for the distribution of indirect costs has been accepted, it shall not be fragmented by the removal of individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of general and administrative (G&A) costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(d) The contractor's method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when --

(1) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(2) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's other products, or other relevant circumstances; or

(3) Indirect cost groupings developed for a contractor's primary location are applied to off-site locations. Separate cost groupings for costs allocable to off-site locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

SECTION 7 APPLICATION OF PRINCIPLES AND PROCEDURES.

(a) Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowable under this Appendix. These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(b) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement or fixed-price incentive type subcontract are allowable to the extent consistent with this Appendix. Costs incurred as payments under firm fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed, shall be allowable only to the extent that the price was negotiated in accordance with this Appendix.

(c) Section 8 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subsection and the treatment of similar or related selected items. When more than one subsection in Section 8 is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost to which more than one subsection in Section 8 is relevant cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals with, or best captures the essential nature of, the cost at issue.

(d) Deviations from the cost principles in this subsection shall be processed in accordance with the procedures in BPI subpart 1.7.

SECTION 8 SELECTED COSTS.

8.1 Public Relations and Advertising Costs.

(a) "Public relations" means all functions and activities dedicated to--

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term "public relations" includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio and television.

(c) Public relations and advertising costs include the costs of media time and space, and purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only advertising costs that are allowable are those specifically required by contract, or that arise from requirements of BPA contracts and that are exclusively for--

(1) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 8.34);

(2) Acquiring scarce items for contract performance; or

(3) Disposing of scrap or surplus materials acquired for contract performance.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of--

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).

(4) Costs of plant tours and open houses (but see subparagraph (f)(5) of this subsection).

(f) Unallowable public relations and advertising costs include the following:

(1) All advertising costs other than those specified in paragraph (d) of this subsection.

(2) Costs of air shows and other special events or trade shows which do not include a significant effort to promote the export of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies, such as corporate celebrations and new product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

8.2 Automatic Data Processing Equipment Leasing Costs.

(a) This subsection applies to all contractor-leased automatic data processing equipment (ADPE) (except as components of an end item to be delivered to BPA acquired under operating leases, as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board. Compliance with 8.11(M) requires that ADPE acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets. Allowability of costs related to contractor-owned ADPE is governed by other provisions of this subsection.

(b)

(1) If the contractor leases ADPE but cannot demonstrate, on the basis of facts existing at the time of the decision to lease or continue leasing (and documented in accordance with paragraph (d) below) that leasing will result in less cost to BPA over the anticipated useful life (see paragraph (c) below), then rental costs are allowable only up to the amount that would be allowed had the contractor purchased the ADPE.

(2) The costs of leasing ADPE are allowable to the extent that the contractor can annually demonstrate in accordance with paragraph (d) below (whether or not the term of lease is renewed or otherwise extended) that these costs meet the following criteria:

(i) The costs are reasonable and necessary for the conduct of the contractor's business in light of factors such as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available, and the provisions of the rental agreement.

(ii) The costs do not give rise to a material equity in the facilities but represent charges only for the current use of the equipment, including incidental service costs such as maintenance, insurance, and applicable taxes.

(iii) The CO's approval was obtained for the leasing arrangement (see subparagraph (d)(3) below) when the total cost of leasing the ADPE

(A) is to be allocated to one or more Government contracts which require the negotiation or determination of costs, or

(B) in a single plant, division, or cost center exceeds $500,000 a year and 50 percent or more of the total leasing cost is to be allocated to one or more Government contracts which require the negotiation or determination of costs.

(3) Rental costs under a sale and leaseback arrangement are allowable only up to the amount that would have been allowed had the contractor retained title to the ADPE.

(4) Allowable rental costs of ADPE leased from any division, subsidiary, or organization under a common control are limited to the cost of ownership (excluding interest or other costs unallowable under this Section 8, and including the cost of money [see 8.10]). When there is an established practice of leasing the same or similar equipment to unaffiliated lessees, rental costs shall be allowed under subparagraphs (b)(1) and (2) above, except that the purchase price and costs of ownership shall be determined under 8.26(e).

(c)

(1) An estimate of the anticipated useful life of the ADPE may present the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life (utility before wearing out). Each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if it can be demonstrated that the ADPE has utility only in a given function and the duration of the function can be determined. Technological life may be used if the contractor can demonstrate that existing ADPE must be replaced because of --

(i) Specific program objectives or contract requirements that cannot be accomplished with the existing ADPE;

(ii) Cost reductions that will produce identifiable savings in production or overhead costs;

(iii) Increase in workload volume that cannot be accomplished efficiently by modifying or augmenting existing ADPE; or

(iv) Consistent pattern of capacity operation (2 1/2 - 3 shifts) on existing ADPE.

(2) Technological advances will not justify replacing existing ADPE before the end of its physical life if it will be able to satisfy future requirements or demands.

(3) In estimating the least cost to BPA for useful life, the cumulative costs that would be allowed if the contractor owned the ADPE should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available.

(d)

(1) Except as provided in subparagraph (3) below, the contractor's justification, under paragraph (b) above, of the leasing decisions shall consist of the following supporting data, prepared before purchase:

(i) Analysis of use of existing ADPE.

(ii) Application of the criteria in paragraph (b) above.

(iii) Specific objectives or requirements, generally in the form of a data system study and specification.

(iv) Solicitation of proposals, based on the data system specification, from qualified sources.

(v) Proposals received in response to the solicitation and reasons for selection of the equipment chosen and for the decision to lease.

(2) Except as provided in subparagraph (3) below, the contractor's annual justification, under subparagraph (b)(2) above, of the decision to retain or change existing ADPE capability and the need to continue leasing shall consist of current data as specified in (d)(1)(i) through (iii) above.

(3) If the contractor's prospective ADPE lease cost meets the threshold in 8.2(b)(2)(iii) above, the contractor shall furnish data in support of the initial decision to lease (see subparagraph (b)(1) above). If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000

per year and 50 percent or more of the total leasing cost is allocated to BPA contracts which require the negotiating or determining costs, the contractor shall furnish data supporting the annual justification for retaining or changing existing ADPE capability and the need to continue leasing shall also be furnished (see subparagraph (b)(2) above).

8.3 Bad Debts.

Bad debts, including actual or estimated losses arising from uncollectable accounts receivable due from customers and other claims, related collection costs, and related legal costs are unallowable.

8.4 Bonding Costs.

(a) Bonding costs arise when BPA requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

8.5 Civil Defense Costs.

(a) Civil defense costs are those incurred in planning for, and protecting life and property against, the possible effects of enemy attack. Costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets acquired for civil defense purposes are allowable through depreciation (see 8.11).

(c) Contributions to local civil defense funds and projects are unallowable.

8.6 Compensation for Personal Services.

(a) General. Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (g) below and for pension costs in paragraph (j) below). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, employee stock options, and stock appreciation rights; employee stock ownership plans; employee insurance; fringe benefits; contributions to pension, other post retirement benefits, annuity and employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost-of-living differential. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other Sections of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see 8.6(g), (h), (j), (k), (m), and (o) below).

(2) The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor--

(i) Has not notified the CO of the changes, either before their implementation or within a reasonable period after their implementation, and

(ii) Has not provided BPA, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Appendix shall not be allowable under this subsection 8.6 solely on the basis that they constitute compensation for personal services. (See 8.34(c))

(b) Reasonableness.

(1) The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. In determining the reasonableness of individual elements for particular employees or classes of employees, consideration should be given to all potentially relevant facts. Facts which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of other firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. While all of the above factors, as well as any other relevant ones, should be considered, their relative significance will vary according to circumstances. For example, in the case of secretarial salaries, conformity with the compensation paid by other firms in the same geographic area would likely be a more significant criterion than conformity with the compensation paid by other firms in the same industry wherever located. The tests for reasonableness of labor-management agreements are set forth in paragraph (c) of this subsection. In addition to the provisions of section 4.2 of this appendix, in testing the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to factors determined to be relevant by the CO. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the above or other tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Based on an initial review of the facts, COs or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or accrued to particular employees or classes of employees. In such cases, there is no presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the contractor may introduce, and the CO will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. For example, a contractor, if challenged on the amount of base salaries for management, could counter by showing lower-than-normal end-of-year management bonuses. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

(i) Offsets will be considered only between the allowable elements of an employee's (or a class of employees') compensation package. For example, excessive management salaries cannot be offset against lower-than-normal secretarial salaries.

(ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or classes of employees:

(A) Wages and salaries.
(B) Incentive bonuses.
(C) Deferred compensation.
(D) Pension and savings plan benefits.
(E) Health insurance benefits.
(F) Life insurance benefits.

(G) Compensated personal absence benefits.

However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

(iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. An executive bonus that is excessive by $100,000 is not fully offset by a base salary that is low by only $25,000. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered. For example, a bonus of $100,000 in the current period will be considered as of greater value than a deferred compensation arrangement to make the same payment in some future period.

(2) Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(i) Compensation to (A) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (B) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. COs or their representatives should normally challenge increased costs where major revisions of existing compensation plans or new plans are introduced by the contractor, and the contractor--

(A) Has not notified the CO of the changes either before their implementation or within a reasonable period after their implementation; and

(B) Has not provided BPA, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(c) Labor-management agreements. If cost of compensation established under “arm’s length” negotiated labor-management agreements is otherwise allowable, the costs are reasonable if, as applied to work in performing Government contracts, it is not determined to be unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less-hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless--

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(d) Form of payment.

(1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of cash, corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation), or other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) Domestic and foreign differential pay.

(1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing; cost of living adjustments; transportation; bonuses; additional Federal, State, local or foreign income taxes resulting from foreign assignment; and other related expenses.

(2) Differential allowances for additional Federal, state, or local income taxes resulting from domestic assignments are unallowable.

(f) Bonuses and incentive compensation.

(1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (f)(1) above and of paragraph (k) below.

(g) Severance pay.

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(7) below.

(2) Severance pay, to be allowable, must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law, (B) employer-employee agreement, (C) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will considered on a case-by-case basis.

(h) Back pay.

(1) Back pay resulting from violations of Federal labor laws or the Civil Rights Act of 1964. Back pay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such back pay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the back pay was not additional compensation for work performed. Back pay resulting from underpaid work is compensation for the work performed and is allowable. All other back pay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) Other back pay. Back pay may also result from payments to employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such back pay is allowable. Back pay to nonunion employees based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(A) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(B) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(C) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.

(j) Pension costs.

(1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. The cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Composition and Measurement of Pension Costs, and 48 CFR 9904.413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth below in subparagraphs (j)(2)(i) and (j)(3) through (8) of this subsection.

(i) Except for unfunded pension plans to be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed, and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (j)(7) below, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) Defined benefit pension plans. This subparagraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i)

(A) Except for unfunded pension plans, normal costs of pension plans not funded in the year incurred, and all other components of pension costs assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(B) Reserved.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs.

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs. Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 8.19(a)(3) and (b), in the indemnification payment to the extent of its fair share.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 8.19(a)(3) and (b), in an indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund are unallowable except to the extent authorized by an advance agreement. The advance agreement shall:

(A) State the amount of the Government's equitable share in the gross amount withdrawn, and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal. If a transfer is made without such an agreement, paragraph (j)(4) of this subsection will apply to the transfer as a constructive withdrawal and receipt of funds by the contractor.

(4) Termination of defined benefit pension plans. When excess or surplus assets revert to the contractor as a result of termination of a defined pension plan, or such assets are constructively received by it for any reason, the contractor shall make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or which are subject to this Appendix.

(5) Defined contribution pension plans. This subparagraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in subparagraph (j)(1) above.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of subdivision (j)(3)(iv) above concerning payments to PBGC apply to defined contribution plans.

(6) Reserved.

(7) Early retirement incentive plans. An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in subdivisions (j)(3)(i) through (iv), provided--

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(8) Employee stock ownership plans (ESOP)

(i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOPs are allowable, subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the CO based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the CO's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year, provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the CO demonstrating that stock purchases by the ESOT are or will be at a fair market price; (e.g., makes arrangements with the trust permitting the CO to examine purchases of stock by the trust to determine that prices paid are at fair market value.) When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis, taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act--TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of subdivision (j)(3)(ii) above are applicable to Employee Stock Ownership Plans.

(k) Deferred compensation.

(1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 8.6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior regulations.

(l) Compensation incidental to business acquisitions. The following costs are unallowable.

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) Fringe benefits.

(1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited

to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided elsewhere in this Appendix, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 8.46(f)).

(n) Employee rebate and purchase discount plans. Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) Post-retirement benefits other than pensions (PRB).

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, post-retirement health care, life insurance provided outside a pension plan, and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this subparagraph.

(i) Cash basis. Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) Terminal funding. If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) Accrual basis. Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) Costs of post-retirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transaction obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable, subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

(6) The Government shall receive an equitable share of any amount of previously-funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to this Appendix.

8.7 Contingencies.

(a) "Contingency" means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. A contingency factor may be

recognized when it is applicable to a past period (such as in a contract termination action) to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:
(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy. Contingencies of this category are to be included in the estimates of future cost.
(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured precisely enough to provide equitable results to the contractor and to the Government. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage.

8.8 Contributions or Donations.

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 8.1(e)(3).

8.9 Reserved.

8.10 Cost of Money.

(a) Policy. Facilities capital cost of money and cost of money as an element of capital assets under construction are not allowable costs under BPA contracts or intergovernmental contracts.

(b) Background. Facilities Capital Cost of Money is a concept which was originally developed by the Cost Accounting Standards Board as CAS 414 and was applied by law to defense contractors. Allowing facilities capital cost of money for this purpose was intended to reward a contractor's investment in plant and equipment used to increase the productivity of the firm, to encourage the use of modern manufacturing technology, to broaden the nation's mobilization base, and to make the performance of defense contracts more efficient. The cost of capital committed to facilities is an imputed cost determined by applying a cost of money rate to facilities capital. Allowing the recovery of these costs was intended to create an incentive for contractors to invest in cost-cutting machinery. The allowance of such costs was felt necessary for defense contractors who had major investments in plant and equipment designed for the production of supplies and equipment in support of the Nation's defense programs. The cost principles were apparently not intended to cover the costs of service contractors, nor to provide recovery of the cost of money expended by contractors to obtain working capital.

(c) BPA's supply contracts do not normally provide a substantial volume of business for any particular contractor over an extended period, and because contractors are not making major investments primarily or exclusively in support of BPA contracts, allowing such costs would be inappropriate. Contractors who do derive a substantial portion of their activities from BPA recover their costs of capital through profits and/or depreciation.

8.11 Depreciation.

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

(b) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, if the contractor is able to demonstrate that it is reasonable and allocable (but see paragraph (h) below).

(c) Depreciation shall be considered reasonable if the contractor follows policies and procedures that are --

(1) Consistent with those followed in the same cost center for business other than Government;
(2) Reflected in the contractor's books of accounts and financial statements; and
(3) Both used and acceptable for Federal income tax purposes.

(d) When the depreciation reflected on a contractor's books of accounts and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based on the asset cost amortized over the estimated useful life of the property using depreciation methods acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center on non-Government business.

(e) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis described in paragraph (d) immediately above.

(f) Special considerations are required for assets acquired before the effective date of this cost principle if, on that date, the undepreciated balance of these assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance on the books and financial statements. The undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation of any asset allowable after the effective date of this 8.11 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior acquisition regulations.

(g) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives in paragraph (a) above, vary with volume of production or use of multi-shift operations.

(h) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(i) The depreciation on any item which meets the criteria for allowance at a "price" under 8.26(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(j) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed. In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(k) Capitalization of tangible assets applies to assets acquired by a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board (FASB). Compliance with 48 CFR 9904.404 and FAS-13 requires that such leased assets (capital leases) be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the leased life as amortization charges as appropriate. Assets whose leases are classified as capital leases under FAS-13 are subject to the requirements of 8.11, while assets acquired under leases classified as operating leases are subject to the requirements on rental costs in 8.36. The standards of financial accounting and reporting prescribed by FAS-13 are incorporated into this principle and shall govern its application, except as provided in subparagraphs (1), (2), and (3) below.

(1) Rental costs under a sale and leaseback arrangement shall be allowable up to the amount that would have been allowed had the contractor retained title to the property.
(2) Capital leases for all real and personal property between related parties are subject to the requirements of this subparagraph 8.11(k). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.
(3) Assets acquired under leases that the contractor must capitalize under FAS-13 shall not be treated as purchased assets for contract purposes if the leases are covered by 8.36(b)(4).

(l) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets shall be limited to the amounts that would have been allowed had the assets not been written down (see 8.16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

8.12 Economic Planning Costs.

(a) This category includes costs of generalized long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs do not include organization or reorganization costs covered by 8.27.

(b) Economic planning costs are allowable as indirect costs to be properly allocated.

(c) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision (see 8.9).

8.13 Employee Morale and Similar Costs.

(a) Aggregate costs incurred for activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraph (b) (c), and (d) immediately below, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 8.6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (1) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where charged but unproductive labor costs

would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) immediately below).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

8.14 Entertainment Costs.

Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 8.1 and 8.13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

8.15 Fines, Penalties, and Mischarging Costs.

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local or foreign laws and regulations are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the CO.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as the costs to rescreen and reconstruct records.

8.16 Gains and Losses on Disposition of Depreciable Property.

(a) Gains and losses from the sale, retirement, or other disposition (but see 8.19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) below). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination.

(b) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases, shall be considered as adjustments of depreciation costs previously recognized. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance (except see subdivision (c)(2)(i) or (ii) below).

(c) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either -
(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or
(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in subparagraph (c)(1) above.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when -
(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 8.11; or
(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

8.17 Idle Facilities and Idle Capacity Costs.

(a) Definitions. "Costs of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, (e.g., property taxes, insurance, and depreciation), and other related costs.

"Facilities" means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

"Idle capacity" means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

"Idle facilities" means completely unused facilities that are excess to the contractor's current needs.

(b) The costs of idle facilities are unallowable unless the facilities -
(1) Are necessary to meet fluctuations in workload; or
(2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 8.42)).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale.

Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

8.18 Independent R and D Bid and Proposal Costs.

(a) Reserved

(b) Composition and allocation of costs.

(1) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the general and administrative (G&A) expense grouping of the profit center in which the costs are incurred. However, when IR&D or B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(2) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the CO may approve use of a different base.

(c) Allowability. Except as provided in paragraph (d) below, costs for IR&D and B&P are allowable only in accordance with the following:

(1) Companies required to negotiate advance agreements.

(i) Any company that received payments for IR&D and B&P costs in a fiscal year, either as a prime contractor or subcontractor, exceeding $7 million from Government agencies, is required to negotiate with the Government an advance agreement which establishes a ceiling for allowability of IR&D and B&P costs for the following fiscal year. This agreement is binding on all Government agencies, unless prohibited by statute. The requirements of Section 203 of Public Law 91-441 necessitate that DOD be the lead negotiating agency when the contractor has received more than $7 million in payments for IR&D and B&P from DOD. Computation of IR&D and B&P costs to determine whether the threshold criterion was reached shall include only recoverable IR&D and B&P costs allocated during the company's previous fiscal year to prime contracts and subcontracts for which the submission and certification of cost or pricing data were required. The computation shall include full burdening.

(ii) When a company meets the criterion in (i) above, required advance agreements may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding $700,000, including burdening, to contracts and subcontracts for which the submission and certification of cost or pricing data were required. When ceilings are negotiated for separate profit centers of the company, the allowability of IR&D and B&P costs for any center that in its previous fiscal year did not reach the threshold cited above may be determined in accordance with subparagraph (c)(2) below.

(iii) Ceilings are the maximum dollar amounts of total IR&D and B&P costs that will be allowable for allocation over the appropriate base for that part of the company's operation covered by an advance agreement.

(iv) No IR&D and B&P cost shall be allowable if a company fails to initiate negotiation of a required advance agreement prior to the end of the fiscal year for which the agreement is required.

(v) When negotiations are held with a company meeting the $7 million criterion or with separate profit centers (when negotiations are held at that level under (ii) above), and if no advance agreement is reached, payment for IR&D and B&P costs shall be reduced below that which the company or profit center would have otherwise received. The amount of such reduced payment shall not exceed 75 percent of the amount which, in the opinion of the CO, the company or profit center would be entitled to receive under an advance agreement. Written notification of the CO's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached before the end of the contractor's fiscal year for which the agreement is to apply, negotiations shall immediately be terminated, and the CO shall furnish a determination of the reduced amount.

(vi) Contractors may appeal decisions of the CO to reduce payment. The appeal shall be filed with the CO within 30 days of receipt of the CO's determination.

(2) Companies not required to negotiate advance agreements. Costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) Deferred IR&D and B&P costs. When appropriate, an agreement may be negotiated between the contractor and the CO to establish the amounts of IR&D and B&P costs incurred in previous accounting periods that will be allowable.

8.19 Insurance and Indemnification.

(a) Insurance by purchase or by self-insuring includes coverage the contractor is required to carry, or to have approved, under the terms of the contract and any other coverage the contractor maintains in connection with the general conduct of its business. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.

(ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.

(v) Contractors operating under a program of self-insurance must obtain approval of the program when required by the CO.

(vi) Costs of nsurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 8.6).

(3) Actual losses are unallowable unless expressly provided for in the contract, except --

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the contractor did not establish a self-insurance program. Such contracts are not subject to the self-insurance requirements of 48 CFR 9904.416. For contracts subject to 48 CFR 9904.416, and for those made subject to the self insurance requirements of that Standard as a result of the contractor's having established a self insurance program (see paragraph a) above) actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 48 CFR 9904.416.50(a)(2)(ii)). In those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of 48 CFR 9904.416-50(a)(3)(ii), the allowable cost shall be limited to an amount computed using as a discount rate the interest rate determined by the Secretary of the Treasury pursuant to 50 USC App. 1215(b)(2) in effect at the time the loss is recognized. However, the full amount of a lump sum settlement to be paid within a year of the date of settlement is allowable.

(ii) Minor losses such as spoilage, breakage and disappearance of small hand tools that occur in the ordinary course of doing business and that are not covered by insurance are allowable.

(4) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.
(5) Premiums for retroactive or backdated insurance written to cover occurred and known losses are unallowable.

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance, and charges for it must comply with the self-insurance provisions. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had it insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable.

(f) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (a)(3) above.

(g) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

8.20 Interest and Other Financial Costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions specified in 8.41 (but see 8.28).

8.21 Labor Relations Costs.

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs under this paragraph include, but are not limited to, the costs of--(1) Preparing and distributing materials; (2) Hiring or consulting legal counsel or consultants; (3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and (4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

8.22 Lobbying and Political Activity Costs.

(a) Costs associated with the following activities are unallowable:
(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash 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 (i) the introduction of Federal, state, or local legislation, or (ii) the enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or 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 enrolled legislation;
(4) Any attempt to influence (i) the introduction of Federal, state, or local legislation, or (ii) the enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;
(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or
(6) Costs incurred in attempting to improperly influence (see Part 3.5), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) above:
(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, 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 thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.
(2) Any lobbing made unallowable by (a)(3) above to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.
(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable (see 14.17) pursuant to this subsection complies with the requirements of this subsection.

(e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of the subsection.

8.23 Losses on Other Contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

8.24 Maintenance and Repair Costs.

(a) Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 8.11):

(1) Normal maintenance and repair costs are allowable.

(2) Extraordinary maintenance and repair costs are allowable, provided those costs are allocated to the applicable periods for purposes of determining contract costs.

(b) Expenditures for plant and equipment, including rehabilitation which should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

8.25 Manufacturing and Production Engineering Costs.

Costs of manufacturing and production engineering, including engineering activities in connection with the following, are allowable:

(a) Current manufacturing processes -- Methods analysis, job analysis, motion and time study, and tool design and improvement.

(b) Current production problems -- Materials analysis for production suitability and component design for simplifying production.

8.26 Material Costs.

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, consideration shall be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspection and correction of defective work). These costs are allowable, subject to the provisions of (b) through (e) below.

(b) Costs of material shall be adjusted for income and other credits, including trade discounts, refunds, rebates, allowances, cash discounts, and credits for scrap, salvage, and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material or be allocated as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, lost discounts need not be credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided, such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost should be charged to the contract. If material is issued from stores, any generally recognized method of pricing is acceptable if that method is consistently applied and the results are equitable. When estimates of future materials costs are required, current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies, and services sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice

of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the price --

(1) Is, or is based on, an "established catalog or market price of commercial items sold in substantial quantities to the general public", or

(2) Is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which produce the item or its equivalent in significant quantity.

(3) Provided that either subparagraphs (1) or (2) above apply only when --

(i) The price is not in excess of the transferor's current sales price to the most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions; and

(ii) The CO has not determined the price to be unreasonable.

(f) The price determined in accordance with paragraph (e)(1) above and Part 12.5.4 should be adjusted to reflect the quantities being acquired and may be adjusted to reflect actual cost of any modifications necessary because of contract requirements.

8.27 Organization Costs.

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subjection, but will be governed by 8.6. These activities include acquiring stock for (1) executive bonuses, (2) employee savings plans, and (3) employee stock ownership plans.

8.28 Other Business Expenses.

The following types of costs are allowable when allocated on an equitable basis:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

(b) Cost of shareholders' meetings.

(c) Normal proxy solicitations.

(d) Preparing and publishing reports to shareholders.

(e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.

(f) Incidental costs of directors' and committee meetings.

(g) Other similar costs.

8.29 Plant Protection Costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with military requirements, are allowable.

8.30 Patent Costs.

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract:

(1) Costs of preparing invention disclosures, reports, and other documents.

(2) Costs for searching the art to the extent necessary to make the invention disclosures.

(3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters are allowable.

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable.

8.31 Reserved.

8.32 Precontract Costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract.

8.33 Professional and Consultant Service Costs.

(a) Definition. "Professional and consultant services" are those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs [c] through [f] of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government [but see 8.30].

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation.

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs [including retainer fees] in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the CO shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required,

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area,

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on nongovernment contracts.

(8) Adequacy of the contractual agreement for the service [e.g., description of the service, estimate of time required, rate of compensation, termination provisions].

(e) Retainer fees, to be allowable, must be supported by evidence that--

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees [if no services were rendered, fees are not automatically unallowable];

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with paragraph [f] of this subsection.

(f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. [See also 8.38(g).] However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include:

(1) Details of all agreements [e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any] with the individuals or organizations providing the services and details of actual services performed;

(2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

8.34 Recruitment Costs.

(a) Subject to paragraphs (b) and (c) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, the following costs are allowable:

(1) Costs of help-wanted advertising.

(2) Costs of operating an employment office needed to secure and maintain an adequate labor force.

(3) Costs of operating an aptitude and educational testing program.

(4) Travel costs of employees engaged in recruiting personnel.

(5) Travel costs of applicants for interviews.

(6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising --

(1) Is for personnel other than those required to perform obligations under a Government contract;

(2) Does not describe specific positions or classes of positions;

(3) Is excessive relative to the number and importance of the positions or to the industry practices;

(4) Includes material that is not relevant for recruitment purposes;
(5) Is designed to "pirate" personnel from another Government contractor; or
(6) Includes color (in publications).

(c) Excessive compensation costs offered to prospective employees to "pirate" them from another Government contractor are unallowable. Such excessive costs may include salaries, fringe benefits, or special emoluments which are in excess of standard industry practices or the contractor's customary compensation practices.

8.35 Relocation Costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) and (f) below:

(1) Cost of travel of the employee and members of the immediate family (see 8.46) and transportation of the household and personal effects to the new location.

(2) Cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during transition periods not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer, except that these costs when added to the costs described in subparagraph (a)(4) below shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, mortgage interest, after settlement date or lease date of new permanent residence, except that these costs when added to the costs described in subparagraph (a)(3) above, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in a new location, except that (i) these costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners and (ii) the total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in paragraph (a) above must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.
(3) The costs must not otherwise be unallowable under this Appendix.
(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in subparagraph (a)(5) above, a flat amount, not to exceed $ 1,000, may be allowed in lieu of actual costs.

(c) The following types of costs are not allowable:
(1) Loss on sale of a home.
(2) Costs incident to acquiring a home in a new location as follows:
(i) Real estate brokers fees and commissions.
(ii) Cost of litigation.
(iii) Real and personal property insurance against damage or loss of property.
(iv) Mortgage life insurance.
(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable).
(vi) Property taxes and operating or maintenance costs.
(3) Continuing mortgage principal payments on residence being sold.
(4) Payments for employee income or FICA (social security) taxes incident to reimbursed relocation costs.
(5) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.
(6) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of paragraphs (a) through (d) above, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if --
(1) The term of employment is not less that 12 months;
(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;
(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior or the outgoing relocation, or other location of equal or lesser cost; and
(4) The relocation costs are determined under the rules of paragraphs (a) through (d) above. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

8.36 Rental Costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property, except ADPE, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with 8.11(m) requires assets acquired by means of capital leases, as defined in FAS-13 shall be treated as purchased assets.

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of:
- (i) rental costs of comparable property, if any;
- (ii) market conditions in the area;
- (iii) the type, life expectancy, condition, and value of the property leased;
- (iv) alternatives available; and
- (v) other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership nor duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) above.

(4) Reserved.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 8.42(e).

8.37 Royalties and Other Costs for Use of Patents.

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary to satisfy contract obligations are allowable unless--
- (1) The Government has a license or the right to a free use of the patent;
- (2) The patent is invalid due to adjudication or administrative determination;
- (3) The patent is considered to be unenforceable; or
- (4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties --
- (1) Paid to persons, including corporations, affiliated with the contractor;
- (2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or
- (3) Paid under an agreement entered into after the award of the contract.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

8.38 Selling Costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of Section 8. Selling activity includes the following broad categories:
- (1) Advertising.
- (2) Corporate image enhancement, including broadly-targeted sales efforts, other than advertising.
- (3) Bid and proposal costs.
- (4) Market planning.
- (5) Direct selling.

(b) Advertising costs are defined at 8.1(b) and are subject to the allowability provisions of 8.1(d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 8.1(a) and entertainment at 8.14, and are subject to the allowability provisions at 8.1(e) and (f) and 8.14, respectively. Bid and proposal costs are defined at 8.18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management

planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 8.12. Other market planning costs are allowable to the extent that they are reasonable. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c)(1) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(2) Reserved.

(d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.

(e) Costs of the type identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 8.6 and 48 CFR 9904.405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, and retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

8.39 Service and Warranty Costs.

Service and warranty costs incurred in fulfilling any contractual obligation are allowable when not inconsistent with the terms of the contract. However, care should be taken to avoid duplication of the allowance as an element of both risk and estimated product cost.

8.40 Special Tooling and Special Test Equipment Costs.

(a) The cost of special tooling and special test equipment is allowable and shall be allocated to the Government contracts for which acquired, except that the cost of items acquired by the contractor prior to the effective date of the contract (or replacement of such items), whether or not altered or adapted for the contract, and items which the contract schedule specifically excludes shall be allowable only as depreciation or amortization.

(b) When items are disqualified as special tooling or special test equipment because with minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

8.41 Taxes.

(a) The following types of costs are allowable:

(1) Federal, State and local taxes, except as otherwise provided in paragraph (b) below that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under subparagraph (a)(1) above, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes --

(i) Promptly requests instructions from the CO concerning such taxes; and

(ii) Takes all action directed by the CO arising out of subparagraph (2)(i) above or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to (A) determine the legality of the assessment or (B) secure a refund of such taxes.

(3) The reasonable cost of any action taken by the contractor at the direction or with the concurrence of the CO. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the CO or by reason of the failure of the CO to insure timely direction after a prompt request.

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations.

(3) Taxes from which exemptions are available to the contractor directly or based on an exemption afforded the Government, except when the CO determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions assure that any tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) below).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(c) Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant, or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs.

8.42 Termination Costs.

Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles are to be used in conjunction with the others in this Appendix:

(a) Common items. The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The CO should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor.

(b) Costs continuing after termination. Costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligence or willful failure of the contractor to discontinue the costs shall be unallowable.

(c) Initial costs. Initial costs including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs are nonrecurring labor, material, and related overhead costs that are incurred in the early part of production and result from factors such as --

(i) Excessive spoilage due to inexperienced labor;

(ii) Idle time and lower-than-expected production due to testing and changing production methods;

(iii) Training; and

(iv) Lack of familiarity or experience with the product, materials, or processes.

(2) Preparatory costs include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting the high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) Loss of useful value. Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided --

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the CO; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for the which the special tooling, or special machinery and equipment was acquired.

(e) Rental under unexpired leases. Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if --

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) Alterations of leased property. The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for the performance of the contract.

(g) Settlement expenses.

(1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for --

(A) The preparation and presentation, including supporting data, of settlement claims to the CO; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such as indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) Subcontractor claims. Subcontractor claims, including the allocable portion of claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided that the amount allocated is reasonably proportionate to the relative benefits received. The indirect expense so allocated shall exclude costs claimed directly or indirectly as settlement expenses.

8.43 Trade, Business, Technical, and Professional Activity Costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity:

(l) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs (see 8.46); and

(3) Costs of attendance by individuals who are not employees of the contractor, provided (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

8.44 Training and Education Costs.

(a) Allowable costs. Training and education costs are allowable to the extent indicated below.

(b) Vocational training. Costs of preparing and maintaining a non-college level program of instruction, but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees are allowable. These costs include:

(1) salaries or wages of trainees (excluding overtime compensation),

(2) salaries of the director of training and staff when the training program is conducted by the contractor,

(3) tuition and fees when the training is in an institution not operated by the contractor, and/or

(4) training materials and textbooks.

(c) Part-time college-level education. Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to --

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructor's salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(d) Full-time education. Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed two school years or the length of the degree program, whichever is less, for each employee so trained.

(e) Specialized programs. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.

(f) Other expenses. Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 8.11, 8.17, 8.24, and 8.36.

(g) Grants. Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) Advance agreements. (1) Training and education costs in excess of those otherwise allowable under (c) and (d) of this subsection, including subsistence, salaries, or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under Section 1. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the CO shall give consideration to such factors as --

(i) The length of employees' service with the contractor;
(ii) Employees' past performance and potential;
(iii) Whether employees are in formal development programs; and
(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) Training or education costs for other than bona fide employees. Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) Employee dependent education plans. Costs of college plans for employee dependents are unallowable.

8.45 Transportation Costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the

appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

8.46 Travel Costs.

(a)

(1) Costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel on official company business are allowable subject to the limitation contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the --

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 022-001-81003-7;

(ii) Joint Travel Regulations, Volume 2, DOD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), section 925, "Maximum Travel Per Diem Allowances of Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and(ii) of this paragraph, available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 744-088-00000-0.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a) (2) (i), (ii),or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the CO.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices provided that a receipt is required for each expenditure of $75.00 or more. The approved justification required by (a)(3)(ii) and, if applicable, (a)(3)(iii) of this subsection must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) in their entirety. Only the maximum per diem rates, the definitions of lodging, meals and incidental expenses, and the regulatory coverage dealing with specific or unusual situations are incorporated herein.

(5) An advance agreement (see Section 1) with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge -

(i) When no lodging costs are incurred; and/or

(ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulation or Joint Travel Regulations, they must result in a reasonable charge.

(7) Costs shall be allowable only if the following information is documented--
(i) Date and place (city, town, or other similar designation) of the expenses;
(ii) Purpose of the trip; and
(iii) Name of person on trip and that person's title or relationship to the contractor.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract.

(d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable, except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth in this paragraph must be documented and justified.

(e)

(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft" includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the CO. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in paragraph (d) of this subsection are applicable, or when an advance agreement under subparagraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate--
(i) Date, time, and point of departure;
(ii) Destination, date, and time of arrival;
(iii) Name of each passenger and relationship to the contractor;
(iv) Authorization for trip; and
(v) Purpose of trip.

(3) Where an advance agreement is proposed (see Section 1), consideration may be given to the following:
(i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
(ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are

allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 8.6(m)(2).

8.47 Defense of Fraud Proceedings.

(a) Definitions.

"Costs" include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during and after commencement of a judicial or administrative proceeding which bear a direct relationship to the proceedings.

"Fraud" means (1) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (2) acts which constitute a cause for debarment or suspension, and (3) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty" does not include restitution, reimbursement, or compensatory damages.

"Proceeding" includes an investigation.

(b) Costs incurred in connection with any proceeding brought by Federal, state, local or foreign Government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employers) are unallowable if a result is -

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability or imposition of a monetary penalty;

(3) A final decision by an appropriate official of an executive agency to:

(i) Debar or suspend the contractor,

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b)(1) through (4) of the subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection.

(c) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United states, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local or foreign government may be allowable when the CO determines that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant CO.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of the procurement litigation, generally-accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80%. However, if an agreement reached under paragraph (c) of this subsection has explicitly considered this 80% rule, then the full amount of costs resulting from that agreement shall be allowable.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with -

(1) Defense against Government claims or appeals or the prosecution of claims or appeals against the Government.

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions.

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either (1) an agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest, or (2) dual sourcing, co-production, or similar programs, are unallowable, except when (i) incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the CO, or (ii) when agreed to in writing by the CO.

(6) Patent infringement litigation, unless otherwise provided for in the contact.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the CO.

(g) Costs which may be unallowable under 8.47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the CO shall generally withhold payment of such costs. However, if in the best interests of the Government, the CO may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

8.48 Deferred Research and Development Costs.

"Research and development" means the type of technical effort which is described in 8.18 but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized that were incurred before the award of a particular contract) are unallowable except when allowable as precontract costs. In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract.

8.49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

8.50 Reserved.

8.51 Costs of Alcoholic Beverages.

Costs of alcoholic beverages are unallowable.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 14-A

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVES' GUIDE FOR CONTRACT ADMINISTRATION

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SECTION 1 INTRODUCTION TO THIS GUIDE

This guide outlines the duties of those BPA personnel designated as Contracting Officer's Technical Representatives (COTRs), who perform supply, service, and construction contract (including intergovernmental contract) administration functions as an adjunct to their normal duties. Contracting Officers (COs) designate COTRs to perform technical contract administration functions. The COTR is an indispensable, key member of the contracting team. The COTR is still accountable, however, to his/her line supervisor for performance of regularly-assigned duties. For contract administration duties, however, the COTR reports directly to, and is accountable only to, the CO. The COTR's supervisor must allow sufficient time to ensure that the COTR can adequately monitor the contract for technical compliance.

This Guide is not directly applicable to the following:

Contracts for lease or purchase of real property;

Contracts involving power (such as purchase, wheeling, or sale of power), acquisition of conservation, energy efficiency products or services, or loans and loan guarantees for the acquisition of power or conservation; or

Grants and Cooperative Agreements (See Bonneville Financial Assistance Instructions)

Comments on the contents of this Guide and suggestions for its improvement should be directed to the Head of the Contracting Activity (HCA).

Effective August 2000, with implementation of an Enterprise Resource Planning (ERP) system, BPA has adopted the use of software applications to electronically transmit and store certain award documents and records as part of its official files. It is anticipated that some contract administration documents will be maintained as paper and electronic records. The benefit of storing contract administration data and records in the ERP system is the ease of information retrieval and access by those who administer contracts directly, as well as those who need current status information for project and work planning purposes.

The content of some Exhibits in this guide may be stored electronically within the ERP system. In particular, the ERP system contains various panels and data fields which can store the information found on Exhibit 14-A-4, COTR's Contract Administration File, Exhibit 14-A-5, COTR's Status Report;, and Exhibit 14-A-9, Invoice Control Sheet. Some information can be entered into the system, such as narrative discussions of contract performance and status. Other data will be automatically generated by the system, such as the complete history of invoices received and certified to date. COTR's must receive training on the ERP system prior to receiving authorization to certify invoices within the system, and this training will educate the COTR on where various contract administration information is located.

SECTION 2 ROLES AND RESPONSIBILITIES.

2.1 Contracting Officer's (CO) Role.

The CO's major post-award responsibilities include ensuring performance of all actions required for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of BPA in its contractual relationships. More specifically, in the course of administering the awarded contracts or intergovernmental contracts, the CO has ultimate legal and commercial accountability and is responsible for the activities of the COR and the COTR.

2.2 Contracting Officer's Representative's (COR) Role.

The COR supports the CO in administrative matters during any portion of the contract process. If no COR is designated, the CO will perform those duties.

2.3 Contracting Officer's Technical Representative's (COTR) Role.

The Contracting Officer's Technical Representative (COTR) is designated and authorized by the CO to perform technical contract administration activities for specific contract(s) on behalf of the CO. (See Exhibit 14-A-1 for Sample COTR Delegation Memorandum.) The COTR designation by the CO is most often based upon a responsible program or project manager's recommendation of a technically qualified candidate.

COTRs must complete a formal COTR training course (normally 24 hours), and be certified by Supply Chain as a BPA COTR. Supply Chain Services approves the COTR training coursework, which may be BPA or vendor provided, and issues the certifications. COTRs should have at least six months of experience in the technical field of activity that is the subject of the contract before they may be assigned to that role, and must attend refresher training as mandated.

It is essential that the COTR have the necessary qualifications and resources available, including time, to monitor the technical requirements of the contract. In order to be delegated authority to act as a COTR,

the person must have completed training in contract administration activities, and have annually reviewed the Purchasing Standards of Conduct found in BPI Part 3 and BPI Appendix 3-A.

The job of COTR incorporates a number of responsibilities and duties. Typically the COTR:

(a) Has a thorough technical understanding of all facets of the contract, including the planning of related contract administration activities;

(b) Designates technically qualified field inspector(s), if needed to assist in contract administration activities (see Exhibit 14-A-2);

(c) Conducts as necessary, in cooperation with the CO and field inspector(s), a pre-work conference, review of contractor's proposed progress schedule, work hours, safety and safety plan requirements, permits and approvals, subcontracts, and other contract-specific requirements;

(d) Reviews contractor's schedule of need for BPA furnished material (if required) and coordinates those needs with BPA materials management staff, and resolves problems with processing of contractor material submittals;

(e) Assures that ADP security, safety, labor standards and other screening of contractor and subcontractor personnel required by the contract are performed;

(f) Maintains a record of all communications with the contractor and significant events relating to the contract; makes routine correspondence pertaining to administration of the contract available to the CO as needed;

(g) Serves as liaison between the contractor and CO on matters pertaining to the technical contract requirements, builds rapport with the contractor, assists the contractor in interpreting technical requirements of the contract, ensures internal BPA coordination of technical requirements with design or other organizations, as necessary or otherwise required by policy;

(h) Makes no commitments to the contractor regarding changes in price, delivery, statement of work, or other contractual terms; instead, performs technical analyses of contractor cost proposals for contract modifications or extensions, recommends such changes, with appropriate technical and cost justification and input from the contractor (if required) to the CO in writing; assures that changes are issued by the CO before the contractor is directed to proceed with such changes. (Note, however, that the CO may delegate to the COTR and/or field inspector(s) limited authority to make field modifications, typically for construction);

(i) Monitors the contractor's performance; witnesses or conducts tests; releases shipments (typically for supply); records observations (including a photographic record of work-site or other contract performance conditions, when necessary) and notes areas for improvement based on contract requirements; performs monitoring activities and status reporting (see Exhibit 14-A-5), including timely reporting of potential and actual slippage in contract performance periods; furnishes copy of evaluation report to CO;

(j) Establishes a progress payment schedule, reviews each voucher or invoice submitted by the contractor and recommends payment based on performance and reasonableness of cost; advises the CO of anticipated overruns or underruns of the estimated cost under cost-reimbursement contracts;

(k) Recommends corrective actions to the CO to restore contract performance or delivery schedule;

(l) Advises the CO of the need for interaction and administrative actions with the contractor; keeps the CO informed of situations that could jeopardize performance or become a basis for future claims; provides copies of relevant correspondence with the contractor to the CO;

(m) Monitors any required quality activities, reviews contractor's quality program, checks contractor performance against standards of acceptance stated in the contract, and provides acceptance of final deliverables on behalf of BPA;

(n) Receives and processes (if required) contractor operating and maintenance (O&M) manuals and special warranties, sending them to using organizations, and assists CO in resolving warranty repair problems;

(o) Assists CO in coordination and arrangement for disposition of property after completion or termination of the contract;

(p) Initiates, signs and forwards to the CO (typically for construction) a contract completion report and a recommendation of final acceptance of contractor's work, and prepares and sends to contractor a release of claims which contractor then completes and returns to the CO (assists the CO in resolving any exceptions noted); and

(q) Completes overall evaluation of the contractor's performance and provides it to the CO for the contract close-out and for use in future contracting.

2.4 Field Inspector's Role.

Field inspector(s) are authorized representatives of the COTR, appointed by a memorandum written by the COTR with a copy to the CO. (See the sample memorandum in Exhibit 14-A-2.) The field inspector is typically responsible for functions such as inspection and review of the work performed under the contract, witnessing of tests, interpretation of technical specifications, reviewing invoices, and recommending approval of specific reports, materials, or services. Field inspector designations automatically terminate at the conclusion of the contract activities. COs or COTRs may also terminate the designation in writing during the performance of the contract if the need for a field inspector no longer exists, or if the individual's performance is inadequate.

The list of duties for a field inspector will vary with the specific demands of the contract type (service, supply or construction), and the specific kinds of duties designated by the COTR. Typically, the field inspector:

(a) Participates, as necessary, with the CO and COTR, in a pre-work conference for requirements relating to area of assigned responsibility;

(b) Serves as a representative of the COTR to monitor, inspect and review work performed under the contract for compliance with the technical specifications or purchase description, drawings, work schedules and labor standards of the contract (performs worker interviews and consultation, if needed, for construction); witnesses tests; recommends approval of specific reports, materials, or services;

(c) Advises the contractor promptly in writing of noncompliance with contract provisions, but makes no commitment to contractor regarding changes in price, delivery, statement of work, or other contractual terms (Note, however, that the CO may delegate field inspector(s) limited authority to make field modifications, typically for construction); reports promptly to the COTR any refusal or failure by the contractor to comply with contract requirements;

(d) Monitors and promptly reports unsafe workplace practices or conditions to contractor and COTR, receives and processes contractor accident reports per established safety policy;

(e) Maintains and provides COTR with timely progress reports noting contract performance status, potential and actual slippage in contract performance; recommends corrective actions to the CO, through the COTR, to restore contract performance or delivery schedule; provides COTR with copies of his/her official daily diaries about all actions, events, and other developments, including a photographic record of worksite conditions (as necessary) that may be a useful record in the event of a dispute or investigation; collects and reviews daily records of performance from the contractor and its subcontractor(s), as required; makes routine correspondence pertaining to administration of the contract available to the CO through the COTR;

(f) Reviews payment vouchers or invoices submitted by the contractor and recommends payment based on performance and reasonableness of cost; advises the CO, through the COTR, of anticipated overruns or underruns of the estimated cost under cost-reimbursement contracts;

(g) Investigates and resolves property owner complaints and non-monetary correction of damages resulting from contractor actions or inaction (typically for construction or on-site services);

(h) Assists CO and COTR in coordination and arrangement for disposition of property after completion or termination of the contract;

(i) Ensures the contractor maintains current as-built drawings (typically for construction);

(j) Determines and advises COTR when the work is substantially complete (typically for construction);

(k) Assists the COTR with final inspection, ensures correction of punchlist items (typically for construction) and recommends final acceptance of contractor's work and all deliverables; and

(l) Provides input to COTR for evaluation of the contractor's performance for contract close-out and for use in future contracting.

2.5 Establishing the Contract Administration Team.

The CO establishes the contract team and sets forth their duties in writing. The COTR is formally designated at the time of contract award.

2.6 Channels of Communication.

The relationships between COs, CORs, COTRs, field inspectors and BPA program or project and contractor personnel are shown in Exhibit 14-A-3.

Much of the COTR's work is accomplished through communication with the contractor. Performance and understanding can be enhanced by clearly establishing the channels through which the communication should flow. At the outset, the COTR ascertains from the contractor who will be acting as the contractor's representative on the contractor's staff for technical liaison and contract administration functions for the contract.

Even though the CO and COTR are the primary representatives authorized to contractually represent BPA, they cannot do so without help. Effective communication with and the support of BPA program managers and support staff may be critical. The CO and COTR must keep the responsible manager(s) informed of the current contract completion status, and coordinate corrective measures, as necessary.

SECTION 3 INITIAL CONTRACT ADMINISTRATION ACTIVITIES

3.1 Read the Contract.

The COTR will receive a copy of the contract from the CO. The COTR and field inspector(s) (if designated) should read it thoroughly and become familiar with all aspects of the contract, including the administrative clauses ("boilerplate"), in order to administer the contract effectively.

3.2 Establish a Contract Administration File.

The need to maintain adequate records, logs, and reports cannot be overemphasized. The amount of documentation, however, is less important than what is recorded and the completeness of the record. Generally, significant events and business decisions made during contract administration must be documented.

All documents related to the administration of the contract, including internal correspondence, should be kept in a file. It is recommended that the COTR's contract file be identical to that used by the CO or COR. Items to be found in a typical contract administration file are listed in Exhibit 14-A-4. This sample file may be adapted as needed to administer each type of contract.

3.3 Find Out What the Contractor Is Planning to Do.

Having established what the contract requires the contractor to do, the COTR and field inspector(s), if designated, must learn what the contractor is planning to do. The COTR should initiate contact with the contractor to establish a communication channel with the COTR's counterpart.

Techniques for gathering information about the contractor's plans for performance include conducting a post-award meeting with the contractor and reviewing the contractor's proposed performance schedule.

3.3.1 Post-Award Meeting with the Contractor.

The CO should hold a post-award orientation meeting with the contractor. The meeting includes the CO (or designated representative) and technical representatives on behalf of BPA. The counterpart representatives of the contractor should also be invited to attend. This meeting provides a means for reviewing the contractor's plans for performing the contract, for uncovering misunderstandings about contract requirements, and for resolving and clarifying matters on what the contract requires of the contractor. Sample agenda items, if not resolved before award, might include:

(a) Performance schedule;

(b) Statement of work or specifications, drawings and other performance requirements;

(c) Quality management activities;

(d) Special contract provisions;

(e) Reporting requirements;

(f) Procedures for monitoring and measuring progress;

(g) General overview of clauses, changes, payments, labor laws, etc.;

(h) Billing and payment procedures;

(i) Property issuance, management policy and procedures, if applicable;

(j) Discussion of travel policy and regulations, if applicable;

(k) Distribution of appropriate posters, wage decisions, BPA policies for on-site contractors, and associated record keeping and submittals, as required;

(l) Identity of key officials and their authorities;

(m) Discussion of project hazards and contractor's safety plan and site-specific safety plan, as applicable;

(n) Environmental requirements; and.

(o) Discussion of policy and procedures regarding non-disclosure and disposition of any Critical Program information (CPI) that BPA provides to or which is newly created by the Contractor.

If a formal post-award orientation conference is not practical, telephone discussions can serve the same purpose.

3.3.2 Performance Schedule.

Obtain the contractor's plan for conducting the contract work, and review it for consistency with contract requirements. When the contract contains a provision that requires the contractor to submit work plans, the COTR should obtain and review them. Even if the contract does not require a formal submission, the COTR should confer with the contractor to gain a thorough understanding of planned activities, and quickly address any matters that would appear to prejudice successful contract performance.

SECTION 4 MONITORING ACTIVITIES.

4.1 General.

The contractor and the COTR both are responsible for monitoring contract work, but for different reasons. The contractor is responsible to ensure that it's performance or supplies delivered complies with the terms of the contract. It is not the COTR's responsibility to do this for the contractor. As a practical matter, however, the COTR typically does, to the extent and manner described in the contract, inspect and monitor the contractor's work and quality assurance activities. The reason the COTR monitors the contractor's activities and work products is to ensure that adequate, timely progress is maintained to complete the work as per the terms of the contract. An important right of BPA (actually any buyer, for that matter) is the right to inspect supplies or services before acceptance. (See section 6.1.1 regarding acceptance). The purpose of this rule is to give the CO and COTR an opportunity to determine whether or not the supplies or services comply with the contract description and other contract terms.

The specific contract oversight activities of the COTR are described in the contract. The extent of oversight activities needed will likely vary from contract to contract. The primary basis for contract oversight is the contract inspection and acceptance clause. Essentially, this clause gives BPA the right to inspect and test work of the contractor, and subcontractors, as called for by the contract, at any time, and any place. BPA will, however, perform its inspections in a manner that will not unduly delay the contractor's work. Other, more specific, oversight requirements are found in the contract statement of work or specifications. In the case of commercial supplies and services, however, inspection and acceptance will typically be more limited in scope and usually conducted at the place specified for delivery or performance.

The challenge for the COTR in monitoring contracts of all types (supply, service or construction) is to work closely with the contractor representative to ensure that:

(a) The contractor accomplishes the specific tasks called for in the contract;

(b) The quality of services or work products is as required by the contract;

(c) The services performed or work products developed (particularly for cost reimbursement, time and materials or a unit priced, estimated quantity type contracts) are accomplished in an efficient manner and that the contractor adequately plans and executes the contract effort to ensure that time and money are not wasted;

(d) Work hazards are identified and accident avoidance measures are appropriate; and

(e) Time schedules in the contract are met.

4.2 Track What the Contractor Is Doing.

Since effective corrective actions cannot be taken if the magnitude of problems is unknown, the COTR must be able to identify problems and determine their significance. The basic method of contract administration is contract monitoring, or surveillance of progress.

Monitoring the contractor's progress involves the use of numerous techniques and procedures to determine whether satisfactory and timely delivery or completion will occur. Contracts are monitored to determine how contract work is being performed (in accordance with the purchase description, Statement of Work or specifications), whether it will be completed on schedule, and whether its cost (cost reimbursement or time-and-material type contracts) will fall within the contract's ceiling. The COTR and other contracting personnel have a responsibility to monitor the contractor's performance to ensure compliance with contract requirements. That task depends on accurate and timely information obtained from the contractor.

Many contracts include provisions that require the contractor periodically to submit written progress reports. COTRs should familiarize themselves with what these reports are required to contain and when they are due. The COTR should:

(a) Get progress reports.

(b) Read progress reports.

(c) Analyze billings. (See Section 6 for detailed procedures.).

(d) Monitor the contractor's performance by inspection. The best way to monitor the contractor's work is through actual inspection. Standard inspection clauses may be included in BPA contracts to give BPA's authorized representatives the right to inspect and witness or conduct tests to monitor performance at all stages and wherever the work is being conducted, including the work of subcontractors. For construction work, this also includes work performed off the primary construction site. The COTR should be familiar with the inspection provisions in the specific contract. It is useful to stay ahead of actual performance. Try to determine the contractor's planned approach. It is particularly important that certain work be inspected as work is conducted, particularly when components of work in process are difficult or impossible to inspect at later stages of contract performance. In this way, the COTR's inspection effort is not likely to hinder the contractor's progress.

(e) Encourage timely performance in cost-type contracts. If a contractor is late on a cost contract, there is practically no monetary adjustment in the contract price due BPA. For that reason, early and continuing attention by the COTR is the best way to ensure timely delivery and cost control. Close communication with the CO is necessary before lateness becomes a problem.

(f) Document contacts with contractor. Use a contract administration file log to keep a diary of the contacts (including significant phone conversations) with the contractor. The need to maintain adequate records or logs is vital. These records provide a basis for defending against claims and are reviewable by the appropriate board of contract appeals or by the courts. (See Exhibit 14-A-5).

(g) Assess the competence of the contractor's performance and the initial deliverables against contractual standards of quality and efficiency:

Do the contractor personnel have the competence to complete the contract in an efficient and timely manner?

Are the preliminary work products or deliverables up to the standard of quality required by the contract?

Are the contractor's personnel being adequately supervised by contractor's management so that they produce quality work?

4.3 BPA-Furnished Property.

Some contracts provide BPA property for the contractor to use during performance of the contract. Such provisions describe the property, timing and conditions for assignment, transfer, and use. This property may include both materials to be incorporated in the contract work, as well as, tools, facilities or equipment provided for the contractor's use in performing the contract. It is the COTR's responsibility to see that BPA provides the property it agreed to furnish to the contractor.

When BPA property is to be furnished, the COTR should take the following steps:

(a) Contact the CO for instructions. The property management representative in the Organizational Property Management Officer's (OPMO) organization is available to the CO and COTR, as necessary, for advice and assistance in administering the use of BPA property on the contract;

(b) Find out where the BPA property is and make arrangements to get it to the contractor on time. When considerable material is to be provided, BPA may, particularly for larger construction projects, establish a material yard at or near the work site where the contractor may inspect and take possession of the property;

(c) Find out whether the BPA property is in proper condition for use as intended. BPA is responsible to ensure that the property it provides is as specified in the contract and fit for its intended purpose (unless specified in the contract to be furnished in "as is" condition). The sooner this is ascertained, the sooner any necessary repairs, corrections, or other actions can be initiated and any delays in contract completion avoided. Once inspected, the contractor is responsible and financially liable for its safekeeping;

(d) Find out whether there are any special instructions or limitations regarding use of BPA's property. If such instructions exist, see that they are furnished to the contractor along with the property;

(e) Make sure a means exists for tracking BPA property, i.e., property custodian, etc.; and

(f) Make sure, at the conclusion of the contract work, excess materials and any tools or equipment provided will be inspected, and that BPA will retake possession and responsibility of the property returned by the contractor. If shortages are noted, the contractor is charged in accordance with contract terms. If damaged, other than normal wear, the contractor will be liable for its repair or replacement.

4.4 COTR Performance Status Reporting.

After the COTR has analyzed the contractor's performance as indicated in the contractor's progress reports and other available information, the COTR shall promptly identify any actual or potential inadequacies and schedule changes, inform the contractor of the inadequacies, and find out how the contractor plans to remedy them. The longer problems continue without corrective action, the more serious they become and the more difficult they are to correct.

However, whether or not problems do exist on the contract, a key responsibility of the COTR is to maintain communication with the CO regarding contract administration activities and to provide the CO with periodic, written performance or status reports. These reports give the CO important information about contract deliverables, contractor's technical and progress reports, contract payment and other matters. A sample of a performance status report is shown in Exhibit 14-A-5. This report may be adapted to specific needs in consultation with the CO.

(a) Routine Reporting: Normally when there are no significant events to warrant special reporting from COTR to CO/COR, intervals of one month are sufficient between written reports.

(b) Non-routine Reporting: Whenever exceptional events occur during the course of the contract, the COTR should generate a non-routine performance status report giving the appropriate details of the specific event. For example, non-routine reports should be submitted when inadequate work is noted, when all required work has been accomplished, and when the final invoice has been received and processed. The CO may also request non-routine reports from the COTR.

(c) Property Reporting: Contractors must furnish annual reports of BPA-furnished property, and property purchased with Government funds by August 31 of each year. COTRs will review these reports, and indicate their receipt and acceptability on Exhibit 14-A-5. This will include a determination that the property is still required by the contractor.

4.5 Financial Monitoring.

Financial monitoring of the contract is another way to review the contractor's progress and performance. COTRs should track actual dollars billed as each invoice is approved and forwarded for payment. (See subsection 6.2.4.) COTRs can monitor the contractor's progress by reviewing actual costs expended relative to the stage of completion for specific tasks, and compare dollars expended to the original dollars estimated for those tasks. If the actual costs reveal an inconsistency, the COTR should advise the CO of possible cost overruns (cost-reimbursement or time-and-material type contracts). Financial monitoring by the COTR can also assist the program manager and the CO in determining if BPA is receiving the best buy for the money expended.

SECTION 5 CONTRACT MODIFICATION.

5.1 Contract Modification.

During the life of a project, it sometimes becomes necessary to incorporate changes into the contract, or to provide coverage for situations that develop after contract award. Some changes can be made in accordance with the contract, but other adjustments not expressly anticipated by the contract may also

occur. In either case, where the project's objectives, the method or manner of performance, cost, or schedules are to be changed, modifications must be made to the contract.

The COTR should closely monitor the contractor's activities in executing the contract's requirements. Except for a limited delegation by the CO for construction contract field modifications, the COTR may not authorize additional work beyond what is specified in the contract, even if such work is within the general scope of the contract. The COTR may be instrumental in the development of changes to a project or modifications to a contract, but does not have the authority to order or authorize the contractor to make such changes, technical or administrative.

If it becomes apparent that the project requires a change, the COTR should immediately notify the CO or COR. The proposed change to the contract may require convening a Strategy Panel (see BPI 6.15 and 14..10.2), so early notification is critical to timely and uninterrupted contract performance. Only COs operating within the scope of their authority may execute contract modifications on behalf of BPA. Other BPA personnel, including COTRs, must not:

(a) Execute contract modifications;

(b) Act in a manner to cause the contractor to believe that they have authority to bind BPA;

(c) Direct or encourage the contractor to perform work that should be the subject of a contract modification;

(d) Permit a contractor to work past the expiration of a contract; or

(e) Change the contract statement of work or specifications.

Although the need for a contract change may become apparent during reviews of the project by a COTR or other program personnel, no action may legally begin on the change until a contract modification has been prepared and approved in accordance with BPA's normal procedures. Modifications are usually initiated by a Purchase Request (PR) or other form of written request, prepared by the COTR or program manager. Until such time as the PR or written request is submitted, a modification to the contract recommended by the COTR will not be made.

5.2 No-Cost Time Extensions.

While the general rule is to not relinquish a contract right without receiving something in return (consideration), no-cost time extensions may be authorized by the CO under limited circumstances. If the COTR encourages, or even permits, the contractor to continue work after the contract expires, a ratification action (see BPI Appendix 6-A, Section 3.5) may be required. Only COs may execute no-cost time extensions.

5.3 BPA Caused Delays.

In those instances when an action or inaction by BPA delays the contractor, the contractor may be entitled to compensation and/or an extension of performance time. Therefore, the COTR must play a key role in assuring that BPA meets it's contractual commitments, and if BPA should be tardy, that any delays are minimized.

When BPA causes a delay, the COTR should immediately document the reasons for delay, and send that information to the CO. In a similar manner, if the COTR receives a statement from the contractor that a delay has been caused by BPA, the same information should be provided to the CO.

5.4 Constructive Changes.

Sometimes BPA actions or inactions may lead contractors to believe that a change in the contract has been ordered. The contractor is required to advise the CO immediately if such a change is contemplated. COTRs must be acutely aware of the impact of their actions on the contractor's approach to performing the contract. The COTR must be very careful not to encourage or direct the contractor to proceed in a manner other than that specified in the contract. Such constructive changes are often the basis for contractor claims of an equitable adjustment in the contract price and/or time. The COTR is required to provide a written explanation of the circumstances surrounding the constructive change.

SECTION 6 ACCEPTANCE AND PAYMENT.

6.1 Requirements for Acceptance.

The final step for the COTR before payment is "acceptance." The term acceptance means that the COTR believes the supplies delivered or work performed conform to the contract.

6.1.1 Acceptance Defined.

Acceptance is documented acknowledgment that the supplies delivered or work performed conform with contract quality and quantity requirements, as well as with the other terms and conditions of the contract. Acceptance formalizes, as a necessary step for final payment and contract closeout (see Section 10), the approval of specific supplies delivered or work performed on behalf of BPA as partial or complete performance of the contract. To make certain of this fact, as was previously described in Section 4 of this guide, the CO must obtain the acknowledgement by the COTR or another person who can attest that all contract requirements have been met. It is important that the COTR understand the responsibility for contract acceptance.

While acceptance is necessary for final payment, certain types of contracts provide for interim payments, before final payment. One form of interim payment is based upon "partial acceptance," as with partial delivery and acceptance of supplies under a supply contract or partial acceptance of quantities of unit priced items of a construction contract. Other contract types, such as construction, may permit payments in advance of final acceptance, as per the "progress payment" clause, which permits multiple progress payments during performance based on the percentage or stage of work completion. Also, cost reimbursement type contracts may require that BPA reimburse the contractor, monthly or other frequency, for costs incurred by the contractor during performance (see 6.2.2.2 of this guide). The basis for acceptance and payment is all spelled out in the contract. It is necessary, however, to look at more than just the payment clause. The contract must be "read and interpreted as a whole," not just interpreted per one clause or part. Therefore, the COTR needs to look at the contract payment schedule of prices and quantities; statement of work or specifications; and contract "boiler-plate" clauses, such as, the inspection and acceptance clause and the various other payment-related clauses. The COTR and other members of the contract administration team need to read and be familiar with these contract terms and conditions for acceptance and payment.

Other contract clauses refer to the "date of acceptance" as the basis for action required by the clause, such as, the payment, prompt payment act, and warranty clauses. It is after final acceptance that the warranty period begins.

6.1.2 Responsibility for Acceptance.

BPA disbursement procedures and Treasury regulations require, to the maximum practicable extent, a separation of duties for those who are authorized to procure, accept and pay for transactions on behalf of BPA. This separation of duties provides internal controls to reduce risk of error, waste, and wrongful acts. Therefore, except for established construction contract practices, CO's are neither authorized to receive

and accept supplies or work performed nor disburse funds for the payment of purchases that they have made. Similarly, while a COTR may be assigned responsibility to accept supplies or work for a purchase, this person may neither have authorized the purchase (unless authorized to issue orders pre-priced by a CO per subsection 7.4 of this guide) nor authorize disbursement of funds for its payment. In a similar manner, those in Disbursement Operations must independently assess and certify the proper disbursement of funds for a purchase, but may not have ordered or received and accepted the supplies or work performed for the contract disbursement.

The COTR accepting work performed or supplies delivered on behalf of BPA is liable for a proper certification of its acceptance. This person must have personal knowledge that the invoiced work has been completed or that the supplies received are in the quantity and quality and condition provided by the contract. If the COTR does not personally have knowledge of the delivery or completion, the quality, or the quantity of the work being invoiced, the COTR should not certify acceptance until consulting with another BPA employee who does have the knowledge required for acceptance. If the COTR believes, or is on notice, that some provision has not been met, the acceptance should not be signed. Instead, refer the matter immediately to the CO. So long as the person does not falsify an acceptance certificate (for example, by accepting services not rendered or supplies not received), there is effectively no personal liability for hidden or obscure errors on the billing.

Another important condition for acceptance is to only enforce the contract as written. The COTR may not insist on conformance to what the COTR personally feels is required, unless that standard is also required by the contract. Refer to the terms of the contract that describe the COTR's role and responsibilities in accepting completed work.

Acceptance does <u>not</u> mean that the COTR has audited the invoice in the financial management sense of the word. The person accepting the supplies/services is expected to use reasonable efforts and best judgment in determining if the contractor has conformed to the requirements of the contract. Reasonable verification of mathematical accuracy and review of supporting documents required by the contract are expected to be performed. If you do not know if the work performed or supplies delivered meet the contract requirements or if the charges are appropriate, the CO and/or the BPA Audit Staff should be contacted for advice.

6.1.2.1 Accepting Services.

A service contract requires a contractor to furnish time and effort to perform an identifiable task. Procured service is performed through processes, either those specified in a contract purchase description or Statement of Work, whose timing of delivery (performance) has to coincide with the performance period specified in the contract. The service may be for the production of an end product, such as a report, or continuous or cyclical in duration, such as office janitorial services.

The inspection of services by the COTR may not, by its very nature, be possible to inspect before performance. Therefore, the measure of quality of service provided has both a tangible and an intangible component. A tangible element may be, for example, either a report produced or an office than is swept, mopped, vacuumed and dusted. The intangible components of these same service examples are, in the case of the report, the accuracy of data or soundness of conclusions. For the office cleaning service, the intangible element may be the relative degree of cleanliness. The basis for acceptance in the contract, therefore, usually describes some measure of acceptability for services rendered. The report, for example, is the final product, but the Statement of Work may provide for "milestone" meetings of the COTR and contractor or interim reporting by the contractor on data gathering techniques, processes utilized, results obtained, and data produced. Similarly, the office cleaning Statement of Work may provide for the frequency of cleaning, extent, and some measure of cleanliness achieved for each task, to be inspected by the COTR on each specified date of performance. Therefore, when the service is performed, the COTR inspects and certifies the acceptability of service rendered for payment, against the standards of quantity, quality and basis for payment described in the contract.

Typically the COTR will document acceptance of services on a contractor's invoice submitted for payment, per the terms of the contract. If for some reason acceptance of services will not be documented on a contractor's invoice, the COTR should contact the CO to determine the format and requirements of a receiving report.

6.1.2.2 Accepting Supplies.

Supplies are tangible supplies, such as, deliverable end-items or assemblies, components, parts, raw and processed materials, and tools, but does not include real property or something intangible (incorporeal), like a patent or copyright. The means used to describe requirements for the purchase of supplies may range from commercially available descriptions, described by brand name or equivalent or general purchase description, to more detailed methods, such as, specifications of physical or chemical characteristics, material and method of manufacture or performance. Other methods of description include engineering drawing, sample, individual standards, and standard specifications.

Every contract for supplies must have a fixed or determinable quantity of each item purchased, a basis for determining acceptability (quality), delivery terms (such as FOB destination or FOB origin (or other place of shipment) to spell out which party pays the expense of transportation and when the risk of loss passes from the seller to the buyer), price, payment terms and warranties. The requirements for contract performance are the physical delivery of the supplies, inspection for compliance with the contract description (including witnessing or conducting tests, etc.), release for shipment (when required by the contract), formal acceptance of the supplies, and payment. Various means are used by the COTR and other team members to describe contract quality requirements and to inspect for compliance with the contract description, as described in the contract description and "boilerplate" clause terms and conditions.

Commercial products typically will require only an inspection at the time of delivery, unless otherwise specified, verification of quantity and apparent damage, and acceptance indicating that the delivered supplies conform to the contract. To make certain of this fact the supplies must be inspected for quality. This inspection for quality is in addition to normal receiving inspection for damage during shipment. If the FOB is shipping point and the damage is found to have occurred after it left the contractor's dock, then BPA is required to process the invoice for payment and deal with the freight company regarding the damages to the shipment. Invoices pertaining to supplies that have been rejected should be held by the CO, pending notice of acceptance. The COTR has the right to inspect the supplies for compliance with the contract description before accepting the supplies, as per the inspection and acceptance terms of the contract. If the supplies received conforms to the contract requirements, the COTR or other designated person prepares a receiving report and accepts the items on behalf of BPA. The receiving report is either forwarded to the CO or other designated contract administration personnel for review and approval for payment, as specified in the contract. Alternately, the contract may specify that the receiving report be sent directly to Disbursement Operations. In any case, after approval, the receiving report must be forwarded to Disbursement Operations by the fifth working day after acceptance.

Supplies received that are different in quantity, quality, and price are referred to the CO for resolution. If there is a substantial deviation, or if the material is damaged, the COTR or the receiving and inspection personnel will reject the supplies. A notification of rejection must be forwarded to the CO.

6.1.2.3 Accepting Construction.

Construction is the building, alteration, or repair (including dredging, excavating, and painting) of buildings, structures or other real property. Construction does not include exploratory drilling or other investigative work for obtaining preliminary data for engineering studies and which are not part of starting or continuing a construction process. Neither does construction include the manufacture, production,

furnishing, building, alteration, repair, processing, or assembling of personal property (supplies), or demolition without construction.

By its very nature, construction work is performed according to a very different set of performance criteria than services or the manufacture of supplies. Some of the performance cost elements can be measured very precisely, but others involve significant risk taking and estimation, particularly the unpredictability of the elements of nature and the elements of performance. Performance is impacted by the availability of skilled labor, tight scheduling and sequencing of work and delivery and incorporation or movement of materials in stages, leading up to the final project completion.

Acceptance of construction is typically accomplished in stages, involving separately priced items of work and quantities at prices found in the contract schedule of pricing. Therefore, partial acceptance is frequently made. As an example, a station of access road (100 feet), a square of roofing (100 square feet), or an hour of an electrician's labor are a common basis for pricing and measuring discrete units of work. The contractor is paid for those units completed within the payment period. The formal acceptance of these separately priced units generally occurs upon completion, billing and payment for all work required to complete the payment item. The formal acceptance is typically made by the CO, based upon the certification of acceptance by the COTR, or other representatives of the CO, as per the construction inspection and acceptance clause of the contract. (See Section 10 of this guide for construction contract close-out, and final payment.)

6.1.3 Acceptance Certification.

The certification of acceptance shall be made using the BPA Enterprise Resource Planning (ERP) system. All original invoices (except utility invoices) are to be mailed by the Contractor to Disbursement Operations, with a copy of the invoice sent to the COTR. For service contracts, the COTRs will certify acceptance for payment using the new ERP system. Supply contract payment is triggered by the COTR or other person who receives the supplies (could be a warehouse receiving or other person) who accepts the supplies using an ERP system receiving report that is electronically transmitted to Disbursement Operations. With construction, the completed work may be billed by the contractor on an invoice or prepared using a BPA payment form, the original of which is sent to Disbursement Operations with a copy sent to the COTR or COR for payment certification through the ERP system. The three-way match process for payment of invoices will be entirely automated by the ERP system, as will many other disbursement functions.

The Prompt Payment Act prescribes a very precise time period and process for BPA to accept supplies or work performed. BPA is committed by the terms of the Act and the contract to accept the supplies or work performed within five work days after receipt, unless otherwise provided in the contract. In addition, we must pay the contractor within 30 days of acceptance or receipt of a proper invoice, whichever is later, unless an improper (incorrect) invoice is specifically rejected in a timely manner. These contract requirements are generally as stated in the Prompt Payment provisions in the contract. If formal acceptance takes place beyond the indicated acceptance period, BPA will be liable for payment of an interest penalty payment to the contractor from the last day of the indicated acceptance period. This concept is known as constructive acceptance. Actual acceptance of supplies and services is not jeopardized by this constructive acceptance. BPA is not required to accept non-conforming supplies or services simply because the five working day acceptance period has elapsed.

6.2 Processing Invoices.

Processing invoices is a task performed in support of payment to the contractor. The procedures for processing invoices are established by Disbursement Operations. BPA is required by the Prompt Payment Act to pay "proper" invoices within a specified period of time, usually 30 calendar days or less, or pay an interest penalty to the contractor. Disbursement Operations may only make a payment after it

has received confirmation that the supplies or services have been satisfactorily received. Prompt processing of invoices and receiving reports by COTRs is essential to avoiding interest payment charges against program office funds. Detailed information on processing requirements is contained in the disbursement guidelines in the BPA accounting manual or by contacting Disbursement Operations. The following information is provided for general guidance only.

6.2.1 Receiving Invoices.

Immediately upon receipt, the office receiving the invoice must clearly stamp on the front of the first page of the invoice with the date received and the receiving organization. The stamped receiving date of the first organization or person designated in the contract to receive the invoice may be used to determine the payment due date. The Prompt Payment Act requires that the date placed on the invoice by the contractor be used to establish the payment due date when the receiving organization fails to date stamp or note when the invoice was first received, unless the acceptance date is used. It is very important that all offices note or date stamp the date of invoice receipt and the name of the receiving organization on the invoice.

Because of stringent requirements in the contract for timely acceptance of the supplies delivered or work performed, invoice review should begin immediately after the invoice is received. If invoice review must be delayed beyond the contractually permitted time, the COTR is responsible for contacting the contractor and resolving whatever problem has occurred. Note on the invoice when the contractor was called and the date of resolution. This notation will protect BPA from making unnecessary interest payments.

6.2.2 Reviewing Invoices.

Generally, invoices for service contracts are forwarded to the technical personnel, generally the COTR, so that acceptance of the services may be recorded on the invoice itself. This has erroneously been interpreted to mean that the COTR is responsible for the accuracy of each item on the invoice. That is not the intent of the COTR's acceptance of the services. Instead, the COTR is expected to apply only a "reasonableness" check to the invoice. The COTR is not certifying that each expense was audited and justified. However, a review of the invoice and other financial data may provide information indicating reasonable progress, or lack thereof, on the project. If you have questions about the allowability of a cost item, immediately contact the CO. Only the CO has the authority to disallow cost items.

The COTR should take note of the costs on the invoice and compare them to those in the contract. If Disbursement Operations finds any mathematical errors, they will make the adjustment and pay the proper amount. Verifying costs is not the same as certifying that they are correct. The COTR should question the contractor concerning invoiced amounts when it appears that something unusual or unexpected is occurring. If the billing for a specific period is unexpectedly high or low, the COTR should request that the contractor supply the reason(s) for the large deviation from what was anticipated.

Every invoice should receive a general review to ensure that all required data is present. If the required data is not present, the invoice is not proper and the allowable time to pay the invoice does not begin. BPA has only seven days to notify the contractor of the defects in the invoice; thus, prompt review is essential. A proper invoice must contain the following required data: invoice date, contract number, task order number, if applicable, contractor name and address, description and quantities of products or services, unit and extended prices, and the name, title, phone number, and complete mailing address of the responsible official to whom payment is to be sent. The dates of performance for services should be shown to ensure that multiple payments are not made for the same services. If this essential data is not present, contact the contractor to point out the inadequacies and document that contact on the invoice. Alternately, a Notice for Improper Invoices can be prepared (See Exhibit 14-A-7). Forward a copy of the notice along with a copy of the rejected invoice to Disbursement Operations.

In the event the COTR does not understand the invoice or the invoice appears to be in error or in other ways inadequate to support the payment, the COTR should attempt to resolve the problem with the contractor. Discussions with the CO will be helpful in resolving problems. If the COTR is unable to resolve the problem with the contractor, the invoice should be forwarded to the CO with an explanation of why the invoice may not be certified and paid. The CO will then contact the contractor to attempt to resolve the problem.

Following this general review, and before proceeding to the steps described below, the COTR shall enter the proper accounting data on the invoice: organization, activity code, PL-6, and object class if known. If the COTR knows that this is the final invoice to be submitted under the contract, that fact should be noted under the COTR's signature, and a COTR performance status report (see Exhibit 14-A-5) should be submitted.

6.2.2.1 Reviewing Fixed-Price Contract Invoices.

Invoices submitted under fixed-price contracts receive only a brief review by the COTR to ensure that required data is present and that amounts invoiced conform to the contract prices and payment provisions in the schedule of items.

6.2.2.2 Reviewing Cost-Reimbursement Contract Invoices.

Provisions of cost-reimbursement contracts obligate BPA to pay the contractor the allowable, reasonable, and allocable costs of performing the contract (plus, in some cases, a fee or profit).

Because the technical expertise of the COTR is essential to understanding the necessity for direct costs on the project, the COTR should review the reasonableness, allowability, and allocability of costs claimed for reimbursement. The COTR should also assure that the contractor submits adequate documentation of costs as required in the contract. Contact the CO if you are unsure how much documentation is needed.

"Allowable" costs are those permitted by the standards set forth in BPI Part 13 (See Appendix 13-A). Special provisions in the contract may also affect the allowability of specific costs.

Whether it is "reasonable" to incur specific costs for performing a particular type of work is a question that can best be answered by an individual familiar with what is involved in performing that type of work, and who has the technical qualifications to make an informed judgment. The materials or effort may be "unreasonable" in that they exceed or differ from what is necessary to complete the contract work. Detecting unreasonable direct costs is the responsibility of the COTR. If unreasonable costs are noted, contact the CO for advice.

A cost is properly "allocable" to a contract if it is incurred specifically for the contract or is incurred by the contractor for other activities that also benefit the contract. The COTR's actions with regard to the allocability of costs claimed will be to spot direct costs that appear to have no connection with the contract work. If the reason for billing materials or specific labor hours to perform the contract is not clear, it may be that the costs were charged to the contract in error.

Many contracts require the contractor to submit periodic financial reports showing the total costs incurred during the last reporting period, cumulative total, etc. To be useful, such reports should "key in" with a financial expenditure plan or budget for the entire contract, so actual costs can be compared with planned costs, shortfalls in estimates can be identified, and timely management decisions regarding additional funding can be made and implemented.

The checklist in Exhibit 14-A-8 may be used as a guide when reviewing invoices for cost-reimbursement contracts. If used such a checklist is used, it should be filed in the COTR's contract administration file. When the unexpended balance declines below the amount needed to complete the work, the COTR must discuss with the CO the future of the contract and the project.

6.2.2.3 Reviewing Time-and-Material Contract Invoices.

Review of time-and-material contract invoices is substantially the same as for cost-reimbursement contracts except that only the number of hours billed need be reviewed for reasonableness and compared to the progress on the project. It is important to review the composition of the hours billed if the contract has different labor rates associated with the different competence and skill levels, i.e., partner hours, senior manager, staff accountant, or senior technical engineer versus engineer/draftsman. Some firms have an internal practice of charging a pro rata portion of "senior" hours for a given number of junior hours and attempt to justify it on the basis of "standard" managerial review and oversight experience within their firm. If the COTR has reason to believe that the invoice includes such estimated amounts, the COTR should question the contractor concerning these costs. Direct costs, i.e., the material portion of the invoice including travel costs, are reviewed in the same manner as cost reimbursement contracts (See Exhibit 14-A-8).

6.2.3 Forwarding Invoices.

Immediately following review of the invoices, original invoices containing the acceptance of services statement will be forwarded to Disbursement Operations. The COTR should retain a copy of the invoice in the COTR file and forward a copy to the CO, attached to the status report.

6.2.4 Recording Invoices.

The COTR may be required to enter and approve invoices in BPA's electronic Business Enterprise System (BES), particularly for services contracts. If the BES application is not used, the Contract Invoice Control Sheet as shown in Exhibit 14-A-9 or similar spreadsheet is useful for logging each invoice processed. Special attention should be paid to the column headed "Remaining Funds." COTRs should compare this total after processing the invoice to ensure that sufficient funds remain to permit completion of the contract work.

SECTION 7 PLACING DELIVERY OR TASK ORDERS.

7.1 Understanding Delivery or Task Order Contracts.

BPA often knows that it will have requirements for specific supplies or services, but does not know exactly how much it will need or when it will need them. Delivery orders (supplies) or task orders (services or construction) give BPA flexibility in meeting its needs. The term "delivery order" or "task order contract" is sometimes used to refer to both a master contract (indefinite quantity/delivery contract) and to a master agreement. Master agreements, however, are not contracts. The contractual commitment is created only when an order is issued under the master agreement.

In administering any ordering arrangement, the COTR must be aware of the clauses in the contract or agreement specifying who may place orders and how the orders are to be placed. The COTR should work closely with the CO to establish procedures for the ordering process.

7.2 Administering Delivery or Task Order Contracts.

The COTR's duties in administering ordering contracts are the same as in administering other types of contracts: To assure that the contractor adheres to the purchase description, performance periods, and completion of deliverables as stated in the task order.

7.3 Preparing Requests for Delivery or Task Orders.

A delivery or task order is prepared in the manner and in the level of detail as required by the master contract or agreement upon which the order is based. See BPI 7.2.5 for more details.

7.3.1 Preparing Delivery Orders.

A deliver order will contain all of the information required to describe the terms of the order: Line item description for each item, quantity, unit of issue, and unit and extended prices, FOB point, delivery location, delivery period, accounting information, and COTR designation or other person or organization for inspection and acceptance. The terms and conditions for administering the order are those of the master contract or agreement.

The purchase description or specification required for a delivery order is often contained in the master contract or agreement, and referenced in the delivery order. However, the master agreement or contract may provide for a separate purchase description or specification, to be attached to each order.

7.3.2 Preparing Task Orders.

The task order will contain, similar to the delivery order, the necessary description of the work, whether for service or construction. For services, the work typically will be described using either a purchase description, particularly for commercial services, or a Statement of Work. Construction work may, similarly be described either using a purchase description for construction or using a specification, with drawings as necessary. The task order purchase description, Statement of Work or specification should be clear and precise. (See BPI Appendix 6-A, Requisitioners' Guide to Preaward Activities, for the requirements for supply, service and construction type transactions.) The task order document communicates to the contractor the specific tasks to be performed. A vague, unclear, or unnecessarily broad work description may prevent the contractor from accomplishing the exact task desired. Ways to help assure that task order wording is clear and precise include:

(a) Review of the draft task order by other BPA project personnel acquainted with the program involved. Ambiguities and other inadequacies can often be spotted by a knowledgeable person who has had no involvement with writing the draft task order.

(b) Review of the draft task order by the contractor to assure mutual understanding can uncover matters that are not clearly expressed. However, the contractor must <u>not</u> be asked or permitted to draft task orders.

Work described in the task order must fall within the "scope" of the contract. Task orders must describe particular work that falls within the general description of services or construction that the contractor has agreed to perform. If BPA wants work done that is not covered by the task order contract, then the purchase of such work should be handled as a new contract action. If in doubt, the COTR/program office should contact the CO/COR.

Work described in the task order should be achievable within the dollar and time limitations of the contract. BPA practice treats the contract completion date of a contract as the end of the contractor's obligations unless the contract or task order specifies that task orders issued prior to the contract completion date may continue until completion of the task regardless of the contract completion date. However, this must be clearly stated in the contract or task order.

7.4 Issuing Delivery or Task Orders.

The majority of delivery or task order contracts require that orders be authorized and issued by the CO. However, COTRs may be authorized by the CO to issue task orders up to a specified amount under certain limited circumstances, such as when the pricing is fixed per the terms of the master contract or agreement. In such cases, the contract will specifically state the limits of the COTR to issue orders.

7.4.1 CO Issues the Order.

While the CO normally issues the order to the contractor, the COTR is generally responsible for preparing and submitting the technical description of the work to be performed or supplies delivered (purchase description, SOW or specification) and a purchase request. The CO conducts necessary negotiations and or clarifications needed and issues the order. COTRs may be asked to conduct some of the discussions with the contractor but are not authorized to direct the contractor to proceed with the work until the order document is signed by the CO.

7.4.2 COTR Issues the Order.

In those instances when the COTR has been delegated authority in the contract to issue orders without CO review or approval, the following steps must be taken:

(a) COTR will obtain funding approval for the order. This approval may require a PR if the COTR is using funds from a different organization.

(b) Any required clarifications will be conducted by the COTR. Once agreement has been reached with the contractor, the COTR will prepare and sign the task or delivery order and distribute copies as directed by the CO. The task order will be documented as defined in BPI Part 12.

(c) The COTR will distribute the order to all parties. Forward a copy of the order to Disbursement Operations. Send a copy of the order and the PR, if one is created, to the CO, and send the order to the contractor who is to perform the work.

SECTION 8 REMEDIAL ACTIONS.

8.1 Initial Action When Contract Requirements Are Not Being Met.

Once the existence and cause of a technical discrepancy or performance delay are identified and it is determined that the contractor is not complying with a specific requirement called for in the contract, the COTR should make sure that the CO and project management are informed of the circumstances in a timely manner so that alternatives for dealing with the problem may be adequately assessed. The COTR should also immediately call the contractor's attention to the discrepancy and seek the contractor's voluntary commitment to remedy the failure. If the contractor agrees that the problem exists and will remedy it, the COTR should document the discussion in a letter to the contractor with a copy to the CO. After the contractor has had an opportunity to remedy the problem, the COTR should follow up to see if remedial action was taken. Results of the follow-up should be documented.

The COTR may not direct the contractor on a course of action to fix the problem. It is up to the contractor to choose whatever course of action is appropriate to remedy the problem unless BPA must direct specific actions to protect its own interest. If the latter is necessary, the CO must be advised. COTRs may not order corrective action.

The COTR's task is to avoid surprises caused by improper or delayed performance after it is too late to cure it. Timely action by the COTR affords program management and the CO the chance to make

decisions based on the maximum number of options. It also minimizes adverse program impact of delay by providing an opportunity to revise planning at an early stage.

8.1.1 Contractor Agrees with COTR.

When the contractor agrees that the contract requirements are not being met, there are several possible courses of action available to the contractor. If the contract is fixed-price, the risk is on the contractor to remedy the problem at its own expense, unless a remedy-granting provision provides otherwise. If the contract is cost-reimbursement and the contract clearly defines standards for acceptance, the contractor must pay the costs of rework. However, in cost reimbursement contracts without such standards, BPA must pay all reasonable, allowable, and allocable costs to remedy the problem. BPA, therefore, has a major role in deciding how to address the problem. For example, the work might be speeded up by using more people or overtime, but the availability of more qualified personnel and/or the availability of program funds for more workers or overtime need to be explored and decided on by the CO based on the recommendation of the program office.

8.1.2 Contractor Disagrees with COTR.

The contractor may disagree that contract requirements are not being met. The COTR should then discuss the matter with the contractor to discover the basis for the contractor's position. If the COTR still feels that the contractor's position has no reasonable basis, the COTR should advise the contractor of the need to take corrective or other action necessary to meet the requirements of the contract. Such advice needs to be confirmed in writing with a copy to the CO. (Written notice is important to document BPA's case if an adverse action, such as suspension of work or termination, is later required.) The giving of such advice is part of the COTR's primary task of ensuring that the contractor does what was promised in the contract. By the same token, the COTR must not direct the contractor to do more than or different from what the contract specifies. Such a direction would exceed the COTR's authority.

If on the other hand the COTR considers that there is or may be reasonable basis for the contractor's position, the COTR should discuss the matter with the CO to see what course of action should be taken to resolve whether the contractor is complying with the contract or not.

8.2 Dealing with Failure to Comply.

If the contractor fails to comply with a contract requirement within a reasonable time after the deficiency has been identified, the COTR should report all facts to the CO in writing. The report should contain a recommendation to the CO to take appropriate action. A letter may be sent to the contractor pointing out the failure of performance and its importance to BPA and requesting the contractor to meet with the CO to discuss the situation and the contractor's plans for remedying it. Such a letter can be beneficial in assuring that top management in the contractor's organization is aware of the problem and in enlisting its support for corrective action. However, if the departure from contract requirements is so serious that further performance would be a waste of money and if it appears that the contractor will not or can not remedy its failure, the COTR should recommend that the CO terminate the contract pursuant to the appropriate contract clause.

8.3 Conduct in Case of an Overrun.

When the contractor's incurred costs reach the stated estimated costs and the obligation to proceed is suspended, the contractor is obligated to notify BPA. It is important that BPA program personnel not request or encourage the contractor to continue work unless directed to do so by the CO. Boards of Contract Appeals have held that such action will legally obligate BPA to reimburse the contractor for continuing with the work. This action exceeds the COTR's authority and will lead to increased BPA expenditures.

On the other hand, fairness requires that BPA not keep the contractor in suspense. The COTR should facilitate a prompt determination of whether or not BPA will fund and authorize continuation of performance. When the decision is made, based on program office advice as to whether additional funds will be provided, the CO is responsible for informing the contractor. If funds are provided, such increase in funds can only be added to the contract by a contract modification signed by the CO (See Section 5).

8.4 Disputes.

In the course of performing BPA contracts, disputes may arise between BPA and the contractor over rights and obligations under the contract. Typical disputes concern such questions as: which interpretation--BPA's or the contractor's--should be attached to ambiguous contract language; what constitutes an "equitable" adjustment for a particular contract change--the amount allowed by the CO or a larger amount claimed by the contractor; or how much delay was caused the contractor by BPA action/inaction or other valid reasons and is, therefore, "excusable"? As BPA's primary liaison with the contractor, the COTR may be the first person aware of differences of opinion between BPA and the contractor.

When the COTR discovers a difference of opinion regarding the rights or obligations of either party under the contract, the COTR should promptly initiate discussions with the contractor to find the basis for the contractor's position. The aim should be to resolve the disagreement by arriving at a mutual agreement. The COTR should also let the CO know about the disagreement, including the positions of the COTR and the contractor, and, if it appears that the COTR can resolve the matter with the contractor, the COTR should review the proposed solution with the CO. These actions should be completely documented in writing to the CO.

The contract's Disputes clause empowers the CO to issue a decision on the matter if the contractor and the CO cannot arrive at agreement on what the contract requires. The clause directs the contractor to proceed with performance of the contract in accordance with the CO's decision.

8.5 Suspension of Work.

BPA actions that cause the contractor to proceed on a schedule other than that originally anticipated may cost the contractor more than planned. These additional costs generally must be borne by BPA. However, if the contract contains a "Suspension of Work" clause, BPA has some rights to stop the contractor's activity pending certain developments or actions on the part of either party, even though, depending upon the circumstances, BPA may still have to pay for stopping the contractor's activity. Therefore, suspending the contractor's work must be for good reasons. The usual practice is that the CO is normally the only individual authorized to suspend work on a contract. In the case of observed unsafe practices, however, the contract "Safety and Health" clause permits any member of the contract administration team (CO, COTR, or field inspectors), with probable cause, to suspend the contract work in those areas or locations of the contract work affected by the unsafe practice.

When the COTR believes that a temporary suspension of work is appropriate, the CO should be notified immediately.

8.6 Claims.

A claim is a written demand by one of the contracting parties seeking the payment of money, adjustment of contract terms, or other relief arising under the contract.

Some typical reasons for claims from the contractor include:

(a) A change in BPA's requirements during the conduct of the contract;

(b) The contractor encountered conditions different from those BPA led the contractor to expect;

(c) BPA redirected the contractor's efforts after the contract was underway; or,

(d) BPA delayed the contractor.

Occasionally BPA may also feel that it has a claim against the contractor. Typical reasons for such claims include:

(a) The contractor is late in delivering the required services and BPA incurs damages because of the late delivery; or,

(b) The contractor adversely impacts other BPA contractors or operations.

The most important functions of a COTR in a claim situation are to immediately notify the CO and to investigate the circumstances surrounding the claim. The COTR should promptly investigate the basis for the claim and send a written report to the CO. The COTR is not authorized to issue decisions on claims, but may discuss with the contractor the basis for the claim if so directed by the CO. The CO may also ask the COTR to begin the negotiation process in an attempt to settle the claim. However, the COTR must not give the impression to the contractor that the claim is being settled or that the COTR has authority to do so.

8.7 CO Final Decisions.

When a contractor files a contract claim against BPA, the CO must determine its merit and negotiate a contract adjustment or issue a final decision on that claim. Generally, the claim filed by the contractor will have been discussed with the COTR and perhaps the CO prior to a written assertion of the claim by the contractor. During these discussions, it will become obvious whether BPA agrees or disagrees with the contractor's claim.

If BPA agrees that the Contractor's claim is valid, the CO will, following negotiations, prepare a contract modification to make the necessary adjustment in the contract price or other terms/conditions. Most claims are adjusted through contract time extensions or payments of money.

However, if the CO and the contractor disagree on merit or adjustment and a claim is filed, the CO must issue a formal, final decision in writing. This final decision will address all elements of the contractor's written claim based on written information provided by COTR and other affected parties.

8.8 Termination.

The object of termination is to cut off further expenditure of BPA funds for continued effort by the contractor. There are four types of termination actions that may be included in BPA contracts. Read the contract you are administering to determine what courses of action are available to you.

Termination for default is used when the contractor has failed to fulfill a significant requirement of the contract. As a rule, BPA cannot recoup amounts already expended for deficient performance, but it may recover excess costs of obtaining the same or similar services from another source in cases of termination prior to the contract delivery/completion date under firm fixed-price contracts.

In potential default termination situations, a key responsibility of the COTR is to give timely notice to both the contractor and CO when the contractor is in noncompliance. The contractor must take whatever actions it determines necessary to assure compliance. However, if the COTR knows of noncompliance, the COTR must advise the contractor rather than waiting until the noncompliance requires a default termination action. The COTR may not terminate a contract.

In the event of default termination action, the contractor has the right of appeal. Documentation obtained by the COTR will be extremely important for use if the contractor appeals the CO's actions.

Under cost-reimbursement contracts, even where a right to terminate for default is included in the contract and may properly be exercised, the contractor is normally entitled to reimbursement for expenses incurred up to the time of termination, unless the work performed does not conform to the standards of acceptance stated in the contract. BPA applies the same rule to time and materials contracts.

Termination for the convenience of BPA is normally used when BPA's requirements have changed to such an extent that continuation of the contract is not in BPA's interest; however, the contractor's performance has not breached the contract. When the right to terminate for the convenience of BPA is exercised, the contractor is entitled to compensation for work done prior to the termination.

In some contracts both BPA and the contractor have a mutual right of termination. In such contracts the parties may negotiate the end of performance. Termination by mutual consent is used when the work under the contract is not progressing satisfactorily, and both parties want to stop the work. Normally, no payment by either party will be made to the other to compensate for the termination.

Termination for the convenience of either party gives to the contractor the same right to terminate at any time that BPA has traditionally reserved for itself. This type of termination is included in a contract only when deemed necessary by the CO to establish a viable business agreement and is advantageous to BPA. This type of termination is normally not used for firm fixed-price contracts. For cost or time and materials type contracts, the contractor exercising this right will be paid for work completed as of the date of termination.

The COTR plays a key role in potential or actual termination actions. The COTR is responsible for documenting circumstances that may lead to the need to terminate the contract. In a situation that could lead to a termination action, it is the responsibility of the COTR to advise the CO in a timely manner so that necessary negotiations are not delayed.

SECTION 9 ADMINISTERING INTERGOVERNMENTAL CONTRACTS.

9.1 Nature of Intergovernmental Contracts.

Intergovernmental contracts (IGCs) are legally the same as the contracts discussed in other parts of this Guide, but they are with entities such as other federal or state agencies, Indian Tribes, etc. An intergovernmental contract binds both parties to perform: The contractor-agency provides a service, and BPA reimburses the costs. The intergovernmental contracts are as legally binding and enforceable as are contracts with commercial enterprises. Some characteristics of intergovernmental contracts include:

(a) There are generally fewer terms and conditions (less boilerplate) in an IGC;

(b) The transaction is with a governmental body at the Federal, State, or local governmental level, a publicly owned college or university, or an Indian Tribe;

(c) Intergovernmental contracts are usually of the cost-reimbursement type. This means that the risks and costs are borne primarily by BPA, and that the governmental body will recover essentially all of its costs. Cost reimbursement intergovernmental contracts have specific cost principles, listed in BPI Part 13, and cited in the contract. The contractor agency may bill BPA only for costs that are reasonable, allowable and allocable under the intergovernmental contract; and

(d) Termination provisions are usually mutual, and do not contain the remedies for failure to perform found in most contracts with the commercial sector.

9.2 COTR Responsibilities.

COTR attention to performance under an intergovernmental contract is just as critical as with the other contracts described in this Guide. Close monitoring is essential to ensure that the project is conducted in an efficient and businesslike manner. Basic steps and actions outlined in other parts of this Guide apply generally to IGCs. Although the terms and conditions of intergovernmental contracts are less stringent than contracts with the private sector, the need for project accomplishment in a timely, efficient manner is just as critical to BPA.

9.3 IGC Billing Procedures - Contracts with Other Federal Agencies.

Payments on the majority of contracts entered into with other Federal agencies are disbursed using the U. S. Treasury's On-Line Payment and Collection (OPAC) system. Under these systems, payments are initiated by the contractor agency. BPA receives a computer-generated billing statement through the Government-on-Line Agency Link System (GOALS). Funds are automatically transferred between the contractor agency's and BPA's account with the U. S. Treasury upon Treasury's receipt of the billing. This is generally accomplished before BPA can perform the acceptance and invoice review processes described in Section 6.

Even though funds have already been disbursed to the contractor agency, BPA has an opportunity to review and, if necessary, to correct the billing, generating a credit or charge back entry to the account of the contracting agency.

Disbursement Operations sends the hard-copy billing to the COTR for receipt and acceptance. This hard-copy billing, which should include all necessary supporting documentation, needs to be reviewed and accepted or rejected with an accompanying explanation and returned to Disbursement Operations promptly so that credits can be claimed in the time allowed and so that the charges can be input into BPA's financial information reporting system.

Acceptance of supplies or services provided by Federal agencies under IGCs is performed in the same manner described in subsection 6.1.

Review of the billings by the COTR is performed in the same manner as the review of commercial invoices. In the event problems are discovered during this review, the CO should immediately be contacted and advised of the problem. The problem should then be documented in a memorandum to the CO.

9.4 IGC billing procedures - other than federal agencies.

Generally, billings submitted by Governmental organizations other than Federal agencies are received and reviewed for reasonableness in essentially the same way as those submitted by commercial organizations. COTR responsibilities and procedures for acceptance of services and invoice review are the same as those described in Section 6.

SECTION 10 COMPLETION AND CLOSE-OUT.

The COTR determines when the work has been completed in accordance with the technical requirements of the contract, including any contract extensions or renewals. This is done by inspecting all deliverables promptly upon receipt to determine acceptability. Administrative matters such as the disposition of BPA-furnished property should be attended to as soon after physical completion of the contract as possible. When all items required by the contract have been delivered and accepted, the COTR notifies the CO by submitting a COTR performance status report. (See Exhibit 14-A-5.) Contract close-out is triggered by this notification.

Prompt initiation of contract/intergovernmental contract close-out allows the COTR to obtain firsthand information from other individuals who were personally involved with the contract/intergovernmental contract. Resolution of open matters is more difficult when personnel have moved to other jobs and their recollections become vague.

The COTR may have additional responsibilities concerning formal certification of completion and acceptance (such as obtaining or confirming delivery of BPA-furnished property certificates, supply test reports, final drawings, instruction books, and any other final deliverables, as specified in the contract), and other issues related to formally closing the contract. The COTR need not initiate these additional documents; they will be requested from the COTR by the CO when required.

For construction work, additional steps of final inspection, obtaining a release of contractor's claims, and settlement of claims are typically performed as a part of the close-out process. The COTR or field inspector determines when the work has been substantially completed in accordance with technical requirements of the contract and conducts a final inspection, developing a "punch list" of those remaining contract items to be resolved. Besides the punch-list items, the COTR or field inspector addresses all remaining administrative matters related to close-out, such as receipt of all special warranty documentation, Operation and Maintenance Manuals, spare parts and disposition of BPA-furnished property. When all items required by the contract have been completed, the notice of final inspection is sent to the CO with a copy to the COTR, if performed by the field inspector. On larger contracts, and some smaller as well, the contractor is typically required to submit a release of claims prior to BPA making final payment. Unless specifically listed on the release form, the contractor may not submit any further claims under the contract. Once a release of claims is received, any remaining payment is processed, even if some claims are still pending resolution, such as those previously submitted or noted as a condition of the contract release of claims.

SECTION 11 STANDARDS OF CONDUCT.

11.1 Business Ethics.

BPA business must be conducted in a manner that is above reproach, with complete impartiality and preferential treatment for no one. Although Federal laws and regulations restrict the actions of Government personnel, their official conduct must be such that they would have no reluctance making full public disclosure of their actions. It is important that BPA personnel observe proper standards of conduct in the discharge of their official duties, especially those duties involved in purchasing programs.

All BPA employees must clearly understand the standards of conduct for power and transmission operations. BPA adopted the Standards of Conduct of the Federal Energy Regulatory Commission (FERC) Order No. 889, separating its wholesale power marketing function from its transmission system operation and reliability functions, and to conducting its future operations per the order.

The basic rules are that--

(a) Access to information on BPA's transmission availability, price, uses or potential uses cannot be discussed with BPA's power marketing employees;

(b) No BPA transmission operations and reliability employees can take part in BPA power marketing functions, such as buying and selling power;

(c) BPA employees who provide services shared by both BPA transmission operations and reliability operations and BPA power marketing operations, and who have access to information on transmission price and availability, cannot discuss such information with BPA power marketing employees; and

(d) BPA power marketing employees can only have access to BPA transmission availability, price, uses or potential uses only through an Internet site: the Open-Access Same-time Information System (OASIS).

It is BPA policy not to interfere in the private lives of its employees; however, certain other standards of conduct are required. These are published in detail and available to all personnel (see Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, BPI Part 3 and Appendix 3-A). Adherence to these standards requires that employees not do indirectly what would be improper to do directly.

Because of their importance in purchasing activities, BPA personnel should be familiar with the following selected standards:

(a) No employee shall receive any salary or compensation for services as a Federal employee from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality.

(b) Employees shall not engage in any outside employment or other outside activity in conflict with the full and proper discharge of the duties and responsibilities of their BPA employment.

(c) Acceptance of gifts, entertainment, or favors (no matter how innocently tendered and received) from those who have or seek business with BPA, may be a source of embarrassment to BPA and to the employee involved. It may affect the objective judgment of the recipient and impair public confidence in the integrity of the business relations between BPA and industry. Therefore, BPA employees shall not knowingly solicit or accept any gifts, entertainment, or favors, either directly or indirectly, from any interested party. (Complimentary meals and beverages or other de minimus gifts may be accepted under certain conditions, see 5 C.F.R. Part 2635.) For the purpose of this standard, gifts, entertainment, and favors include any benefits, gratuities, loans, discounts, tickets, passes, transportation, accommodations, or hospitality given or extended to or on behalf of the recipient.

(d) An employee shall not directly or indirectly use or allow the use of BPA property of any kind for other than officially approved activities. An employee has a duty to protect and conserve public property, including equipment, supplies, and other property entrusted or issued to the employee.

(e) BPA employees must not directly or indirectly use official information for private gain which has been obtained through the employee's BPA employment if the information has not been made available to the general public.

(f) Employees are prohibited from endorsing the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. Use of material, products, or services by BPA does not constitute official endorsement.

Public confidence in BPA employees clearly demands that each employee take no action that would constitute the use of official position to advance personal or private interests.

11.2 Conflicts of Interest.

Technical and contracting personnel must observe standards of conduct and avoid conflicts of interest with suppliers or potential suppliers of BPA to obviate any possible inference that BPA may be compromised by an employee's actions.

A few key points relating to conflicts of interest in purchasing matters are:

(a) Employees, or their families, shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's BPA duties and responsibilities.

(b) Employees, or their families, shall not engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained through BPA employment which has not been made available to the general public.

(c) Unless authorized to do so, no employee shall participate as a BPA employee in any matter that the employee knowingly has a financial interest.

Questions should be directed to BPA's ethics official in the Legal Services.

11.3 Purchasing Standards of Conduct.

BPI purchasing policy prohibits certain actions by BPA employees, consultants, and advisers, and by competing contractors involved in the conduct of any BPA purchase of supplies, services, or construction. The prohibited actions relate to (1) post-employment restrictions, (2) discussion of future employment, (3) gratuities, and (4) disclosure of proprietary or source selection information. BPA regulations implementing the policy are in BPI Part 3 and Appendix 3-A.

11.4 BPA Harassment Policy.

Under BPA policy, harassment will not be tolerated in the BPA workplace. With regard to contractors, harassment may occur either between contractor employees or between BPA and contractor employees. The role of the COTR when contractor employees are or may be involved in harassment, is to direct complaints to the contractor's management for resolution. COTRs are not to participate in complaint resolution.

Contractors working on-site at BPA are subject to BPA policies, including harassment-free workplace, through the inclusion of Clause 3-8, Contractor Compliance with BPA Policies, in their contract. Violations of the clause may result in termination of the contract for default. The CO should be informed of all pertinent facts in such situations. Further guidance on dealing with harassment is provided in a booklet published by Human Services, Diversity and EEO, and is available at all service centers and field personnel offices.

SECTION 12 DOS AND DON'TS FOR COTRs.

12.1 DOS.

Maintain a teamwork relationship, keeping the contracting officer fully informed and current on major problems concerning the contractor's performance, costs, or adherence to clauses.

Have a copy of the contract and all changes and modifications readily available, and be familiar with and understand all facets of the contract.

Maintain a separate file for each contract.

Work with the contractor, within your authority, as needed to get the job done.

Assure that any required security screening is completed before allowing contractors access to BPA ADP resources.

Attend scheduled meetings between the contracting officer and the contractor.

Monitor the contractor's work to ensure performance consistent with contract requirements within the time and cost parameters stated in the contract.

Provide periodic information to the contracting officer about the contractor's progress.

Verify that unsatisfactory contractor performance is corrected, including observed unsafe practices affecting safety.

Ascertain that BPA property is being used properly and that appropriate measures are being taken to protect and safeguard it.

Assure that the contractor is providing timely response to all correspondence, and be timely yourself.

Verify that the contractor has the correct personnel performing the contract work and a need exists for overtime (when the contract type, i.e., time and materials, requires such review).

Follow up on corrective actions by the contractor as recommended by an authorized inspector(s).

Ascertain that all emergencies are attended to and resolved immediately.

Give notice of technical non-compliance (technical direction) to the contractor in writing. If such notice is given orally, follow up with a written confirmation.

Have regular and frequent contact (as necessary) with the contractor to ensure awareness of any potential concerns.

Ensure that your replacement is thoroughly briefed, both verbally and in writing, on all important issues.

Conduct contractual compliance checks and accurately record the information discovered.

Document significant actions, conversations, etc. as they occur.

Complete review and response regarding drawings, submittals, and other documents within the time specified in the contract.

12.2 DON'TS.

Award, agree to, or execute a contract or contract modification. (Note: An exception is a construction contract field modification issued by a COTR or field inspector within delegated limits, as set by the CO).

Obligate, in any way, the payment of money by BPA unless delegated specific authority to do so.

Make a final decision on any matter that would be subject to appeal under the disputes clause of the contract.

Take action to terminate the contractor's right to proceed. (Note: Safety issues may require immediate action including suspension of contract work, with probable cause, for those areas affected by unsafe practices. See BPA Safety Manual.)

Approve work that is not in conformance with the contract requirements.

Make a final determination of contractor liability for loss or damage to BPA property.

Monitor the contractor so closely that you interfere with the contractor's work.

Encourage the contractor to perform work that is not specified in an existing contract, or permit the contractor to proceed with work outside the scope of the contract.

Accept special favors or gratuities from the contractor.

Tell the contractor how to carry out his/her responsibilities within any facet (technical, management, cost, or provisions) of the contract.

Commit the equipment, supplies, or personnel of the contractor for use by others.

Delay or cause to be delayed any correspondence or reports that require immediate response from the contractor, the contracting officer, or other BPA officials.

Create an employer-employee relationship with contractor personnel through supervisory or administrative practices.

Offer the contractor advice that may adversely affect contract performance, compromise the rights of BPA, provide the basis for a constructive change or impact any pending or future CO determination as to fault or negligence.

Grant extension of time.

Divulge any sensitive or proprietary information. (Contact the CO for advice)

Accept an appointment as a COTR if there is an apparent conflict of interest.

Exceed your authority as expressed (and limited) in your letter of appointment.

Become involved in contractor's business affairs not covered in the contract. This includes disputes with subcontractors, interpersonal conflict among contractor's employees, etc.

Exhibit 14-A-1 Sample COTR Delegation Memorandum

Date

(Organization, Routing)

Designation of Contracting Officer's Technical Representative
(Contract Number, Contractor Name)

Roger Kabat, Contracting Officer's Technical Representative
(Organization, Routing)

You are hereby designated the Contracting Officer's Technical Representative (COTR) for the subject contract. You represent the Contracting Officer in all technical matters that arise. Your major duties and responsibilities are contained in the "Contracting Officer's Technical Representatives' Guide for Services Contracts." (BPI Appendix 14-A).

Your delegation is made without power of redelegation. The delegation shall remain in effect through the life of the contract unless it is revoked by the Contracting Officer, you are reassigned, or your employment is terminated. Therefore, it is important that you advise me immediately if someone else will assume your COTR responsibilities for this contract.

You are authorized to perform the following functions:

- Inspect and review work performed
- Inspect or witness test presentations or other activities
- Interpret technical specifications
- Approve submitted deliverables/reports
- Approve invoices
- Reject non-conforming services, materials, or equipment.
- Maintain a file of all contractor property purchasing and disposition documents
- Conduct required verifications of property listings (including annual physical verification of property).

You are not authorized to act for the Contracting Officer in the following matters pertaining to the contract:

- Approve contract modifications or change orders
- Authorize actions that result in a change in the contract price, technical specifications, or time of performance
- Approve subcontractors
- Except for unsafe practices or conditions, suspend or terminate
- the Contractor's right to proceed
- Take action to terminate the contract for default or for BPA convenience
- Make final decisions on any matters subject to appeal.

It is essential that the Contracting Officer be informed of the Contractor's progress. I have enclosed a master contract status report form tailored to your contract. Please make additional copies for your future use. Prepare and submit a status report upon receipt of deliverables or reports or upon completion of major contract performance milestones. Also, submit a status report upon receipt of invoices, attaching a copy of the invoice, for work performed.

Upon your recommendation, I have designated Angela Sanchez to act on your behalf during your absence on all technical matters relating to the contract. I ask that you familiarize her with your duties and responsibilities.

Joel Bovard is the Contracting Officer's Representative (COR) I have assigned to monitor this contract. Please contact him on all matters pertaining to administration of this contract. His telephone number is (503) 555-0990.

Cynthia Jenner, Contracting Officer

Enclosure: Status report

IMSecretary:ims:0000 (VS10-XXX-0000g)

cc:
Contractor
Contracting Officer's Representative
Disbursement Operations
Alternate COTR
Official File - XXX

Exhibit 14-A-2 Sample Field Inspector Delegation Memorandum

Date

(Organization, Routing)

Designation of Field Inspector
(Contract Number, Contractor Name)

Jamie Jones, Field Inspector
(Organization, Routing)

You are hereby designated a Field Inspector for the subject contract. You shall represent the Contracting Officer's Technical Representative in technical matters. Your major duties and responsibilities are outlined in the contract clause, Contracting Officer's Representatives.

This delegation is made without power of redelegation and shall remain in effect through the life of the contract unless revoked by the Contracting Officer's Technical Representative, you are reassigned, or your employment is terminated.

You are authorized to perform the following functions:

- Inspect and review work performed.
- Advise contractor when it is not conforming to the contract requirements.
- Interpret technical specifications.
- Recommend to the CO approval or rejection of submitted services.
- Review invoices.

You are not authorized to act for the Contracting Officer's Technical Representative in the following matters pertaining to the contract:

- Reject services.
- Authorize actions that result in a change in the contract price, technical specifications, or time of performance.
- Except for unsafe practices or conditions, suspend or terminate
- the contractor's right to proceed.
- Take action to terminate the contract for default or BPA convenience.
- Sign invoices for acceptance.

Contractor noncompliance with any portion of the contract and all contract changes are the specific responsibility of the Contracting Officer and the Contracting Officer's Technical Representative. You need to notify me of any and all instances of noncompliance with the contract.

I have designated Rosy Schachtelovich to act on your behalf during your absence on all technical matters relating to the contract. I ask that you familiarize her with your duties and responsibilities.

Please do not hesitate to contact me if you have any questions.

Roger Kabat, Contracting Officer's Technical Representative

IMSecretary:ims:0000 (VS10-XXX-0000g)

cc: Contracting Officer, Contractor, Alternate Field Inspector, Official File - XXX

Exhibit 14-A-3 Contracting Authority and Communication Channels

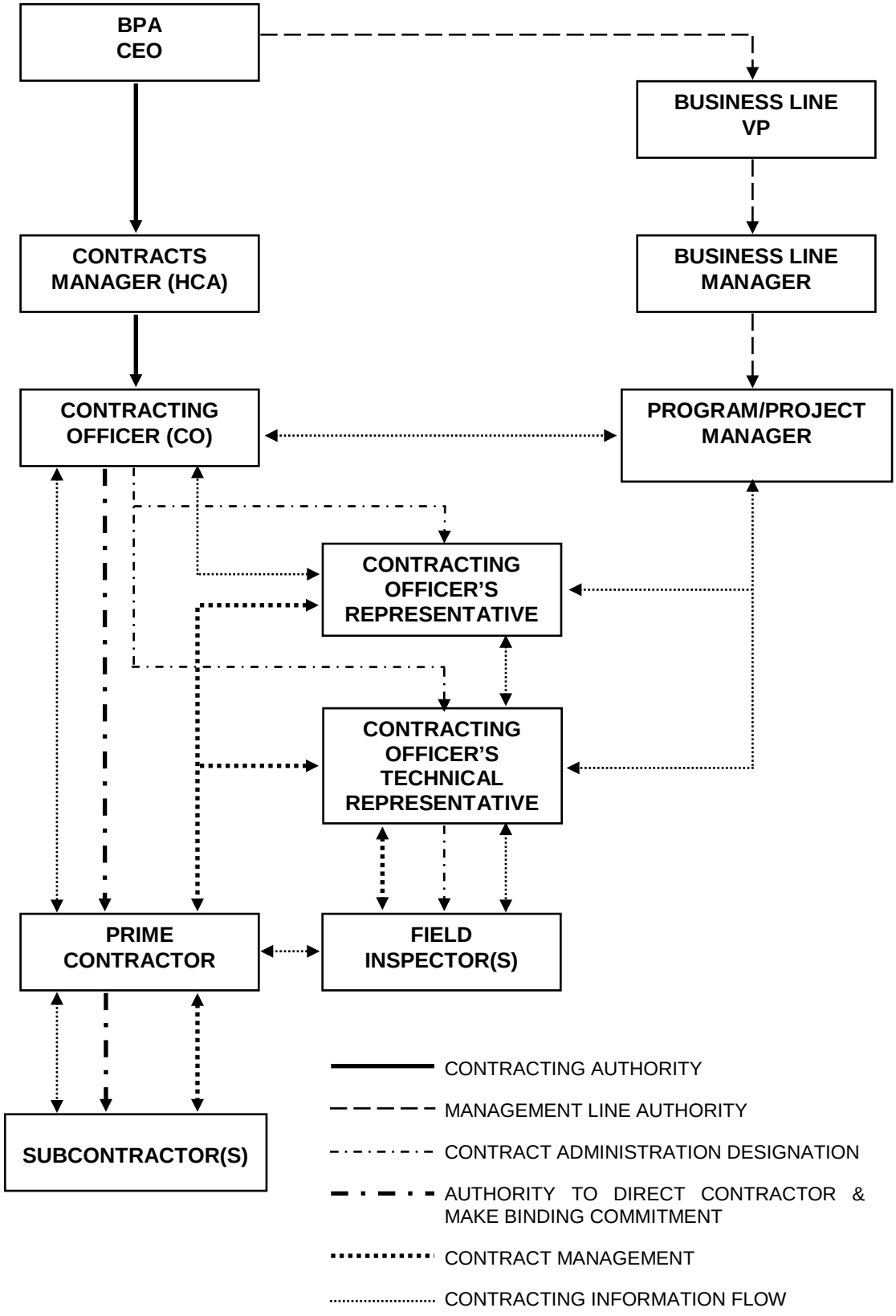

Exhibit 14-A-4 Typical Contents of COTR's Contract Administration File

A uniform and orderly approach to file maintenance will reduce time spent searching for material and provide neat, standardized files. Consistency is important. It is recommended that the COTR establish a contract administration file similar to that used by the CO or COR. The COTR may use the agency approved electronic records storage application to retain contract documentation. The following is a sample format, to be adapted as necessary for the type of contract:

(a) File identification:: The following information typically should be used to identify award files:

Contractor Name
Project Name and/or Number
Contract No.

(b) File content: This is a suggested file format, which may be modified as necessary for the contract type (service, supply or construction).

1 Contract and Supplements

- Purchase requests
- Copy of executed original contract and all modifications

2 Basic File

- Bonds and insurance certificate(s)
  - Performance and payment bonds
  - Insurance certificate(s)
  - Surety status inquiries
- Contractor performance evaluation/award fee/quality assurance
- Forms (travel, training, etc.)
- Labor clearances and enforcement record(s)
  - Certified payroll
  - Contractor employee interview forms
- Log of significant activities
- Meeting notes
- Overtime approvals and other work-progress related documents
- Reports (accident, audit, contractor progress, COTR performance status, financial, receiving, workforce status, etc.)
- Schedule of compliance reviews
- Project staffing/organization charts
- List of BPA-furnished property
- Close-out records
  - Final inspection memo
  - Final acceptance letter
  - Contract completion report
  - Release of claims
  - Contractor evaluation
  - Contract close-out checklist

3 Correspondence File

Copies of all correspondence between COTR and CO/COR
Copies of all correspondence between COTR and Field Inspectors
COTR and any Field Inspector designation
Internal memoranda
Record of communication between COTR and other support activities
Copies of all correspondence between COTR and contractor
Copies of all general correspondence related to contract
Copies of all correspondence regarding labor issues
Copies of all notices to proceed, stop or report submittals
Copies of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules

4 Payment File

Backup documentation for contractor payment or progress payments
Copies of inspection reports related to payment
Copies of invoices
Information relative to discount provisions for prompt payment
Correspondence pertaining to payment
Payment status log

Exhibit 14-A-5 COTR's Status Report

BPA F 4220.50e
(08-96)

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION

Electronic Form Approved by CGIR -08/14/96(VB)

COTR'S STATUS REPORT

1A. TO	1B. THROUGH	1C. ORG. CODE
C.O	C.O.R.	

2. CONTRACT NUMBER		3. TITLE
4. PROJECT NUMBER	5. TASK ORDER NUMBER	6. CONTRACTOR

7. This Contract include BPA furnished or funded property or materials.

8. This is a ☐ Fixed Price Contract ☐ Time and Materials Contract ☐ Cost Reimbursement Contract

9. CURRENT FINANCIAL STATUS

	YES	NO	N/A
A. The expenditure rate is at anticipated levels.	☐	☐	
B. Prices for deliverable *(if fixed price)*, of labor rates *(if T&M/Cost reimbursement)* are consistent with those found	☐	☐	☐

C. The following may be left blank if Control Invoice Sheet attached. *(Attach copies of invoices.)*

(1) Original Award Amount/Ceiling
(2) Increase/Decrease Since Last Report
(3) Current Award Amount/Ceiling
(4) Minus Previous Payments
(5) Minus This Payment
(6) Unpaid Balance

10. CURRENT PROJECT STATUS ***(Explain "No" answers)***

A. CURRENT EXPIRATION DATE *(MM/DD/YY)*

B. OPTIONS FOR EXTENSION THROUGH:

(If no, explain in block 13)	YES	NO	N/A
C. Deliverables are acceptable.	☐	☐	☐
D. Deliverables were submitted on time.	☐	☐	☐
E. Progress is satisfactory and should be completed before the expiration date. ***(If no, contact the COR immediately.)***	☐	☐	

11. PROPERTY ***(Skip This section if the contract does not include BPA furnished or funded property.)***

A. Has additional property been purchased and charged to BPA since the last report? YES ☐ NO ☐

B. The annual physical inventory report *(due August 31)*:

12. CLOSE-OUT ***(Complete this block when final payment is authorized.)***

I recommend that this contract be closed. Final payment was authorized by me on DATE:
Overall, I consider the contractor's performance

13. REMARKS ***(Cite block number)***

14A. COTR'S SIGNATURE	14B. DATE *(MM/DD/YY)*
14C. COTR'S NAME	14D. M&P *(COR'S Initials)*

Exhibit 14-A-6 Correction Memorandum

BPA F 6410.43e
(09-94)
(Previously BPA 234)

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION
CORRECTION MEMORANDUM

Electronic Form Approved by CGIR - 09/01/94 (VB)

DATE *(MM/DD/YY)*

THIS IS NOT AN AUTHORIZATION FOR EXTRA WORK.

SUBJECT: CONTRACT NUMBER AND TITLE

THE FOLLOWING IS NOT IN COMPLIANCE WITH THE CONTRACT REQUIREMENTS

REFERENCE CONTRACT REQUIREMENTS

Please investigate this non-compliance immediately and in the space below, provide this office with a written response to the non-compliance within days. Your response shall include the corrections to be made and the time frame in which you intend to make them. If you do not agree with the facts stated in this memorandum, please notify the Contracting Officer immediately.

INSPECTOR *(Signature)*	DATE *(MM/DD/YY)*
CONTRACTOR'S ACKNOWLEDGMENT OF RECEIPT *(Signature)*	DATE *(MM/DD/YY)*

THE CONTRACTOR'S RESPONSE TO THE STATED NON-COMPLIANCE IS

This correction memorandum is satisfied this date.	DATE *(MM/DD/YY)*	INSPECTOR *(Signature)*	DATE *(MM/DD/YY)*

Exhibit 14-A-7 Sample Notice for Improper Invoice

SUBJECT: Notice of Improper Invoice

TO: (Contractor's Name & Address)

On _____ the attached invoice was received by Bonneville Power Administration (BPA). Payment of this invoice cannot be made in whole/part due to the reasons marked below:

( ) The attached invoice does not reflect our purchase order/contract/task order/account number. This identification number is necessary in order to make payment.

( ) There is an error in unit price/extension/total on the attached invoice. Please provide a corrected invoice that agrees with the terms of our purchase order/contract.

( ) The attached document is returned because payment cannot be made against a statement/carbon copy. Please provide an original invoice so that payment can be made.

( ) The attached invoice does not reflect unit price(s). Please provide an itemized invoice so payment can be made.

( ) Other (describe)_____
_____.

Please mail the requested information to the following address with a copy of this notice attached.

Attn: (Name and Routing)

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

Your prompt attention to this matter is appreciated.

_____
(Signature & Title)

Attachment: (Copy of Invoice)
cc: Accounts Payable

Exhibit 14-A-8 Checklist for the Review of Cost-Reimbursement Contract Invoices

Contractor: _____ Contract Number:_____
Invoice Number: Date reviewed: _____
Billing Period: _____ to _____

__ Does the invoice have all contractually required data?

__ Is the period of performance covered by the billing shown?

__ Does the billing period duplicate a previously invoiced period?

__ Do billing rates agree with those in the contract?

__ Is the rate of expenditure during the billing period as expected, or is it unusually high or low?

__ Is the number of hours billed a reasonable number for the accomplishments of the contractor for that period of time?

__ Are the travel expenses reasonable for the amount of travel expected during the period of the billing.

__ Are the total cumulative invoiced costs within the contract's limitation?

__ Are the equipment/supplies/materials invoiced as expected, or has something caused an unusual expenditure?

__ Is additional funding beyond the present ceiling expected to be needed for this contract in the next three months?

__ Are there direct costs not previously negotiated, such as extra materials, unanticipated travel, personal computers, etc.?

__ After considering the questions above, the technical progress, and the financial information gained through the invoice review described above, is there any reason to expect other than satisfactory completion of the project/contract?

__ Is there any reason to contact the Accounts Payable or CO concerning timely processing of this invoice?

__ Are receipts or supporting documentation attached?

_____ _____
COTR Signature Date

Exhibit 14-A-9 Invoice Control Sheet

Contract Number: _____ Supplies/Services: _____

Contractor: _____

Invoice Number	Date Invoice Received	Date Invoice Approved	Date Sent to CRC	Invoice Amount	Amount Paid	Cumulative Amount Paid	Remaining Funds
Initial Contract Limit							$ _____
1. _____	_____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____	_____	_____	_____
8. _____	_____	_____	_____	_____	_____	_____	_____
9. _____	_____	_____	_____	_____	_____	_____	_____

Exhibit 14-A-10 Definitions

"CO" means Contracting Officer.

"COR" means Contracting Officer's Representative.

"COTR" means Contracting Officer's Technical Representative.

"COTR Certification" means the program to verify that an individual has successfully completed the required BPA COTR training and has adequate program level experience to qualify them to perform the roles and responsibilities of the position.

""Contract" means a legal instrument reflecting a relationship between BPA and another party where the principal purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of BPA. In the context of this Guide, the terms "contract" and "contract administration" also apply to Intergovernmental Contracts.

"Field inspector" means one or more individuals that are delegated authority to monitor the performance of the contractor.

"General Scope of the Contract" means the work which was fairly and reasonably within the contemplation of the parties when they entered into the contract. This can be defined by determining what each party planned to do as a result of the contract. Generally, changes to specific elements or parts of the work would be considered "within the scope" if the end product of the contract was essentially the same as that contracted for initially. Changes that are beyond the scope of the contract are considered new purchases which require the competition requirements of the BPI to be met.

"Program Office" means the office that is the source of funds for the contract. This office determines major program goals and policies, and allocates funds, personnel, and other resources among the programs for which it is responsible, and determines other major facets of the contract effort.

"Requisitioner" means the person in the program office who is responsible for developing the project supported by a specific award, and the person who concurs with any proposed program-type modifications to agreements before action by the CO. The requisitioner recommends to the CO an individual to serve as COTR for the contract. The nominated individual must be certified by the HCA as a qualified COTR. The important considerations are the technical and contract administration knowledge of the individual to ensure effective technical compliance by the contractor and receipt and acceptance of the supplies/services. The CO will evaluate the recommendation(s), and designate the individual selected as a COTR. If the qualifications of the individual(s) nominated to be COTR are not met, the CO will ask for additional recommendations. The requisitioner may be designated as the COTR on a contract, but this is not necessary or required.

BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 19-A

PROPERTY MANAGEMENT PROCEDURES FOR CONTRACTORS

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1.1 GENERAL.

This supplement prescribes procedures to contractors for managing BPA-furnished and contractor acquired property (CAP).

1.2 DEFINITIONS.

“Adjusted Depreciated Value” means the final adjusted value of an asset taking into account the depreciated value and the asset’s physical condition.

"BPA-furnished property" means property in the possession of or directly acquired by BPA and subsequently made available to the contractor.

"BPA property" means all property and materials owned by, leased to, or acquired by BPA under the terms of the contract. It includes both BPA-furnished property and contractor-acquired property as defined in this section.

"Capitalized equipment" means personal property items having a unit acquisition cost of $10,000 or more with a useful service life of one year or more, and generally has a property tracking number assigned and is carried on the financial ledger as an asset (i.e., not expendable due to use).

"Contract Inventory" means:

(a) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in BPA.

(b) Any property to which BPA is obligated or has the option to take title to under any type of contract as a result either of any changes in the specifications or plans or of the termination of the contract (or subcontract thereunder), prior to completion of the work; and

(c) BPA-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

"Contractor-acquired property" means property acquired or otherwise provided by the contractor for performance of a contract, to which BPA has title or the right to take title under the contract terms.

"Cost-reimbursement contract" means the contractor is reimbursed for its costs.

"Custodial records" means any document such as requisitions, property receipts, issue documents, tool checks, stock record books, etc.

"Excess" means any property that is no longer used, needed, or required by BPA.

“Expendable property” means property and material, which when put to use, are consumed, lose their identity, or become an integral part of other property.

"Fixed-price contract" means that the contractor receives a stated amount regardless of the costs the contractor incurs.

"Material" means property which may be incorporated into or attached to a deliverable end item or which may be consumed or expended in the performance of a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in the performance of a contract.

"Non-Expendable Equipment" means property which has continuing usefulness as a self contained unit, is not consumed in use, and does not lose its identity when put to use or does not ordinarily become a component of other equipment or plant. It may or may not be capitalized.

"Personal Property" is defined as all property other than real property, property that becomes permanently affixed to real property, or property that becomes a component part to another asset.

"Physical inventory" means the actual observation and count of the property to be reconciled with custodial records.

"Property Administrator" or Organizational Property Management Office, provides advice/guidance on BPA's property management and control requirements.

"Salvage" means property that has some value in excess of its basic content, but which is in such condition that it has no reasonable use for any purpose as a unit, and its repair or rehabilitation is clearly impractical or uneconomical.

"Scrap" means property that has no reasonable value except for the recovery value of its basic material/mineral content.

“Sensitive property” means items, regardless of value, requiring special control and accountability because of susceptibility to unusual rates of loss, theft, or misuse, or due to National Security and Export Control considerations.

"Surplus" means inventory excess to the contract that is not required by other Federal agencies.

"Termination inventory" means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract.

1.3 PROPERTY CLAUSES.

See BPA Property Clauses in the contract.

1.4 FIRM FIXED PRICE /COST REIMBURSEMENT CONTRACTS.

Under a fixed price contract BPA shall retain title to all BPA-furnished property until such times as BPA decides to relinquish or transfer title through a disposal action such as donation, sale, orabandonment.

Under a cost reimbursement contract, the BPA has title to all property that is BPA-furnished or contractor acquired as a direct cost of performance under that contract.

1.5 PROVIDING MATERIALS.

Contractors shall ordinarily furnish all material for the performance of BPA contracts. However, BPA shall provide material to a contractor when necessary to achieve significant economy, standardization, expedited production, or when it is otherwise in BPA's best interest. Material to be furnished by BPA under the contract must be set forth in the solicitation and the contract.

1.6 RESPONSIBILITIES AND LIABILITIES FOR BPA PROPERTY.

(a) Responsibilities.

(1) The contractor is directly responsible and accountable for all BPA property in its possession or control in accordance with the requirements of the contract. This includes BPA property in the possession or control of a subcontractor. The contractor shall establish and maintain a property system in accordance with the contract to control, protect, preserve, and maintain all BPA property. This property control system shall be in writing unless the CO determines such a document to be unnecessary. The system shall be approved in writing by the CO.

(2) The contractor's property control system is subject to review by BPA as often as circumstances warrant during the contractor's performance, at contract completion or termination, or at any time thereafter while the contractor is required to retain the contract records. The contractor shall take necessary action to correct deficiencies found during any review.

(3) The contractor shall designate one individual in writing, who is not the user of the property, as the primary property contact for the contract.

(4) The contractor shall maintain and make available accurate property records and shall account for all BPA property until relieved of that responsibility by the CO.

(5) The contractor shall require subcontractors who are provided BPA property under the prime contract to comply with the provisions of this paragraph. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(6) The contractor shall promptly report all BPA property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(7) When unrecorded BPA property is found, both the cause of the discrepancy and actions taken by the contractor to prevent recurrence shall be determined and reported to the CO.

(b) Liabilities.

(1) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damages, or destruction of BPA property. The contractor may also be liable when the use or consumption of BPA property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.

(2) The contractor shall promptly report to the COTR any shortage, loss, damage, or destruction of BPA property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case as soon as the facts become known, or when they are requested by the CO. The liability for loss, damage, or improper use of BPA property will depend upon all the circumstances surrounding the particular case and will be determined by the CO in accordance with the provisions of the contract. The contractor will furnish all data necessary to

substantiate any request for discharge from responsibility. The contractor shall immediately report loss that may be due to theft to local police and/or Federal Bureau of Investigation (FBI) and the COTR.

(c) Relief from responsibility. Unless the contract or CO provides otherwise, the contractor shall be relieved of the responsibility for BPA property consumed in the performance of the contract.

1.7 PROPERTY IN POSSESSION OF SUBCONTRACTORS.

The contractor shall require any of its subcontractors possessing or controlling BPA property to adequately care for and maintain that property and ensure that it is utilized only as authorized by the contract. The contractor's approved property control system shall include procedures to ensure this responsibility. The contractor shall also hold its subcontractors possessing or controlling BPA property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

1.8 RECORDS.

(a) BPA Property. Property records are the means by which location and status of property is recorded from acquisition through utilization and disposal. Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required basic information (see paragraph 1.8(a)(6)).

(1) The contractor shall establish and maintain adequate property control records, manual or automated consistent with the requirements of this section for all BPA property provided under a contract, including property provided under such contract in the possession or control of a subcontractor. The records specified in this section are the minimum required by BPA unless directed otherwise by the CO, when a subcontractor has an approved property control system for BPA property provided under its own separate prime contract, the contractor shall utilize the records created and maintained under that system.

(2) Contractor records of BPA property established and maintained under the terms of the contract are the official property records. Duplicate official records shall not be furnished to or maintained by BPA personnel, except when the contract provides for the CO to maintain BPA's official property records when BPA property is furnished to a contractor.

(3) Official property records must identify all BPA property and provide a complete, current, auditable record of all transactions. The contractor's system of record maintenance shall be sufficient to adequately monitor BPA property. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this paragraph. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized BPA personnel at all reasonable times. All these records, including related correspondence, shall be made available to BPA or other Government auditors upon request.

(4) The contractor's property control system shall be adequate to locate any item of BPA property within a reasonable period of time.

(5) A multi-contract costs and material control system may be authorized if --

(i) The contractor demonstrates that adoption of the system will result in savings or improved operations, or that it will otherwise be in the interest of BPA;

(ii) The system is applied to existing BPA contracts only and excludes materials acquired or costs incurred for non-BPA work or in anticipation of future BPA work; and

(iii) The contractor's accounting system is adequate to provide on a complete and timely basis a clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract.

(6) Basic information. The contractor's property control records shall provide the following basic information for every item of BPA property in the contractor's possession:

Contract number

Nomenclature or description of item

Quantity received

Quantity issued

Balance on hand

Posting reference and date of transaction

Unit price/acquisition cost

Location

Disposition

(7) Custodial Records. Custodial records should be maintained for tool crib, security equipment, protective clothing and other items issued for the use of the contractor in the performance of the contract.

(b) Capitalized Equipment.

(1) The contractor shall maintain individual item records for each item of equipment having a unit cost of $10,000 or more. Summary records may be maintained for equipment costing less than $10,000 per unit, except where individual item records are necessary for effective control, calibration, or maintenance.

(2) In addition to the information required in 1.8(a)(6) above for each item of BPA-owned equipment having a unit cost of $10,000 or more, the following information is required:

(i) The manufacturer's name; model or part number;

(ii) Serial number and year built;

(iii) Identification number; and

(iv) Acquisition and disposition document references and dates.

(3) The CO may determine that the information in (2) (ii) and (iii) above should be recorded in the property records for equipment costing less than $10,000, e.g., sensitive and safety equipment.

(4) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. When accessory and auxiliary items are permanently removed from the basic equipment, the cost of the basic item shall be appropriately reduced.

(c) Materials

(1) General. All BPA material furnished to the contractor, as well as other material to which title has passed to BPA by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a BPA contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.

(2) Consolidated stock record. When a contractor is provided BPA material under more than one contract, the CO may authorize a consolidated record for materials, if the total quantity of any item is allocated to each contract-by-contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used.

(3) Use of receipt and issue documents. The CO may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of BPA-provided material that is issued for immediate consumption and, as a matter of sound business practice, is not entered in the inventory records.

(4) A multi-contract costs and material control system may be authorized for the physical identification of BPA material, if the contractor demonstrates that adoption of the system will result in savings or improved operations or is otherwise be in the interest of BPA.

1.9 RECEIPT OF BPA-FURNISHED AND CONTRACTOR-ACQUIRED PROPERTY.

(a) Receipts. The contractor shall furnish the COTR with written receipts for all or specified classes of BPA property prior to reimbursement. If evidence of receipt is required for contractor-acquired property, the contractor shall provide it before submitting a request for payment of the property. For BPA-furnished property, the contractor shall provide the required receipt immediately upon receipt of the property.

(1) Inspection, transfer. All BPA-furnished property shall be inspected and tested/operated by the contractor at the time of receipt. Any visible or other external evidence of damage or error in quantity should be noted on the property transfer document with the signature of the carrier's agent. As soon as possible, the contractor shall furnish the CO a full report of the damage or quantity error, including extent, apparent cause, and the estimated costs of repairs. Only that quantity of property actually received will be recorded on the official records.

(2) Inspection, acquisition. The contractor shall inspect at the time of receipt, all property that is acquired for the performance of the contract, and take necessary action with the vendor and/or carrier to correct or adjust for any damage or error in quantity.

(3) Warranty documentation. Procedures shall be established by the contractor to protect applicable warranty rights that accrue to BPA with the acquisition of BPA property.

(b) Contractor-acquired property. The contractor shall take all actions necessary to adjust overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier. However, when the shipment has been moved by Government bill of lading and carrier liability is indicated, the contractor shall report the discrepancy in accordance with Paragraph (a) above.

(c) Segregation. BPA property shall be segregated from contractor-owned property when feasible.

1.10 IDENTIFICATION.

The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, with the exception of leased or rented equipment. The contractor shall permanently mark the property in a legible, conspicuous, and tamper-proof method to identify it as BPA-owned. The identification markings shall consist of a serial number and an indication of BPA ownership. This identification shall be maintained as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers for BPA-furnished property will be provided to the contractor by the COTR. The contractor shall record applicable number(s) on receiving, shipping, and disposal documents, and any other documents pertaining to the property control system. The contractor shall remove or obliterate markings when BPA property is sold, scrapped, abandoned, or donated.

1.11 UTILIZATION.

It is BPA's policy that all BPA property furnished under a contract shall be fully utilized. The contractor's property and supply management practices shall assure that the maximum and best possible use is made of the property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract. The use of BPA property for non-contract purposes is prohibited without the prior written consent of the CO.

1.12 PHYSICAL SECURITY, CARE AND MAINTENANCE.

(a) General. Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, (commensurate with the value of the property) to prevent loss, theft, or unauthorized movement of BPA property from the premises.

(1) The contractor shall ensure that effective procedures and practices are established for administrative and physical control of tagged and tracked property items before and after such items are issued. The CO shall contact Shared Services Personal Property group prior to providing the Contractor with instructions for tagging and tracking BPA property under the Capitalization threshold.

(2) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts, and damages. More frequent inventories may be necessary when the value of the property, degree of security achieved, or loss experience indicates that more stringent controls are required to protect BPA's interest. Such procedures and practices shall be subject to the CO/COTR review and approval.

(b) Weather. The contractor shall ensure the protection of any BPA property that is susceptible to weather damage.

(c) Care and Maintenance. The contractor shall be responsible for the proper care and maintenance of BPA property in its possession or control from the time of receipt until relief of responsibility, in accordance with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract. The removal of BPA property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

(d) Major repairs or rehabilitation. The contractor's maintenance program shall provide for disclosure to the COTR of the need for major repairs, replacement, and other rehabilitation work on BPA property in its possession or control.

(e) Records of maintenance. The contractor shall keep records listing the type of maintenance and repair performed and the associated cost. Upon completion of the contract the contractor shall provide the COTR with copies of the maintenance records. Deficiencies discovered as a result of inspections on BPA-furnished property shall be reported to COTR as soon as practical.

1.13 PHYSICAL INVENTORIES.

(a) General. The contractor shall conduct periodic physical inventories of all BPA property and shall cause subcontractors to do likewise. The contractor, with the approval of the CO, shall establish the type of inventory and procedures. The type of inventory should be based on the contractor's established practices, the type and use of BPA property involved, or the amount of BPA property involved and its monetary value, and the reliability of the contractor's property system. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property. The inventory shall be conducted in accordance with the following frequencies:

(1) Permanently affixed plant (such as fencing, buildings, utilities, and systems - every 10 years;

(2) Moveable capital equipment – Bi-annually;

(3) Non-Capital equipment - annually; and

(4) Stores inventories - annually.

(b) Reporting results of inventories. Results of the inventory must be recorded on the property records. The report shall include a signed statement that the inventory was completed on a certain date, the inventory method used, and that the physical inventory was found to be in agreement with the official property records, except for the discrepancies reported. The report shall contain all discrepancies disclosed by the physical inventory. As a minimum, the discrepancy listing shall contain the property number, nomenclature, and unit cost. The report and signed statement shall be furnished to the COTR no later than 30 days after completion of the physical inventory.

(c) Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory and an assessment of condition (see Exhibit 1, Condition Code listing), adequate for disposal purposes, of all BPA property applicable to the contract. This inventory shall also include all BPA property in a subcontractor's possession or control, which applied to the completed or terminated contact. This inventory report shall be submitted to the CO for verification and disposal instructions.

1.14 DISPOSITION.

(a) General. Property shall not be disposed of without prior approval of the CO. The contractor is responsible for disposing of all BPA property as provided in the contract or as directed by the CO. The contractor shall promptly advise the CO of any BPA property that becomes excess to the requirements for contract performance and shall take disposition action as directed.

(b) Disposal methods for supplies and materials. BPA may exercise its rights to require delivery of any contract supplies and materials inventory. If BPA does not exercise these rights, the contract inventory shall be disposed of by one of the following methods in the priority indicated:

(1) Return of contractor-acquired property to suppliers. The CO shall encourage contractors to return allocable quantities of contractor-acquired supplies and materials to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less.

(2) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired supplies and materials. The CO shall encourage contractors to purchase or retain contractor-acquired supplies and materials at cost. However, the contractor shall not include any part of the cost of supplies and materials purchased or retained in any claim for reimbursement against BPA. If a contractor purchases or retains contractor supplies and materials inventory for use on a continuing BPA contract that is subsequently terminated, the supplies and materials shall be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules.

(3) Sale at the fair market value of excess supplies and materials

(c) Disposal methods for property other than supplies and materials. BPA may exercise its rights to require delivery of any contract property other than supplies and materials inventory. If BPA does not exercise these rights, the contract inventory shall be disposed of by one of the following methods in the priority indicated:

(1) Deliver the property inventory to BPA for either reutilization or disposal by BPA.

(2) Purchase or retention at cost by prime contractor or subcontractor of CAP. The CO shall encourage contractors to purchase or retain contractor-acquired property other than supplies and materials at cost. However, the contractor shall not include any part of the cost of the property purchased or retained in any claim for reimbursement against BPA. If a contractor purchases or retains contractor property other than supplies and materials inventory for use on a continuing BPA contract that is subsequently terminated, the property shall be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of performance schedules.

(3) BPA will transfer title to the property to the contractor if BPA declares the property excess to BPA's needs.

(4) Destruction or abandonment. If determined that the property has no commercial value or no value to BPA, the estimated cost of care and handling exceeds any potential sale price, or does not constitute a danger to public health, safety, or welfare, the property may be abandoned or destroyed on the contractor's premises with written consent.

(5) Donation. If determination has been made by BPA, the property may be donated to public bodies or educational institutions in lieu of abandonment or destruction. All costs incident to the donation shall be borne by the donee.

(d) Retirement. The contractor shall notify the COTR when capital equipment is worn out or damaged beyond economical repair. The CO shall provide to the contractor instructions as to the disposition of worn out or damaged property.

1.15 PROPERTY CONDITION CODES

Disposal Code	Brief Definition	Expanded Definition	Depreciation Adjustment Factors
1	Excellent	Property that is in new condition or unused condition and can be used immediately without modifications or repairs.	100%
4	Usable	Property that shows some wear but can be used without significant repair.	75%
7	Repairable	Property which is unusable in its current condition but can be economically repaired	35%
X	Salvage	Property which has value in excess of its basic material content but repair or rehabilitation is impractical and/or uneconomical	5%
S	Scrap	Property which has no value except for its basic material content	0%
EO	Operable Electronics	Property that contains one or more of the e-waste defined elements but is still usable and could be sold for further use.	0%
E	E-waste	Property that contains one or more of the following: a circuit board, computer chip, plasma screen, cathode ray tube, lead or other hazardous materials that will cause environmental damage when disposed of improperly; such as personal computers and peripherals, communication equipment, and generally most electronic devices. [1]	For all E-Waste items, the Depreciation Adjustment Factors above are to be used to arrive at an accurate Adjusted Depreciation Value.

[1] If uncertain about contents, **assume** that it does contain one or more of the E-waste qualifying elements.