ARCHITECT OF THE CAPITOL

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United States Government

MEMORANDUM 34-09-1

DATE: June 10, 2016

TO: All AOC Employees

FROM: Stephen T. Ayers, FAIA, LEED AP
Architect of the Capitol

SUBJECT: Architect of the Capitol (AOC) Suspension and Debarment Program

This memorandum is a statement of policy to highlight agency efforts to adopt policies and procedures regarding the suspension, debarment, and ineligibility of government contractors to receive AOC contracts. Effective immediately, the AOC Suspension and Debarment Program will be followed in accordance with this memorandum.

As a legislative branch agency, the AOC is not subject to the requirements of the Federal Acquisition Regulation (FAR). However, the AOC generally follows the FAR to the extent practicable. Furthermore, the AOC may refer to Subpart 9.4 of the FAR for guidance in the administration of its suspension and debarment program. The AOC's procurement rules are contained in AOC Order 34-1, Contracting Manual (CM). The policy regarding suspension and debarment contained here will be added as a chapter to the AOC's CM in the next revision.

The AOC will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System (EPLS), which is maintained by the General Services Administration. Further, if AOC suspends, or proposes debarment for a contractor, AOC will list that contractor in the government's EPLS.

Suspending and debarring official

The AOC General Counsel in the Office of General Counsel (OGC) will serve as the suspending and debarring official. The AOC General Counsel, at his or her discretion, may designate another attorney, including without limitation an attorney in another legislative branch agency serving as a suspending and debarring official pursuant to an interagency agreement with the AOC, to serve as the suspension/debarment official in any particular suspension/debarment action. The AOC General Counsel will also be responsible for deciding whether to terminate a current contract or subcontract in existence at the time the contractor was suspended, debarred, or proposed for debarment.

Investigating and referring entity

The AOC Acquisition and Material Management Division (AMMD) will be the AOC office with primary responsibility for investigating and referring potential suspension and debarment actions to the suspension/debarment official for his or her consideration. Individuals, employees and

members of the public, who believe that there may be grounds to suspend or debar a contractor should contact AMMD and provide them with all relevant information. Whenever AMMD learns of information that indicates there may be grounds for suspending or debarring a contractor, AMMD will gather appropriate information and refer the matter to the suspension/debarment official. All such referrals will include a recommendation by the AMMD Chief as to a proposed course of action. Likewise, AMMD will have responsibility for recommending to the suspension/debarment official whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is suspended, debarred, or proposed for debarment.

Causes for suspension

(1) Upon adequate evidence the suspending official may suspend a contractor suspected of committing fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract

(2) Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property

(3) Failing to make a good faith effort to provide a drug-free workplace by violating 41 U.S.C. Chapter 81, Drug-Free Workplace, proven by the number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace

(4) Intentionally affixing a "Made in America" label (or any label having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas

(5) Knowing failure by a principal, until three years after final payment on any government contract awarded to the contractor, to timely disclose to the government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or any violations of the civil False Claims Act (31 U.S.C. 3729-3733)

(6) Indictment for any of the causes in paragraph (2) of this section constitutes adequate evidence for suspension

Causes for debarment

(1) Being convicted of, or civil judgment for committing fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract

(2) Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws or receiving stolen property

(3) Seriously violating the terms of a government contract or subcontract that debarment is justifiable: such as willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform or of unsatisfactory performance of one or more contracts

(4) Intentionally affixing a "Made in America" label (or any label having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas

(5) Failing to make a good faith effort to provide a drug-free workplace by violating 41 U.S.C. Chapter 81, Drug-Free Workplace, proven by the number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace

(6) Violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code

(7) Violation of the civil False Claims Act (31 U.S.C. 3729-3733)

Suspension and debarment procedures

AMMD, in consultation with the OGC, will also be responsible for establishing written procedures that address the key aspects of the AOC suspension/debarment program. AMMD will establish and maintain written procedures for:

(1) Promptly reporting, investigating, and referring to the suspension/debarment official of appropriate matters for that official's consideration. All suspension/debarment referrals shall include a recommendation by the AMMD Chief of a proposed course of action

(2) Following the imposition of suspension, the suspension decision making process shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension

(3) The debarment decision making process shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing or through a representative, information and argument in opposition to the proposed debarment

(4) Recommending to the AOC General Counsel whether or not to solicit offers from, award contracts to or consent to subcontracts with a contractor who is suspended, debarred or proposed for debarment

(5) Recommending to the AOC General Counsel whether or not to continue current contracts with a contractor or subcontractor who is suspended, debarred or proposed for debarment

The AOC General Counsel, or his or her designee, will review for legal sufficiency

(1) Referrals by AMMD to the suspension/debarment official

(2) Recommendations by AMMD that AOC solicit offers from, award contracts to or consent to subcontracts with a contractor who is suspended, debarred or proposed for debarment

(3) Recommendations by AMMD to terminate a current contract because a contractor or subcontractor was subsequently suspended, debarred or proposed for debarment

(4) Notices of proposed suspension, debarment or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment

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United States Government

ORDER 34-1

EFFECTIVE DATE: March 31, 2016

SUBJECT: Contracting Manual

SERIES: Procurement

DESCRIPTION: This revised Contracting Manual (CM) is issued to prescribe uniform policies for the acquisition of supplies, services, construction and related services; and provide guidance to personnel in applying those policies and procedures.

SCOPE: The requirements included in this CM are applicable to all AOC jurisdictions. This CM will be revised periodically in order to stay up-to-date with current legislation and acquisition best practices. AOC jurisdiction heads and supervisors should consult this CM as necessary to insure compliance in day-to-day operations.

OPR: The Office of Primary Responsibility (OPR) is the Acquisition and Material Management Division (AMMD).

SUMMARY OF CHANGES: Changes made in this revision include:
Minor changes to the Table of Contents; Removal of the Forms Appendix (the CM now refers users to AOC web pages); Minor formatting and revisions to the AOC Clause Matrix; Minor formatting changes to the Superseded Publications appendix; Changes to the method of amending the CM (elimination of the bold black margin line); Revisions to § 1.2 Definitions; Elimination of outdated and unnecessary legal citations throughout CM; Minor revisions to Chapter I; Insertion of a new section in Chapter II for Brand Name products and Restrictive Specifications; Expansion of § 2.6, Non-Personal Services Contracts; Revisions to § 4.2.5 small business sub-contracting plan; Minor revisions to Chapter IV, Required Sources and Small Business Program; Insertion of Training Requirements in § 5.1.2, Contracts Crossing Fiscal Years; Revisions to Chapter VII, Small Purchases; Minor revisions to Chapter VIII, Types of Contracts; Minor revisions to Chapter IX, Acquisition Process; Minor revisions to Chapter XI, Emergency Procurements; Minor revisions to Chapter XIII, Contract Administration; and Insertion of a new section in Chapter IX for Acquisition of Commercial Items.

Stephen T. Ayers, FAIA, LEED AP
Architect of the Capitol

ORDER OF THE ARCHITECT OF THE CAPITOL 34-1
CONTRACTING MANUAL

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CHAPTER I. AUTHORITY, POLICY AND ADMINISTRATIVE MATTERS

1.1 Contracting Manual

1.1.1. Purpose
The Contracting Manual (CM) is issued to prescribe uniform policies for the acquisition of supplies, services, construction and related services; and provide guidance to personnel in applying those policies and procedures.

1.1.2. Authority
The CM is issued pursuant to the authority vested in the Architect of the Capitol (AOC) by 2 U.S.C. § 1801 et seq.

1.1.3. Applicability
The CM shall apply to the contracting of all supplies, services, construction and related services made by the Acquisition and Material Management Division (AMMD).

1.1.4. Arrangement of the Contracting Manual
(a) The CM is divided into subject matter chapters, each of which deals with a separate aspect of contracting. Each chapter is further divided into sections and paragraphs.

(b) Paragraph identification and citation. Chapters are identified by capital Roman numerals. Sections and subsections are referenced by chapter, section and paragraph – e.g.: this paragraph 1.1.4 is Chapter 1, Section 1, Paragraph 4.

1.1.5. Forms
Sample forms and templates referenced in this manual are located on the shared AOC network and are also available on the agency's intranet portal.

1.1.6. Amendment of the Contracting Manual
Changes to the CM shall be accomplished by issuing replacement pages when necessary. Revisions will be indicated by a revision date found in the CM footer. Any recommended revisions to the CM shall be submitted to the Chief, AMMD.

1.1.7. Deviation from the Contracting Manual
(a) Circumstances may arise in which established policies, orders, directives or business practices are not appropriate for a new technique or approach or a specific contractual situation. In those cases, a deviation may be deemed necessary. The term "deviation" includes:

(1) The use of any business practice inconsistent with any AOC publication, policy, order or directive.
(2) The use of a clause or provision inconsistent with any policy, order, directive, or business practice established by the AOC.

(b) To maintain uniformity to the maximum extent possible, deviations should be kept to a minimum. It is the Contracting Officer's responsibility to request a deviation whenever it is in the best interest of the government. A request for approval of any deviation shall be in the form of a determination and findings (D&F), reviewed first by one level above the Contracting Officer, and then forwarded to the Chief or Deputy Chief of AMMD for review and approval. The D&F shall explain the nature of the deviation and provide the reasons necessitating it. Adequate time should be allowed for review and approval of the request. The D&F and approval shall be documented in the contract file.

1.2 Definitions

Acceptance. The act of an authorized government representative that results in the government assuming ownership of the delivered supplies or services rendered. An inspection to determine whether the supplies or services conform to contract specifications must precede acceptance.

Acquisition. Acquiring supplies or services (including construction) by contract. The Acquisition process begins when agency needs are established and includes the description of requirements, solicitation and source selection, contract award, contract financing, contract performance, contract administration, and technical and management functions directly related to the contracting process.

Anti-Deficiency Act. Requires fund availability prior to awarding any procurement. The Act also prohibits government officials from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. Additionally, government officials may authorize expenditures or obligations from only those appropriations or funds for which the official is given express written authority.

Architect of the Capitol. Established as a permanent office in 1876, the Architect of the Capitol is provided permanent authority for the care and maintenance of the United States Capitol based on Section 1811 of Title 2 of the United States Code. He is responsible for the maintenance, operation, development and preservation of 17.4 million square feet of buildings and more than 553 acres of land throughout Capitol Hill. This includes the Capitol, House and Senate office buildings, the U.S. Capitol Visitor Center, the Library of Congress, the Supreme Court of the United States, the U.S. Botanic Garden, the Capitol Power Plant, and other facilities. The Architect of the Capitol also provides professional expertise with regard to the preservation of achitectural and artistic elements entrusted to his care and provides recommendations concerning design, construction and maintenance of the facilities and grounds. The Architect of the Capitol is also responsible for the upkeep and improvement of Capitol grounds and the support of the quadrennial inaugural ceremonies and other ceremonies held on Capitol Hill.

Bid. A response to an Invitation for Bids (IFB) that, if accepted, binds the bidder (offeror) to perform the resulting contract in accordance with the terms and conditions specified in the IFB for the price submitted by the bidder.

Bilateral Modification. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the CO. Bilateral modifications are used to:
(1) Make negotiated equitable adjustments resulting
from the issuance of a change order.
(2) Definitize letter contracts.
(3) Reflect other agreements of the parties modifying the terms of contracts.

Buy American Act. Restricts purchasing supplies that are not domestic end products for use within the United States. A foreign end product may be purchased if the CO determines that the price of the lowest domestic offer is unreasonable or if another exception applies. In construction contracts, it requires, with some exceptions, the use of only domestic construction materials/supplies.

Cardholder. A government employee who has been issued a government purchase card to obligate appropriated funds within the limits of their authority.

Commercial item. Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities and has been sold, leased or licensed to the general public including the items with minor modifications of a type not customarily available in the commercial marketplace made to meet federal government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor. Commercial items may also include service contracts of a type offered and sold

competitively in substantial quantities in the commercial marketplace and can be based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions.

Competition. The effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms.

Competition Threshold. The amount at which competition for a requirement must be solicited. The competition threshold for the AOC is greater than $5,000.

Construction. The alteration, repair, or construction, including dredging, excavating, and painting buildings, structures or other real property.

Contract. A mutually binding legal document that obligates the seller to furnish supplies or services (including construction) and the buyer to pay for the supplies or services.

Contracting Manual (CM). The CM is the guide to agency personnel on the execution and obligation of appropriated funds in the agency.

Contracting Officer's Technical Representative (COTR). An individual with expertise for the type of work performed or supplies provided under contract, who is issued a letter of appointment by the CO as being responsible for monitoring and reporting contractor compliance with contract terms and conditions.

Contracting Officer (CO). The Architect of the Capitol or an individual authorized in writing by the Architect of the Capitol to award contract(s) on behalf of the AOC. A CO may be appointed by name or position, and is subject to the limitations as specified in the written delegation of authority.

Contractor Suitability. A determination as to whether a contractor and/or his/her employee is eligible or ineligible for access to the United States Capitol complex based on the results of the contract employee's Criminal History Records Check provided by the U.S. Capitol Police and the E-Verify program. The determination is made by the Employee Relations Branch in the Human Capital Management Division (HCMD).

Critical Need. A sudden or unexpected occurrence usually characterized by additional work or deadlines required by statute, court order, regulation or directive.

Construction Wage Rates Requirements Statute (formally the Davis-Bacon Act (DBA)). Requires that contractor personnel working on contracts, purchase orders or task orders in excess of $2,000 for construction, alteration or repair of real property to which the United States is a party be paid an amount not less than the prevailing wage rates as determined by the Secretary of Labor.

Delivery Order (DO). A written order for supplies made within the terms and conditions of an existing contract.

Determination and Findings (D&F). This refers to a special form of written approval by an authorized official that is required by statute, policy or manual as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

Defense Priorities and Allocations System Program (DPAS). The Defense Priorities and Allocations System is used to prioritize national defense-related contracts/orders throughout the U.S. supply chain in order to support military, energy, homeland security, emergency preparedness and critical infrastructure requirements.

Evaluation Factors. The standards used by the government in a competitive request for proposals to determine the winning contractor. The government"s solicitations must clearly state the factors, significant sub factors, and the factors' relative importance that will be considered in evaluating proposals and selecting a source. Once established, these evaluation factors must be used in evaluating each offeror's proposal.

E-Verify. E-Verify is an internet-based, free program run by the United States government that compares information from employees' Employment Eligibility Verification Form I-9 to data from U.S. government records.

Excluded Parties List (EPLS). The EPLS is an electronic, web-based system that identifies those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and nonfinancial assistance and benefits. The EPLS keeps its user community aware of administrative and statutory exclusions across the entire government, and individuals barred from entering the United States. Exclusions can be found on www.sam.gov.

Federal Travel Regulations (FTR). The FTR is issued by the General Services Administration (GSA) and governs travel and transportation allowances for federal civilian employees and contractors.

Free on Board (F.O.B.) Destination. Generally means that the cost of the shipping, risks, ownership, and responsibility for filing claims for damages to the freight/supplies are the responsibility of the vendor (seller) until the agency (buyer) receives and accepts the freight/supplies at the agency's specified delivery site.

F.O.B. Origin. Generally means that the cost of the shipping, risks, ownership, and responsibility for filing claims for damages to the freight/supplies shipped are the responsibility of the agency (buyer) at the shipper's dock where ownership and title are assumed by the agency.

Fixed-Price Contract. A type of contract that establishes at the time of contract award a price to be paid by the AOC upon completion of contract requirements. Fixed-priced contracts place the financial risk for contract performance on the contractor, not the AOC, and do not provide for an adjustment in contract price on the basis of the contractor's actual cost to perform the contract.

Head of Agency. The Architect of the Capitol has delegated authority to the Chief Admistrative Officer (CAO) to administer the procurement program and further delegate warrant authority to obligate appropriated funds on behalf of the agency.

Head of Contracting Activity. The CAO has delegating authority from the Architect of the Capitol to administer the contracting progam on behalf of the agency.

Indefinite-Delivery Contract. A contract that establishes a pricing structure and overall framework of requirements at contract award and provides for placing orders for those requirements as the need arises throughout the period of contract performance. Examples of indefinite-delivery contracts are GSA Federal Supply Schedule contracts, government-wide agency contracts, and multi-agency contracts.

Independent Government Cost Estimate. The estimated dollar amount of the AOC requirement developed by a government employee or authorized designee, which consists of all cost elements, including overhead and profit.

Inherently Governmental Function. A function that is so intimately related to the AOC and public interest as to mandate performance by a government employee. An inherently governmental function includes activities that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of government authority, and monetary transactions and entitlements.

Inspection. The examination and/or testing of supplies, services or construction, to determine compliance with the contract.

Interagency Funding Document. A written document transferring funds from the AOC to another government agency in accordance with provisions of a particular statute that authorizes the practice.

Invitation for Bid (IFB). The solicitation document sent to prospective bidders for procurements using sealed bidding. IFBs must describe the government's requirements clearly, accurately and completely. Sealed bidding uses only price and price-related factors to determine the successful responsive and responsible offeror.

Labor-Hour Contract. A type of contract that provides for acquiring services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit.

Method of Procurement. A broad term describing the way the government procures supplies, services and construction. The AOC uses the following basic methods of procurement: request for quotes (RFQ), requests for proposals (RFP), invitation for bids (IFB), government purchase cards, orders under Federal Supply Schedules, delivery orders against other government agency contracts, and task orders against AOC indefinite delivery contracts.

Modification. A formal written change issued by the CO to a purchase order, delivery order, task order or contract after award.

Off-Site Delivery. The official point of delivery of supplies and materials by contractors ordered under contract by the AOC.

Offer. "Offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids;" responses to requests for proposals (negotiation) are offers called "proposals;" however, responses to requests for quotations (small purchases) are considered information or "quotations," not offers.

Options. Line item(s) in a contract which, for a specified time, entitles the government to purchase additional supplies or services called for by the contract, or extend the contract term.

Packing Slip. A document provided by the vendor that provides a description of the items included in a shipment and the quantities of each item shipped. A packing or receiving slip is not an invoice.

Personal Services Contract. A contract characterized by the employer-employee relationship it creates between the AOC and the contractor's personnel.

Price Reasonableness. A determination by the CO that the offeror's price is fair and reasonable. Although this determination generally addresses whether the price is too high, it may also identify a price that is too low, indicating a lack of understanding by the offeror of the agency's requirements that could result in serious contract performance issues.

Proposal. An offer submitted in response to a RFP. The proposal must address all requirements outlined in the RFP and respond to the technical evaluation and price factors.

Public Exigency. A need by a public entity that is so urgent due to its impact on the operation, financial, safety or security of the entity that immediate attention and action is necessary. The need must be compelling and of unusual urgency.

Purchase Card Transaction. A procurement method to be used to the maximum extent possible for small purchases (e.g., task/delivery/purchase orders) below the competition threshold. Purchase card transactions provide a streamlined method of acquiring agency needs and reduce administrative costs, avoid unnecessary burdens and promote efficiency. Purchase card transactions must be distributed equitably among qualified suppliers and is the preferred method of procurement for purchases under the competition threshold.

Purchase Order (PO). An order executed by a CO authorizing a vendor to deliver supplies or services at the agreed upon price based on the terms and conditions specified at the time quotations were solicited. POs are used when there is not an existing contract that can fulfill the AOC's requirements for $100,000 or less. Purchase orders are not binding on the vendor until accepted in writing or performance begins.

Quantity Discount. A discount offered by a vendor based upon the quantity of a particular order. It may be based upon the total number of items ordered or the total value of the order.

Quote or Quotation. A vendor's response to a Request for Quotation. Vendor quotations are not binding upon either the AOC or the offeror.

Ratification. The process by which an unauthorized commitment is approved for conversion to an official and legal AOC contract or order.

Receiving. The action taken by AOC personnel to indicate that goods or services have been physically delivered to the premises by the contractor. Receiving usually infers that the goods or services were received, inspected and accepted by the AOC.

Request For Information (RFI). A a business process primarily used to gather information to help make a decision, or is sent to a broad base of potential suppliers to help develop acquisition strategy, build a supplier database, and prepare for the issuance of an upcoming solicitation. In the construction industry, a RFI submitted by the contractor is sometimes necessary to confirm the interpretation of a detail, specification or note on the construction drawings or to secure a documented directive or clarification from the architect/engineer to continue work.

Request for Quotations (RFQ). A solicitation document used to communicate the AOC's requirements to prospective vendors. Quotes submitted in response to an RFQ are not offers and, consequently, do not form a binding contract between the AOC and the vendors.

Request for Proposals (RFP). A solicitation document used in negotiated procurements to communicate the AOC's requirements to prospective offerors and solicit proposals from them.

Requisition. A request to purchase goods or services through AMMD or the government purchase card program. The purchase requisition must include all appropriate approvals, proper funding, a clear and definitive description of the requirements, a realistic delivery date, and any special instructions or attachments as required.

Scope of Work (SOW). The overall range or extent of the work or services to be provided under the contract. A SOW provides detailed information on what the AOC expects the contractor to deliver or accomplish. Sometimes SOW can also mean Statement of Work or Scope of Services.

Service Contract. A contract to provide a specified end result rather than a product, such as architectural and engineering services, custodial services, maintenance or repair.

Service Contract Labor Standards. (Formally the Service Contract Act (SCA)) Requires contractor personnel performing service contracts with a total value exceeding $2,500, be paid wages and benefits determined applicable for that geographic area by the Department of Labor (DOL).

Shipping Charges. The cost of transporting an item from the contractor's point of origin to the AOC designated location.

Single Transaction Purchase Card Limit. A maximum amount for which a single procurement can be made with the purchase card. Each cardholder's single transaction purchase card limit shall be set by the Purchase Card Program Manager.

Sole Source. A contract for the purchase of supplies or services that is entered into or proposed to be entered into by the AOC after soliciting and negotiating with only one source.

Solicitation means any request to submit offers or quotations to the government. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals." Solicitations under small purchase procedures are called "requests for quotes."

Source Selection Information means any of the following information that is prepared for use by the AOC for the purpose of evaluating a bid or proposal to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly:
(1) Bid prices submitted in response to an invitation for bids, or lists of those bid prices before bid opening.
(2) Proposed costs or prices submitted in response to a solicitation, or lists of those proposed costs or prices.
(3) Source selection plans.
(4) Technical evaluation plans.
(5) Technical evaluations of proposals.
(6) Cost or price evaluations of proposals.
(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award.
(8) Rankings of bids, proposals or competitors.
(9) Reports and evaluations of source selection panels, boards or advisory councils.
(10) Other information marked as "Source Selection Information" based on a case-by-case determination by the Architect of the Capitol or the CO that disclosure would jeopardize the integrity or completion of the procurement.

Specification. A description of the technical requirements for a material, product or service that includes the criteria for determining whether the requirements are met. Specifications may include drawings.

Statement of Accounts. Documents produced by the bank issuing the AOC purchase card and sent to the Cardholder and the AOC Accounting Division that list all transactions processed in the previous billing cycle.

Supplemental Agreement. A contract modification that requires the signature and agreement of both an authorized contractor employee and an authorized AOC CO in order to establish a definite price for additional services or supplies, or to make other changes in the contract.

Supplies. All property, equipment, tools, parts and accessories but not land or interest in land.

System for Award Management (SAM or sam.gov). The primary government repository for prospective federal awardee and federal awardee information and the centralized government system for certain contracting, grants, and other assistance-related processes. It includes data collected from prospective federal awardees required for the conduct of business with the government and identification of those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits.

Task Order (TO). A written order for services made within the terms and conditions of an existing contract.

Termination for Convenience. Exercising the government's right to completely or partially terminate performance of work under a contract when it is in the government's interest to do so.

Termination for Default. Exercising of government's right to completely or partially terminate a contract because of the contractor's failure to perform its contractual obligations.

Time-and-Materials (T &M) Contract. A type of contract that provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expense, and profit and materials at cost. Each T&M contract must state a ceiling price that the contractor may not exceed.

Title. Legal ownership (title) that transfers to the AOC upon acceptance of contract performance regardless of when or where the AOC takes physical possession.

Trade-in Value. The amount at which an existing piece of AOC equipment is valued when the AOC is procuring a new piece of equipment. Trade-ins of old equipment are shown on the order for the new equipment and result in a decrease of the total cost of the new equipment.

Unsolicited Proposal. A proposal submitted to the AOC, without any known requirement or request by the AOC, for the purpose of obtaining a contract or purchase order.

1.3. Procurement Authority and Responsibility

1.3.1. Procurement Authority

(a) The Architect of the Capitol has delegated the CAO as the Head of Contracting Authority (HCA) on behalf of the agency.

(b) The Chief, or Deputy Chief, AMMD, has been delegated authority to enter into contracts on behalf of the AOC, with authority to appoint and terminate COs as necessary for contract award, execution and administration.

(c) COs are authorized to enter into and administer contracts within the limits prescribed in their CO delegation of authority (warrant).

1.3.2. Contracting Responsibilities

(a) The Chief, AMMD, shall be responsible for the following:

(1) Ensure that contracts, including interagency agreements, are made in accordance with all applicable laws, regulations and directives.
(2) Ensure that all purchases, including reimbursable inter-agency agreements, contain the respective justifications and receive Office of General Counsel (OGC) review as appropriate.
(3) Ensure that emergency purchases are held to an absolute minimum and shall not accept any emergency requests or requisitions for any item unless such purchase request or requisition is justified by the originating jurisdiction as to the exigency of the purchase.
(4) Ensure that purchase requests or requisitions are not accepted when there has been an attempt to circumvent this manual governing competitive negotiation and bidding.

(b) COs execute and administer contracts for supplies, services and construction on behalf of the AOC. All COs shall sign contractual documents in their own name.

(c) All conditions shall be met before entering into contracts. No contract shall be entered into unless all applicable requirements of law, this manual and AOC directives have been met.

1.3.3. Selection, Appointment and Termination

(a) Selection. In selecting individuals to serve as COs or in positions which include authority to act as COs, consideration shall be given to experience, training, education, business acumen, judgment, character, reputation and ethics. Contracting personnel certification for Federal Acquisition Certification-Contracting, Levels I, II and III shall be consistent with Federal Acquisition Institute standards as to education level, experience and training. COs' delegation of authority in the form of a CO warrant shall be commensurate with their level of certification.

(b) Termination. A CO appointment may be unilaterally terminated or suspended at any time by the Chief, or Deputy Chief, AMMD, but no such termination or suspension shall operate retroactively. Unless sooner terminated or suspended, the appointment of a CO shall automatically cease:

(1) Upon the expiration date, if any, contained in their warrant.
(2) Upon reassignment to duties not requiring contracting authority.
(3) Upon termination of employment with the AOC.

1.3.4. Determination and Finding(s)

(a) A determination and finding(s) (D&F) constitutes a special form of approval or exercise of judgment required as a prerequisite to taking certain actions by procurement officials. A D&F must stand alone and should ideally be confined to a single page, containing all available findings, concisely stated, to support the determination. A D&F is specifically used whenever the phrase "determination and finding" or the phrase "determination and findings" or the sole acronym "D&F" appear to describe the documentation needed to support a contractual action of any kind. Similarly, a D&F is to be used wherever the words "determine" or "determination" or any variations on these words appear to require documentation in support of any contractual action.

(b) D&Fs are utilized for, but not limited to, the following types of contractual actions:
(1) Ratifications.
(2) Quantum meruit claims.
(3) Non responsibility determinations.
(4) Mistakes in bids.
(5) Negotiations with other contractors for a reprocurement, where the original contractor has been terminated for default.
(6) Authorizing awards notwithstanding U.S. Government Accountability Office (GAO) protests.

1.3.5. Ratification of Unauthorized Commitments
(a) An unauthorized commitment is an agreement that is not binding because the government representative who made it lacked the authority to enter into that agreement on behalf of the government.

(b) Positive action should be taken to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this CM where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by AOC personnel.

(c) All ratifications of unauthorized commitments are subject to the Anti-Deficiency Act and AOC policy.

(d) When an unauthorized commitment has occurred, the responsible individual will receive a memorandum from the Chief, AMMD. In this memorandum, the individual is instructed to answer relevant questions and provide a description of all facts concerning the unauthorized commitment, including all pertinent records and documents. The information requested shall include:
(1) A description and the amount of the service/supply received.
(2) Justification for the service/supply.
(3) The benefit the government acquired from receiving the service/supply.
(4) The circumstances that led to the unauthorized commitment, including why a procurement request was not prepared and why the CO was not allowed an opportunity to place an order for the service/supply.
(5) The name of the vendor that provided the item, the vendor's invoice, how the vendor was selected to provide the item, how the vendor's price was determined fair and reasonable, and other vendors and prices considered.
(6) Date the service/supply was requested and received by the government official.
(7) If the unauthorized commitment was executed using prior fiscal year funds, documentation from accounting that funds are available for the appropriate fiscal year, or if current year funds are proposed for use, a requisition in the appropriate amount utilizing the proper funds.
(8) What actions will be taken to prevent future unauthorized commitments.
(9) Why the unauthorized commitment should be ratified rather than requiring the individual who made the unauthorized commitment to settle the action directly with the vendor.

(e) The responsible individual for the unauthorized commitment shall sign their name with title on the memorandum. If the individual is no longer an AOC employee, then the individual's Superintendent or Director shall sign the memorandum.

(f) Upon completion of the memorandum, the responsible individual shall forward it through their respective Superintendent/Director to the AMMD Chief. Upon receipt of the memorandum and documentation for an unauthorized commitment and if it is deemed to be sufficient, the AMMD Chief shall prepare the following determinations and recommendation:
(1) The government needed and obtained a benefit from the service/supplies received.
(2) The price for the service/supplies has been determined to be fair and reasonable.
(3) Funds are available and were available at the time the unauthorized commitment was made.
(4) The ratification request is in accordance with established agency procedures.
(5) Based on the information received, a resulting order/contract would otherwise be proper if executed by a CO and

there appears to be no conflict of interest.

(6) The vendor is not debarred or ineligible for award.

(7) The CO has explained to the individual who made the unauthorized commitment that:

(i) Only government personnel with contracting authority may obligate Government funds.

(ii) The action is not a binding government agreement and does not require the government to pay the vendor for the item.

(iii) The person who made the unauthorized commitment may be held liable to the vendor for payment or return of the item.

(iv) Payment for the service/supply is recommended or not recommended.

(g) The Chief, AMMD, shall forward the memorandum, determination and recommendation, and any other supporting documentation to the Review and Approval Board (consisting of the Chief Operating Officer (COO), Chief Administrative Officer (CAO), Chief Financial Officer (CFO) and General Counsel). The Board, after review of the unauthorized procurement, will either recommend for or against the request for ratification based upon the sufficiency of the memorandum. If not all Board Members approve ratification, the Architect of the Capitol has the authority to make the final approval.

(h) The Board shall notify the Chief, AMMD, of its decision.

(1) If the ratification request is approved by the Board, AMMD shall notify the Superintendent/Director of the Board's approval. The Superintendent/Director shall prepare the appropriate documentation (sole source justification, etc.), and submit it to the CO for procurement action in accordance with applicable regulations and AOC policy.

(2) If the ratification request is not approved by the Board, the jurisdiction/organization will receive a copy of the Board's disapproval. Disapprovals may require disciplinary action against the employee and/or notification to the vendor that the AOC is not responsible for the procurement of this item. The employee may be held liable for the expenditure.

1.4. General Policies

1.4.1. Ethical Considerations

Persons who represent the AOC in business dealings with commercial contractors must observe the highest ethical standards. Individuals should not allow themselves to be placed in a position in which an actual or apparent conflict of interest might arise. Not only must their official conduct comply with federal laws and AOC regulations, it must be such as to avoid any appearance of unethical conduct. Accordingly, jurisdictions must ensure that all personnel involved in procurement activities become familiar with AOC Order 38-1, Government Ethics, and complete annual ethics training.

1.4.2. Suspected Antitrust Violations

(a) *General.* Practices designed to eliminate competition or restrain trade, and which may evidence possible violations of the antitrust laws, include: collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of business, identical bids and similar practices.

(b) *Reporting suspected violations.* Any offer or bid received which evidences a violation of the antitrust laws must be referred to the Chief, AMMD who will review the file and determine whether further action is needed. If further investigation is warranted, AMMD will refer the matter to the OGC and the Office of Inspector General (OIG) as appropriate. Any suspected violation shall be promptly reported, setting forth complete details regarding the circumstances.

(c) *Noncollusive bids.* By submission of a bid, the bidder in the "Certification of Independent Price Determination" on the reverse of the bid form certifies that among other things:

(1) The prices have been arrived at independently without reference to or agreement with other bidders or with any competitor for the purpose of restricting competition.

(2) The prices bid have not been, and will not be, knowingly disclosed, and no attempts have been made to induce any other firm to submit or not to submit a bid.
(3) The signer of the bid is the one responsible for the decision as to the prices bid, and, has not and will not participate in any conduct contrary to (1) or (2) above.

Normally, a bid cannot be considered for award if any deletions or modifications to the certificate have been made. If a bidder takes exception to the disclosure provision, the CO will make the determination required by paragraph (d) of the certificate. If the certificate is suspected of being false, or there is evidence of collusion, the matter will be reported in accordance with this section.

1.4.3. Documenting Procurement Actions

(a) Official records (i.e., contract files) shall be established and maintained for all procurement actions (including cancelled soliciations) in accordance with the AMMD Records Schedule. The contract file shall contain documentation, both formal and informal, of all actions taken with respect to the transaction, including final disposition. Such information may be necessary to provide essential facts for litigation or congressional inquiries; to furnish information for investigations or to satisfy other similar requirements.

(b) The following records are normally kept in contract files. The list is not all-inclusive and not all items listed will be applicable to every file.

(1) The requisition, acquisition planning information, market research and other pre-solicitation documents.
(2) Evidence of availability of funds, including any increases or decreases.
(3) Synopsis of the acquisition as published.
(4) A list of sources solicited, including additional firms that requested a copy of the solicitation and were furnished it or denied it. Documentation on any denial shall be in the files.
(5) AOC estimate of the requirement.
(6) Record of any exchanges before award.
(7) A copy of the solicitation, including attachments and any amendments.
(8) A copy of each offer or quotation received.
(9) The abstract of offers and record of negotiations.
(10) Pre-award survey reports.
(11) Evaluation plan.
(12) CO's determination of contractor responsibility.
(13) Cost or pricing data and analysis.
(14) Packaging and transportation data.
(15) Legal review(s).
(16) Notice of award.
(17) The original of the signed contract and all contract modifications.
(18) Copies of letters to unsuccessful offerors and records of any debriefings with them.
(19) Bonds and notices to sureties.
(20) Proof of required insurance, licenses and permits.
(21) Notices to proceed or suspension of work letters.
(22) Royalty clearances, copyright reports and so on.
(23) Contract completion documents, such as payments, receiving reports.
(24) Documentation concerning termination actions.
(25) Letters of appointment of COTRs and ordering officers, COTR reports.
(26) Copies of any reports required as a result of the dollar value of the contract.
(27) Any additional documents on which action was taken by the CO.
(28) Copies of protests, appeals and documentation supporting decision.
(29) Copies of all correspondence between and among all interested parties.
(30) Copies of all disputes, claims, audits and supporting documents for any CO's final decision.

1.4.4. Taxes

(a) Items purchased for the AOC are for exclusive use of the United States government and are generally exempt from state and local taxes. From time to time, a state or local government entity may request or require payment of taxes. Should this happen, the matter must be referred to the OGC for review and advice.

(b) AOC contractors are responsible for paying state and local sales tax. For an AOC contractor to claim exemption from state or local sales tax, the contractor must be an agent of the government or be an instrumentality so closely connected to the government that the two cannot realistically be viewed as separate entities. An AOC contractor will generally be unable to meet this test except in very limited circumstances. The U.S. Supreme Court held that the federal government's immunity from state and local tax does not pass to a federal contractor simply because it provides services to the government.

(c) Language in all AOC contracts states that the contract price includes all applicable federal, state, and local taxes and duties. Unless specified in the contract, the AOC cannot be required to pay any additional amount above the contract price for taxes.

1.4.5. Requests for Information

The AOC, as a legislative branch agency, is not subject to the Freedom of Information Act (FOIA). FOIA requests must be referred to OGC for response. However, communication with industry and debriefing of unsuccessful offerors are part of the normal procurement process. Requests for information from members of the media or the general public must be referred to AOC Office of Communications and Congressional Relations (CCR).

1.4.6. Defense Priorities and Allocation System (DPAS)

DPAS provides for the prompt procurement and delivery of articles and materials in support of national defense and in the event of an emergency. The Federal Emergency Management Agency issued a program determination on November 12, 2012, allowing the use of DPAS for specific AOC activities. More information about the DPAS Program shall be obtained by contacting the AOC DPAS Program Manager in the AOC Office of Safety, Fire and Environmental Programs.

1.4.7. Variation in Quantity

The AOC shall not accept any variations in the quantity of any item called for in a contract unless the variation is authorized in the solicitation and variation in quantity clause or language is included in the contract. The CO shall insert the appropriate clause shown in Appendix A in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies. The variation percentage or amount is determined by the CO.

1.4.8. Contractor Team Arrangements

(a) Definition. "Contractor team arrangement" means an arrangement in which:

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor.
(2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program within the scope of the "Subcontracts" clause.

(b) General. Contractor team arrangements may be desirable from both a government and industry standpoint in order to enable the companies involved to complement each other's unique capabilities and offer the government the best combination of performance, cost, and delivery for the system or product being acquired. The companies involved normally form a contractor team arrangement before submitting an offer or bid. However, they may enter into an arrangement later in the acquisition process, but only on competitively negotiated procurements.

(c) Policy. The government will recognize the integrity and validity of contractor team arrangements for contracts valued in excess of $100,000; provided, the arrangements are identified and company relationships are fully disclosed in an offer or bid or, for arrangements entered into after submission of an offer, before the contract becomes effective. The government will not normally require or encourage the dissolution of contractor team arrangements.

(d) Joint Venture Agreement. Agreements shall be signed by all parties to the joint venture and contain the following before acceptance by the government:

(1) The written agreement between the parties shall reserve to the government the right to enforce the terms of the contract both jointly and severably against the parties.
(2) The agreement must contain a statement from the attorney for each party that the joint venture is within the corporate power of each party.
(3) One party to the joint venture must have total control of all phases of contract performance. Control must include delegated authority to fix the responsibilities of the other party.
(4) One party to the joint venture must perform the contract primary production function. All other parties must perform at least one of the remaining production functions as described in the solicitation.
(5) The agreement should identify each party's contribution toward contract completion such as materials, manpower and experience.
(6) Invoices for all phases of contract performance must be submitted by one party to the joint venture. All payments will be made in the name of the joint venture.
(7) The joint venture agreement must be limited solely to the objective of the contract.
(8) A copy of the executed agreement must be submitted with the proposal or bid.

(e) Limitations. Nothing in this subsection authorizes contractor team arrangements in violation of antitrust statutes or limits the government's rights to:

(1) Require consent to subcontracts.
(2) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor.
(3) Provide to the prime contractor data rights owned or controlled by the government.
(4) Pursue its policies on competitive contracting, subcontracting and component breakout after initial production or at any other time.
(5) Hold the prime contractor fully or solely responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

(f) Sufficiency Review of Joint Venture Agreements. The CO must ensure that the documentation for a joint venture agreement is sufficient for government acceptance, that there is no contradiction or ambiguity with antitrust statutes, and that there are no limitations on the government's rights. Therefore, before taking any action regarding a joint venture agreement, the CO must forward a copy of the solicitation, a copy of the planned award document, and the original submitted joint venture documentation to OGC for a legal sufficiency determination.

(g) Insert the appropriate clause shown in Appendix A in solicitations and contracts.

1.5. Contractor Responsibility

1.5.1. General

Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. The award of a contract solely on the basis of the lowest responsive bid is not to the advantage of the government if additional procurement or administrative costs could subsequently result.

1.5.2. Responsible Contractor

A responsible contractor is one who meets the minimum standards set forth in this CM to the extent that such standards are applicable to the specific procurement.

1.5.3. Authority

The authority for determinations of contractor responsibility rests with the CO however, where a small business is concerned, under a Memorandum of Understanding (MOU) with the Small Business Administration, the AOC must refer small business contractor responsibility determinations to the SBA which has final authority to determine the responsibility of small business concerns. COs must seek OGC review and involvement before making any determinations of contractor non-responsibility.

1.5.4. Minimum Standards for Responsible Prospective Contractors
To receive a favorable responsibility rating, a prospective contractor must meet the standards set forth below to the extent applicable to the specific procurement. The prospective contractor shall:
(a) Have adequate financial resources, or the ability to obtain adequate financial resources to perform the contract (The CO must review Dun & Bradstreet report and place a copy on file).

(b) Be able to comply with the proposed delivery schedules, taking into consideration other existing commitments, commercial and governmental.

(c) Have a satisfactory performance record regarding both quality and timeliness on previously awarded contracts.

(d) Have obtained satisfactory past performance evaluations in Past Performance Information Retrieval System (PPIRS).

(e) Possess or have the ability to acquire, the necessary equipment, technical skills and productive capacity to perform the contract requirement.

(f) Have adequate production controls and quality assurance methods to satisfy the quality requirements of the contract.

(g) Be able to satisfy any specified special standards of responsibility that are incorporated in special standards or specifications where the requirements call for unusual expertise, specialized facilities, or location of facilities.

(h) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

(i) The Contractor has properly registered and entered all mandatory information, including the DUNS number or the DUNS+4 number, into the SAM database (sam.gov) and is not be listed on SAM Exclusions as an excluded vendor.

1.5.5. System for Award Management
(a) Prospective contractors shall be registered in the SAM database prior to award, except for:
(1) Purchases under a Government purchase card;
(2) Contracts awarded in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies:
(3) Contracts to support unusual or compelling needs

(b) If a contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements, the contractor shall provide the CO a minimum of one business day's written notification of its intention to change the name in the SAM database; and agree in writing to the timeline and procedures specified by the CO. The contractor must provide with the notification sufficient documentation to support the legally changed name.
(1) If the contractor fails to comply and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information. Any invoice submitted in accordance with the payment clauses of this contract which contain incorrect information will not be processed.
(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims.
(3) Assignees shall be separately registered in the SAM database. Information provided to the contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information. Any invoice submitted in accordance with the payment clauses of this contract which contain incorrect information will not be processed.

(c) Unless the acquisition is exempt, the contracting officer shall:

(1) Verify that the prospective contractor is registered in the SAM database before award. Contracting officers are encouraged to check SAM early in the acquisition process, after the competitive range has been established, and then communicate to the unregistered offerors that they must register.

(2) Use the DUNS number or, if applicable, the DUNS+4 number, to verify registration.

(d) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the SAM database, the contracting officer shall:

(1) If the needs of the agency allow for a delay, make award after the apparently successful offeror has registered in the SAM database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the agency do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer; or

(3) If the contract action is being awarded pursuant to an unusual and compelling urgency, the contractor must be registered in the SAM within 30 days after award, or at least three days prior to submitting the first invoice, whichever occurs first.

1.5.6. Debarment, Suspension and Ineligibility

(a) Contractors debarred, suspended or proposed for debarment are ineligible for contract award. Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the AOC as agents or representatives of other contractors.

(b) Contractors on the SAM Exclusions list are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the period set in the exclusion. The AOC shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period of exclusion.

(c) The AOC may or may not continue contracts or subcontracts in existence at the time the contractor was debarred, suspended or proposed for debarment. The CAO, or designee, with input from AMMD, technical personnel, and OGC, will make a determination in writing whether continued performance is in the AOC's best interest. Before arriving at a decision, the decision authority should consider factors such as:

(1) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment, suspension or proposed debarment.

(2) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the AOC.

(3) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(4) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment, suspension, or proposed debarment.

If the decision is made not to continue the contract, the CO shall seek OGC guidance and issue the appropriate termination.

(d) The AOC may continue to place orders against existing contracts, including indefinite delivery contracts, if the contract is not terminated.The AOC shall not extend or exercise options to renew contracts or consent to subcontracts with contractors debarred, suspended or proposed for debarment unless the Architect of the Capitol or designee states in writing a compelling reason for the extension or renewal.

1.5.7. Contractor Financial Difficulty or Bankruptcy

Situations may arise where a contractor encounters financial problems during the course of contract execution and

must enter bankruptcy proceedings. Upon notice of such proceedings, COs will contact OGC for advice.

1.5.8. Non-Responsibility Determinations
Except where small businesses are concerned, the CO shall make a non-responsibility determination if, after careful consideration of all available information, there is not a clear indication that the prospective contractor meets the minimum requirements set forth in 1.5.4. Also, doubt as to the contractor's productive capacity or financial strength which cannot be resolved affirmatively shall require a non-responsibility determination.

(a) *Documentation*
(1) Non-responsibility determinations, when the proposed award is $100,000 or more, shall be documented in a D&F.
(2) Non-responsibility determinations on proposed awards of less than $100,000 shall be documented in an appropriate format as to the reason for the determination.
(3) Copies of non-responsibility determinations shall be included in the contract file and contractor compliance file.

(b) *Contractor notification.* The affected contractor shall be notified of the determination by letter, signed by the CO. Copies of the letter shall be made a part of the contract file and the contractor's compliance file.

(c) *Data disclosure.* The details or circumstances resulting in a determination of non-responsibility shall not be made available to anyone outside the government, except to the affected contractor when deemed necessary by the CO. The disclosure of such information may be made to, or summarized for, other government offices or agencies upon request.

1.6. Government Furnished Property (GFP)

1.6.1. Scope
(a) This section sets forth policies with respect to providing government-furnished property (GFP) for use by AOC contractors.

(b) Property provided under AOC contracts is subject to the specific terms and conditions of the contract under which it is furnished. When such property is to be provided, the CO through the COTR is required to track the contractor's compliance with property-related AOC policy and clauses.

1.6.2. Identification of GFP in Solicitations
COs shall insert the appropriate clause shown in Appendix A in all solicitations in which the government will furnish GFP during the period of contract performance. GFP has a direct impact on the offeror's pricing proposal. If a contract does not specifically state that the AOC will provide GFP, it shall not be provided without the CO negotiating with the contractor regarding the terms and conditions and any reduction in price relative to the GFP.

1.6.3. GFP Responsibilities
(a) The COTR designation letter delineates COTR responsibilities relative to GFP including the description, type and quantities of GFP.

(b) The COTR is responsible for coordinating the issuance and return of GFP.

(c) Any GFP provided to the contractor for use during the performance of a contract shall be issued to the contractor's representative and recorded by the COTR on AOC Form 1423, "AOC Property Issued to Contractors". The contractor's representative shall be responsible for ensuring the proper care and use of the GFP. Once Form 1423 is properly executed by all parties involved with issuing and tracking the GFP, with a copy retained by the COTR and the CO.

(d) GFP provided by the AOC shall be used only for conducting official business on behalf of the AOC. *Note: Providing AOC-owned cell phones to contractors is strongly discouraged.*

(e) All GFP shall be returned by the contractor to the COTR in the same condition as issued, with allowances for wear and tear that occurs with responsible care and use. Failure to return GFP or the return of GFP that has not been properly maintained and used may result in a reduction to the contract price that reflects the market replacement value of the property or the market price to repair or restore the property to its condition when issued to the contractor.

1.7 Contingent Fees

1.7.1. Covenant Against Contingent Fees
Every contract shall include the appropriate clause shown in Appendix A.

1.7.2. Policy Against Contingent Fees
A fee, regardless of what it is called or how it is computed, which is payable based on the success a representative has in obtaining government contracts for a client is considered a contingent fee. It is contrary to public policy to use a contingent fee arrangement(s), unless such representatives are bona fide employees of the contractor or are bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

1.7.3. Enforcement
(a) Unless exception is taken in the bid, the bidder warrants that by submission of the bid that no person or company other than a bona fide employee has been employed to solicit the contract and that there is no agreement to pay any fee contingent upon the success of securing the contract.

(b) If the bidder takes exception to the provision in the bid, or if misrepresentations or violations of the covenant against contingent fees are suspected, the facts shall be provided through the AMMD chain of command for resolution.

1.8 Buy American Act (BAA)

1.8.1. General
(a) Policy. The Buy American Act establishes as a government policy, that manufactured materials, supplies or articles acquired for public use shall be substantially constituted from domestically mined or manufactured articles or supplies.

(b) *Definitions.*
(1) "*Component*" means an article, material or supply incorporated directly into an end product or into another component.
(2) "*End product*" means an article, material or supply to be acquired for public use.
(3) "*Domestic end product*" means:
  (i) An unmanufactured end product which has been mined or produced in the United States.
  (ii) An end product manufactured in the United States if the cost of the components mined, produced, or manufactured in the United States exceed 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and shall include duty in the case of components of foreign origin.
(4) "*United States*" means the 50 States, the District of Columbia, and outlying areas (i.e., Puerto Rico, American Samoa, the U.S. Virgin Islands, and any other place subject to United States jurisdiction).
(5) "*Foreign end product*" means an end product other than a domestic end product.

1.8.2. Implementation
(a) The AOC has chosen to apply the BAA to AOC purchases. The AOC restricts the purchase of supplies (including construction materials and services in which supplies are furnished) that are not domestic end products. For manufactured products, the BAA uses a two-part test:
(1) The article must be manufactured in the United States.
(2) The cost of domestic components must exceed 50 percent of the cost of all components.

(b) A foreign end product may be purchased if the CO determines that the price of the lowest domestic end product is unreasonable.

(c) Contract files must include documentation of the efforts made to find a domestic end product, the results of the search, and, if both a foreign and domestic end product are available, a justification for acquiring the foreign end product. If price is used for the justification, the following evaluation shall be performed:

(1) If the domestic end product is made by an American small business, 12 percent must be added to the price of the foreign end product and the foreign end product must still be less than the domestic end product.
(2) If the domestic end product is made by an American large business, 6 percent must be added to the price of the foreign end product and the foreign end product must still be less than the domestic end product.

1.9 Contract Review Board

1.9.1. Contract Actions

As indicated in the table below, contract actions are subject to a process review and a legal review. The process review is performed within AMMD, and the legal review is requested from OGC. Any individual in the process review may elect to send the contract action to OGC for a legal review after a process review by their Branch Chief. Branch Chiefs may also review any contract action within their area of responsibility at any time and regardless of dollar value of the procurement.

Contract Action	Review Process
Solicitations using sealed bidding procedures over $100,000 but less than $500,000	GS-13 or greater Peer Review
Solicitations using sealed bidding procedures over $500,000	Branch Chief
Negotiated procurements over $100,000 but less than $500,000	GS-13 or greater Peer Review
Negotiated procurements over $500,000 but less than $25M	Branch Chief, OGC
Negotiated procurements over $25M	Branch Chief, Deputy Chief AMMD, OGC
Sole source procurement over the competition threshold	Branch Chief, OGC
Delivery/Task Orders and all Modifications over $100,000 but less than $500,000	GS-13 or greater Peer Review
Delivery/Task Orders and all Modifications over $500,000 but less than $1M	Branch Chief
Delivery/Task Orders and all Modifications over $1M	Branch Chief, Deputy Chief AMMD
Cure notices, show cause notices, termination for default or convenience, CO's final decisions	Branch Chief, Deputy Chief AMMD, OGC

The total value of the contract action, including options, shall be used in determining if a contract action is subject to a process review. For review purposes, the total value is calculated without regard to additive or negative values. For example, a modification that proposes to add $100,000.00 in additional work and delete $25,000.00 of existing work has a total value of $125,000.00.

1.9.2. Procedures

(a) The complete normal review sequence is Branch Chief; Deputy Chief, AMMD; Chief, AMMD; and OGC. The CO must build adequate review time into the procurement process. As a general rule, the time for a process review by the

Branch Chief, Deputy Chief and Chief, AMMD is two work days, and legal review by OGC is three work days.

(b) After review by the Branch Chief, the CO must resolve all correct/resolve comments and either resolve highly recommended comments or provide an explanation as to why corrective action was not taken. These corrections and/or explanations must be incorporated into the contract action and resubmitted for review to the Branch Chief. When resubmitted, comments from previous review(s) must be sent with the file. This step may be repeated, as necessary, to the satisfaction of the Branch Chief.

(c) Upon satisfactory review by the Branch Chief, the contract action may be sent for further review in accordance with the above table. The CO must provide a new document that incorporates corrections as well as written explanations to the reviewing official's comments.

1.10. Market Research

1.10.1. General

Market research is an investigation of the market place to evaluate:

(a) If a commercial good or service is available.

(b) Current industry trends, news and information.

(c) The nature of the competitive environment for the product or service.

1.10.2. Requirement

Market research shall be performed:

(a) When developing requirements documents.

(b) Before issuing solicitations above the competition threshold.

(c) When submitting a sole source or brand name justification.

1.10.3. Sources for Market Research

The following are generally regarded as leading resources used to perform market research:

(a) Knowledgeable people within government and industry such as GSA contracting officials or trade associations.

(b) Independent research for the same or similar requirements (e.g., internet searches).

(c) Publish formal Request for Information (RFI) in FedBizOpps.

(d) Commercial Catalogs and product literature.

(e) Government wide contracts.

1.11. Procurement Integrity

1.11.1. General

AOC Order 38-1, Standards of Conduct and Government Ethics, defines minimal standards of conduct and ethical rules required of all AOC employees. Jurisdiction heads must ensure that employees involved in the procurement process:

(a) Familiarize themselves with AOC Order 38-1.

(b) Complete the annual Ethics Training provided by OGC.

(c) Comply with the standards and rules established in AOC Order 38-1.

(d) Seek OGC advice when they are uncertain about a specific procurement or ethics situation.

1.11.2. Disclosure, Protection and Marking of Contractor Bid or Proposal Information and Source Selection Information

(a) No person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized to receive such information, in accordance with applicable policies of this manual, and as authorized by the CO.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with applicable law, AOC policies and this manual.

(c) Individuals responsible for preparing material that may be source selection information shall mark the cover page of the documents "SENSITIVE SOURCE SELECTION INFORMATION."

(d) If the CO believes that information is inappropriately marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the CO may remove the marking and the information may be released.
(2) If after reviewing any contractor submitted justification, the CO determines that the marking is not justified, the CO shall notify the contractor in writing.
(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance with RFP instructions, shall not be released until:
    (i) The review of the contractor's justification has been completed or
    (ii) the period specified for the contractor's response has elapsed, whichever is earlier.

(e) Nothing in this section restricts or prohibits:

(1) Individual meetings between an AOC official and an offeror or potential offeror, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur.
(2) The government's use of technical data in a manner consistent with the government's rights in the data.

(f) Nothing in this subsection shall be construed to authorize:

(1) Withholding any information pursuant to a proper request from Congress, any committee or subcommittee thereof, a federal agency, the Comptroller General, or an Inspector General of a federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection sensitive information related to the conduct of a government procurement, the disclosure of which is restricted.
(2) Withholding information from, or restricting its receipt by, the Government Accountability Office in the course of a bid protest.
(3) Releasing information after contract award or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement.

CHAPTER II. ACQUISITION PLANNING AND COMPETITION

2.1. General

(a) The AOC shall perform formal acquisition planning for procurements to promote and provide for full and open competition and to ensure selection of the appropriate contract type. Planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of acquisition planning is to ensure that the government meets its needs in the most effective, economical, and timely manner.

(b) As soon as possible following the identification of an agency need or requirement covered by this policy, acquisition planning and discussions shall begin between the organization/jurisdiction and AMMD - preferably well in advance of the fiscal year in which contract award is necessary. Discussions concerning the acquisition approach shall result in an agreement regarding which elements of the Acquisition Plan (AP) the CO will assist the organization/jurisdiction in preparing and the date the AP will be provided to the CO. Discussions shall include, but are not limited to:

(1) Determining the intended acquisition strategy and contract/order type, including using options.
(2) Reviewing the requirements document (i.e., SOW, Performance Work Statement (PWS), Specifications).
(3) Evaluating the potential for, and maximizing the use of competitive procedures.
(4) Performing market research, identifying potential sources and determining small business subcontracting opportunities.
(5) Preparing an acquisition milestone schedule.
(6) Determining if multi/intra-agency contracting is possible.

2.2. The Acquisition Plan (AP)

(a) An AP shall be used for all acquisitions expected to exceed $1,000,000 (including options), any negotiated procurement over $500,000, and other acquisitions as desired. The AP must identify those milestones at which decisions should be made and address all the technical, business, management and other significant considerations that will control the acquisition. The AP, and all of its elements and attachments, is considered "Source Selection Sensitive Information" prepared to evaluate offers and enter into an AOC contract. Disclosure of Source Selection Sensitive Information is prohibited and would jeopardize the integrity or successful completion of the procurement. Consistent with AOC policy, Source Selection Sensitive Information shall be shared or disclosed on a need to know basis only as determined by the CO.

(b) The specific content of an AP will vary, depending on the nature, circumstances and complexity of the acquisition. A format for preparing the AP is available on the intranet. AOC staff shall use this format when developing the AP. Acquisition plans are required as noted above except for the following acquisitions:

(1) Letter contracts.
(2) Unsolicited proposals.
(3) Regulated utility services available from only one source.
(4) Orders placed under GSA Federal Supply Schedule contracts.
(5) Task orders or delivery orders less than $1,000,000 placed under:
  (i) An existing AOC Indefinite Delivery Indefinite Quantity (IDIQ) contract provided there is an approved AP document for the original action if required by this policy, and there is no significant deviation from the AP.
  (ii) An existing AOC Blanket Purchase Agreement (BPA), provided there is an approved AP document for the original action if required by this policy, and there is no significant deviation from the AP.
(6) Contract/order modifications that:
  (i) Exercise options.
  (ii) Only provide additional funding.
  (iii) Make changes authorized by the "Changes" clause contained in the contract.

(c) Acquisition Plan Waiver

(1) A standard form for preparing an AP waiver request is available on the intranet. AOC staff shall use this format when requesting a waiver of an AP.

(2) In cases of public exigency, the AMMD Chief may waive, in writing, the requirement to complete an AP. A waiver request shall not be granted based on the lack of advance planning.

(d) Content
An AP shall address each applicable element shown in the AP template. Elements that are not applicable to an individual acquisition shall be marked "N/A." The scope and depth of an AP may vary depending on the nature, complexity and estimated cost of the proposed acquisition.

(e) Format
An AP shall consist of six parts with standard headings. Within each of the six parts, there are required components that cannot be modified and specific areas where changes, additions or deletions can be made. APs will be formatted as follows:

- Part I- Transmittal and Approval Form
- Part II- Summary Sheet
- Part III- Project Considerations and Information
- Part IV- Acquisition Milestone Schedule
- Part V- Independent Government Cost Estimate
- Part VI- Attachments

(f) Reviews
Before the organization/jurisdiction transmits the AP to the CO, technical and requirements personnel from the organization/jurisdiction, the Organization/Jurisdiction head, or its Deputy, and other AOC staff as shown in signature blocks contained in the AP, shall review the AP and certify that it provides all required information in the prescribed format and that:

(1) All vague and ambiguous language has been eliminated.
(2) A thorough technical review of the agency requirement has been completed and the development of a requirements document has been completed.
(3) The project is structured by phases or tasks, as appropriate.
(4) Methods are available to assess the contractor's performance.
(5) The acquisition mechanism is appropriate (i.e., the principal purpose of the project and acquisition mechanism is to acquire supplies/services or construction for the direct benefit or use of the government in the most effective, economical and timely manner).
(6) The planned obligation of appropriated funds is budgeted for the project and satisfies a bona fide need arising in the fiscal year for which the appropriation was made.

(g) Delivering the AP to the CO
Technical and requirements personnel from the organization/jurisdiction shall convey the signed AP to the CO by providing a completed Part 1- Transmittal and Approval Form, with all other parts of the AP attached. The AP shall be provided no later than the date agreed to in the acquisition milestone schedule, unless a different date is established by mutual agreement of the Organization/Jurisdiction head, or its Deputy and the AMMD Chief. The CO shall review the AP and certify that it provides all required information in the prescribed format.

(h) Acquisition Milestone Schedule
The CO shall retain the acquisition milestone schedule in the contract file and update/revise it to track progress of the acquisition. Any revisions to the milestone schedule that will impact the award date shall be agreed to mutually between the organization/jurisdiction and the AMMD Chief. Failure to meet established milestones shall be immediately reported to the CO, the Organization/Jurisdiction head, or its Deputy, and to the AMMD Chief.

(i) Responsibility for Acquisition Plans

Acquisition Planning	Responsible Organization
Establish standard acquisition lead times and deadlines for receipt of requirements for award, in an applicable fiscal year	AMMD Chief.
Begin acquisition planning to identify and plan requirements, particularly complex, long lead time acquisitions, in advance of the fiscal year in which they are awarded.	Technical and requirements personnel from the organization or jurisdiction, Organization/Jurisdiction head, or its Deputy.
Participate in acquisition planning; prepare the AP and provide it to the CO.	Technical and requirements personnel from the organization or jurisdiction, Organization/Jurisdiction head, or its Deputy.
Participate in acquisition planning and assist in AP preparation.	CO; AMMD Chief.
Review and certify that an AP is complete, accurate and in proper format.	Technical and requirements personnel from the organization or jurisdiction, Organization/Jurisdiction head, or its Deputy; CO; AMMD Chief.
Make necessary interim changes to the AP and notify all affected stakeholders.	CO; Organization/Jurisdiction head, or its Deputy; AMMD Chief.
Waive requirements for development of an AP, when justified.	AMMD Chief.
Meet established acquisition milestone dates.	Technical and requirements personnel from the organization or jurisdiction; CO.

2.3. Competition

2.3.1. Full and Open Competition

(a) AOC policy is to promote full and open competition in the procurement process and fully justify acquisitions using other than full and open competition to include a sole source award. Full and Open Competition means that all responsible sources shall be permitted to compete. This policy applies to all acquisitions above the AOC competition threshold except:

(1) AOC contracts awarded using contracting procedures that are expressly authorized by statute, or other law.
(2) Contract modifications that are within the scope and under the terms of an existing AOC contract, including exercising priced options that were evaluated as part of the initial competition.
(3) Task/Delivery/Purchase Orders placed under existing requirements, definite-quantity or indefinite-quantity contracts (i.e., Indefinite Delivery Contracts).

(b) Examples of competitive procedures that promote full and open competition are:

(1) Requests for Quotes (RFQ).
(2) Use of multiple award schedules issued under the procedures established by the GSA Administrator.
(3) Sealed Bidding - Invitations for Bids (IFB).
(4) Negotiated Contracts - Requests for Proposals (RFP).

2.3.2. Full and Open Competition after Excluding Sources

(a) Acquisitions made after exclusion of sources shall use the competitive procedures listed in this manual providing for full and open competition after excluding one or more sources.

(b) The AOC may exclude a particular source from an acquisition in order to establish or maintain a source(s)

for the requirement needed if the Architectof the Capitol, or designee, determines that to do so would:

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition (when this paragraph is cited, the D&F shall include a description of the estimated reduction in overall costs and how the estimate was derived).
(2) Be in the interest of national security in having supplies or services available in case of an emergency.
(3) Ensure the continuous availability of a reliable source of supplies or services.

(c) Every proposed acquisition made after excluding one or more sources shall be supported by a D&F signed by a CO acting within the scope of their delegation of procurement authority. A D&F shall not be made on a class basis. Organizations/jurisdictions are responsible for providing the CO all necessary data to support their recommendation to exclude a particular source. The Organization/Jurisdiction head, or their Deputy, is responsible for certifying the D&F as accurate and for providing a completed D&F to the CO for approval. All D&Fs required by this section shall be created using the Determination and Findings (D&F) - Exclusion of One or More Sources form.

(d) The D&F shall set forth enough facts to clearly justify the specific determination made. At a minimum, each D&F shall include the following information:

(1) The organization/jurisdiction.
(2) Description of the action being recommended.
(3) Particular circumstances, facts or reasoning that supports the determination.
(4) Necessary supporting documentation.
(5) A determination, based on the findings, that the proposed action is justified.
(6) The dated signature of the CO approving the D&F.

(e) COs may set aside small purchase solicitations to allow only small business concerns to compete. No separate justification or D&F is required to set aside a small purchase contract action for small business concerns.

2.3.3. Other Than Full and Open Competition

(a) Requirements.

(1) Contracting without providing for full and open competition is not permitted unless allowed by statute. Any sole source contract shall contain a reference to the specific statutory authority under which it is awarded and the contract file shall contain a D&F. Where more than one statutory citation may apply, the justification shall use the citation that presents the most compelling justification and not reference multiple citations.
(2) Sole source acquisitions shall not be justified on the basis of:
  (i) A lack of advanced acquisition planning by the organization/jurisdiction.
  (ii) Concerns related to expiring funds or the amount of funds available.

(b) Circumstances permitting other than full and open competition.

(1) Public Exigency (41 U.S.C. § 610l(b)(2)(B)) – Refers to an exceptional and urgent necessity requiring the immediate delivery of the supply or performance of the service. This is a need by the AOC that is so urgent due to its impact on the functions, safety or security that immediate attention and action is necessary. The need must be compelling and of unusual urgency, as when the AOC would suffer serious financial loss or other damage if the supplies or services were not furnished by a certain date and when they could not be procured by that date by means of full and open competition. The justification for contracts awarded under this authority may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) Only One Source (41 U.S.C. § 610l(b)(2)(C)) – Only one source of supply is available to meet the AOC's needs/requirements. Use of this authority may be appropriate in the following situations (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):
  (i) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by unique supplies or services available from only one source/supplier with unique capabilities.

(ii) The existence of limited rights in data, patent rights, copyrights or secret processes; the control of basic raw material; or similar circumstances, make the supplies/services available from only one source.

(iii) When acquiring utility services circumstances may dictate that only one supplier can furnish the service; or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(iv) When the Architect of the Capitol has determined in accordance with an agency standardization program that only specified makes/models of technical equipment and parts will satisfy the AOC's needs for additional units or replacement items, and only one source is available.

(3) Technical and Professional Services (41 U.S.C. § 6101 (b)(2)(D)) – Services are performed by the contractor in person which are technical and professional in nature or under AOC supervision and paid for on a time basis.

(4) Security Related Project (2 U.S.C. § 1821(a)(2)) – Services, equipment and construction for security projects.

(c) Justification

(1) Justifications required by this section may be made on an individual or class basis. Whenever a justification is made and approved on a class basis, the CO shall ensure that each contract action taken pursuant to the authority of the class justification is within the scope of the class justification and shall document each contract action accordingly.

(2) Technical and requirements personnel from the organization/jurisdiction are responsible for providing a completed justification to the CO, including all necessary data to support their recommendation for a sole source acquisition.

(d) Contents of Justification

(1) All justifications required by this manual shall be created using the Sole Source Justification form.

(2) Each justification shall include the following information:

(i) Nature and/or description of the action being approved.

(ii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iii) An identification of the statutory authority permitting sole source acquisitions.

(iv) Sufficient facts and rationale to justify using the specific statutory authority cited.

(v) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the sole source authority cited.

(vi) A description of the market research conducted and the results.

(vii) Explanation of why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available.

(viii) When the Public Exigency statute is cited, data, estimated cost or other rationale as to the extent and nature of the harm to the government.

(ix) When the Only One Source statute is cited for follow-on acquisitions, an estimate of the cost to the government to re-solicit the requirement and how the estimate was derived.

(x) A certification by the Organization/Jurisdiction head, or the Deputy, that the information and supporting data which forms a basis of the justification is complete and accurate.

(xi) CO certification that the justification is accurate and complete to the best of the CO's knowledge and belief.

(e) Approval of Sole Source Justification

(1) For a proposed small purchase contract above the AOC competition threshold, the signature of the AMMD Small Purchase Branch Chief will serve as approval. This authority is not delegable.

(2) For a proposed contract above the AOC small purchase threshold up to but not exceeding $12.5 million, the signature of the AMMD Contracts Branch Chief will serve as approval. This authority is not delegable.

(3) For a proposed contract over $12.5 million, but not exceeding $62.5 million the signature of the AMMD Deputy Chief will serve as approval. This authority is not delegable.

(4) For a proposed contract over $62.5 million, the signature of the AMMD Chief will serve as approval. This authority is not delegable.

(5) The AMMD Chief shall approve a class justification.

(6) The estimated dollar value of all options shall be included in determining the required level of justification approval.

2.4. Brand Name Products

2.4.1. Restrictive Specifications

(a) Brand-name products shall not be used unless the particular brand-name product is essential to the AOC's requirements and market research indicates other companies' similar products do not meet, or cannot be modified to meet, the AOC's needs. When an acquisition contains a brand-name product, the CO shall include a sole source justification in the contract file.

(b) A brand-name product means a brand-name description, or other purchase description, to specify a particular brand-name, product, or feature (salient characteristic) of a product peculiar to one manufacturer.

(c) COs shall exercise due diligence to identify a brand-name product created by the description of salient characteristics of a brand-name product in the specifications as mandatory requirements. Salient characteristics are sometimes inserted into specifications listing specific brand-name product physical and functional features. Without the sole source justification required by this manual, brand-name specifications restrict competition and shall not be used in AOC acquisitions.

(d) If only a portion of the acquisition is for a brand-name product or item peculiar to one manufacturer, a sole source justification is required and shall cover only the portion of the acquisition which is brand-name or peculiar to one manufacturer. The justification shall state it is covering only the portion of the acquisition which is brand-name or peculiar to one manufacturer and shall indicate that the use of such brand-name product is essential to the AOC's requirements, thereby precluding consideration of a product manufactured by another company.

(e) For acquisitions off of the GSA Federal Supply Schedule (FSS), justification for a brand-name product is required at the order level when the justification for the brand-name item was not completed for the FSS or does not adequately cover the requirements in the order even if the brand-name product is available on more than one Schedule.

2.4.2. Brand Name or Equal

Brand-name or equal descriptions, and other purchase descriptions that permit offerors to supply products other than those specifically referenced by brand-name, provide for full and open competition and do not require a D&F.

2.5. Submitting Requirements

(a) All requirements shall include:
(1) A Requisition form.
(2) An AOC Financial Management System requisition, approved and processed.
(3) An Independent Government Estimate (separately priced for the base term and any additional option term).
(4) A SOW, purchase description, drawings and specifications as applicable.

(b) In addition to the above:
(1) Services require a statement of non-personal services form.
(2) Information Technology equipment and services require ITD approval in writing.
(3) Construction requires computation of liquidated damages and magnitude of construction costs.
(4) Sole source and/or brand-name requirements need a fully executed sole source justification form.

2.6. Non-Personal Services

(a) Congress has specifically authorized the AOC to procure temporary or intermittent personal services by contract (not in excess of one year) for individual experts and consultants and when the services are required to be performed by the contractor in person and are: (a) of a technical and professional nature; or (b) under government supervision and paid for on a time basis. Notwithstanding this specific statutory authority for entering into a personal services contract, organizations/jurisdictions shall obtain the review and opinion by OGC prior to submitting such procurement actions to AMMD.

(b) The AOC requires that contract requirements include language to provide a clear distinction between government employees and contractor employees. Personal services contracts are characterized by the employer-employee relationship created between the government and the contractor's personnel. A personal services contract, because of its contract terms, or by the way the contract is administered post award, makes contractor staff appear to be government employees. Personal services contracts are prohibited as a matter of public policy because such work should be performed by government employees in accordance with direct hire and competitive appointment procedures. Normally, the government is required to obtain its employees by direct hire, under competitive appointment, or other procedures required by civil service laws. Obtaining personal services by contract, rather than by civil service laws, circumvents those laws unless Congress has specifically authorized personal services by contract.

(c) Each proposed service contract must be evaluated in the light of its own facts and circumstances. Organizations/jurisdictions will need to determine if the proposed service contract requires the government to exercise relatively continuous supervision and control over the contractor personnel performing under the contract. For example, unauthorized supervision of one contractor employee is problematic, while relatively continuous government supervision of a substantial number of contractor employees would violate policy against personal services contracts. Contract requirements and statements of work must be developed carefully. The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.
(2) Principal tools and equipment furnished by the government.
(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
(5) The need for the type of service provided can reasonably be expected to last beyond one year.
(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, government direction or supervision of contractor employees in order to:
    a. Adequately protect the government's interest.
    b. Retain control of the function involved.
    c. Retain full personal responsibility for the function supported in a duly authorized federal officer or employee.

(d) Service contracts shall require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and wearing a distinctive badge or other identifier that distinguishes them from AOC employees. In addition, contracts shall require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

(e) AMMD staff shall review contract requirements and SOWs for compliance with this manual. Organization/jurisdiction managers shall execute a Certification of Non-personal Services Form when submitting purchase requests to AMMD and shall ensure that a service contract does not inadvertently become administered as a personal-services contract.

CHAPTER III. CONTRACTOR LABOR RELATIONS

3.1. Policy

3.1.1. General

(a) COs shall brief AMMD leadership and consult with OGC as appropriate when dealing with contractor noncompliance with labor regulations.

(b) It is in the interest of the AOC to encourage the best possible relations with industry and labor so that requirements for construction, supplies and services may be obtained without delay and at a reasonable cost.

(c) This is not to imply that the AOC will become involved in a contractor's labor problems. The AOC shall not take a position on the merits of a dispute between private management and labor or engage in conciliation, mediation, or arbitration actions.

3.1.2. Contract Administration

(a) Labor disputes may give rise to work stoppages which cause delays in the timely performance of AOC contracts. The CO shall notify contractors that they will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard clauses dealing with default and excusable delays do not relieve contractors for delays that are within their control, or their subcontractor's control, such as may be the case with delays precipitated by an unfair labor practice of a contractor.

(b) All COs shall cooperate, and encourage contractors to cooperate, with federal and state agencies responsible for enforcing labor requirements including health, safety, maximum hours and minimum wages, child and convict labor, and equal pay for its employees.

3.2. Convict Labor

3.2.1. General

Federal law prohibits the employment of convict labor in contracts entered into by certain Government departments or agencies. Although not applicable to the AOC by law, it is applied herein by policy in the manner and extent stated below.

3.2.2. Requirement

All contracts shall contain a "Convict Labor" clause. This clause provides that the contractor agrees not to employ any person undergoing sentence of imprisonment which has been imposed by any federal, state or U.S. government territory court.

3.2.3. Applicability

(a) The requirement does not prohibit employing persons who:
(1) Are federal prisoners authorized to work at paid employment.
(2) Are on parole or probation.
(3) Have been pardoned.

(b) The requirement does not apply to a contract:
(1) Subject to the provisions of the Walsh-Healey Public Contracts Act which contains its own provisions relating to the use of convict labor.
(2) For supplies and services from Federal Prison Industries, Inc.
(3) For finished supplies manufactured in a state prison and which could be secured in the open market.

3.3. Walsh-Healey Public Contracts Act

3.3.1. Statutory Requirements

All contracts subject to the Walsh-Healey Public Contracts Act for manufacturing or furnishing materials, supplies, articles and equipment (referred to in this section as supplies) in any amount exceeding $10,000, shall include or incorporate by reference the stipulations required pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions. COs shall insert the appropriate clause shown in Appendix A.

3.3.2. Exemptions

(a) Statutory exemptions. The Act does not apply to purchasing supplies that may usually be bought in the open market.

(b) Regulatory exemptions. Contracts for the following acquisitions are fully exempt from the Act:

(1) Supplies manufactured outside the United States, Puerto Rico or the U.S. Virgin Islands.
(2) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.
(3) Newspapers, magazines or periodicals.
(4) Public utility services including electricity, water, steam and gas.

(c) The Architect of the Capitol may request an exemption from the Secretary of Labor for specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations. The request must include a finding by the Architect the Capitol that conducting government business will be seriously impaired unless the exemption is granted. Requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

3.3.3. Rulings and Interpretations of the Act

The Secretary of Labor has issued rulings and interpretations concerning the administration of the Act. The substance of certain rulings and interpretations is as follows:

(a) If a contract for $10,000 or less is subsequently modified to exceed $10,000, the contract becomes subject to the Act for work performed after the date of the modification.

(b) If a contract for more than $10,000 is subsequently modified by mutual agreement to $10,000 or less, the contract is not subject to the Act for work performed after the date of the modification.

(c) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the government, the prime contractor is required to include the stipulations of the Act in contracts in excess of $10,000 awarded for and on behalf of the government for construction supplies.

(d) If a contract subject to the Act is awarded to a contractor operating government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(e) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for one year after the effective date of the agreement will not exceed $10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

3.3.4. Procedures

(a) Award. When a contract subject to the Act is awarded, the CO, in accordance with regulations or instructions issued by the Secretary of Labor, shall furnish to the contractor DOL publication WH–1313, Notice to Employees Working on Government Contracts.

(b) Breach of stipulation. In the event of a violation of a stipulation required under the Act, the CO shall notify the appropriate regional office of the DOL, Wage and Hour Division, and furnish any information available.

3.4. Service Contract Labor Standards

3.4.1. General

(a) Service Contract Labor Standards (formally the Service Contract Act (SCA)) apply to every government contract where the principal purpose is to furnish services in the United States using service employees. Contractors and subcontractors performing on such federal contracts must comply with minimum wage and safety and health standards, and must maintain certain records, unless a specific exemption applies.

(b) Every service employee performing any of the government contract work under a service contract in excess of $2,500 must be paid not less than the monetary wages, and must be furnished fringe benefits, which the Secretary of Labor has determined to be prevailing in the locality for the classification in which the employee is working or the wage rates and fringe benefits (including any accrued or prospective wage rates and fringe benefits) contained in a predecessor contractor's collective bargaining agreement. The wage rates and fringe benefits required are specified in the wage determination included in the contract. If no wage determination has been made applicable to the contract, employees performing work under the contract must be paid not less than the federal minimum wage provided in section 6(a)(1) of the Fair Labor Standards Act.

(c) Service contracts which do not exceed $2,500 are not subject to wage and fringe benefit determinations or to the safety and health requirements of the statute. However, the statute does require that employees performing work on such contracts be paid not less than the above minimum wage rate provided by section 6(a)(1) of the Fair Labor Standards Act.

(d) All provisions of the statute, except the safety and health requirements, are administered by the DOL Wage and Hour Division.

(e) Questions regarding wage determinations and how they are established may be directed to the DOL.

(f) Questions regarding a contractor's compliance with the wage determination applicable to a particular contract should be directed to the appropriate regional office of the DOL, Wage and Hour Division.

3.4.2. Procedure

When the CO has reason to believe that a contract will be subject to the Act, the CO shall obtain the appropriate wage determination from the DOL website (www.dol.gov). In cases where it is not clear whether the contract is subject to the Act, the CO shall consult with the DOL or OGC as needed. COs shall insert the appropriate clause shown in Appendix A in all service contracts (including Architect and Engineering) where applicable.

3.5. Contract Work Hours and Safety Standards Act

3.5.1. Requirements

(a) The Contract Work Hours and Safety Standards Act provides that wages for every laborer and mechanic be computed based on a standard workweek of 40 hours. Work in excess of the standard hours is permissible provided the employee is compensated at the rate of time and one-half the regular wage in excess of the standard hours.

(b) The contractor is also liable for any wages it has failed to pay and for additional liquidated damages in the amount

of $10 per day per employee who has not been paid the required overtime. These amounts may be withheld from any payments due the contractor from the AOC.

(c) COs shall incorporate by reference the appropriate clause shown in Appendix A.

3.5.2. Applicability

The Act applies to all types of contracts, which use mechanics or laborers, including apprentices, trainees, watchmen and guards, except:

(a) Contracts for transportation by land, air or water.

(b) Contracts for the transmission of intelligence.

(c) Contracts for materials usually bought in the open market.

(d) Contracts subject to the provisions of the Walsh-Healey Public Contracts Act.

(e) Contracts of $100,000 or less.

3.6. Construction Wage Rate Requirements statute

3.6.1. Overview

The Construction Wage Rate Requirements statute (formerly, the Davis Bacon Act (DBA)) provides that government contracts in excess of $2,000 for construction, alteration or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause that no laborer or mechanic employed directly on the site of the work shall receive less than the prevailing wage rates determined by the Secretary of Labor.

3.6.2. Wage Determinations

The DOL is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the work site including drivers who transport materials and equipment to or from the site. 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.

3.6.3. Types of Wage Determinations

(a) General wage determinations.

(1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded or canceled by the DOL. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the CO exercises an option to extend the contract term. These determinations shall be used whenever possible. They are issued at the DOL's discretion either upon receipt of an agency request or on the DOL's initiative.

(2) General wage determinations are published on the DOL website (WDOL). General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. "Publication" within the meaning of this section occurs on the first date the wage determination is published on the WDOL. Archived general wage determinations that are no longer current may be accessed in the "Archived DB WD" database on WDOL for information purposes only. COs may not use an archived wage determination in a contract action without obtaining prior approval of the DOL. To obtain prior approval, contact the DOL, Wage and Hour Division, using http://www.wdol.gov.

(b) Project wage determinations. A project wage determination is issued at the request of a contracting agency. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the

determination. However, if a determination expires before contract award, the agency may request an extension to the 180-day life of the determination. Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the CO exercises an option to extend the contract term.

3.6.4. General Requirements
(a) The CO must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination applies. The CO must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the contract term, the CO must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(b) If the wage determination is a general or project wage determination containing more than one rate schedule, the CO shall either include only the rate schedules that apply to the particular 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. Inclusion by reference is impermissible.

(c) COs shall insert the applicable provisions and clauses found in Appendix A in solicitations and contracts in excess of $2,000 for construction within the United States.

3.7 Enforcing Labor Standards

3.7.1. Policy
(a) COs are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts.

(b) AMMD shall:
(1) Ensure that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract.
(2) Conduct adequate payroll reviews, on-site inspections and employee interviews to determine compliance by the contractor and subcontractors, and promptly initiate corrective action when required.
(3) Promptly investigate and dispose of complaints. If the CO or COTR believes that a contractor or subcontractor is submitting false payroll documentation (e.g., based on interviews of employees), this is possible fraud that must be immediately reported to the OIG.

(c) Preconstruction conferences. Before construction begins, the CO shall issue an explanatory letter and arrange the conference with the contractor promptly after award of the contract.

3.7.2. Apprentices and Trainees
(a) The CO shall review the contractor's employment and payment records of apprentices and trainees to ensure enforcement of labor standards.

(b) If a contractor has classified employees as apprentices, trainees or helpers without complying with the contract, 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.

3.7.3. Subcontracts
In accordance with the contract requirements, the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

3.7.4. Payrolls and Statements
(a) In accordance with the contract requirements, the contractor must submit within seven calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of certified

weekly payrolls applicable to the contract, and (2) certified weekly payroll statements of compliance. The contractor may use the DOL Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) The contracting agency shall retain payrolls and compliance statements for three years after contract completion and make them available when requested by the DOL at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reason, but copies may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(c) Disclosure of payroll records. Contractor payroll records in the government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain Personal Identifiable Information (PII) 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 AOC may be obligated to protect.

3.7.5. Compliance Checking

(a) *General.* The CO or designee shall perform checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Compliance checks.* Compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments and hours worked. (See Standard Form 1445)

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

(3) Payroll reviews to ensure that contractors' and subcontractors' payrolls have been submitted on time and are complete and in compliance with contract requirements and any statutory or regulatory requirements. Particular attention should be given to:

- (i) Correctness of classifications and rates.
- (ii) Fringe benefits payments.
- (iii) Hours worked.
- (iv) Deductions.
- (v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.

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

(c) *Special compliance checks.* Situations that may require special compliance checks include:

(1) Inconsistencies, errors or omissions detected during compliance checks.

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be invited to submit additional information.

3.7.6. Withholding from or Suspension of Contract Payments

(a) Withholding for nonsubmission. If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the CO shall withhold payment of an amount that the CO considers necessary to protect the AOC's interest and the employees of the contractor or any subcontractor.

(b) Withholding payments. If the CO believes a violation exists or upon request of the DOL, the CO must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages under the Contract Work Hours and Safety Standards Act.

(1) If the CO believes a violation exists or upon request of the DOL, the CO must withhold funds from any current AOC contract with the same prime contractor.

(2) If a subsequent investigation confirms violations, the CO must adjust the withholding as necessary. However, if the DOL requested the withholding, the CO must not reduce or release the withholding without DOL's written approval.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(c) Suspension of contract payments. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses, the agency, upon its own action or upon DOL's written request, must suspend any further payment, advance or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(d) Disposition of contract payments withheld or suspended:

(1) Forwarding wage underpayments to the AOC CFO. Upon final administrative determination, if the contractor or subcontractor has not made restitution, the CO must forward Standard Form (SF)1093, Schedule of Withholdings to the CFO. Attach to the SF 1093 a list with the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. The CO must indicate if restitution was not made because the employee could not be located. The AOC may assist underpaid employees in preparation of their claims. The CFO must submit the SF 1093 with attached additional data and the funds withheld (by check) to the Comptroller General (Claims Section).

(2) Returning withheld funds to contractor. When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, the CO shall return the funds to the contractor.

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

(4) Liquidated damages. Upon final administrative determination, the CO must coordinate with the CFO as to the proper disposition of withheld funds.

3.7.7. Cooperation with the Department of Labor

(a) The AOC shall cooperate with DOL representatives in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the DOL. When requested, the AOC shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a DOL representative undertakes an investigation at a construction project, the CO shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under labor standards statutes.

CHAPTER IV. REQUIRED SOURCES AND SMALL BUSINESS PROGRAM

4.1. AbilityOne Program

(a) The Javits-Wagner-O'Day Act (JWOD) created a procurement program (AbilityOne) that uses the government's purchasing power to create jobs and training opportunities for people who are blind or severely disabled. Under JWOD, it is mandatory for all federal agencies to purchase certain supplies and services from the AbilityOne Program. JWOD established a Committee to implement the AbilityOne Program. The Committee is responsible for determining those supplies and services to be purchased by the government and establishes prices for these supplies and services.

(b) The AbilityOne Program is a required source for all AOC purchases. Supplies and services available through the AbilityOne Program shall be purchased regardless of the dollar value of the procurement, including purchases made with an AOC Purchase Card.

(c) The Committee maintains a "Procurement List" of the supplies and services required to be purchased by the government from the AbilityOne program. The Procurement List is available at http://www.abilityone.gov. AbilityOne supplies and services can also be purchased from GSA Supply Catalogs, the GSA Advantage website, and the AbilityOne Supplies and Services Catalog.

4.2. Small Business Programs

4.2.1. Definitions

(a). "Industry" means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) code manual.

(b)"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards by the SBA.

(c) "Small business set-aside" means a procurement that limits the participation to small business concerns.

4.2.2. Relationship with the Small Business Administration (SBA)

The AOC shall:

(a) Apply the SBA's definitions of small business concerns and utilize the SBA's expertise in establishing size standards for AOC procurements.

(b) Comply with the SBA's size determinations, including accepting the SBA's Office of Hearings and Appeals (OHA) decisions and selection of a NAICS code when one is not selected or properly selected by the AOC.

(c) Comply with the SBA's decisions on protests concerning an offeror's representation as a small business concern.

(d) Accept the SBA's determinations of responsibility of a small business under the Certificate of Competency program.

(e) Comply with the SBA's determination of the eligibility of concerns to participate in a small business set-aside.

(f) Utilize the SBA's class waivers and individual contract waivers under the non-manufacturer rule.

4.2.3. Responsibilities

(a) The Chief, or Deputy Chief, AMMD is responsible for coordinating outreach activities to small businesses, program oversight of small business set-asides, providing training to the appropriate AOC staff, and for developing reporting mechanisms for measuring the AOC's accomplishments in small business contracting awards. The Small

Business Coordinator has the authority to approve or disapprove the use of other than small businesses for a specific requirement or class of requirements.

(b) COs and purchase cardholders, are responsible for using small business set-asides in compliance with this section.

4.2.4. Policy
(a) All small purchases exceeding $5,000, but $100,000 or less shall be set-aside for small business concerns unless one of the exceptions below applies. However, purchases shall be directed to small business concerns for purchases of $5,000 or less to the maximum extent practicable.

(b) Small business set-asides are not applicable to small purchases made to entities outside the United States and its territories or transfers of funds or payments to other government agencies, AOC indefinite-delivery contracts, federal agencies' government-wide indefinite-delivery contracts (GWACs), multi-agency contracts, and GSA Federal Supply Schedule (FSS) contracts.

(c) COs shall make reasonable efforts to identify and use small business concerns, including small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, and service-disabled veteran-owned small businesses for all procurements, including those not utilizing small business set-asides.

4.2.5. Small Business Sub-Contracting Plan
(a) All AOC contracts exceeding $650,000 for architect-engineer services or $1,500,000 for construction that are awarded to other than small businesses shall include in the solicitation the appropriate clause(s) shown in Appendix A.

(b) If a subcontracting plan is required, the award letter shall state that it must be submitted to the CO within a specified number of days following award of the contract.

(c) The CO shall provide a copy of any award letter that requires a subcontracting plan to the Small Business Coordinator.

(d) Upon receipt of any subcontracting plan, the CO shall review the document for compliance with the contract clause(s) noting any deficiencies, and then forward it to the Small Business Coordinator for review and final recommendations.

(e) Any deficiencies noted in the subcontracting plan shall be remedied by the contractor within 10 calendar days following notification by the CO.

(f) The SF 294, Subcontracting Report for Individual Contracts, is due in accordance with the terms of the contract and shall be submitted by the contractor to the CO. Upon receipt, the CO shall review the document for compliance with the contract clause(s) noting any deficiencies, and then forward it to the Small Business Coordinator for review and final recommendations. Any deficiencies shall be remedied by the contractor within 10 calendar days following notification by the CO.

4.2.6. North American Industry Classification System (NAICS) Codes and Size Standards
(a) The NAICS is a system of codes assigned by the U.S. Department of Commerce (DOC) to each major service and supply industry in the United States. The SBA establishes small business size standards on an industry-by-industry basis using the NAICS codes assigned by DOC. Size standards are based on revenue or number of employees. The NAICS code determines which businesses are considered small businesses and are permitted to participate in a procurement utilizing a small business set-aside.

(1) The current NAICS code manual with descriptions of each industry is available at: http://www.census.gov/eos/www/naics/index.html.
(2) The size standards assigned each NAICS code is available at: http://www.sba.gov/content/small-business-size-standards.

(b) All written Requests for Quotations (RFQs) for requirements exceeding the competition threshold and utilizing small purchase procedures must specify a NAICS code and corresponding size standard. All COs obtaining quotations orally must provide a NAICS code if requested by SBA or a vendor. For size standard purposes, a product or service is classified in only one industry whose definition best describes the principal nature of the product or service being acquired, usually the component which accounts for the greatest percentage of contract value. Procurements for supplies must be classified under the appropriate manufacturing NAICS code.

(c) Questions regarding the selection of NAICS codes in AOC procurements should be referred to the Small Business Coordinator.

(d) The CO's determination of the applicable NAICS code is final unless appealed to the SBA.

4.2.7. Non-Manufacturer Rule

States:

(a) A small business proposing to furnish a product that it did not manufacture must furnish the product from another small business manufacturer. The SBA has the authority to grant either a waiver or exception to the non-manufacturer rule.

(b) AOC small purchases exceeding $25,000 but $100,000 or less are subject to the non-manufacturer rule. SBA has excepted procurements from the non-manufacture rule if the procurement utilizes small purchase procedures and the anticipated cost of the procurement will not exceed $25,000. The exception permits small business concerns to provide any domestic firm's product.

(c) The SBA may issue a waiver for a class of products using the NAICS code for an industry.

(1) Current class non-manufacturer rule waivers may be found on the SBA website. If using an existing class non-manufacturer rule waiver, the CO must place a copy of the list of approved non-manufacturer waivers in the contract file.

(2) Waivers for a class of products may be requested by the Small Business Coordinator.

(d) An individual non-manufacturer waiver can be requested for a specific procurement. To request a waiver, the CO must submit the following information to the Small Business Coordinator.

(1) A definitive statement of the specific item to be waived and justification.

(2) The RFQ number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history.

(3) A determination by the CO that there are no known small businesses that provide or could be expected to provide the requested items. The determination must contain a narrative statement of the CO's efforts to search for small business providers of the item.

(4) The Small Business Coordinator shall submit the required information to the SBA for a determination.

4.2.8. Locating Small Business Sources

(a) Requisitioners and COs are responsible for the market research and documentation necessary to locate the small business sources needed to use a small business set-aside for an AOC procurement; however, the CO is ultimately responsible for ensuring compliance with the requirements of this AOC Order.

(b) AOC employees can utilize www.sam.gov to search for small businesses. AOC employees may utilize other available sources to locate small businesses for an AOC requirement; however, businesses identified by utilizing other sources must meet the federal size standard for a small business.

4.2.9. Procedures for Small Business Set Asides

(a) Small purchases exceeding $5,000 but $100,000 or less shall be automatically set aside for small business concerns unless:

(1) The requirement is a justified sole source procurement ; or

(2) Market research strongly indicates that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery; or.
(3) The market research indicates that no small business concerns possess the requisite capabilities; and
(4) An AOC Form 1901, Small Business Program Review has been approved.

(b) Requisitioners and COs shall afford small business concerns the maximum practicable opportunity to participate in AOC procurements by structuring their requirements so that:
(1) Delivery schedules are established that will encourage small business participation to the extent consistent with the AOC's requirements.
(2) The maximum amount of time practicable for submitting offers is allowed.
(3) Procurement information is furnished to all small businesses that express an interest.

(c) If a small business concern cannot be located for a requirement exceeding the competition threshold, the CO must complete AOC Form 1901, Small Business Program Review, and submit it to the Small Business Coordinator for concurrence prior to obtaining full and open competition or awarding to the identified sole source vendor. AOC Form 1901 and related documentation shall be maintained with the procurement file.

(d) Small Business Coordinator Review
(1) If the Small Business Coordinator concurs with the findings that the procurement cannot utilize a small business set-aside, the procurement can proceed with the soliciting of competition or awarding to the identified sole source vendor.
(2) If the Small Business Coordinator does not concur, the reason(s) for non-concurrence shall be provided in writing to the CO. The CO cannot proceed with the procurement when the Small Business Coordinator does not concur on the AOC Form 1901.
(3) Disputes between the CO and the Small Business Coordinator shall be decided by the Chief or Deputy Chief, AMMD.

(e) Offers
(1) If the CO receives only one acceptable offer from a responsible small business concern in response to a small business set-aside, the CO must make an award to that small business concern.
(2) If the CO receives no acceptable offers from responsible small business concerns the set-aside is automatically withdrawn. The requirement may be competed. Concurrence by the Small Business Coordinator is not required when no offers are received.
(3) Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, consult with the Small Business coordinator who will advise if SBA review is necessary.

4.2.10 Withdrawing a Small Business Set Aside.
(a) If, before award of an order involving a small business set-aside, the CO considers that award would be detrimental to the public interest (e.g., payment of more than a fair market price), the CO may request that the small business set-aside be withdrawn and the procurement solicited among all business types. However, the CO must submit AOC Form 1901, Small Business Program Review, to the Small Business Coordinator and include all relevant and pertinent information to support a withdrawal of the individual small business set-aside.

(b) If the Small Business Coordinator does not agree to a withdrawal, the matter shall be referred to the Chief Administrative Officer or his/her designee for resolution.

(c) All documentation relating to the withdrawal of a small business set-aside shall be maintained in the contract file.

4.2.11. Protesting a Small Business Representation
(a) To be eligible for award as a small business concern, a vendor must represent in good faith that it is a small

business at the time of its certification and representation. The CO shall accept a vendor's representation that it is a small business unless another vendor or interested party challenges the small business representation or the CO has reason to question the representation.

(b) Interested parties may protest the size status as represented by an offeror or request a formal size determination of an offeror. Formal size determination appeals shall be processed through the SBA. AOC COs must submit requests for formal size determinations to the AOC's Small Business Coordinator. The Small Business Coordinator is responsible for submission of the request for a formal size determination to the SBA.

(c) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination as to whether the offeror is a small business. Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and rejected by the AOC CO after receipt of an SBA determination on the size status.

(d) A CO may proceed with awarding a procurement after protest of a small business issue. However, the SBA must be notified of the intent to proceed prior to award of the order. The CO shall notify the Small Business Coordinator of the intent to proceed with award at least five workdays prior to award of the order. The Small Business Coordinator is responsible for notifying the SBA.

4.2.12. Recordkeeping and Reporting Requirements

(a) The size representation provided by vendors is entered into the Financial Management System, (FMS) vendor database. Any discrepancies between socio-economic data obtained from the contractor when compared to sam.gov must be reported to the Small Business Coordinator for resolution.

(b) COs shall comply with any data collection and reporting instructions necessary to measure the AOC's small business accomplishments. In general, the methodologies used shall be automated to the fullest extent possible. The Small Business Coordinator has the authority and responsibility for issuing any data collection and reporting instructions.

CHAPTER V. CONTRACT FUNDING & PAYMENTS

5.1. Funding Requirements

No obligation shall be created or authorized in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. Before executing any contract, the CO shall:

(a) Obtain written assurance from responsible fiscal authority that adequate funds are available or expressly condition the contract upon availability of funds in accordance with the availability of funds clause in the contract.

(1) If the contract is fully funded, funds are obligated to cover the price of a fixed-price contract or the estimated cost and fee of a cost-reimbursement contract.

(2) If the contract is incrementally funded, funds are obligated within the limits of appropriated funds.

5.1.1. Contracts Conditioned Upon Availability of Funds

(a) Fiscal year contracts. The CO may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes the appropriate clause shown in Appendix A. This authority may be used only for operation and maintenance and continuing services (e.g.,rentals, utilities, and supply items not financed by stock funds):

(1) Necessary for normal operations.

(2) For which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) Indefinite-quantity or requirements contracts. A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided, that:

(1) Any specified minimum quantities are certain to be ordered in the initial fiscal year.

(2) The contract includes the clause, Availability of Funds for the Next Fiscal Year.

(c) Acceptance of supplies or services. The government shall not accept supplies or services under a contract conditioned upon the availability of funds until the CO has given the contractor notice, to be confirmed in writing, that funds are available.

5.1.2. Contracts Crossing Fiscal Years

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year.

(b) The AOC may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year. This may include contracting for training requirments. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

5.1.3. Limitation of Cost or Funds

(a) When a contract is approaching the estimated cost of the contract or the limit of the funds allotted, the CO shall promptly obtain funding and programming information pertinent to the contract's continuation and notify the contractor in writing that:

(1) Additional funds have been allotted, or the estimated cost has been increased in a specified amount.

(2) The contract is not to be further funded and that the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract.

(3) The contract is to be terminated.

(4) The government is considering whether to allot additional funds or increase the estimated cost:

(i) The contractor is entitled by the contract terms to stop work when the funding or cost limit is reached.

(ii)Any work beyond the funding or cost limit will be at the contractor's risk.

(5) Upon learning that a partially funded contract will receive no further funds, the CO shall promptly give the contractor written notice of the decision not to provide funds.

(b) Under a cost-reimbursement contract, the CO may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the CO shall ensure availability of funds for directed actions. The CO may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation that may result in civil or criminal penalties.

5.2. Payments

5.2.1. Considerations for Progress Payments

(a) Progress payments may be made on the basis of delivered supplies or accepted deliverables under service contracts and construction contracts. Progress payments may include:

(1) Payments based on the percentage of completion accomplished.
(2) Payments for partial deliveries accepted by the government.
(3) Partial payments for a contract termination proposal.

(b) The CO shall include the clause or provision appropriate to contract type in all solicitations and an updated project schedule shall be included with the invoice for projects over $500,000.00.

5.2.2. Retainage

(a) Retainage is defined as a contractually agreed upon dollar amount or percentage of a payment(s) to be withheld from progress payments as security for the contractor's performance over the life of a construction or architect-engineer contract or until specific terms/milestones are met. Retainage stipulations and amounts are in the payment clauses of the contracts and mandatory in contracts for construction and architect-engineer services. Retainage provides the agency with leverage to ensure that all items of work are completed satisfactorily. Throughout the contract, payments are processed and amounts are retained (withheld) from each payment. The payment terms do permit some discretion regarding release of retainage and may permit the CO, with input from the COTR to release the entire retained amount or a portion of the retained amount. However, retainage cannot be increased or decreased by the CO without written notification to the contractor on the reason for increasing or decreasing the amount of retainage.

(b) Construction contract retainage.

(1) Construction contract payment terms require that if satisfactory progress was achieved during any period for which a progress payment is to be made, the CO shall authorize payment in full.
(2) If the contractor has not made satisfactory progress, the CO may retain a maximum of 10 percent of the payment amount until satisfactory progress is made.
(3) When the work is substantially complete, the CO may retain from previously withheld funds and future progress payments an amount the CO considers adequate to protect the AOC and release to the contractor the remaining withheld funds.
(4) Upon completion and acceptance of the contract work, payment shall be made for the completed work without retainage.

(c) Architect/Engineer (A/E) Contract Retainage

A-E contracts contain a clause that provides for a 10 percent retainage of each payment to the contractor. AOC employees involved in approving/certifying payments shall ensure that the correct retainage is provided for in payments under A-E contracts.

(d) Process for Releasing Retainage

(1) Generally, the contractor must request in writing to the CO that retainage be released including the amount that the contractor is seeking to be released.
(2) The CO and the COTR then review the contractor's request to determine if it is reasonable in whole or in part.

The following questions should be asked to determine if releasing retainage is appropriate:

(i) Does the release of retainage prior to substantial completion place the AOC at risk?
(ii) Does the release of retainage impair the AOC's ability to or leverage in obtaining completion of the contract?
(iii) Were previous performance milestones achieved satisfactorily and on time?
(iv) Are there indications that the contractor may not finish the remaining work?
(v) If the project is substantially complete, is there adequate retainage to cover the value of any remaining items? If deficient work exists, is there adequate retainage to cover the value of correcting this work?

(3) If determined to be reasonable, the CO shall notify the contractor in writing. The release may be reflected on the contractor's next invoice. The CO can notify AOC Accounting that release of retainage is authorized by signing the payment request or sending accounting a copy of the contractor notification.

5.3. Contract Debts

5.3.1. General

Contract debts arise in various ways. The following are some examples:

(a) Damages or excess costs related to defaults in performance.
(b) Breach of contract obligations concerning progress payments, or government-furnished property.
(c) Government expense of correcting defects.
(d) Overpayments related to errors in quantity or billing or deficiencies in quality.

5.3.2. Responsibilities and Cooperation Among AOC Officials

(a) To protect the AOC's interests, COs, disbursing officials and auditors shall cooperate fully with each other to:

(1) Discover promptly when a contract debt arises.
(2) Ascertain the correct amount of the debt.
(3) Act promptly and effectively to collect the debt.
(4) Administer deferment of collection agreements.
(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, the CO, in coordination with the CFO, has the primary responsibility for determining the amounts of and collecting contract debt.

5.3.3. Debt Determination and Collection

(a) If a contract debt arises, the CO, in coordination with other AOC officials shall determine promptly whether debt is due the AOC and the amount. Any unwarranted delay may contribute to:

(1) Loss of timely availability of the funds to the project for which the funds were initially provided.
(2) Increased difficulty in collecting the debt.
(3) Actual monetary loss to the AOC.

(b) In determining the contract debt amount, the responsible official shall fairly consider both the government's claim and contractor claims against the government. This determination does not constitute a settlement of such claims, nor is it a CO's final decision.

(c) The AOC Chief Financial Officer is responsible for controlling records for each contract debt and procedures for tax credit, contract debt negotiation, pricing agreement with refund, payment demand of contract debt, withholding and setoff, collection deferment, and interest charges and credits.

5.4. Assignment of Claims

5.4.1. General

The Assignment of Claims Act of 1940 (31 U.S.C. § 3727, 41 USC § 6305) permits contractors to assign claims against the government for monies due or to become due to a bank, trust company, or other financing institution. The Act also protects assignees from assuming the assignor's liability, and prevents the government from collecting on any

such liability from the assignee.

5.4.2. Conditions Governing the Assignment of Claims
(a) The Act permits the assignment of funds due under a contract provided:
(1) The contract provides for payment aggregating $1,000 or more.
(2) Payments are assigned to a bank, trust company, or other financing institution, including federal lending agencies.
(3) The contract does not forbid assignment.

(b) An assignment may be made to only one party and shall cover all amounts payable under the contract, which have not already been paid. Any assignment may be made to one party as agent or trustee for two or more parties participating in the financing. In accordance with the statute, there shall be no further assignment unless expressly permitted by the contract.

5.4.3. Contract Clause
The CO shall include the "Assignment of Claims" clause in all contracts by reference.

5.4.4. Filing Notice of Assignment
The assignee must send four signed copies of the assignment notice to the CO, together with one true copy of the assignment instrument (a certified true duplicate or a photo static copy of the original).

5.4.5. Procedures Upon Receipt of Notice of Assignment
(a) The CO will examine the notice of assignment, instrument of assignment, and the contract involved to determine that the assignment is in proper form, has been properly executed, and that the contractor is empowered under the contract to make the assignment. If these conditions are not met, or if post award payment processing has been initiated by the AOC Accounting Division on single bid purchase orders, the CO will return the assignment documents to the assignee with an explanation of the objections to the proposed assignment.
(b) If the assignment conditions are met, the CO will indicate the assignment in the contract file.
(c) The CO shall then forward the assignment documents to OGC for review. If OGC has a legal objection, the CO shall return all assignment documents to the assignee with an explanation of the legal objection. The CO shall then forward the assignment papers to the AOC Accounting Division.

5.4.6. Further Assignment and Reassignment
Contracts which permit assignment of claims also permit the further assignment and reassignment by the assignee to another bank, trust company or other financing institution under the "Assignment of Claims" clause. Copies of a written notice of further assignment and reassignment and the copy of the instrument shall be processed in the same manner as the initial notice of assignment.

5.4.7. Transfer of Businesses and Corporate Mergers
Transfers of an entire business, corporate mergers, and assignments by the operation of law, each of which may affect the assignment of claims under a contract, are not governed by the Assignment of Claims Act of 1940. Assignment notices of claims under the contract made by the transferee should not be acknowledged until the CO obtains a certified copy of the document evidencing the transfer.

CHAPTER VI. PUBLICIZING CONTRACT ACTIONS

6.1. Policy
The FedBizOpps System (FBO) is the government-wide system for publicizing federal procurement opportunities and is available at www.fbo.gov. COs publicize procurements to:
(a) Increase competition.

(b) Broaden industry participation in meeting government requirements.

(c) Assist small business concerns in obtaining contracts and subcontracts.

6.2. Procedures
(a) Pre-Solicitation Notices/Synopses shall be published on FBO for all full and open procurement actions for supplies, services, professional services, construction and A-E services expected to exceed $100,000. For A-E services, publication is based on the total fee, including phases and options. The CO shall upload/attach all pertinent documents necessary for the proper advertisement of the procurement opportunity, except construction drawings for security reasons. Construction solicitations shall state the magnitude of the requirement including physical characteristics and estimated price range at the CO's discretion and approved by AMMD leadership.

(b) Solicitations shall be advertised on FBO 15 calendar days following Synopses.

(c) Notices of award shall be published within five days after award when the contract amount exceeds $100,000 and the contract action was synopsized on FBO.

(d) COs may allow vendors to add themselves to the "interested vendors list" for an opportunity, and review other interested vendors who have expressed interest in the opportunity. This is particularly helpful to small businesses that wish to sub-contract for construction projects.

(e) FBO archiving timelines shall be determined by the CO.

6.3. Exceptions
COs are not required to publicize procurement actions when:
(a) The amount does not exceed $100,000.00.

(b) Public exigency requires immediate delivery or performance.

(c) Only one source is available and is supported by a Determination & Findings.

(d) The services, equipment or construction are for security purposes.

(e) The services, equipment or construction are for fire protection and the procurement is being conducted under the approved class D&F authorizing the use of small purchase procedures regardless of dollar amount.

(f) The acquisition is made from an IDIQ contract, Government-Wide contract (e.g., Utilities Area Wide vehicles, GMACs, GWACs, contracts from other agencies) or GSA Federal Supply Schedule (FSS) contract.

CHAPTER VII. SMALL PURCHASES

7.1. General Principles
This chapter contains small purchase procedures for award of procurements not to exceed $100,000.00

7.1.1. Competition
The AOC promotes competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the government.
(a) The AOC will not:
(1) Solicit quotations based on personal preference.
(2) Restrict solicitations to brand name products.

(b) If using small purchase procedures and not publishing a synopsis on FBO, maximum practicable competition can be obtained by soliciting at least three quotations or offers from local sources.

(c) Competition is not required for:
(1) Purchases of $5,000 or less.
(2) Purchases that exceed $5,000 with a valid sole source justification.

(d) AOC personnel shall not split a requirement exceeding $5,000 into multiple requisitions to circumvent competition requirements.

(e) Purchases under $5,000 must be determined to have a fair and reasonable price and it is recommended that the same or similar requirements purchased over a period of time be equally distributed among qualified suppliers to the maximum extent practical.

(f) The Request for Small Purchase Form shall be used to document the identification of an agency need and management's approval of its purchase.

7.1.2. Basis for Award
When soliciting quotations or offers, the AOC will notify potential quoters or offerors of the award basis (price alone or price and other factors, e.g., past performance and quality). Generally, low price will be the determining factor; however, at the AOC's discretion, other acquisition strategies may be used.

7.1.3. Sources
When soliciting price quotations, COs must limit their requests for quotes to small businesses in accordance with section 4.2, Small Business Programs.

7.1.4. Requests for Quotes (RFQs) Under $25,000.00
Jurisdictions/organizations have the authority to issue RFQs for supplies provided:
(a) The RFQ is in writing and sent to at least three vendors.

(b) The RFQ documentation complies with the requirements of this chapter, contains the appropriate NAICS code and business size standard, and includes all required small purchase terms and conditions.

(c) Jurisdiction personnel coordinated with their assigned CO for guidance and assistance in preparing the RFQ.

(d) The RFQ does not exceed $2,000.00 for construction or $2,500 for services.

7.1.5. Small Purchase Procedures
(a) For supplies or services, the solicitation of at least three qualified, independently competing vendors whose principal line of business is in the industry in which the supplies or services are normally found.

(b) If practicable, one or more source(s) not included in previous procurements for the same or similar supplies or services should be included in the RFQ source list.
(c) Written RFQs are mandatory for procurements expected to exceed $5,000.00.

(d) Requisitions for services shall also include:
(1) Certification of Non Personal Services.
(2) Independent Government Cost Estimate (IGCE).
(3) SOW.

(e) A copy of all written quotes shall be maintained in the Jurisdiction's file for that requisition. The RFQ and resulting quotes shall be forwarded to the CO as part of the requisition package.

(f) All procurements over $5,000.00 require a determination by the CO, or a cardholder on a purchase card transaction, that the prices submitted by the vendor selected for award are fair and reasonable.

(g) The table below provides requirements that must be included in RFQs and requisitions.

REFERENCE TABLE FOR SMALL PURCHASES

Activity	**Required in RFQ**	**Required in Requisition**
The identification of the account(s) to which the purchase is chargeable.	No	Yes
The electronic approval or signature of the Jurisdiction/organization's official authorized by the Architect of the Capitol and budget policies and procedures to commit and certify that account.	No	Yes
A reasonable delivery date that allows time for AOC processing of the order and includes starting and ending dates and any applicable milestones to be achieved during performance.	Yes	Yes
An itemized list of the supplies or services required, including a complete and accurate description of the supplies or services, the quantity of each item or service, and the unit to be used for pricing, e.g., "each", "box", "case", "hour", etc.	Yes	Yes
The location where the supplies are to be delivered or the services are to be performed.	Yes	Yes
A SOW, plans and/or specifications, as applicable.	Yes	Yes
For noncompetitive procurements exceeding $5,000, a sole source Justification certified and signed by the Jurisdiction/organization's official authorized by the Architect of the Capitol and budget policies and procedures to commit and certify that account.	No	Yes
For procurements exceeding $5,000 but $25,000 or less, all vendor quotations received by the jurisdiction/organization.	No	Yes
For supplies, a request for information on the vendor's normal shipping terms, i.e., F.O.B. origin or F.O.B. destination, and if shipping/handling costs can be charged separately, an actual cost or best estimate of the shipping/handling charges.	Yes	Yes
For supplies, inclusion of the Buy American Act clause.	Yes	No
For construction exceeding $2,000, a statement on the applicability of the Construction Wage Rate Requirements statute and any required wage determinations.	Yes	Yes

For services exceeding $2,500 (excluding construction and professional services), a statement on the applicability of the Service Contract Labor Standards and any required wage determinations.	Yes	Yes
For construction exceeding $25,000, a requirement for payment, and performance bonds.	Yes	Yes
For construction exceeding $50,000, the liquidated damages in the amounts as required by statute.	Yes	Yes
If the supplies or services are on an existing Federal Supply Schedule contract or other indefinite-delivery contract awarded by an agency other than the AOC, the vendor's contract price, terms, conditions, and contract number.	Yes	Yes
AOC security procedures for supplies and/or individuals.	Yes	Yes
Any warranty provisions required by the AOC and/or offered by the vendor.	Yes	Yes
If trade-in of existing AOC equipment is desired, a description of the existing equipment and a request for any trade-in value offered by the vendor.	Yes	Yes
If travel by vendor employees is required, a notice that Federal Travel Regulations apply to travel charges and a requirement for the vendor to specify the travel charges, including the number of people and days.	Yes	Yes

7.2. Transportation

7.2.1. F.O.B. Destination

All transportation expenses incurred in the delivery of the finished product shall be borne by the contractor. F.O.B. Destination shall be used to the maximum extent on all contracts and purchase orders in order to minimize risk of loss to the AOC.

7.2.2. Delivery Vehicle Instructions

Delivery Vehicle Inspection Requirements are required for quotes, solicitations and resulting purchase orders, delivery orders and contracts, when the SOW or specifications require contractor delivery of equipment or materials to the job site or point of destination.

7.3. Purchase Card Program

7.3.1. Program Objectives

It is AOC policy that a purchase card shall be used for all small purchases below the competition threshold except when the particular vendor supplying the goods or services does not accept government purchase cards. The purchase card can also be used as a payment method specified by the contract terms. All AOC jurisdictions, and all other AOC organizational divisions, shall ensure a staff member under their supervision use a government purchase card to conduct purchases under the AOC competition threshold. Purchase cards provide AOC personnel a streamlined method of ordering and paying for supplies and services. Additional objectives are to reduce administrative costs, avoid unnecessary burdens for ordering activities and contractors, and promote efficiency.

7.3.2. Responsibilities

(a) The Chief, AMMD, is the Agency Program Manager (APM) and is authorized to delegate the authority to use the government purchase card and incur obligations under AOC appropriations. The APM is responsible for the AOC's purchase card program, including purchase cards, travel cards and fleet cards. The APM has the authority to approve card issuance and cancellation, changes to card limits and Merchant Category Code (MCC) groupings, and to delegate authority to administer the program to the Agency Program Coordinator(s).

(b) The Agency Program Coordinator (APC) is responsible for the day-to-day purchase card program management and is the agency's primary point of contact. The APC is also responsible for implementing policies and procedures for the purchase card program. This position is located in the AMMD. The APC maintains all forms and documents necessary to manage the purchase card program.

(c) The Approving Official (AO) is responsible for reviewing the cardholder's monthly statement for accuracy and appropriateness of purchase and ensuring that:
(1) Purchase card transactions meet the legal requirements for authorized purchases.
(2) Adequate documentation is available for individual transactions.
(3) Documents for payment are complete and accurate.
(4) Appropriate action is taken to prevent two or more payments for the same transaction.
(5) Dispute procedures are properly implemented when transactions are questioned.
(6) The cardholder reconciles the statement within the time frame established by the AOC's Accounting Division.

(d) The cardholder is an AOC employee who is issued a purchase card. The cardholder is responsible for purchasing goods and services with the card in accordance with applicable laws and regulations, including AOC policies and procedures regarding authorized small purchases, record keeping, and reconciling and paying of the statement of account. This authority terminates upon the employee's separation from the agency or cancellation of the card by the APM or his/her designee.

7.3.3. Controls
(a) Cards. Each card will have monetary limits on both individual and monthly purchases. Transactions that exceed either of these limits will automatically reject the attempted purchase. Additional controls may be included as needed or offered by the bank.

(b) Merchant Category Codes (MCC's). The bank assigns each vendor an MCC that represents the vendor's general or specific industry. The APC develops MCC groups that are appropriate for the cardholder's use to limit the types of merchants a cardholder may properly utilize.

(c) Training. Each cardholder and the AO must complete required training before being issued a card. The APM may waive training requirements for six months during which documentation indicating the fulfillment of the required training can be provided or the card will be cancelled, however, the APM does not have the authority to waive the "appropriations law" training required by the AOC Chief Financial Officer. Every five years the cardholder/AO is required to take refresher training in appropriations law. Required training is indicated on the AMMD form used to apply for a government purchase card.

(d) Organizations/jurisdictions must not have only one individual conduct the purchase card activities (requesting, ordering, receiving, reconciliation of monthly statement and approving of monthly statement) to ensure that the card is used for legitimate AOC purchases. At a minimum, the cardholder may not make the purchase request or review/sign the statement. The purchase requestor or the AO must sign and date the receiving documentation and keep it in the purchase card file.

(e) Conduct of Cardholders. Conduct of the cardholders shall be governed by AOC Standards of Conduct and Government Ethics. Cardholders are prohibited from soliciting or accepting gifts or anything of value from a nongovernmental entity which does business or is seeking to do business with the AOC.

7.3.4. Card Security
(a) Safeguarding cards. Cardholders must safeguard their cards and account numbers and never allow anyone else to use them. When not in use, cards and other documents containing the purchase card number must be secured in a secure area with access limited to the cardholder and AO.

(b) Lost or Stolen Cards. If a card is lost or stolen, the cardholder must immediately notify the bank and the APC so

the card can be cancelled. The bank will mail a new card with a new account number within two business days of the reported loss or theft. If a card is subsequently found, the cardholder shall return it to the APC for destruction.

(c) Separation of Cardholder or Cancellation of the Card. If the cardholder leaves the agency or changes to a position that does not require a card, the cardholder must surrender the card to the APC for destruction. The cardholder's AO is ultimately responsible for notifying the APC that the cardholder is leaving the agency or changing to a position that does not require a card. Notification must be made prior to the cardholder's departure or change of position.

(d) Card Changes. To change the cardholder information, e.g., location, authorization limits, etc., in the bank's master file, the APC shall transmit an account maintenance change to the bank. The bank makes changes within one day of receipt of the information.

7.3.5. Card Issuance
(a) To request a purchase card for an employee, Jurisdiction heads shall complete and submit AOC Form 3413-01, Application for a Government Purchase Card, to the APM. The Jurisdiction head may suggest both single and monthly limits; however, the APM may change and approve different limits than those requested. The form must be accompanied by documentation of the required training. If approved by the APM, the APC will request a card from the bank.

(b) Upon receipt of the card from the bank, the APC will notify the prospective cardholder of arrival of the card and provide the "Architect Of The Capitol Certification And Issuance Of A Purchase Card" form. The prospective cardholder then must arrange for training and orientation with the Financial Systems Division, followed by procurement purchase card training by the APC. Upon completion of both of these training sessions the prospective cardholder will be issued the purchase card. The cardholder is responsible for activating the card after issuance.

7.3.6. Using the Government Purchase Card
(a) The purchase card may be used, within specific limitations, to procure goods and services needed in the day-to-day operation of the organization, provided the cardholder has the authority and funding. Purchase card transactions must be distributed equitably among qualified suppliers. The purchase card may be used as payment for procurement of over-the-counter goods or by a telephone order. When using a purchase card, the cardholder must inform the merchant that it is for official U.S. government purposes and, therefore, not subject to state or local taxes. If the merchant refuses to waive the state or local tax, the cardholder may place the order and include the state or local tax.

(b) All purchase card procurements must first have a written and signed request for small purchase form submitted from the employee requiring the goods or services. Additionally, the order must be entered and approved in FMS prior to placing the order for each purchase. Cardholders are also required to enter the vendor ID, AOC part numbers for those items being purchased for inventory, or a short description for those items not being inventoried.

(c) The jurisdiction that uses a purchase card is responsible for performing the "receiving" function for those goods and/or services ordered. If the shipping destination is different than the jurisdiction's office location, an official at the destination office can confirm receipt by fax or in writing to the jurisdiction. All steps from requesting the purchase card transaction through payment authorization are the responsibility of the cardholder/organization. In addition, the requestor or the AO must sign and date the receiving documentation and keep it in the purchase card file.

(d) Cardholders must solicit prompt payment discounts whenever available, as vendors normally receive payment from the bank within three days of the date the purchase card transaction is processed by the vendor.

(e) All items must be readily available. *Back ordering is prohibited*. The vendor must be able to provide the required supplies or services within 30 calendar days from the date of the order.

7.3.7. Unauthorized Card Use
(a) The following are unauthorized uses of the card:

(1) Cash advances, money orders or travelers checks.
(2) Splitting requirements into several purchases to avoid the cardholder's delegated single transaction purchase card limit or procurement regulations, policies or laws.
(3) Purchases for personal use.
(4) IT Equipment and Software, unless delegated authority by ITD.
(5) Long term (exceeding one month) motor vehicle lease/rental.
(6) Lease/rental of office equipment.
(7) Furniture and furnishings, except those jurisdictions with funding authority.
(8) Telecommunications services and equipment, unless specifically authorized.
(9) Construction over $2,000.00 or services over $2,500.00.
(10) Use of the government purchase card for proof of identity when making non-government purchases.
(11) Long-term (exceeding one month) equipment lease/rental, including construction equipment, and storage trailers.
(12) Repair of leased GSA vehicles.
(13) Utilization of store credit for personal use. All utilization of store credit requests must be submitted to the AMMD Chief for approval. Documentation will be required to be provided that ensures the store credit was utilized for the benefit of the AOC.
(14) Charges to any U.S. Supreme Court account, except those cardholders that have specific authority.

(b) Penalties for Unauthorized Card Use. Indicators of personal use will be immediately reported to the OIG. In the event of an unauthorized or inappropriate purchase or failure to follow this policy the APM has the authority to cancel the card. The cardholder may also be personally liable for any cost resulting from a violation of these policies and procedures.

7.3.8. Disputes
Disputes regarding inappropriate charges, non-receipt of items, etc., shall be processed in accordance with the bank's disputes procedures. Cardholders shall notify the APC if the bank is not complying with the established disputes procedures.

7.3.9. Reconciliation of Statement
(a) Cardholders are responsible for downloading their monthly statements from the bank website and reconciling each Statement of Account. The cardholder shall retain all receipts and other transaction documentation to facilitate reconciliation. If documentation is not available, the cardholder shall annotate the Statement of Account or invoice, recording all pertinent information. Additionally, the cardholder and the AO shall review and ensure that all transactions on the Statement of Account or invoice are appropriate. The cardholder and AO shall sign and date the Statement of Account.

(b) All reconciliation procedures and processes are determined by the AOC Accounting Division. Questions regarding the reconciliation process shall be directed to the Accounting Division. Cardholders are required to reconcile all statement activity by a date determined by the AOC Accounting Division.

7.3.10. Record Keeping Requirements
(a) All purchase card orders and supporting paperwork shall be kept in file folders, filed by fiscal year, and placed in consecutive order by the purchase card order number. All required documentation for each order must be attached to the order. At a minimum, print a copy of the Purchase Card Transaction/Order with all supporting paperwork, (i.e., sales receipts, packing slips, screen print of electronic purchases, training request form, training evaluation form, etc.) for review and auditing purposes. If the Purchase Card Transaction/Order is amended, the original printout and all subsequent amendments to the order must be printed out and kept in the file.

(b) Statement of Accounts signed by both the cardholder and the AO must be maintained for a period of time in accordance with the AOC Record Retention Policy.

(c) A checklist can be found on the AMMD intranet site and is titled "Purchase Card Checklist". The checklist is not mandatory, but serves as a useful tool to the cardholder to ensure that the acquisition is in compliance with all applicable AOC policies and procedures. The checklist may be made mandatory for a particular jurisdiction/division if a less than satisfactory rating is received on the annual reviews conducted by AMMD.

7.3.11. Review Reports

A purchase card review will be performed by AMMD on each cardholder's files on an annual basis. Reviews will check for compliance with this manual, other applicable AOC policy and all applicable laws.

(a) Purchase Card Review reports will be issued following the actual on-site review.

(b) Each review will be given one of the following ratings:

(1) Satisfactory. The activity or individual typifies AOC policies or procedures. Some areas may be commendable, and some improvements may be necessary.

(2) Marginal. The activity or individual is minimally acceptable and deficient in application of AOC policy and procedures. A marginal rating is assigned when an activity or functional area is "less than fully satisfactory" but demonstrates the potential for self-improvement. This rating may be used if file documentation is lacking. A change in purchase card authority may be authorized at the APM's discretion. A follow-up review 60 days after the report is issued is required after receipt of a marginal rating. If the follow-up review does not indicate that the deficiencies found in the initial review have been corrected the rating will be downgraded to unsatisfactory. If the deficiencies have been corrected the rating will be upgraded to satisfactory.

(3) Unsatisfactory. The activity or individual is incapable or unwilling to apply AOC policies and procedures. A change in the purchase card authority must be part of any unsatisfactory review which will be approved by the AMMD Chief. A follow-up review is required in sixty days and a second follow-up review in six months from the date of the issuance of the original report.

(i) Following any rating of unsatisfactory, within thirty (30) days, the card holder's jurisdiction is required to submit a Plan of Action to the Chief, AMMD, for review and approval. The Plan of Action will address all issues found during the review and will provide a process of checks and balances to ensure that deficiencies do not occur again. Failure to submit an approved Plan of Action will result in a reduction of purchase cards and/or buying authority for the jurisdiction. Once a Plan of Action has been reviewed and approved by the Chief, AMMD, it shall be distributed to all personnel involved in the purchase card process.

(c) Purchase cards are subject to OIG and auditor review. Copies of all paperwork shall be provided to the OIG within a reasonable time.

7.4. Items Purchased for Resale in the Gift Shops

(a) Items intended for resale in AOC Gift Shops generally undergo a multi-layered review and approval process before they are purchased with Curators from the House, Senate and the AOC; Staff of the House and Senate Oversight Committees; Librarians for the House and Senate and/or Historians from the House, Senate and AOC.

(b) The Gift Shop retail items must be made in the United States. The Gift Shop Manager and staff must conduct market research to identify sources, including attending trade conferences and reviewing trade magazines and vendor catalogs.

7.5. Blanket Purchase Agreements (BPA)

7.5.1. General

A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply.

(a) BPAs should be established for use by the AOC jurisdictions responsible for providing supplies or services for its own operations or for other offices or functions.

(b) Using BPAs does not exempt the AOC from keeping obligations and expenditures within available funds.

7.5.2. Conditions for Use

(a) The following are circumstances under which COs may establish BPAs:

(1) There are a variety of items in a broad class of supplies or services that are frequently purchased, but the exact items, quantities and delivery requirements are not known in advance and may vary.

(2) There is a need to provide commercial sources of supply or service for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid writing numerous purchase orders.

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(b) After determining whether a BPA would be advantageous, COs shall:

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes.

(2) Consider suppliers whose past performance was dependable, who offer quality supplies or services at consistently low prices, and who have provided numerous purchases at or below the small purchase threshold.

(c) BPAs may be established with:

(1) More than one supplier for the same type of supplies or services to provide maximum practicable competition.

(2) Federal Supply Schedule contractors, if consistent with the applicable schedule contract terms.

(d) BPAs should be prepared, after contacting suppliers to make the necessary arrangements for:

(1) Securing maximum discounts.

(2) Documenting individual purchase transactions.

(3) Periodic billings.

(4) Incorporating other necessary details.

(e) COs must comply with competition requirements when establishing blanket purchase agreements.

(f) BPAs must be pre-priced and include quantity discounts when applicable.

7.5.3. Preparing BPAs

The following statements shall be included in the BPA:

(a) The supplier shall furnish supplies or services, described in general terms, if and when requested by the CO (or the authorized representative of the CO), during a specified period and within a stipulated aggregate amount, if any.

(b) The AOC is obligated only to the extent of authorized purchases actually made under the BPA.

(c) Specifies the dollar limitation for each purchase under the BPA.

(d) Individuals authorized to purchase under the BPA, identified either by title or by individual, organizational component, and the dollar limitation per purchase for each position title, individual or organization.

(e) Shipments under the agreement, except those for newspapers, magazines or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

(1) Name of supplier.

(2) BPA number.

(3) Date of purchase.

(4) Call number.

(5) Itemized list of supplies or services furnished.

(6) Quantity, unit price and extension of each item, less applicable discounts (unit price and extension need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(7) Date of delivery or shipment.

(8) Invoices.

7.5.4. Limitations on Use of BPAs
(a) Use BPAs only for purchases that are otherwise authorized by law or orders.

(b) Individual purchases shall not exceed the small purchase threshold. A waiver of this limitation may be made on a case-by-case basis by the AMMD Chief.

(c) The existence of a BPA does not justify purchasing from only one source.

(d) When there is more than one BPA for specific supplies or services, rotate BPA purchases among suppliers.

7.5.5. BPA Reviews
The COs or their designated representatives shall:
(a) Review a sufficient sample of BPA files at least annually to ensure that authorized procedures are being followed and updated when necessary.

(b) Maintain awareness of changes in market conditions, sources of supply and other pertinent factors that may warrant writing BPAs with different suppliers or modifying existing BPAs.

CHAPER VIII. TYPES OF CONTRACTS

8.1. Selecting Contract Types

8.1.1. General

(a) Multiple contract types are available to the AOC to provide needed flexibility in acquiring supplies and services. Contract types vary according to:

(1) The degree and timing of the contractor's responsibility for the performance costs.
(2) The amount and nature of the contractor's profit incentive for achieving or exceeding specified standards or goals.

(b) Negotiated contracts can be of any type that will promote the AOC's interest. Generally, selecting a contract type is within the CO's reasonable discretion. Some factors that a CO should consider in selecting the contract type are:

(1) Availability of price competition.
(2) The accuracy of price or cost analysis.
(3) The type and complexity of the requirement.
(4) Urgency of the requirement.
(5) Period of performance or length of production run.
(6) Contractor's technical capability and financial responsibility.
(7) Adequacy of the contractor's accounting system.
(8) Concurrent contracts.
(9) Extent and nature of proposed subcontracting.
(10) Acquisition history.

(c) The cost-plus-a-percentage-of-cost contract shall not be used because it assures the contractor greater profits if it incurs greater costs, which does not provide an incentive to keep costs down. A contract clause prohibiting cost-plus-a-percentage-of-cost contract shall be included in all prime contracts (including letter contracts) other than firm-fixed-price contracts.

8.1.2. Fixed Price Contracts

(a) Firm Fixed Price contracts provide a set price (occasionally adjustable as described below) for the contractor that is not subject to adjustment based on the contractor's cost experience on the contract. Firm Fixed Price contracts should be used when a fair and reasonable price can be established at the outset. This contract type is preferred because it encourages the contractor to contain costs.

(b) Fixed Price with Economic Price Adjustment (EPA) contracts provide for an upward or downward revision of the stated contract price when specified contingencies occur. Fixed Price with EPA contracts are used to protect the contractor and the government against significant economic fluctuations in labor or material costs during the contract performance period beyond the contractor's control. EPA contracts are based on established catalog or market prices, actual costs, or cost indices of labor or materials, which are specifically identified in the contract. The contract also shall specify the methods for the contractor to submit price adjustments and the CO's review process.

(c) Fixed Price/Level of Effort contracts are used to purchase a specified level of effort over a stated period of time, i.e., a specific number of hours to be performed in a specified period. This type of contract is not commonly used.

(d) Fixed Price Incentive contracts are used when the parties can negotiate a target cost, target profit and a ceiling price that provides for the contractor to assume an appropriate share of the risk. Incentive contracting is an integral part of a contract type discussion conducted during planning for many acquisitions. For example, incentive contracting is only permitted when other contract types do not sufficiently focus contractor efforts and discourage waste. It is never the "default" selection. When appropriately used, an Incentive, Award Fee or Award Term allow the CO to further address risk concerns for key acquisition objectives. Another major condition for incentive contracting - the anticipated benefit derived from the use of an incentive - must outweigh the estimated cost. The true cost of an incentive is more than just the incremental profit/fee used to motivate a contractor. Each incentive type has its own administrative burden that

drives cost. That is why the Head of the Contracting Activity (HCA) must sign a Determination and Finding (D&F) to substantiate that incentive contracting is in the government's best interest. Three general rules for incentive contracting are:

(1) Align incentive criteria to performance, cost or scheduling results
(2) Ensure the cost benefit equation justifies the incentive you've selected
(3) Use a D&F to document your selection in the contract file.

(e) Fixed Price Award Fee. An award fee contract provides an additional profit or fee amount that may be awarded, in whole or in part, based upon periodic evaluations of ongoing contractor performance. An award fee arrangement does not include predetermined targets and automatic profit or fee adjustment formulas; instead, the award fee determination is a judgmental one, made unilaterally by the government and, not, subject to conventional Disputes clause procedures.

8.1.3. Cost-Reimbursement Contracts

(a) Cost-Reimbursement contracts generally allow payment of a contractor's allowable incurred costs to the extent provided in the contract. The contract establishes an estimate of total cost to allow obligating funds, and sets a ceiling that the contractor may not exceed (except at its own risk) without CO approval. Cost-Reimbursement contracts should be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any fixed-price contract.

(b) Types of Cost Reimbursement contracts include:

(1) Cost-Plus-Fixed-Fee contracts are contracts where the contract price is the contractor's allowable costs, plus a fixed fee that is negotiated and set prior to award.
(2) Cost-Plus-Incentive-Fee contracts specify a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee is determined in accordance with the formula.
(3) Cost-Plus-Award-Fee contracts are contracts where the contractor receives its costs plus a fee consisting of a base amount (which may be zero) and an award amount based on an AOC evaluation sufficient to provide motivation for excellent contract performance.
(4) Cost Sharing contracts are contracts where the AOC pays a portion of the allowable costs and no fee.

8.1.4. Letter contracts

Letter contracts are used when the AOC's interests demand that the contractor be given a binding commitment so that work can start immediately, and negotiating a definitive contract is not possible in sufficient time to meet the requirement. Letter contracts shall include a not to exceed (NTE) price, definitization requirement and schedule.

8.1.5 Time and Material and Labor Hour Contracts

Time-and-Material and Labor Hour contracts are used when it is not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. This type of contract requires a Determination and Finding prior to use, as it should be used only when another type of contract is not suitable. These contracts provide no incentive for cost control; therefore perform surveillance on the contractor to assure that the contractor is performing efficiently and using effective cost control measures. Immediately after award, convene a government meeting with appropriate functional elements to establish a strict surveillance plan which includes performance of periodic audits of contractor's billings and periodic site visits by the COTR and the contract administrator. This type of contract should contain a NTE amount/price.

8.1.6. Indefinite Delivery Contracts (IDC)

(a) An IDC's primary objective is to acquire supplies or services when the exact times and quantities of future deliveries are unknown at contract award. IDCs are also known as "delivery order contracts" when supplies are being acquired, and "task order contracts" when services are being acquired. Delivery orders and task orders are the vehicles used to acquire the goods and services as the need arises. Funds are obligated by each order and not the contract itself. Different types of IDCs are outlined below.

(b) Requirements Contracts

(1) In a requirements contract, all purchase requirements for specific supplies or services during the contract period shall be placed with the winning contractor. The contractor is not promised a minimum or maximum amount of orders for the supplies/services. A requirements contract may be appropriate for acquiring any supplies or services when the AOC anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that will be needed during a definite period.

(2) The AOC must provide the offeror with estimates of the total quantity needed during the contract period. Estimates should be based upon actual historical requirements with adjustments for any anticipated program changes. This estimated quantity is stated in the solicitation and contract. The estimate does not guarantee that the estimated quantity will be ordered.

(c) Indefinite-Delivery/Indefinite-Quantity (IDIQ)

(1) An IDIQ contract provides that during the contract period the AOC must order a stated *minimum* quantity of the supplies or services and that the contractor must furnish that minimum. If more supplies or services are ordered, any additional quantities are not to exceed a *maximum* provided for in the contract. An IDIQ contract may be used when it is not possible to determine, in advance, the precise quantities of the supplies or services that will be needed by the AOC during a definite period of time.

(2) The solicitation format for an indefinite-delivery contract must:

(i) Specify the contract period, including any option periods.

(ii) Include a SOW or specifications that reasonably describe the general scope, nature, complexity, and purpose of the supplies or services the government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.

(iii) State the procedures that the government will use in issuing orders.

(3) Most individual order requirements are contained within the scope of the contract; however, specific processes and information to be contained on orders are:

(i) Receipt of requisition in FMS/Momentum.

(ii) SOW.

(iii) Quantity.

(iv) Government Estimate.

(v) Delivery or Performance Schedule.

(vi) Place of delivery or performance.

(vii) Packaging, packing and shipping instructions, if any.

(viii)Any other document required under this CM.

(4) Multiple Award Contracts.

(i) A multiple award occurs when one solicitation is issued and two or more contracts are awarded for all or most of the same requirements stated in the solicitation. Generally, task/delivery orders under multiple award contracts must be competed among all contract awardees. The solicitation for the contract must state how the orders will be competed.

(ii) To the extent practicable, the CO will give preference to making multiple awards of IDIQ contracts under a single solicitation, while considering the:

- Scope and complexity of the contract requirement.
- Expected duration and frequency of task or delivery orders.
- Mix of resources a contractor must have to perform expected task or delivery order.
- Ability to maintain competition among the awardees throughout contract performance.

(d) Government Wide IDIQ Contracts.

(1) The GSA Federal Supply Service administers the Federal Supply Schedule program. Federal Supply Schedules are multiple award IDIQ contracts available to all federal agencies. Under this program, GSA enters into government wide contracts with commercial firms to provide supplies and services. Agencies place orders directly with the contractors. Information on contractors and ordering procedures on GSA schedule contracts are available through the schedules e-library at http://www.gsaelibrary.gsa.gov/ElibMain/home.do.

(2) The Interagency Contract Directory is a central repository of Indefinite Delivery Vehicles (IDV) awarded by

federal agencies where the IDV is available for use at the interagency levels. IDVs include Government-Wide Acquisition Contracts (GWAC), Multi-Agency Contracts, Other Indefinite Delivery Contracts (IDC), Federal Supply Schedules (FSS), Basic Ordering Agreements (BOA), and Blanket Purchase Agreements (BPA). The URL for the directory is https://www.contractdirectory.gov/contractdirectory/. COs shall comply with the procuring agencies procedures when using these types of contracts, especially with respect to fair opportunity requirements.

(e) Definite-Quantity Contracts. While seldom used, a definite-quantity contract provides for delivery of a definite quantity of specified supplies or services for a fixed period, with deliveries or performance at designated locations on a task/delivery order. This type of contract may be used when it is determined that a definite quantity of supplies or services will be regularly available or will be available after a short lead time. Definite-quantity contracts are ideal where precise quantities are known and storage space is not adequate for large volumes. For example, if 50 boxes of trash bags are required each week, a definite-quantity contract can be awarded for one to five years and require delivery of 50 boxes every Tuesday.

8.2. Service Contracts

8.2.1. General

(a) A service contract is a contract to provide a specified end result rather than a product, such as architectural and engineering services, custodial services, maintenance or repair. Service contracts may include the following:

(1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, of supplies, systems or equipment.
(2) Routine recurring maintenance of real property.
(3) Housekeeping and installation services.
(4) Advisory and assistance services.
(5) Operation of AOC or government-owned equipment, facilities and systems.
(6) Communication services.
(7) Architect-engineer.
(8) Transportation and related services.
(9) Instructions and training.

(b) AOC shall not award a contract for the performance of an inherently government function.

8.2.2. Extension of Services

Awarding contracts for recurring and continuing service requirements may be delayed due to circumstances beyond the CO's control. To avoid negotiating short term extensions to existing contracts, the CO may include an option clause, which allows continued performance in accordance with the contract. However, labor rates may be adjusted only as a result of a DOL revision to prevailing labor rates. The option provision may be exercised more than once, but total extension shall not exceed six months beyond the total contact term.

8.2.3. Advisory, Assistance and Other Services

(a) Advisory and assistance services mean; those services provided under contract to support AOC personnel perform ongoing AOC operations. All advisory and assistance services are to be classified as one of the following:

(1) Management and professional support services provide assistance, advice or training for efficient organizational management. These services normally are closely related to the basic responsibilities and mission of the activity originating the requirement. Included are efforts that support or contribute to improve the program or logistics management, project monitoring and data collection, budgeting, accounting, performance auditing, and administrative/technical support for conferences and training programs.
(2) Studies, analyses, and evaluations provide organized, analytical assessment and evaluation, which may include supporting models, methodologies, and related software.
(3) Engineering and technical services.

(b) Acquiring advisory and assistance services is a legitimate way to improve AOC services and operations. The AOC may contract for advisory and assistance services, when essential to the AOC's mission, to:
(1) Obtain outside points of view on critical issues.
(2) Obtain advice regarding developments in industry, university or foundation research.
(3) Obtain the opinions, special knowledge or skills of noted experts.
(4) Enhance the understanding of, and develop solutions to, complex issues.
(5) Support and improve organizational operations.
(6) Ensure the efficient or effective operation of managerial or hardware systems.

(c) Prohibited advisory and assistance services. Advisory and assistance services shall not be:
(1) Used in performing policy, decision-making or managerial work that is the direct responsibility of AOC employees.
(2) Used to bypass or undermine personnel laws or procedures.
(3) Contracted for on a preferential basis to former AOC or government employees.
(4) Used for lobbying.
(5) Used to obtain professional or technical advice that is available within the AOC or another federal agency.

(d) Contractors may not evaluate a proposal submitted for an initial contract award unless AOC personnel do not have adequate training and capabilities to perform the required proposal evaluation and the CO makes a written determination.

8.2.4. Temporary Administrative and Professional Staffing Services
(a) AOC may enter into a contract with a temporary help service firm for the brief or intermittent use when the following conditions are met:
(1) An employee is absent for a temporary period because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other non-compelling circumstances.
(2) The AOC must carry out work for a temporary period which cannot be delayed in the judgment of the organization/jurisdiction because of a critical need.
(3) The need cannot be met with current employees or through appointment of temporary employees.

(b) Temporary services shall not be used by the AOC in lieu of the regular recruitment and hiring procedures under the AOC Career Staffing Plan, to displace an AOC employee or to circumvent controls on employment levels.

(c) No employer/employee relationship is created by AOC use of contracted temporary administrative and professional staff. Services furnished by temporary help firms will not be considered federal employees for any purpose, will not be regarded as performing a personal service, and will not be eligible for civil service employee benefits, including retirement.

(d) Temporary Administrative and Professional Staffing Services may be obtained through GSA schedule 736.

8.2.5. Performance Based Contracting
(a) Performance based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance based contracts:
(1) Describe the work requirements in terms of results rather than the performance methods.
(2) Use measurable performance standards (in other words, terms of quality, timeliness, quantity and so on) and quality assurance plans.
(3) Specify procedures for reductions of fee or contract price when services are not performed or do not meet contract requirements; and include performance incentives, where appropriate.

(b) Statements of work.

(1) A SOW defines requirements in clear, concise language, identifying specific work to be accomplished. SOWs must be individually tailored to consider the performance period.

(2) For task order contracts, the SOW for the basic contract need only define the scope of the overall contract. When preparing SOWs, COs shall, to the maximum extent practicable:

(i) Describe the work in terms of what is the required output rather than how the work is accomplished or the number of hours provided.

(ii) Provide measurable performance standards.

(iii) Avoid combining requirements into a single acquisition that is too broad to manage effectively.

(c) Quality assurance. COs shall develop quality assurance plans when acquiring services. These plans shall recognize the responsibility of the contractor to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the SOW. The quality assurance plans shall focus on the level of performance required by the SOW rather than the on methodology used by the contractor to achieve that level of performance.

8.3. Information Technology Requirements

8.3.1 Definitions

(a) Information technology (IT) means any equipment, or interconnected system(s) or subsystem(s) of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data for AOC information. Equipment is used by the AOC or an AOC contractor which requires the use, to a significant extent, of such equipment in performing a service or furnishing a product.

(1) IT products and services include computers, ancillary equipment, software, firmware and services (including support services).

(2) IT does not include:

(i) Any equipment that is acquired by a contractor incidental to a contract.

(ii) Any equipment that contains imbedded IT that is used as an integral part of the product, but IT is not the principal function. For example, HVAC (heating, ventilation and air conditioning) equipment such as thermostats or temperature control devices are not IT.

(b) Commercial off-the-shelf item. Commercial items that require no unique government modifications or maintenance over the life cycle of the product to meet the requirements of the AOC.

8.3.2. Procedures

(a) Requirement determination. Jurisdictions shall identify IT requirements pursuant to current IT policies and orders. When developing acquisition strategy, COs should consider IT's rapidly changing nature through market research and impact to network security.

(b) Risk management. Contracting and Program Managers are responsible for assessing, monitoring and controlling risk when selecting IT projects. Risks may include schedule, technical obsolescence, cost, contract type, technical feasibility, funding and program management. Appropriate techniques should be put in to place to manage and mitigate risk.

(c) Coordinating IT requirements. All IT requirements must be approved by AOC ITD as part of the requirements package. COs shall not initiate any IT procurement action until ITD approval is included in the RFQ or solicitation file.

(d) Signing license agreements. COs are authorized to sign software license agreements. OGC must review any agreement prior to execution.

(e) The CO shall ensure the solicitation and contract:
(1) Contain provisions requiring commercial warranty.
(2) Include appropriate licensing requirements.
(3) Ensure software conforms to all government and AOC security standards.
(4) Address privacy protections.
(5) Include software source and object code escrow requirements.

8.4. Construction Contracts

8.4.1. Definitions

(a) Construction means to build, alter or repair (including dredging, excavating and painting) buildings, structures, or other real property including improvements to all types of AOC facilities.

(b) Projects include construction, maintenance, repair, demolition, restoration and built-in equipment.

(c) Design-bid-build is the traditional method of construction contracting in which design and construction are sequential and contracted for with two separate contract actions.

(d) Design-build (D–B) is a method of construction contracting in which design and construction are combined in a single contract with a single contractor (or two contractors working in a partnership).

(e) Plans and specifications means drawings, specifications and other pre-construction data.

(f) An irrevocable letter of credit is a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the AOC (the beneficiary), or a written demand. The financial institution, offeror or contractor cannot revoke or condition the letter of credit.

(g) Performance and payment bonds are written instruments executed by a contractor and a surety to ensure the contractor meets its obligations to the AOC and subcontractors. If the contractor's obligations are not met, the bond ensures payment, to the extent stipulated, of any loss by the AOC or subcontractors.

8.4.2. Procedures

(a) Specifications
(1) Advance notices and solicitations should be distributed to a sufficient number of prospective offerors to obtain adequate competition.
(2) Construction documents shall comply with AOC Design Standards and include updated local and national Architecture, Engineering & Construction Codes and Standards.
(3) When "brand name or equal" descriptions are required, specifications must clearly identify and describe the particular physical, functional or other characteristics of the brand-name items considered essential to satisfying the requirement.
(4) When the CO determines using D–B contracting is in the AOC's best interest, the solicitation should allow the offeror flexible choices in its approach to the design and construction.

(b) Independent construction cost estimate
(1) The requiring activity will prepare an independent construction cost estimate. This estimate will be provided to the CO with the fund certification and project requirements. An independent construction cost estimate will also be required for each contract modification anticipated to exceed $25,000. The CO may require an independent construction cost estimate when the price of the required work is anticipated to be $25,000 or less. The estimate must contain sufficient detail to allow the CO to make a determination of price reasonableness for award.
(2) Access to information concerning the AOC's cost estimate will be limited to AOC personnel whose official duties require knowledge of the estimate.
(3) Advance notices and solicitations will state the requirement in terms of physical characteristics. The CO will

determine when the use of an estimated price range is appropriate. Advance notices and solicitations shall not disclose the AOC's cost estimate.

(c) Prequalifications

(1) Prequalification procedures may be used to ensure timely and efficient performance of construction projects. Prequalification procedures:

(i) Result in a list of sources determined to be qualified to perform a specific construction contract.

(ii) Limit offerors to those with proven competence and experience to perform.

(2) The CO will determine when using prequalification procedures is appropriate. When prequalifying sources, the CO will review the contractor's past performance, financial capacity, qualifications of the design-build team and experience.

(d) Site inspection and data examination. The CO should make arrangements for prospective offerors to inspect the work site and examine data concerning the work performance. The site inspection and examination of data may include boring samples, original boring logs, and the records and plans of previous construction projects. The solicitation should notify offerors of the time and place for the site inspection and data examination. Significant site information and the data should be made available to all offerors. A record should be kept of the date, identity and affiliation of all offerors that inspect the site and/or examine the data.

(e) Price negotiation

(1) The CO will evaluate proposals based on the solicitation criteria and by comparing proposals to the construction cost estimate. When a proposed price is significantly lower or higher than the construction cost estimate, the CO will ensure that both the offeror and the AOC estimator understand the scope of the work. If negotiation reveals errors in the construction cost estimate, the estimate will be corrected and the changes documented in the contract file.

(2) When appropriate, proposed prices may be compared to current prices for similar types of work and adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

(f) Labor standards

(1) The solicitation shall include all labor standards clauses applying to construction contracts exceeding $2,000 listed in Appendix A.

(2) Contracts for dismantling, demolition or removal of improvements are subject to either The Service Contract Labor Standards or The Construction Wage Rate Requirements statute. If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Labor Standards applies unless further work, which will result in the construction, alteration, or repair of a public building or public work at that location, is contemplated.

(g) Insurance. The contractor must obtain liability and worker's compensation insurance in amounts specified by the contract. In no event will the amount be less than the minimum requirements established by applicable state and local regulations and laws.

8.4.3. Liquidated Damages

(a) COs may not enter into or administer any construction contract over $50,000 unless the contract includes a provision requiring the payment of liquidated damages in the amount determined under this section in the event that the contractor delays completion of the project. COs may use liquidated damages for construction contracts under $50,000. The CO shall place a written documentation on the basis of use or nonuse of liquidated damages in the solicitation file for a procurement under $50,000.

(b) The payment amount required under a liquidated damages provision shall be equal to:

(1) The daily liquidated damage payment rate.

(2) The number of days by which the completion of the project is delayed.

(c) Daily liquidated damage payment rate
(1) The daily liquidated damage payment rate generally means:
(i) $140, for a contract greater than $50,000 and less than $100,000.
(ii) $200, for a contract equal to or greater than $100,000 and equal to or less than $500,000.
(iii) The sum of $200 plus $50 for each $100,000 increment by which the contract exceeds $500,000, in the case of a contract greater than $500,000.
(2) The CO may adjust the daily liquidated damage payment rate involved to a rate greater or lesser than the rate described in this section if the CO makes a written determination that the rate described by this section does not accurately reflect the anticipated damages which the AOC will suffer as a result of the delay in contract completion.

(d) Before liquidated damages are deducted from any invoice, the contractor must be advised in writing that the CO has decided to deduct a specific amount.

8.4.4. Bonds
(a) The Miller Act mandates performance and payment bonds for construction contracts over $100,000.00. Before any contract of more than $100,000.00 is awarded for the construction, alteration, or repair of any public building or public work of the federal government, a person must furnish to the government the following bonds, which become binding when the contract is awarded:
(1) Performance bond. A performance bond with a surety satisfactory to the CO, and in an amount the CO considers adequate, for the protection of the government.
(2) Payment bond. A payment bond with a surety satisfactory to the CO for the protection of all persons supplying labor and material in carrying out the work provided for in the contract for the use of each person. The amount of the payment bond shall equal the total amount payable by the terms of the contract unless the CO determines, in writing supported by specific findings, that a payment bond in that amount is impractical, in which case the CO shall set the amount of the payment bond. The amount of the payment bond shall not be less than the amount of the performance bond.

(b) Bond amounts required
(1) For contracts over $100,000, the penal amount of performance and payment bonds shall be 100 percent of the original contract price, unless the CO determines, in writing, that a lesser amount would be adequate to protect the AOC. If the contract price increases, the CO may secure additional protection equal to 100 percent of the increase by directing the contractor to increase the penal amount of the existing bonds or obtain additional bonds. The amount of the payment bond must be no less than the amount of the performance bond.
(2) For contracts between $25,000 and $100,000, the penal amount of the payment bond or the alternative payment protection shall be 100 percent of the original contract price, unless the CO determines, in writing, that a lesser amount would be adequate to protect the AOC. If the contract price increases, the CO may secure additional protection equal to 100 percent of the increase by directing the contractor to increase the penal amount of the existing bond, obtain an additional bond, or furnish additional alternative payment protection.

(c) The CO shall insert the appropriate clause shown in Appendix A in all construction, alteration or repair of building(s) contracts when the contract is expected to exceed $100,000.00.

(d) The AOC does not accept bonds from individual sureties.

8.5. Architect/Engineer Contracts
(a) Architect-engineer services are professional services of an architectural or engineering nature which are performed or approved by a person licensed, registered or certified to provide such services. Architect-engineer services include research, planning, development, construction design, alterations, real property repair, studies, investigations, surveying, mapping, tests, evaluations, program management, conceptual designs, plans and specifications, soil

engineering, drawing review, preparing operating and maintenance manuals, and other related services.

(b) A SOW for architect-engineer services related to construction design shall require the architect-engineer to consider energy conservation, environmental considerations and waste reduction to the maximum extent practicable.

(c) Evaluation board

(1) When acquiring architect-engineer services, the CO will establish an architect-engineer board composed of members who have experience in architecture, engineering, construction and AOC related acquisitions. One member of the board will be designated as the chairperson. The chairperson must ensure that all members of the board have current ethics training in accordance with AOC Order 38-1 and certify that no members of the board have any conflicts of interest such as relatives or friends with any bidders.

(2) The CO may include non-government members on the board who are AOC contractors. No firm shall be eligible for the award of an architect-engineer contract during a period in which any of its principals or associates are participating as members of an evaluation board on that contract.

(3) In accordance with the evaluation criteria and evaluation plan, the evaluation board will perform the following functions:

(i) Review past performance information.

(ii) Evaluate the firm(s) for technical merit in accordance with:

A. Professional qualifications necessary for satisfactory performance of required services.
B. Specialized experience and technical competence in the type of work required.
C. Capacity to accomplish the work in the required time.
D. Past performance on contracts with government agencies and private industry in terms of cost control, quality of work and compliance with performance schedules.
E. General geographical area of the project and knowledge of the locality of the project.
F. Other evaluation criteria, as appropriate.

(iii) Hold discussions if needed with the CO and most highly qualified firms regarding concepts and using alternative methods of furnishing the required services. Architect-engineer fees will not be considered in these discussions.

(iv) Prepare an evaluation report for the CO recommending, in order of preference, at least three firms that are considered the most highly qualified to perform the required services. The report will include a description of the discussions and evaluations conducted by the board to allow the CO to review the considerations upon which the recommendations are based.

(d) CO functions

(1) The CO will conduct negotiations with the most highly rated firm(s) and, with the advice of the evaluation board, make the final selection. Negotiations are held with only one firm at a time, based on order of technical merit. The negotiations will only commence upon receipt of the evaluation report. Because selection of architect-engineer firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic.

(2) If a mutually satisfactory contract cannot be negotiated, the CO shall notify the firm that negotiations have been terminated. The CO shall then initiate negotiations with the next most highly rated firm as set forth in the evaluation report. This process shall continue until a mutually satisfactory contract has been negotiated.

(e) Qualifications. To be considered for architect-engineer contracts, a firm must file with the CO an SF330 (Architect-Engineer Qualifications).

(f) Architect-engineer liability and insurance. Architect-engineer contractors shall be responsible for the quality, technical accuracy and coordination of services required under its contracts. Architect-engineer firms shall be required to carry Professional Liability Insurance-General Coverage (Errors and Omissions). The architect-engineer shall be fully responsible to the AOC for work performed by his associates, subcontractors and professional consultants. An architect-engineer firm may be liable for AOC costs resulting from errors, omissions or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error, omission or deficiency in the service provided by an architect-engineer contractor, the CO, with the advice of technical personnel and OGC, will consider the extent to which the architect-engineer contractor may be reasonably liable.

(g) Cost of corrections. Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the AOC when designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies or inadequacies. If the AOC does not require a firm to correct errors, the CO shall make a written determination of the decision in the contract file.

(h) Design within funding limitations. The AOC may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified funding limit. If the price of construction proposed in response to an AOC solicitation exceeds the construction funding limitation in the architect-engineer contract, the architect-engineer shall be solely responsible for redesigning the project within the funding limit. These additional services shall be performed at no increase in the contract price. The CO shall insert the appropriate clause shown in Appendix A in solicitations and contracts in fixed-price architect-engineer contracts. The amount of the construction funding limitation will be established during negotiations.

(i) Prohibitions. No construction contract shall be awarded to the firm, or its subsidiaries or affiliates, that designed the project, except for the D–B construction method or with the approval of the AMMD Chief.

CHAPTER IX. ACQUISITION PROCESS

9.1. Negotiated Acquisitions

9.1.1. General

Negotiation is a flexible contracting method that permits contracting personnel to hold discussions and obtain clarification of initial assumptions and positions. Discussions may include price, schedule, technical requirements, contract type or other terms of a proposed contract. Negotiation allows the CO the widest discretion in arriving at a fair and reasonable price with mutually agreed upon contract terms. Negotiation is the preferred method of contracting and will be accomplished on a competitive basis to the maximum extent practicable.

9.1.2. Source Selection Processes

The objective of source selection is to select the proposal that best meets the requirements of the solicitation and to obtain the best value for the AOC. There are two main source selection processes:

(a) Tradeoff process. This method is appropriate when the CO may award to other than the lowest priced offeror or the highest technically rated offeror. It allows tradeoffs between price and non-price factors. This process permits tradeoff among cost or price and non-cost factors and allows the AOC to accept other than the lowest priced proposal. The benefits of the higher priced proposal shall justify the additional cost and the tradeoff rationale must be documented in the file. The solicitation in a tradeoff procurement must include:

(1) All evaluation factors and significant sub factors affecting contract award with the factor's relative importance.
(2) Whether all evaluation factors other than cost or price, when combined, are significantly more than, approximately equal to, or significantly less important than cost or price.

(b) Lowest price, technically acceptable process. This method is appropriate when best value is expected to result from selecting a technically acceptable proposal with the lowest evaluated price. When using the lowest price, technically acceptable process, the following apply:

(1) The evaluation criteria establishing the requirements of acceptability shall be set forth in the solicitation. The solicitations shall specify that award will be made based on the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. Past performance may be used, but is not required, as an evaluation factor. If past performance is used as an evaluation factor, then the solicitation must state the past performance evaluation approach.
(2) Tradeoffs are not permitted.
(3) Proposals are only evaluated for technical acceptability and not ranked.
(4) Exchanges with offerors may occur.

9.1.3. Solicitation Terms and Conditions

(a) Uniform Contract Format (UCF). COs will normally prepare solicitations (RFPs) and resulting contracts using the UCF.

(1) The UCF is based on SF33 Solicitation Offer and Award (for supplies and services)and consists of four parts:
  (i) Part I -- The Schedule. Includes subparts A-H, specifically A – Solicitation/contract form; B – Supplies or Services & Prices or Costs; C – Specifications/SOW; D – Packaging and Marking; E – Inspection and Acceptance; F – Deliveries or Performance; G – Contract Administration Data; and H – Special Contract Requirements.
  (ii) Part II -- Contract Clauses. Includes subsection I – Contract Clauses.
  (iii) Part III -- List of Documents, Exhibits and Other Attachments. Includes subsection J – List of Attachments.
  (iv) Part IV -- Representations and Instructions. Includes subsections K-M, specifically K – Representations, Certifications & Other Statements; L – Instructions, Conditions & Notices to Offerors or Quoters; and M – Evaluation Factors for Award.
(2) Solicitations contain all four parts, but Part IV is not included in the contract.
(3) The Construction and Architect-Engineer UCF is based on SF1442 but contains the four major parts and sub parts above.

(b) An RFP is the instrument by which negotiated acquisitions are initiated. It provides a potential offeror with the opportunity to offer a price and a plan for accomplishing a particular acquisition and is issued on SF33 or SF1442 as appropriate. RFPs are used in negotiated acquisitions to communicate AOC requirements to prospective offerors and to solicit proposals in meeting those requirements.

(c) Evaluation criteria

(1) The solicitation shall clearly describe the evaluation criteria by which proposals will be evaluated and the relationship between the criteria. The criteria to be considered in evaluating offers must:

(i) Be tailored to each acquisition.

(ii) Tie directly to requirements in the SOW (although not all requirements must be evaluated).

(iii) Represent what is most important to the requiring activity.

(iv) Support meaningful comparisons among proposals.

(v) Assist the evaluation team in discriminating among proposals.

(2) The quality of the product or service shall be considered in every source selection through examining one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, key personnel qualifications or prior experience.

(3) Price or cost to the AOC shall be evaluated in every source selection. In evaluating price, any discount offered for quantity of items ordered, any shipping charges and any minimum order charges should be used to determine the actual price of the supplies, services or construction.

(4) Multiple award evaluation. The solicitation shall state if multiple awards will be considered.

(d) Options

(1) Using contract options affords the AOC the unilateral right, for a specified period of time, to purchase additional supplies or services called for in the contract, or to elect to extend the term of the contract. When exercising an option, the CO shall provide the contractor a preliminary written notice prior to contract expiration in accordance with the contract's option clause. Solicitations containing options shall state the evaluation basis, either exclusive or inclusive of the option and shall inform the offeror if it is anticipated that the AOC may exercise the option at time of award.

(2) Options should not be used when:

(i) The supplies or services are readily available on the open market (except for extending the term of indefinite delivery type contracts).

(ii) The contractor or the AOC will incur undue risk, such as the inability to estimate the price or determine availability of required materials and labor for future requirements.

(iii) Market prices for supplies or services are likely to change substantially.

(iv) The option represents known requirements for which funds are available.

(v) There is no anticipated need to continue beyond the initial contract period (except in service contracts to ensure continued operation and to avoid possible increased cost that might result from interrupted support).

(3) Options will be priced at initial award. Priced options may be firm dollar amounts or may be tied either to published indices at solicitation or award or to a maximum percentage increase. When the contract provides for economic price adjustment and the contractor requests a price revision, the CO shall determine the price adjustment effect under the option before the option is exercised. If an informal analysis of prices or an examination of the market indicates that the option price is better than market prices or that the option is the more advantageous offer, the CO may exercise the option. If the CO determines that option pricing is not more advantageous, then the requirement should be re-solicited. This determination shall be documented in the contract file.

(4) When options are included in the solicitation the CO shall:

(i) Complete a justification for inclusion of options.

(ii) Include the appropriate clause shown in Appendix A in solicitations and contracts.

(e) Delivery and performance time. The delivery or performance time is an essential contracting element and will be clearly stated in all solicitations. Required delivery or performance times should be realistic to avoid restricting competition. The contractor is responsible for timely contract performance. The CO shall monitor contract delivery

and performance time to protect the AOC's interest.

(f) Quality assurance
(1) COs shall include appropriate inspection, acceptance and other quality requirements in solicitations and contracts to protect the AOC's interest. Generally, when acquiring commercial items, standard commercial warranties will be used, although COs have the discretion to use additional inspection requirements where appropriate.
(2) When applicable, the appropriate warranty clauses shall be inserted in contracts. The contractor is liable under the warranty clause for only the defects covered by the warranty.
(i) The defects covered in the typical supply warranty clause are those of defects in material and workmanship. If the defect discovered is covered under the warranty, it does not matter whether it is a patent or a latent defect, since the contractor has warranted the items to be free from defects and is liable for their correction or replacement.
(ii) Warranty clauses should state when coverage begins and ends and the time in which notice of a defect must be given to the contractor.

(g) Liquidated damages. When determining whether to use a liquidated damages clause, the CO should consider its likely effect on pricing, competition and contract administration. If the CO decides to use a liquidated damages clause, the applicable clause and the appropriate liquidated damage rate will be included in the solicitation. (Also see Chapter 8, paragraph 8.4.3.)

(h) E-Verify. AOC contractors shall use the E-verify system to verify employment eligibility of contractor employees. The employer (the contractor and subcontractor) consents to release information relating to compliance with its verification responsibilities to the AOC upon request.
(1) COs shall include in solicitations and contracts, requirements that contractors must:
(i) Enroll as "Federal Contractor" in E-Verify.
(ii) Use E-Verify to verify employment eligibility of its AOC workforce.
(iii) Submit documentation evidencing that all contractor employees working at the AOC are authorized to work in the United States and have been determined eligible for employment in E-Verify.
(iv) Include these requirements in any subcontracts.
(2) In exceptional cases, the Chief Administrative Officer may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the performance period. This waiver authority may not be delegated.

9.1.4. Source Selection Authority
(a) The CO is designated as the source selection authority (SSA) unless the AMMD Chief or the Deputy Chief appoints another individual for a particular acquisition.

(b) The SSA shall:
(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical and finance experts to provide the appropriate expertise to ensure a comprehensive evaluation.
(2) Approve the source selection strategy and acquisition plan, if applicable, before solicitation release.
(3) Ensure consistency among the solicitation requirements, notices to offeror(s), proposal preparation instructions, evaluation factors and sub factors, solicitation provisions or contract clauses, and data requirements.
(4) Ensure that proposals are evaluated based solely on the evaluation factors and sub factors contained in the solicitation.
(5) Consider the recommendations of advisory boards or panels, if any.
(6) Select the source(s) whose proposal(s) offers the best value to the AOC.

(c) The CO shall:
(1) After solicitation release, serve as the contact person for inquiries from actual or prospective offeror(s).
(2) After receipt of proposals, control exchanges with offeror(s).
(3) Award the contract.

9.1.5. Exchanges with Industry Prior to Receipt of Proposals
(a) Information exchanges among interested parties are encouraged. Any information exchange must be consistent with AOC Order 38-1 and applicable laws. Interested parties include potential offerors, AOC AMMD and supporting personnel, and others involved in an acquisition.

(b) The purpose of exchanging information is to improve the understanding of AOC requirements and industry capabilities, allowing potential offerors to determine how they can satisfy the AOC's requirements. It enhances the AOC's ability to obtain quality supplies and services, including construction, at reasonable prices, and to increase efficiency in proposal preparation, evaluation, negotiation and contract award.

(c) COs are encouraged to promote early information exchanges about future acquisitions. An early information exchange among industry representatives and the program manager, CO and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy. These exchanges include proposed contract type, terms and conditions, acquisition planning schedules, the feasibility of the requirement (including performance requirements), statements of work, and data requirements. Some techniques to promote early information exchanges are:
(1) Holding an Industry Day.
(2) Conducting market research.
(3) Meeting with potential offerors.
(4) Releasing presolicitation notices, draft RFPs or RFIs.
(5) Holding presolicitation or pre-proposal conferences.
(6) Allowing site visits.

(d) An RFI may be used when the AOC does not presently intend to award a contract but wants to obtain price, delivery, other market information or capabilities for planning purposes. Responses to these requests are not offers and cannot be accepted by the AOC to form a binding contract. There is no required format for RFIs.

(e) Releasing information. General information regarding the AOC's mission may be disclosed at any time.
(1) When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, the CO shall make that information available to all potential offerors to avoid creating an unfair competitive advantage.
(2) Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy.
(3) When a presolicitation or proposal conference is conducted, materials distributed at the conference should be made available to all potential offerors upon request.

9.1.6. Amending Solicitations
(a) After the solicitation has been issued, but before the closing date, it may become necessary to change, correct or clarify the SOW, specifications, quantities, delivery schedule or the closing date. The CO issues an amendment to the solicitation using SF30 that is furnished to all offerors.

(b) Amendments issued after the RFP closing date shall be issued to all offerors that have not been eliminated from the competition.

(c) The CO will determine whether the closing date will be revised based on the amendment's content. This determination will be made in coordination with the requiring activity. If the CO decides to revise the closing date, prospective offerors will be notified simultaneously. Oral notice may be used when time is of the essence, the CO documents notice in the file, and a formal amendment is subsequently sent.

(d) If, in the CO's judgment, an amendment, after offers have been received, is so substantial that it exceeds what prospective offerors reasonably could have anticipated and additional sources likely would have submitted offers had the amendment been known to them, the CO shall cancel the original solicitation and issue a new one.

(e) The CO will not award a contract unless all amendments have been acknowledged by the successful offeror, either listed on the solicitation form or acknowledged on each amendment and submitted with the offeror's proposal.

9.1.7. Solicitation Response Time
The CO shall establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to the solicitation. The CO should consider the individual circumstances, such as the acquisition's complexity, commercial availability or urgency. Offerors are normally allowed 30 days or longer to respond to a solicitation. Time frames shorter than 30 days may be used if it is in the AOC's best interest and the reason is documented in the contract file.

9.1.8. Handling Proposals
(a) When responses to solicitations are received, the CO or designated individual will ensure the submission is promptly marked with date and time received.

(b) Proposals shall be safeguarded from unauthorized disclosure of information throughout the source selection process. The proposal contents are competition sensitive and are not to be disclosed.

(c) Electronic and facsimile proposals may be authorized in the solicitation. If any portion of a proposal received by the CO electronically or by facsimile is unreadable, the CO shall notify the offeror in a timely manner and permit the offeror to resubmit the unreadable portion of the proposal. The CO shall prescribe the method and time for resubmission after consultation with the offeror. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the CO.

9.1.9. Submission, Revision and Withdrawal of Proposals
(a) A proposal in response to an RFP is an offer that may be accepted by the AOC and creates a binding contract.

(b) Offerors are responsible for submitting offers, and any revisions and ensuring the offers reach the AOC office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal delivery so that proposals cannot be received by the exact time specified in the solicitation, and urgent requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal AOC processes resume.

(c) Proposals and revisions that are received in the designated AOC office after the exact time specified shall be considered only if:
(1) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the AOC not later than the closing date and time specified in the solicitation.
(2) It is the only proposal received.

(d) The CO shall promptly notify any offeror if its proposal, modification or revision was received late and shall inform the offeror whether it will be considered, unless contract award is imminent and document in the contract file why a late proposal or modification was accepted or rejected.

(e) Late proposals and modifications that are not considered shall be held unopened until after award and then retained, unopened, with other unsuccessful proposals.

(f) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon the CO's receipt of a written notice of withdrawal. Oral proposals in response to oral solicitations may be withdrawn orally and documented in the contract file. One copy of withdrawn proposals shall be retained in the contract file. Extra copies of withdrawn proposals may be destroyed or returned to the offeror at the offeror's request and expense. Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be deleted from primary and backup data storage systems.

(g) If the solicitation is cancelled, all offerors to whom the solicitation was sent will be notified of the cancellation in writing. Proposals received in response to the solicitation will be returned unopened to the offerors. Proposals received by electronic transmission shall be deleted from the primary and back-up data storage systems. Each offeror shall be notified that the information was deleted.

9.1.10. Oral Presentations

(a) The solicitation may require each offeror to submit part of its proposal through oral presentations. When an offeror's qualifications and capability to perform the work and/or understanding of the requirements are the primary evaluation factors, an oral presentation may be useful. An oral presentation allows the evaluation team to observe the offeror's technical team and how it functions together. Oral presentations may occur at any time in the evaluation process. Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, and transition plans may be presented orally.

(b) The AOC must consider the following when deciding to conduct oral presentations:
(1) The AOC's ability to adequately evaluate the oral information.
(2) The need to incorporate any information in the contract.
(3) The impact on the efficiency of the acquisition.
(4) The impact on the offeror, to include cost. Alternatives to onsite oral presentations, such as teleconferencing or video teleconferencing, should be considered.

(c) When requesting oral presentations, the RFP should include:
(1) Information to be presented.
(2) Qualifications, by function or job title, of personnel giving the oral presentation.
(3) Limitations on written material, and date prior to the presentation when the written material is to be submitted.
(4) Location, date and time for presentation.
(5) Restrictions on length of presentation.
(6) Scope and content of exchanges to take place after the presentation.

(d) The CO shall ensure that no additional written materials are accepted. The evaluators should rate each offeror directly after its presentation. The CO must document the file regarding the presentation. The documentation may be in the form of notes, audiotape, and videotape, written record, and/or copies of slides, and so on, at the discretion of the CO.

(e) Any exchanges to be conducted should be clearly stated in the solicitation. If the AOC intent is to award without discussions, only clarifications may be addressed after the presentation. If the AOC intends to award with discussions, exchanges can be more extensive, such as a question and answer session between the evaluation team and the offeror's team.

9.1.11. Exchanges with Offerors After Receipt of Proposals

(a) Definitions
(1) Clarifications. Limited exchanges between the CO and the offerors that occur before award. Clarifications can be used to resolve minor or clerical errors.
(2) Communications. Exchanges between the AOC and offerors after receipt of proposals, leading to establishment of the competitive range.
(3) Discussions. Negotiations that occur after establishing the competitive range that may, at the CO's discretion, result in an offeror being allowed to revise its proposal.
(4) Deficiency. A material failure of a proposal to meet a solicitation requirement, or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. A deficient proposal shall not receive contract award.
(5) Weakness. A flaw in a proposal that increases the risk of unsuccessful performance. A significant weakness in a proposal is a flaw that substantially increases the risk of unsuccessful contract performance.

(b) Clarifications and award without discussions

(1) If award will be made without discussions, offerors may be given the opportunity to clarify certain aspects of proposals (for example, the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(2) Award may be made without discussions if the solicitation states that the AOC intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the AOC determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file.

(c) Communications with offerors before establishing the competitive range

(1) If a competitive range is to be established communications:

(i) Shall be limited to the offerors who submitted proposals in response to the solicitation.

(ii) Shall be held with offerors whose past performance information is preventing them from being placed within the competitive range.

(iii) May only be held with those offerors whose exclusion from or inclusion in the competitive range is uncertain.

(iv) May be conducted to enhance the AOC's understanding of the proposal, allow reasonable interpretation of the proposal or facilitate the AOC's evaluation process.

(v) Are to address issues such as ambiguities weaknesses, errors, omissions or mistakes, or past performance information including adverse past performance information to which the offeror has not previously had an opportunity to respond.

(2) Communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Communications may be considered in rating proposals for the purpose of establishing the competitive range.

(d) Competitive range

(1) If discussions are to be conducted, a competitive range must be established. Based on the ratings of each proposal against all evaluation criteria, the CO shall establish a competitive range.

(2) The CO may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(3) If the CO decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in a timely manner.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing.

(e) Discussions with offerors after establishing the competitive range

(1) Discussions are tailored to each offeror's proposal and shall be conducted by the CO with each offeror within the competitive range.

(2) The objective of discussions is to maximize the AOC's ability to obtain best value.

(3) The CO shall indicate the significant weaknesses, deficiencies and other aspects of each offeror's proposal that could be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of the CO's or the SSA's judgment.

(4) An offeror originally in the competitive range may be eliminated from the competitive range after discussions have begun, regardless of whether all material aspects of the proposal have been discussed, or the offeror has submitted a proposal revision.

(f) Limits on exchanges. AOC personnel involved in an acquisition shall not:

(1) Favor one offeror over another.

(2) Reveal the name(s) of other offerors.

(3) Reveal an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any other information that would compromise an offeror's intellectual property to another offeror.

(4) Reveal an offeror's price to other offerors without that offeror's permission (except the CO may inform an offeror that its price is considered by the AOC to be too high or too low and reveal the results of the analysis supporting

that conclusion).
(5) Reveal the names of individuals providing past performance information.

9.1.12. Proposal Revisions
(a) If an offeror's proposal is eliminated from the competitive range, no further revisions to the offeror's proposal shall be accepted or considered.

(b) The CO may allow proposal revisions to clarify and document understandings reached during discussions. Each offeror still in the competitive range after discussions shall be given an opportunity to submit a revised final proposal. The CO shall establish a common cut-off date for receiving revised final proposals. Requests for revised final proposals shall advise offerors that the revised final proposal revisions shall be in writing and that the AOC intends to award without further revisions.

9.1.13. Pre-Award Survey
(a) A pre-award survey is normally required when the information readily available to the CO, including information from commercial sources, is insufficient to determine responsibility. Generally, pre-award surveys should not be done for contracts of $100,000 or less.

(b) Information obtained during a pre-award survey may include finances, incorporation details, firm officer's names and positions, company history, and past performance. Information requested should relate directly to the solicitation requirements.

(c) A Duns and Bradstreet report shall be obtained and placed in the contract file.

(d) The results of the pre-award survey shall be documented in the contract file.

9.1.14. Evaluating Proposals
(a) The technical proposal evaluation is the foundation of the source selection process and the pending contract award. AOC uses an adjectival rating system to evaluate proposals:
(1) Outstanding: The proposal provides a very clear, comprehensive and detailed response which meets all requirements and includes significant strengths with no deficiencies or significant weaknesses. The risk of unsuccessful performance is very low as the proposal demonstrates a clear understanding of the requirements and can be expected to result in outstanding performance.
(2) Good: The proposal provides a sound response which meets all requirements and includes strengths with no deficiencies and few weaknesses. The risk of unsuccessful performance is low as the proposal demonstrates an understanding of the requirements and can be expected to result in satisfactory performance.
(3) Acceptable: The proposal provides a response which is capable of meeting all requirements but includes both strengths and weaknesses with no deficiencies. Strengths are not outweighed by the weaknesses. The risk of unsuccessful performance is moderate as the proposal demonstrates a general understanding of the requirements and can be expected to result in satisfactory performance.
(4) Marginal: The proposal provides a response which does not meet all requirements and includes strengths, weaknesses, and/or deficiencies. Strengths are outweighed by the weaknesses and/or deficiencies. The risk of unsuccessful performance is high as the proposal does not demonstrate an understanding of the requirements and can be expected to result in unsatisfactory performance.
(5) Unacceptable: The proposal provides a response that does not meet all requirements and includes significant weaknesses and/or deficiencies which far outweigh any strengths. The risk of unsuccessful performance is very high as the proposal does not demonstrate an understanding of the requirements and will result in unsatisfactory performance.

(b) Source Selection decision
(1) The SSA's decision shall be based on comparing proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment.

(2) The source selection decision shall be documented, including the rationale for any business judgments, tradeoffs made or relied on by the SSA, and cost benefit analysis.

9.1.15. Contract Award

(a) The CO shall award a contract to the successful offeror(s) by furnishing the executed contract or other notice of award to that offeror. No award will be made until the following determinations are made:

(1) The proposal conforms to the solicitation.
(2) The price is fair and reasonable.
(3) The offeror is responsible.

(b) These determinations, along with a description of the evaluation process and rationale for award, shall be documented in the contract file and signed by the CO. Solicitation sections K, L and M shall be included in the contract file and removed from the contract document, and this should be indicated on the cover page of the contract.

(c) For the proposal information to be legally binding it must be incorporated into the contract, it does not automatically become part of the contract. When incorporating information from the offeror's proposal, the CO must ensure that the information is relevant and does not conflict with the contract terms and conditions. It is insufficient to state that a proposal is incorporated into the contract.

(d) The offer, including additions and changes resulting from negotiations, is accepted when the CO signs the contract. If the award includes information different from the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the CO shall sign the contract. The effective date of award will be the date the contract is signed by the CO, unless a future date is given in the contract.

(e) The CO will provide the executed contract to the successful offeror and shall provide written notice to the unsuccessful offerors that they did not receive the contract award.

9.1.16. Debriefings

(a) All unsuccessful offerors, upon request, shall be debriefed and furnished the basis for the selection decision. Request for debriefing shall be made by the offeror by written request within three calendar days after receiving notice from the CO that the offeror did not receive award.

(b) Debriefings may be done verbally (including by telephone) or in writing by the CO who may request support from the evaluation team. The CO shall document the debriefing in the contract file.

(c) Pre-award Debriefings

(1) A pre-award debriefing shall include:
  (i) The AOC's evaluation of significant elements of the offeror's proposal.
  (ii) A summary of the rationale for eliminating the offeror from the competitive range.
  (iii) Reasonable responses to relevant questions about the source selection process contained in the solicitation.
(2) A pre-award debriefing shall not disclose:
  (i) The number of offerors.
  (ii) The identity of other offerors.
  (iii) The contents of other offerors' proposals.
  (iv) The ranking of other offerors.
  (v) The evaluation of other offerors.
  (vi) Any comparison of offerors.

(d) Post-award Debriefings

(1) A debriefing after award shall include the following:
  (i) Significant deficiencies or weaknesses in the proposal.
  (ii) Overall rating of the successful offeror and the debriefed offeror.

(iii) Past performance information on the debriefed offeror.
(iv) Rationale for award.
(v) Reasonable responses to questions on the source selection process contained in the solicitation.
(2) A debriefing after award is not:
(i) A page-by-page analysis of the proposal.
(ii) A point-by-point comparison of proposals.
(iii) A debate over the award decision.
(iv) A release of any offeror's proprietary information to other offerors.

9.1.17. Mistakes After Award
When a mistake in the successful offeror's proposal is discovered after award, it may be corrected by modifying the contract only if the correction is favorable to the AOC and if it does not change the essential requirements of the contract. In all other cases, the following procedures will be used:
(a) The CO will obtain evidence from the contractor to prove that a mistake was actually made and to show what the contractor intended to offer in the proposal.

(b) The CO will review the contractor's documents to verify the mistake and to determine whether the contract should be modified, terminated or allowed to stand as written.

(c) The CO will consult with OGC.

(d) After reaching a decision, the CO will prepare a memorandum for the contract file that contains:
(1) All evidence furnished by the contractor in support of the mistake.
(2) A summary of the evidence provided by the contractor and any additional pertinent evidence.
(3) A determination as to whether a mistake was made. If a mistake has been made, the CO will also analyze whether:
(i) The effect of correcting the mistake would increase costs to the AOC, determine whether a revised contract would still represent the lowest offer, and any other relevant considerations.
(ii) Not correcting the mistake would affect the contractor's ability to perform under the existing contract and the quality of the supply or service to be delivered.
(4) A discussion on the status of the contract in terms of performance, deliveries and payments.

9.2. Sealed Bidding

9.2.1. Preparing an Invitation for Bids (IFB)
(a) Sealed bidding is not the AOC's preferred contracting method. However, sealed bidding may be used when:
(1) Price is the only evaluation factor.
(2) Current and accurate purchase descriptions or specifications have been developed.
(3) Time permits the solicitation, submission and evaluation of bids.
(4) It is not necessary to conduct discussions with the respective bidders.
(5) There is a reasonable expectation of receiving more than one bid.

(b) The following information should be included in an IFB:
(1) Contract line item number.
(2) Description of supplies or services, or data sufficient to identify the requirement.
(3) Quantity and unit of issue.
(4) Unit price and extended total amount.
(5) Packaging and marking requirements.
(6) Inspection and acceptance, quality assurance and reliability requirements.
(7) Place of delivery or performance, delivery dates or period of performance, and FOB point.
(8) Other item-peculiar information, as necessary (for example, individual fund citations).
(9) Clauses required by this manual. Additional clauses may be incorporated when considered necessary to a particular procurement.

(10) List of documents and attachments, as necessary.
(11) Representations and certifications.
(12) Instructions, conditions and notices.
(13) Basis for award.

9.2.2. Bid Submission
(a) To be considered, bids shall be submitted to the designated delivery point in the IFBs not later than the exact date and time specified.

(b) COs may authorize electronic submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic methods(s) that bidders may use.

9.2.3. Bidding Time
The CO in coordination with the Program Office and/or Project Manager will determine the appropriate bidding time consistent with the complexity of the requirement. Normally, solicitations should provide offerors 30 days to prepare their bids or offers.

9.2.4. Records of IFB and Abstract of Bids
(a) AMMD shall retain a record of each IFB and each abstract or record of bids. COs shall review and use information available in connection with subsequent acquisitions of the same or similar items.

(b) The IFB file shall show the distribution that was made and the date the IFB was issued. The names and addresses of prospective bidders who requested the IFB and were not included on the original solicitation list shall be added to the list and made a part of the record.

9.2.5. Release of Solicitation Mailing List
(a) AMMD shall provide the IFB mailing list to the public upon written request.

(b) When IFBs for construction contracts have been issued, the IFB mailing list will be made available to trade journals, prospective subcontractors, and material suppliers upon written request.

9.2.6. Pre-Bid Conference
(a) A pre-bid conference may be used to brief prospective bidders and explain complicated specifications and requirements as early as possible after the IFB has been issued and before bids are opened. It shall never be used as a substitute for amending a defective or ambiguous IFB.

(b) The CO shall decide if a pre-bid conference is required and make the necessary arrangements, including:
(1) If notice of the pre-bid conference was not in the IFB, give all prospective offerors who received the solicitation adequate notice of the time, place, nature and scope of the conference.
(2) Prospective bidders must submit written questions in advance. The CO can deliver prepared answers during the conference.
(3) For technical and legal personnel to attend the conference, if appropriate.

(c) The CO shall conduct the pre-bid conference, furnish all prospective bidders identical information concerning the proposed procurement, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors by amendment. Attendees shall be advised that IFB terms and specifications remain unchanged unless the IFB is amended in writing.

9.2.7. Amending IFBs
(a) If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or to correct a defective or ambiguous invitation, the CO shall amend the IFB using SF30. The fact that a change was mentioned at a pre-bid conference does not eliminate the necessity for issuing an amendment. Amendments shall be sent, before the

time for bid opening, to all prospective bidders and/or posted on Fedbizopps.gov.

(b) Before amending an IFB, the time remaining until bid opening and the need to extend the time period shall be considered. When only a short time remains before the time set for bid opening, the CO may notify bidders of an extension by telephone or facsimile. Such extension must be confirmed by written amendment.

9.2.8. Cancellation of IFBs Before Opening

(a) IFBs should not be cancelled unless cancellation is in the AOC's best interest, such as:
(1) Where there is no longer a requirement for the supplies or services.
(2) Where amendments to the IFB would be of such magnitude that a new IFB is desirable.

(b) If an IFB is cancelled, all offerors to whom the IFB was sent will be notified of the cancellation in writing. The cancellation notice shall identify the IFB by number and short title or subject matter and briefly explain why the IFB is being cancelled. Bids received in response to the IFB will be returned unopened to the offerors. Bids received by electronic transmission shall be deleted from the primary and back-up systems.

9.2.9. Late Bids, Late Modification of Bids or Late Withdrawal of Bids

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the AOC office designated in the IFB by the time specified in the IFB. They may use any transmission method authorized by the IFB (regular mail, electronic methods, courier, etc.). Acceptable evidence to establish the receipt time includes a time/date stamp, other documentary evidence of receipt maintained by AOC, oral testimony or statements of AOC personnel.

(b) Any bid, modification or withdrawal of a bid received at the AOC office designated in the IFB after the exact time specified for receipt of bids is late. A late modification of an otherwise successful bid that makes its terms more favorable to the AOC will be considered at any time it is received and may be accepted. Any other late bids will not be considered unless:
(1) The bid was received before award is made.
(2) The CO determines that accepting the late bid would not unduly delay the acquisition and:
(i) It was transmitted through an electronic method authorized by the IFB.
(ii) It was received at the AOC not later than 5p.m. one working day prior to the date specified for receipt of bids.
(iii) There is acceptable evidence to establish that the bid was received at the AOC location designated for receipt of bids and was under the AOCs control prior to the time set for receipt of bids.

(c) If any emergency or unanticipated event interrupts normal AOC processes so that bids cannot be received at the AOC office designated for receipt of bids by the exact time specified in the IFB, and urgent AOC requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal AOC processes resume.

(d) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes electronic methods, bids may be withdrawn at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative any time before the date and time set for receipt of bids.

9.2.10. Opening Bids

(a) At the time set for opening of the bids, the CO will publicly open all bids received. After opening, the bids will be recorded on an abstract of bids document and the abstract will be retained in the contract file.

(b) The time designated for the opening of bids may be postponed when:
(1) A significant number of bids are known to have been delayed in the mail through no fault of the bidders.
(2) An emergency interrupts normal AOC operations.

(c) The CO shall notify the OIG immediately if fraud or antitrust violations are suspected in the bidding process.

9.2.11. Pre-award Mistakes in Bids
(a) Examination of bids. Before award, COs shall examine all bids for mistakes. In cases of apparent clerical mistakes and in cases where the CO believes a mistake may have been made, the CO shall request from the bidder a verification of the bid, calling attention to the suspected mistake.

(b) Clerical mistakes.
(1) Any clerical mistake apparent on its face in the bid may be corrected by the CO before award. Examples include:
(i) Misplacing a decimal point.
(ii) Incorrect discounts.
(iii) Reversal of the price FOB destination and price FOB origin.
(iv) Unit designation errors.
(2) Correcting the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

9.2.12. Award
The award will be made to the lowest responsive and responsible bidder within any time limits that may have been set by the acceptance of the bids. The CO will issue a written notice of award. Contract types will be firm fixed price contracts and fixed price with economic price adjustment.

9.2.13. Award for Sealed Bidding Construction
The low offeror and the items to be awarded shall be determined as follows:
(1) Prior to bid opening, the AOC will determine the amount of funds available for the project.
(2) The low offeror shall be the Offeror that:
(i) Is otherwise eligible for award.
(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the available funds.

(3) The CO shall evaluate all bids on the basis of the same additive or deductive items. If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the CO will skip that item and go to the next item from the bid schedule of priorities; and add that next item if an award may be made that includes that item and is within the available funds.
(i) The CO will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if it is in the AOC's best interest; funds are available at the time of award; and the low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.
(ii) *Example:* The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000 and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000 and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

9.2.14. Mistakes After Award
(a) The mistake may be corrected by contract modification, if:
(1) Correcting the mistake would be favorable to the AOC without changing the essential requirements of the specifications.
(2) The contractor demonstrates by clear and convincing evidence that a mistake in bid was made. It must be clear that the mistake was mutual, or if unilaterally made by the contractor, so apparent as to have charged the CO with notice of the probability of the mistake. Each proposed determination shall be coordinated with legal counsel.

(b) After a mistake in bid, COs may decide:
(1) To rescind a contract.
(2) To modify a contract, deleting the items involved in the mistake or increasing the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB.
(3) That no change shall be made in the contract as awarded, if the evidence does not warrant deleting the items or increasing the price.

(c) Mistakes alleged or disclosed after award shall be processed as follows:
(1) The CO shall request a written statement and pertinent evidence of the contractor's bid, including:
(i) The contractor's original worksheets and other data used in preparing the bid.
(ii) Subcontractors' and suppliers' quotations, if any.
(iii) Published price lists.
(iv) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.
(2) The CO shall write a determination memorandum:
(i) Describing the supplies or services involved.
(ii) Explaining how and when the mistake was alleged or disclosed.
(iii) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent.
(iv) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the CO's estimate of a fair price for the supplies or services and the basis for the estimate.
(v) Setting forth the CO's opinion as to whether a bona fide mistake was made and whether the CO was, or should have been, on notice of the mistake before the award.
(vi) Setting forth the course of action that the CO considers proper on the basis of the evidence, with respect to the alleged mistake, and, if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired.
(3) The contract file shall contain the following concerning the mistake:
(i) Contemplated performance and payments.
(ii) A signed copy of the bid involved.
(iii) A copy of the IFB and any specifications or drawings relevant to the alleged mistake.
(iv) An abstract or written record of the bids received.
(v) A written request by the contractor to reform or rescind the contract.
(vi) Copies of all other relevant correspondence between the CO and the contractor concerning the alleged mistake.
(vii) A copy of the contract and any related change orders or supplemental agreements.

9.3. Two-Step Sealed Bidding

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. The objective is to develop a sufficiently descriptive and not unduly restrictive statement of the AOC's requirements, including an adequate technical data package. This method is useful in acquisitions requiring technical proposals or for complex items. It is conducted in two steps as follows:
(a) Step one is requesting, submission, evaluation and (if necessary) discussion of a technical proposal without pricing. This step is to determine whether the supplies or services are acceptable. The word "technical" has a broad connotation and includes, among other things, engineering approach, special manufacturing processes and special testing techniques. It is the proper step for clarifying questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not a responsibility determination.

(b) Step two involves submitting sealed priced bids by offerors who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards are made in accordance with evaluation factors stated in the IFB.

9.4. Unsolicited Proposals

(a) An unsolicited proposal is a written proposal that is submitted to the AOC on the initiative of a vendor for the purpose of obtaining a contract with the AOC and which is not in response to a formal or informal request. Advertising material, commercial product offers, gifts or technical correspondence are not unsolicited proposals. Unsolicited proposals may be a valuable means of obtaining innovative or unique methods or approaches to accomplishing a function or task; however, AOC personnel are cautioned not to encourage potential contractors to submit such proposals. All unsolicited proposals will be forwarded to the contracting office for coordination, receipt, evaluation and disposition. The contracting office will, in turn, refer the unsolicited proposal to appropriate technical personnel for evaluation. However, if the unsolicited proposal is not related to the mission of AOC, it need not be evaluated.

(b) The criteria below will be considered in evaluating an unsolicited proposal. A valid unsolicited proposal must:
(1) Be innovative and unique.
(2) Be independently originated and developed by the offeror.
(3) Be prepared without AOC or government personnel supervision.
(4) Include sufficient detail to permit a determination of how the AOC would benefit.
(5) Not be an advance proposal for a known AOC requirement that can be acquired by competitive methods.

(c) Contents of a valid unsolicited proposal should include:
(1) Offeror's name, address and the type of organization (for example, profit, nonprofit or educational).
(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes.
(3) Identity of proprietary data to be used for evaluation purposes only.
(4) Submission date.
(5) Signature of authorized agent to represent and contractually obligate the offeror.
(6) Technical information, which should include a concise title or description and an abstract of the proposed effort.
(7) A reasonably complete discussion (abbreviated statement of work) stating the objectives of the effort or activity, the method of approach and extent of the effort to be employed, the nature and extent of the effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the AOC mission.
(8) Names and biographical information on the offeror's key personnel who would be involved.
(9) Type of support needed from the AOC (for example, facilities, equipment, materials, or personnel resources)
(10) Supporting information, which may include:
(i) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation.
(ii) Period of time for which the proposal is valid (a six month minimum is suggested).
(iii) Type of contract.
(iv) Duration of proposed effort.
(v) Brief description of the organization, previous experience in the field and facilities to be used.
(vi) Required statements, if applicable, about organizational conflicts of interest, security clearances and environmental impacts.

(d) A noncompetitive contract may be awarded for unsolicited proposals upon a determination by the CO that:
(1) The standards describe above have been met.
(2) Funding for award of the contract, if applicable, is available.
(3) Services cannot be obtained through competitive acquisition methods.

(e) Obtain OGC review and approval from the Head of Contracting Activity (CAO) before proceeding with execution of a contract resulting from an unsolicited proposal.

9.5. Acquisition of Commercial Items

For acquisitions of commercial items exceeding the competition threshold but not exceeding $6.5 million, including options, COs may use the following procedures to the maximum extent practicable:
(a) COs shall:

(1) Conduct market research to determine whether commercial items are available that could meet the agency's requirements.
(2) Acquire commercial items when they are available to meet the agency's need.
(3) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items as components of items supplied to the agency.

(b) As appropriate for the particular commercial item acquisition, COs shall use the policies in this section in conjunction with policies and procedures for solicitation, evaluation and award prescribed for regarding Small Purchases; Sealed Bidding; or Negotiated Acquisitions:

(1) When a written solicitation will be issued, the CO may reduce the time required to solicit and award contracts by combining the synopsis and the issuance of the solicitation into a single document. The CO shall include the following additional information in the synopsis:
  (i) This is a combined synopsis/solicitation for commercial items as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.
  (ii) The solicitation number and a statement that the solicitation is issued as a request for quotation (RFQ), an invitation to bid (IFB) or a request for proposal (RFP).
  (iii) A notice regarding any set-aside and the associated NAICS code and small business size standard.
  (iv) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).
  (v) Description of requirements for the items to be acquired.
  (vi) Date(s) and place(s) of delivery and acceptance and FOB point.
  (vii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the CO to be necessary for this acquisition and consistent with customary commercial practices.
  (viii) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.
  (ix) The date, time and place offers are due.
  (x) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) The CO shall allow response time for receipt of offers as follows:
  (i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.
  (ii) When using the combined synopsis and solicitation, COs must establish a reasonable response time by considering the circumstances of the individual acquisition, such as the complexity, commerciality, availability and urgency.
(4) The CO shall publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

(c) When a policy in another section of this Contracting Manual is inconsistent with a policy in this section, this section shall take precedence for the acquisition of commercial items.

(d) Exclusions. This section shall not apply to the acquisition of commercial items:
(1) At or below the competition threshold.
(2) When using the government purchase card.
(3) When purchasing requirements directly from another federal agency.

(e) The description of the requirement must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the competition threshold, the agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the government.

(f) Where technical information is necessary for evaluation of offers, COs shall review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, COs shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(g) COs should allow offerors to propose more than one product that will meet a government need in response to solicitations for commercial items. The CO shall evaluate each product as a separate offer.

(h) Past performance should be an important element of every evaluation and contract award for commercial items. COs should consider past performance data from a wide variety of sources both inside and outside the federal government.

(i) Commercial item contracts shall rely on contractors' existing quality assurance systems as a substitute for government inspection and testing before acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the government shall be conducted in a manner consistent with commercial practice.

(j) It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this section seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the CO determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law.

(k) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures contained in this Contracting Manual, as applicable. The CO shall select the offer that is most advantageous to the government based on the factors contained in the solicitation and fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

CHAPTER X. BID PROTESTS

10.1 Definitions

(a) An interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) A protest is a written objection by an interested party to a solicitation or other AOC request for bids or offers, cancellation of a solicitation or other request, award or proposed award of a contract, or termination of a contract if terminated due to alleged improprieties in the award.

10.2 Forum for Protest

An interested party may protest to the agency or the Government Accountability Office (GAO).

10.3 Procedures

(a) Agency Protests. Agency protests shall be filed with the CO.

(1) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(2) Timing

(i) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals.

(ii) In all other cases, protests shall be filed no later than 10 calendar days after the basis of protest is known or should have been known, whichever is earlier.

(b) GAO Protests. Although GAO protests do not apply to the AOC by law, the AOC voluntarily allows GAO to hear its bid protests. GAO protests shall be filed in accordance with the GAO rules, available at: http://www.gao.gov/legal/contract/rules.html.

CHAPTER XI. EMERGENCY PROCUREMENTS

11.1. General Information

(a) Jurisdictions shall develop a SOW or specifications that can be used to solicit vendor quotes necessary to initiate action for emergency needs. The scope at this point does not need to be written as a formal document; however, as much detail as possible should be included. Sole source requirements may be documented within two days of issuing the emergency procurement. AOC contracting policies will still be in effect during an emergency, as will any limitations imposed by federal appropriations law.

(b) Emergency acquisitions can be obtained through a purchase order, letter contract (also see Chapter 8, paragraph 8.1.4) or, if necessary, by purchase cards. If FMS is accessible, jurisdictions shall submit requisitions and make purchase card transactions using the normal FMS procedures. If FMS is not accessible, the jurisdictions shall obtain funding authorization from the AOC CFO and provide AMMD with funding information and limitations. Records must be maintained to track the purchase card transactions and purchase orders issued, and enable the agency to reconstruct the transactions and account for expenditures when FMS becomes accessible. When FMS becomes accessible, an FMS purchase requisition shall be established and approved in the usual manner.

11.2. Using Purchase Cards

In an emergency, the APC may increase a cardholder's single transaction purchase card limit. Requests for increases, including a justification for the increase and the cardholder's name, must be made in writing (email is sufficient) to the APC. A senior official in the jurisdiction must ensure that sufficient funds are available to cover the emergency and monitor fund usage. Jurisdictions must comply with any funding guidance issued by the AOC CFO.

CHAPER XII. PRICING OF CONTRACT ACTIONS

12.1. Cost and Price Analysis

The primary components of price are cost plus any fee or profit. The AOC's primary pricing objective for all contract actions is to acquire supplies and services from responsible sources at fair and reasonable prices. The CO's primary objective in pricing a contract action is to consider the contract type, cost, and profit or fee negotiated to obtain a price that is fair and reasonable to both parties. To obtain this objective, the CO can use three approaches: price analysis, cost analysis and cost realism analysis.

(a) Price analysis. Price analysis determines whether the overall contract price is fair and reasonable without evaluating its separate cost elements and proposed profit. All AOC procurements shall use price analysis to ensure that the agency receives supplies and services at a fair and reasonable price.

(1) Price analysis involves a comparison with other prices, such as with:
- (i) Commercial prices, including competitive published price lists, published commodity market prices, similar indices, and discount or rebate arrangements.
- (ii) Previously proposed prices and contract prices for the same or similar end items.
- (iii) Parametric estimates.
- (iv) Independent government estimates.
- (v) Market research for the same or similar items.
- (vi) Analyzing the offeror's pricing information.
- (vii) Proposed prices received in response to the solicitation.

(2) Price analysis is a subjective evaluation, the CO who must be satisfied that the price is fair and reasonable. The CO must document the price analysis rationale in the contract file with appropriate supporting information provided by the COTR, and/or other specialists.

(3) The CO may request a technical analysis of the proposed prices from personnel (such as the COTR) having specialized knowledge, skills, experience or capability in engineering, science or management. The technical analysis will be performed on the proposed types and quantities of materials, labor processes, special tools, facilities, scrap and spoilage, and other associated factors set forth in the proposal(s) to determine the need for and reasonableness of the proposed resources.

(b) Cost analysis. Cost analysis determines whether the underlying contract costs are fair and reasonable. Cost analysis must be used in addition to price analysis when:

(1) Evaluating proposals for cost type contracts.

(2) An offeror is required to submit cost or pricing data. In this situation, the offeror must provide complete, accurate and current data to support all proposed costs and profit/fee.

(3) An offeror is required to submit cost information other than cost or pricing data to support the CO's decision on price reasonableness or cost realism.

(c) Cost realism analysis.

(1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of the offeror's proposed cost estimate to determine whether the estimated proposed cost elements:
- (i) Are realistic for the work to be performed.
- (ii) Reflect a clear understanding of the requirements.
- (iii) Are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analysis is performed in addition to pricing analysis on each cost reimbursement contract action to determine the probable cost of contract performance, and uses that estimate to evaluate the best value to the government.

12.2. Unbalanced Pricing

(a) Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated, as indicated by applying cost or price analysis techniques.

(b) Issues with unbalanced pricing include:
(1) Increased contract performance risk.
(2) Result in essentially advance payments for work not yet performed.
(3) Result in paying unreasonably high prices.

(c) This risk is normally greatest when:
(1) Startup work, mobilization, first articles or first article testing are separate line items.
(2) Base and option quantities are separate line items.
(3) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-quantity contract.

(d) The CO may reject an offer if the unbalanced pricing results in a materially unbalanced offer that poses an unacceptable risk to the AOC. An offer is materially unbalanced if it is based on prices that are significantly less than cost for some line items and significantly more than cost for other line items.

12.3. Price Reasonableness Documentation
(a) Written documentation that the price is fair and reasonable is required for each contract action exceeding $5,000.

(b) Examples of techniques to establish price reasonableness include, but are not limited to:
(1) Comparison. Historical prices found reasonable on other purchases for the same or similar items. Reference to the previous contract shall be made in the contract file;
(2) Competition. Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price.
(3) Price Lists. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
(4) Use of the IGCE. Comparison of proposed prices with the IGCE.
(5) Market Research. Comparison of proposed prices with prices obtained through market research for the same or similar items.

(c) In addition to those items noted above, if the contract is negotiated, the following information is required to be contained in the contract file:
(1) The name and title of each person representing the government.
(2) The name and title of each person representing the offeror.
(3) The date of negotiations.
(4) The negotiated positions.
(5) The CO's signature.

CHAPTER XIII. CONTRACT ADMINISTRATION

13.1. General Guidelines

13.1.1. Overview

(a) Contract administration is the management of a contract from the time of award through its expiration and close out. The purpose of contract administration is to ensure that the contractor performs according to the contract; to ensure the CO does not waive any AOC rights; to ensure that the AOC receives the quantity and quality of the supplies, services or construction procured in the contract; and to develop a record of the contractor's past performance. The types of activities included in contract administration are issuing contract modifications, monitoring contract deliveries and performance, reviewing the contractor's invoices for payment, and closing out the contract. The terms and conditions of the contract are used as the guidance in performing these tasks.

(b) Site visits. COs or Contract Administrators shall perform site visits as necessary to ensure satisfactory contract performance and document the site visit in the contract file.

13.1.2 COTR

(a) A CO may appoint an AOC employee as a COTR on a designated contract. The AOC COTR designation is synonymous with the Contracting Officer's Representative (COR) designation used in Executive Branch agencies. COTRs are responsible for monitoring performance to assure that it is in accordance with the written terms and conditions of the award. The CO will ensure and document that the individual selected is trained and possesses the qualifications and experience necessary to perform the function. A copy of the COTR training certificate must be maintained on record in the AMMD master COTR file. COTRs shall maintain current skills and knowledge required to perform effective contract administration functions and ensure contractors meet their contractual obligations. Employees who are selected for appointment as COTRs, or who are likely to be selected, must comply with the following training requirements:

(1) Prior to appointment by the CO, a COTR shall complete a 40 hour COTR/COR training course:
(2) All COTRs shall complete an eight hour COTR/COR refresher course within five years of the anniversary date of completing their initial 40 hour COTR/COR training course and once again within every five years thereafter:
(3) Any other specific training as required and determined necessary by the Jurisdiction / Program Office to meet the needs of the particular contract being administered: and
(4) The AMMD Chief is authorized to approve equivalencies or substitutions to the COTR training requirements stated above.

(b) A COTR appointment will be made in writing and designated by name and title of position. Each appointment letter will set forth the authority and limitations applicable to the COTR. The COTR is not empowered to issue, authorize, agree to, or sign any contract or modification or in any way obligate the payment of funds by the AOC.

(c) COs shall review COTR records regularly to ensure proper performance of post award administration duties.

(1) The COTR Review Checklist shall be used by all staff to ensure proper COTR performance of post award administration duties.
(2) Complete the COTR Review Checklist in accordance with the information on the form.
  (i) In the blocks provided, check off items as applicable.
  (ii) Staff shall complete an entry for each row of the checklist noting not applicable (n/a) where appropriate.
  (iii) Staff shall add rows to the checklist as needed to capture tasks relevant to specific COTR post award administrative duties applicable to the procurement.
(3) The completed COTR Review Checklist shall be placed in the contract file.

13.1.3. Ordering Officers

(a) The CO may appoint ordering officers to place delivery orders against indefinite delivery contracts, provided the contract terms allow for the appointment of ordering officers. Ordering officers may place orders in accordance with the dollar threshold set forth in their appointment letter. The CO may also authorize designated individuals to place

calls against funded BPAs, provided that each call is limited to the small purchase threshold or as otherwise indicated in the BPA language.

(b) Ordering officers will be appointed in writing and will be under the CO's technical supervision. COs shall review ordering officers' files at least once a year to ensure compliance with appointment letters and the contract terms. This review shall be documented in the contract file. Jurisdictions shall cooperate fully with the CO in scheduling and conducting these reviews.

13.1.4. Post Award Conference

(a) A post award conference aids both the AOC and contractor achieve a clear and mutual understanding of all contract requirements and identify and resolve potential problems. However, it is not to be used to substitute for the contractor's full understanding of the work requirements at the time the offers are submitted, or alter the final agreement arrived at in any negotiations before contract award. The CO shall decide if a post award conference is required based on the:

(1) Type, value and complexity of the contract.
(2) Complexity and acquisition history of the product or service.
(3) Urgency of the delivery schedule.
(4) Contractor's performance history and experience with the product or service.
(5) Safety precautions required for hazardous materials or operations.

(b) All construction contracts shall utilize a post-award conference. The CO, consulting with the COTR, shall establish the agenda and prepare the post-award conference report that covers all items discussed and the participants. The post-award conference report shall be distributed to all involved participants.

13.1.5. Contract Modifications

(a) COs acting within the scope of their authority may issue contract modifications. Other AOC or government personnel shall not execute contract modifications or act in a manner as to cause the contractor to believe they have the authority to bind the AOC. All modifications will be in writing using SF30.

(b) There are two types of contract modifications:

(1) Unilateral. A unilateral modification is a contract modification that is signed by the CO only. Unilateral modifications are used to make administrative changes, issue change orders under the changes clause, make changes authorized by other contract clauses (options), and issue termination notices.
(2) Bilateral. Bilateral modifications (supplemental agreements) are contract changes requiring mutual consent by both the CO and the contractor. The CO signs bilateral modifications after the contractor has signed. Bilateral modifications are used to:
  (i) Make negotiated equitable adjustments as a result of issuing a change order under the changes clause, including constructive changes. For an equitable adjustment, the CO will make a written determination that the new price is fair and reasonable.
  (ii) Reflect other agreements that change the contract terms.

(c) Supplemental agreements may not be used to expand an existing contract to include additional work beyond the scope of the original contract. Additional work must be clearly documented and shall include a determination that the work was not contemplated at the time of the original contract and is such an inseparable part of the work originally contracted for as to render it prohibitively difficult to be performed by other than the original contractor.

(d) When preparing contract modifications, COs shall ensure that the appropriate authority is cited which permits the modification. All modifications must include:

(1) Contract Summary of Changes.
(2) Contractor's Statement of Release, when applicable.

13.1.6. Change Orders
(a) AOC contracts may contain a changes clause that permits the CO to make unilateral changes within the contract scope. The contractor must continue performance of the contract as changed. The CO must make a written determination that using the changes clause is appropriate.

(b) The changes clause provides for an equitable adjustment if the change causes an increase or decrease in cost or performance time. If the change order contains a price for the change, the change requires a supplemental agreement reflecting the resulting equitable adjustment in the contract terms. If the change order is not priced, the change requires the change order and a supplemental agreement reflecting the resulting equitable adjustment.

(c) COs will negotiate equitable adjustments resulting from change orders as promptly as possible (preferably less than 30 days after issuing the change order). The negotiated equitable adjustment will be based on both the AOC's and contractor's estimated cost for the proposed price adjustment. If additional funds are required as a result of the change, the CO will obtain a certification of available funds before issuing the supplemental agreement.

13.1.7. Constructive Changes
Constructive changes are government action or inaction that imposes a change in the contract terms, but does not do so formally (i.e., under the changes clauses or a supplemental agreement). Such changes entitle the contractor to relief under the changes clause. Constructive changes can be the result of the AOC:
(1) Requiring the contractor to meet a delivery date despite an excusable delay.
(2) Furnishing defective specifications.
(3) Misinterpreting the contract.
(4) Requiring a more thorough inspection than prescribed in the contract.

13.1.8. Contractor Delivery and Performance
(a) Contractor noncompliance may be detected through quality inspections, customer complaints or contractor failure to comply with delivery schedules, performance standards or other contract provisions. The CO must be made aware of noncompliance with the contract to correct the deficiencies, follow through with required action until resolved, and document the deficiency in the contract file. It is the COTR's responsibility to promptly notify the CO, in writing, any time contractor performance is not in compliance with the contract.

(b) Delays in delivery or performance
(1) Excusable delays are due to causes beyond the contractor's control. For excusable delays, the CO may extend the delivery schedule by a bilateral contract modification. If the supplies are needed before the contractor can deliver, the contract may be terminated for convenience.
(2) Inexcusable delays are contractor caused. The CO shall consult with OGC and conduct a thorough analysis of the situation and possible courses of action to determine the most efficient and economical resolution. If the delivery schedule can be extended, this shall be done by a bilateral contract modification, which extends the delivery schedule and may provide for a price reduction or other consideration.

13.1.9. Exercising Options
(a) When exercising an option, the CO shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a price adjustment, the CO shall determine the effect of the price adjustment before the option is exercised.

(c) The CO may exercise options only after determining that:
(1) Funds are available.
(2) The requirement covered by the option fulfills an existing government need.
(3) Exercising the option is the most advantageous method of fulfilling the government's need.
(4) One of the following bases for exercising an option apply:

(i) A new solicitation fails to produce a better price or a more advantageous offer than the option.
(ii) An informal price analysis or market research indicates that the option price is better than market prices or that the option is the more advantageous offer.
(iii) The time between contract award and the exercise of the option is so short that it indicates the option price is the lowest price or the more advantageous offer. The CO shall consider factors such as market stability and the usual contract duration for such supplies or services.

13.1.10. Suspension of Work and Stop Work Orders
(a) During contract performance, the AOC may need to suspend work or to stop work. The CO is the only official authorized to suspend or stop a contractor's work. The CO shall include the appropriate clauses for suspension and stop work orders in solicitations and contracts as needed.
(1) The CO may order a suspension of work under a construction or architect-engineer contract for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for any cost increase (excluding profit) incurred because of the suspension.
(2) The CO may issue a stop-work order in any fixed-price supply or service contract when the CO determines it is appropriate. Work stoppage may be required for state-of-the-art advancements, engineering breakthroughs, and realignment of programs.

(b) A stop-work order will be issued only if it is advisable to stop work pending an AOC decision and a bilateral modification providing for a suspension of work is not feasible. Issuing a stop-work order shall be approved at a minimum one level higher than the CO. Stop-work orders shall not be used in place of a termination notice after a decision to terminate has been made.
(1) Stop-work orders will include the following elements:
(i) A description of the work to be stopped.
(ii) Instructions concerning the contractor's ordering additional supplies or services.
(iii) Instructions to the contractor concerning any action to be taken on subcontracts.
(iv) Direction to the contractor concerning minimizing costs, since the AOC may be required to pay the contractor an equitable adjustment.
(2) As soon as possible after a stop-work order has been issued, the CO will discuss the stop-work order with the contractor and make any necessary modifications.
(3) As soon as possible after a stop-work order has been issued and before it expires, the CO will:
(i) Terminate the contract.
(ii) Cancel the stop-work order, with approval one level above the CO.
(iii) Extend the stop-work order by a bilateral modification, if necessary.

13.2. Contract Terminations

13.2.1. General
(a) The termination clauses authorize COs to partially or totally terminate contracts for convenience or for default and to enter into settlement agreements. If the price of the undelivered balance is less than the termination cost, normally the contract should not be terminated, but completed.

(b) The CO shall document the reasons for any termination in the contract file.

13.2.2 Termination for Convenience
(a) The CO has the authority to partially or totally terminate a contract for convenience when it is in the AOC's best interest. The CO shall not exercise the authority to terminate a contract for convenience until approval is obtained from the requiring activity. Terminations for convenience are normally exercised when the AOC no longer has a need for the requirement.

(b) The CO will send written notification to the contractor as soon as possible after the termination decision is made. The CO will obtain written acknowledgment of the notification from the contractor. The written notice will contain the effective date of termination, details of the termination and the line items terminated.
(1) The CO will simultaneously send the termination notice to any known assignee, guarantor, or surety contractor.

(2) The CO may amend a termination notice to add supplemental data or instructions or rescind the notice if it is determined that items terminated were completed or shipped before the contractor received the notice.

(c) Settlement.
(1) If a contract must be terminated for convenience, the CO will attempt to terminate the contract on a no-cost basis to either party.
(2) If a no-cost settlement is not possible, the contractor must submit a claim to the CO, in writing within one year of the termination notice. The contractor has the burden to establish the proposed settlement amount.
(i) A termination settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, if any, including a reasonable allowance for profit to the date of termination.
(ii) The CO should use a variety of methods to reach a settlement such as a cost or price analysis. The CO, in negotiating a settlement, will use sound business judgment and consult with OGC.
(iii) If the parties cannot reach a settlement, the CO will make a final decision concerning the claim, in writing, and notify the contractor in a timely manner, usually 60 days. Any dispute arising as a result of this process will be resolved using the Disputes Clause.

13.2.3. Termination for Default
(a) The CO has the authority to terminate a contract for default because of the contractor's actual or anticipated failure to perform its obligations under the contract. Such failure includes the failure to deliver at the required time, failure to make necessary progress as to endanger performance, and failure to perform any of the other provisions of the contract. The right to terminate for default should only be exercised after careful review by the CO, technical personnel and OGC.

(b) The notice requirement for a termination for default is the same as that for a termination for convenience. Additionally, normally a show cause or a cure notice is provided before the termination notice; however, they are not required when circumstances indicate the need for immediate termination. Notices shall be issued by certified mail, return receipt requested.
(1) Cure notice. A cure notice is a notice issued by the AOC to inform the contractor that the government considers the contractor's failure a condition that is endangering contract performance. The cure notice specifies a time period (typically 10 days) for the contractor to remedy the condition. If the contractor does not correct the condition, the notice states that the contractor may face termination of its contract for default.
(2) Show cause notice. A show cause notice is a notice issued by the AOC that the AOC intends to terminate for default unless the contractor shows cause why the contract should not be terminated. Show cause notices are generally used if there is insufficient time remaining in the delivery schedule to allow a cure period.

(c) The CO will consider the following factors in determining whether to terminate a contract:
(1) Terms of the contract and applicable laws and orders.
(2) Specific failures of the contractor and other sources.
(3) Availability of supplies and services from other sources.
(4) Urgency of need for the supplies or services.
(5) Any other pertinent facts and circumstances.

(d) The CO should consider the following in lieu of termination for default:
(1) Permitting the contractor, surety or guarantor to continue performing the contract under a revised delivery schedule.
(2) Permitting the contractor to continue performing the contract through a subcontract or other business arrangement with an acceptable third party.
(3) Executing a no-cost termination agreement when the requirement for the supplies or services no longer exists and there are no damages to the AOC.

(e) Reprocurement

(1) The CO will determine whether to repurchase similar supplies or services and hold the contractor liable for any excess costs associated with the repurchase. Repurchase should only be considered if supplies or services are still required after termination. The repurchase must be undertaken within a reasonable time after termination and try to minimize cost. If an award to the next successful offeror or from the original solicitation is fair and reasonable, the offeror is determined to be responsible, and the offer is still valid; the CO may proceed with award without further competition.

(2) When a fixed-price supply or service contract is terminated for default, as part of settlement, the contractor may be liable for excess repurchase costs only if a replacement contract is issued within a reasonable period of time after the notice of default is issued. In construction contracts terminated for default, the uncompleted structure may be taken over by the AOC.

(3) If a settlement cannot be agreed upon, the issue concerning the equitable adjustment may be regarded as a question of fact under the Disputes Clause.

13.3. Contract Disputes and Appeals

13.3.1. Authority

Public Law 110-161, established a Contract Appeals Board for the legislative branch at the Government Accountablity Office and made certain parts of the Contract Disputes Act apply to the AOC.

13.3.2. Procedures

(a) Contract disputes may arise over the respective rights and obligations of the parties. Any disputes and appeals arising from AOC contracts and purchase orders shall be processed in accordance with the Disputes Clause.

(b) The CO shall attempt to settle the dispute amicably without resorting to the procedures provided in the Disputes Clause. The CO will convene whatever meetings or conferences that are necessary and negotiate in good faith concerning the merits of the dispute and the parties' positions.

(c) Contracting Officer's Final Decision

(1) When all attempts to settle a dispute amicably fail, AMMD must issue a decision under the Disputes Clause. The CO will request that the contractor submit written evidence substantiating the disputed amount. The contractor has the burden to establish the amount proposed. The CO will review all available facts pertinent to the dispute. The CO will obtain assistance of legal, technical and professional experts.

(2) Only the AMMD Chief or Deputy Chief has the authority to sign and issue a CO's final decision. All COs preparing final decision letters shall use the below closing paragraph.

"This is the final decision of the Contracting Officer. You may appeal this decision to the Government Accountability Office Contract Appeals Board. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Government Accountability Office Contract Appeals Board at 441 G Street, N.W., Room 7182, Washington, DC 20548, Phone: 202.512.3342 Fax: 202.512.9749 Email: CAB@gao.gov. A copy of such notice of appeal shall be simultaneously mailed or otherwise furnished to the Architect of the Capitol, U.S. Capitol Building, Room SB-16, Washington, DC 20515, and to the Chief, Acquisition & Material Management Division, Architect of the Capitol, Room H2-263, Ford House Office Building, 2nd and D Streets, SW, Washington, DC 20515. The notice shall indicate that an appeal is intended, reference this decision and identify the contract by number. With regard to appeals to the Government Accountability Office Contract Appeals Board, you may, solely at your election, proceed under the board's small claims procedures for claims of $50,000 or less or its accelerated procedures for claims of $100,000 or less. Note, however, that unlike the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), the Legislative Branch Contract Disputes Act, P.L. 110-161 (31 U.S.C. 702 Note), does not allow an appeal directly in the United States Court of Federal Claims."

(d) When the CO receives a notice of appeal from GAO or a contractor, he/she will date/time stamp the notice, and notify the AMMD Chief and OGC.

(e) Preparing the appeal file. Within 30 days of receipt of the notice of appeal, the CO, will compile five copies of the appeal file (Rule 4 file) with OGC advice and assistance, who will coordinate with the GAO. Since the appeal file will be available to the contractor, no privileged information or documents and no analysis of the merits of the appeal or the law applicable thereto will be included. The appeal file must contain the following information:

(1) The finding of fact and the decision from which the appeal is taken and the letter(s) or other documents of claim in response to which the decision was issued.
(2) The contract and pertinent plans, specifications, modifications and change orders.
(3) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeals.
(4) Any additional material information.

(f) Within 30 days of receipt of the notice of appeal, the CO, with OGC advice and assistance, will compile a comprehensive report of the matter in dispute. The objective of the report is to provide all facts affecting the dispute to the OGC.

(1) The comprehensive report will be forwarded through the AMMD chain of command to OGC. It will not be furnished to the GAO or to the contractor.
(2) The comprehensive report will include the following:
  (i) A factual summary of events leading to the dispute.
  (ii) The names and addresses of all potential witnesses.
  (iii) A signed statement or summary by each government/AOC witness reflecting the facts to which the witness will be able to testify and a statement as to the expected availability of each government/AOC witness at the hearing.
  (iv) An analysis of the contractor's position and a discussion of the validity thereof.
  (v) A memorandum by OGC analyzing the legal issues involved in the dispute and comments upon the adequacy of the findings of fact and the legal sufficiency of the decision.

(g) Witness expenses. Travel and per diem costs incurred by witnesses concerning the appeal and necessary preparation will be paid by the requiring AOC jurisdiction.

(h) With OGC advice and assistance, the AMMD Chief or designee should:

(1) Carefully review the appeal file and the comprehensive report.
(2) Ensure that the findings on which the COFD is based adequately address the issues involved, that the decision is consistent with the findings, and that it is proper in form and substance.
(3) Ensure that the appeal file and comprehensive report are completed and that the evidence contained in them supports the CO's decision.
(4) Advise the CO either to furnish additional support for any decision from which a timely appeal has been taken or to withdraw it if it is clear from the contract provisions or the applicable law that the decision is not sufficiently supported by available and competent evidence or is erroneous.
(5) Not more than 10 days after taking the action prescribed in (4,) above, notify the OGC of the nature of the action being taken and an estimated date as to which the additional support will be furnished, or a date that the decision will be withdrawn.
(6) Not more than 10 days after receiving the comprehensive report, forward it and the appeal file to OGC with:
  (i) Evaluations, conclusions and recommendations.
  (ii) Any additional evidence.
(7) Ensure that assistance is rendered to OGC in obtaining additional evidence or in making other necessary preparations for presenting the AOC's position before the GAO.

(i) Copies furnished. When the GAO renders an opinion, copies of the opinion will be sent by certified mail to the attorneys for the CO and the contractor. A motion for reconsideration of the decision may be filed with the GAO within 30 days of receipt of the opinion unless the total contract amount is less than $10,000 and/or the appellant has previously waived the right to appeal. The GAO decision is final.

13.4. Novation and Name Change Agreements

This section prescribes policies and procedures for:

(a) Recognition of a successor in interest to government contracts when contractor assets are transferred.

(b) Recognition of a change in a contractor's name.

(c) Execution of novation agreements and change-of-name agreements by the CO.

13.4.1. Responsibility for Executing Agreements

The CO is responsible for processing and executing novation and change-of-name agreements.

13.4.2. Processing Agreements

(a) If a contractor wishes the government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the CO.

(b) The responsible CO shall:

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change.
(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts.
(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible CO shall determine whether or not it is in the government's interest to recognize the proposed successor in interest on the basis of:

(1) The comments received from the affected contract administration offices and contracting offices.
(2) Any factor relating to the proposed successor's performance of contracts with the government that the government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the CO to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (*e.g.,* long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs and final overhead costs) should be referenced specifically in the novation agreement.

(f) Before novation and change-of-name agreements are executed, the responsible CO shall ensure that OGC has reviewed them for legal sufficiency.

(g) The CO shall:

(1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee.
(2) Retain a signed copy in the case file.

(h) Following distribution of the agreement, the CO shall:

(1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected.
(2) Retain the original Standard Form 30 with the attached list in the case file.
(3) Send a signed copy of the Standard Form 30, with attached list to the transferor and to the transferee.

(4) Send a copy of this Standard Form 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

13.4.3 Applicability of Novation Agreements

(a) 41 U.S.C. 15 prohibits transfer of government contracts from the contractor to a third party. The government may, when in its interest, recognize a third party as the successor in interest to a government contract when the third party's interest in the contract arises out of the transfer of:

(1) All the contractor's assets.

(2) The entire portion of the assets involved in performing the contract for the effect of novation agreements after bid opening but before award. Examples of such transactions include, but are not limited to:

(i) Sale of these assets with a provision for assuming liabilities.

(ii) Transfer of these assets incident to a merger or corporate consolidation.

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the government.

(c) When it is in the government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(d) When considering whether to recognize a third party as a successor in interest to government contracts, the CO shall identify and evaluate any significant organizational conflicts of interest. If the CO determines that a conflict of interest cannot be resolved, but that it is in the best interest of the government to approve the novation request, a request for a waiver may be submitted to the AMMD Chief.

(e) When a contractor asks the government to recognize a successor in interest, the contractor shall submit to the CO three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, e.g., purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the government, as of the date of sale or transfer of assets, showing for each, as of that date, the:

(i) Contract number and type.

(ii) Name and address of the contracting office.

(iii) Total dollar value, as amended.

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the CO.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the CO one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; *e.g.,* bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate parties' stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.
(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.
(7) Evidence that any security clearance requirements have been met.
(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the government's interests are adequately protected with an alternative formulation of the information, the CO may modify the list of documents to be submitted by the contractor.

(h) When recognizing a successor in interest to a government contract is consistent with the government's interest, the CO shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that:
(1) The transferee assumes all the transferor's obligations under the contract.
(2) The transferor waives all rights under the contract against the government.
(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee).
(4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any federal law.

(i) The CO shall use the appropriate form for agreements when the transferor and transferee are corporations and all the transferor's assets are transferred. This form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

13.5. Value Engineering

13.5.1. Processing Value Engineering Change Proposals (VECP)

(a) Instructions to the contractor for preparing a VECP and submitting it to the government are included in paragraphs (c) and (d) of the value engineering clauses, upon receiving a VECP, the CO or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency procedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The CO is responsible for accepting or rejecting the VECP within 45 days from its receipt by the government. If the government will need more time to evaluate the VECP, the CO shall notify the contractor promptly in writing, giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the government for the proportionate share of these payments. If the VECP is not accepted, the CO shall provide the contractor with prompt written notification, explaining the reasons for rejection.

(c) The following government decisions are unilateral decisions made solely at the discretion of the government:
(1) The decision to accept or reject a VECP.
(2) The determination of collateral costs or collateral savings.
(3) The decision as to which of the sharing rates apply when the value engineering clause is used.
(4) The CO's determination of the duration of the sharing period and the contractor's sharing rate.

13.5.2 Sharing Arrangements

(a) Supply or service contracts.
(1) The sharing base for acquisition savings is the number of affected end items on contracts of the contracting office accepting the VECP. The sharing rates (government/contractor) for net acquisition savings for supplies and

services are based on the type of contract, the value engineering clause or alternate used, and the type of savings, as follows:

Government/Contractor Shares of Net Acquisition Savings (Figures in Percent)				
Contract Type	Sharing Agreement			
	Incentive (Voluntary)		Program Requirement (Mandatory)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50/50	*50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50/50	(**)	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***75/25	***75/25	85/15	85/15
* The CO may increase the contractor's sharing rate to as high as 75 percent for each VECP. ** Same sharing arrangement as the contract's profit or fee adjustment formula. *** The CO may increase the contractor's sharing rate to as high as 50 percent for each VECP				

(2) Acquisition savings may be realized on the instant contract, concurrent contracts, and future contracts. The contractor is entitled to a percentage share of any net acquisition savings. Net acquisition savings result when the total of acquisition savings becomes greater than the total of government costs and any negative instant contract savings. This may occur on the instant contract or it may not occur until reductions have been negotiated on concurrent contracts or until future contract savings are calculated, either through lump-sum payment or as each future contract is awarded.

(i) When the instant contract is not an incentive contract, the contractor's share of net acquisition savings is calculated and paid each time such savings are realized. This may occur once, several times, or, in rare cases, not at all.

(ii) When the instant contract is an incentive contract, the contractor shares in instant contract savings through the contract's incentive structure. In calculating acquisition savings under incentive contracts, the CO shall add any negative instant contract savings to the target cost or to the target price and ceiling price and then offset these negative instant contract savings and any government costs against concurrent and future contract savings.

(3) The contractor shares in the savings on all affected units scheduled for delivery during the sharing period. The contractor is responsible for maintaining, for three years after final payment on the contract under which the VECP was accepted, records adequate to identify the first delivered unit incorporating the applicable VECP.

(4) Contractor shares of savings are paid through the contract under which the VECP was accepted. On incentive contracts, the contractor's share of concurrent and future contract savings and of collateral savings shall be paid as a separate firm-fixed-price contract line item on the instant contract.

(5) Within three months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the CO shall modify the instant contract to provide the contractor's share of savings.

(6) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The lump-sum method may be used only if the CO has established that this is the best way to proceed and the contractor agrees. The CO ordinarily shall make calculations as future contracts are awarded and, within three months after award, modify the instant contract to provide the contractor's share of the savings. For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the CO will purchase for delivery during the

sharing period. In deciding whether or not to use the more convenient lump-sum method for an individual VECP, the CO shall consider:

(i) The accuracy with which the number of items to be delivered during the sharing period can be estimated and the probability of actual production of the projected quantity.

(ii) The availability of funds for a lump-sum payment.

(iii) The administrative expense of amending the instant contract as future contracts are awarded.

(b) Construction contracts. Sharing on construction contracts applies only to savings on the instant contract and to collateral savings. The government's share of savings is determined by subtracting government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts or (2) 75 percent for cost-reimbursement contracts.

13.5.3. Sharing Alternative - No Cost Settlement Method

In selecting an appropriate mechanism for incorporating a VECP into a contract, the CO shall analyze the different approaches available to determine which one would be in the government's best interest. COs should balance the administrative costs of negotiating a settlement against the anticipated savings. A no-cost settlement may be used if, in the CO's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the government. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The government would keep all savings resulting from concurrent contracts placed with other sources, savings from all future contracts and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECPs.

13.5.4. Relationship to other incentives

Contractors should be offered the fullest possible range of motivation, yet the benefits of an accepted VECP should not be rewarded both as value engineering shares and under performance, design-to-cost, or similar incentives of the contract. To that end, when performance, design-to-cost or similar targets are set and incentivized, the targets of such incentives affected by the VECP are not to be adjusted because of the acceptance of the VECP. Only those benefits of an accepted VECP not rewardable under other incentives are rewarded under a value engineering clause.

13.6 Contract Closeout

(a) The Contract Closeout process consists of the following elements:

(1) Ensuring all requirements of the contract have been met.

(i) Contractor performance ratings are entered into the Contractor Performance Assessment Reporting System (CPARS) (ACASS) (CCASS) in accordance with the chart below.

A&E Services	>$30,000 for total fee, including construction services and site visits
Construction	>$550,000
Operational Support Services	>$5,000,000
Information Technology	>$1,000,000
Other Services	>$1,000,000

(2) Obtaining a properly executed Release of Claims from the contractor.

(3) Documentation of final payment.

(i) Before final payment, the CO/COTR shall obtain from the contractor a fully executed Release of Claims form. COs shall not authorize final payment until receipt of the Release of Claims form is confirmed by the COTR. The CO must ensure approval for final payment is not forwarded to the AOC Accounting Division without a fully executed Release of Claims form in the contract file.

(ii) COs shall ensure that COTRs require the contractor to return all GFP (i.e., badges, documents, supplies and other items) before authorizing final payment.

(4) Documentation that funds were de-obligated.

(5) Supervisory review of a completed Contract Closeout form.

(b) The Contract/Task Order Closeout form shall be completed in its entirety after final payment is made for all contracts and delivery orders greater than $100,000. Small purchases and GSA delivery orders under $100,000 shall be considered closed out upon final payment with a $0.00 balance in contracted funds.

APPENDIX A. CLAUSE MATRIX

This matrix is intended as a guide to the basic content for the most commonly used formats and is not the definitive word on solicitation content. Each CO is responsible for ensuring that any and all appropriate and applicable clauses and provisions are included in the solicitation.

UCF – Uniform Contract Format Section GC = General Conditions Sol = Solicitation Conditions	SC = Supplementary Conditions RC – Reps and Certs IBR – Is incorporation by reference authorized or recommended?	Supply – Fixed-Price Supply Service – Fixed-Price Service A-E – Architect-Engineer Construction – Fixed-Price Construction	R = Required clause or provision O = Optional A = Required when applicable

FAR/ AOC	NUMBER	TITLE	UCF Section SF 33	IBR Y or N	Supply	Service	A-E	Construction SF 1442
FAR	52.202-1	Definitions	I	Y	R	R	R	R
FAR	52.203-2	Certificate of Independent Price Determination	K	N	A	A	A	A
FAR	52.203-3	Gratuities	I	Y	R	R	R	R
FAR	52.203-5	Covenant Against Contingent Fees	I	Y	R	R	R	R
FAR	52.203-6	Restrictions on Subcontractor Sales to the Government	I	Y	R	R	R	R
FAR	52.203-7	Anti-Kickback Procedures	I	Y	R	R	R	R
FAR	52.204-3	Taxpayer Identification	K	N	R	R	R	R
FAR	52.209-5	Certification Regarding Responsibility Matters	K	N	R	R	R	R
FAR	52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	I	Y	R	R	R	R
FAR	52.211-5	Material Requirements	I	Y	R			
FAR	52.211-6	Brand Name or Equal	L	Y	A			R

FAR	52.211-12	Liquidated Damages - Construction	F	N				R
FAR	52.211-13	Time Extensions	F	Y				A
FAR	52.211-16	Variation in Quantity	F	N	A	A		
FAR	52.211-17	Delivery of Excess Quantities	F	Y	O			
FAR	52.211-18	Variation in Estimated Quantity	I	Y				A
FAR	52.214-3	Amendments to Invitations for Bids	L	Y	A	A		A
FAR	52.214-4	False Statements in Bids	L	Y	A	A		A
FAR	52.214-5	Submission of Bids	L	Y	A	A		A
FAR	52.214-6	Explanation to Prospective Bidders	L	Y	A	A		A
FAR	52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	L	Y	A	A		A
FAR	52.214-10	Contract Award – Sealed Bidding	L	Y	A	A		
FAR	52.214-12	Preparation of Bids	L	Y	A	A		
FAR	52.214-14	Place of Performance – Sealed Bidding	K	N	A	A		
FAR	52.214-15	Period for Acceptance of Bids	L	N	A	A		
FAR	52.214-16	Minimum Bid Acceptance Period	K	N	A	A		
FAR	52.214-18	Preparation of Bids - Construction	Sol	Y				A
FAR	52.214-19	Contract Award – Sealed Bidding - Construction	Sol	N				A
FAR	52.214-21	Descriptive Literature	L	N	A	A		
FAR	52.214-22	Evaluation of Bids for Multiple Awards	M/Sol	Y	A	A		A
FAR	52.214-29	Order of Precedence – Sealed Bidding	I/GC	Y	A	A		A
FAR	52.215-6	Place of Performance	K	N	A		A	
FAR	52.215-8	Order of Precedence – Uniform Contract	I	Y	A	A	A	

		Format						
FAR	52.216-1	Type of Contract	L	N	R	R	R	R
FAR	52.216-18	Ordering	I	N	A	A	A	A
FAR	52.216-19	Order Limitations	I	N	A	A	A	A
FAR	52.216-20	Definite Quantity	I	N	A	A	A	A
FAR	52.216-21	Requirements	I	N	A	A	A	A
FAR	52.216-22	Indefinite Quantity	I	N	A	A	A	A
FAR	52.216-27	Single or Multiple Awards	L	Y	A	A	A	A
FAR	52.217-3	Evaluation Exclusion of Options	M	Y	A	A	A	A
FAR	52.217-4	Evaluation of Options Exercised at Time of Contract Award	M	Y	A	A	A	A
FAR	52.217-5	Evaluation of Options	M	Y	A	A	A	A
FAR	52.217-6	Option for Increased Quantity	I	N	A	A	A	A
FAR	52.217-7	Option for Increased Quantity - Separately Priced Line Item	I	N	A	A	A	A
FAR	52.217-8	Option to Extend Services	I	N		A	A	
FAR	52.217-9	Option to Extend the Term of the Contract	I	N		A	A	
FAR	52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	I	Y				R
FAR	52.222-6	Construction Wage Rate Requirements	I	Y				R
FAR	52.222-7	Withholding of Funds	I	Y				R
FAR	52.222-8	Payrolls and Basic Records	I	Y				R
FAR	52.222-9	Apprentices and Trainees	I	Y				R
FAR	52.222-10	Compliance with Copeland Act Requirements	I	Y				R

FAR	52.222-11	Subcontracts (Labor Standards)	I	Y				R
FAR	52.222-12	Contract Termination - Debarment	I	Y				R
FAR	52.222-13	Compliance with Construction Wage Rate Requirements and Related Act Regulations	I	Y				R
FAR	52.222-14	Disputes Concerning Labor Standards	I	Y				R
FAR	52.222-15	Certification of Eligibility	I	Y				R
FAR	52.222-20	Walsh-Healey Public Contracts Act	I	Y	R			
FAR	52.222-21	Prohibition of Segregated Facilities	I	Y	R	R	R	R
FAR	52.222-22	Previous Contracts and Compliance Reports	K	N	R	R	R	R
FAR	52.222-26	Equal Opportunity	I	Y	R	R	R	R
FAR	52.222-27	Affirmative Action Compliance Requirements for Construction	I	Y				R
FAR	52.222-30	Construction Wage Rate Requirements - Price Adjustment (None or Separately Specified Method)	I	Y				A
FAR	52.222-31	Construction Wage Rate Requirements - Price Adjustment (Percentage Method)	I	Y				A
FAR	52.222-32	Construction Wage Rate Requirements - Price Adjustment (Actual Method)	I	Y				A
FAR	52.222-35	Equal Opportunity for Veterans	I	Y	R	R	R	R
FAR	52.222-36	Affirmative Action for Workers with Disabilities	I	Y	R	R	R	R
FAR	52.222-37	Employment Reports on Veterans	I	Y	R	R	R	R
FAR	52.222-41	Service Contract Labor Standards	I	Y		A	A	
FAR	52.222-42	Statement of Equivalent Rates for Federal Hires	I	N		A	A	

FAR	52.222-43	Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multi-year and Option Contracts)	I	Y		A	A	
FAR	52.222-44	Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment	I	Y		A		
FAR	52.222-50	Combating Trafficking in Persons	I	Y	R	R	R	R
FAR	52.222-52	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Certification	K	N		A		
FAR	52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements	I	Y		A		
FAR	52.223-1	Biobased Product Certification	K	N	A	R		R
FAR	52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	I	Y		R		R
FAR	52.223-3 Alternate I	Hazardous Material Identification and Material Safety Data	I	N	R			R
FAR	52.223-6	Drug-Free Workplace	I	Y	R	R	R	R
FAR	52.223-15	Energy Efficiency in Energy-Consuming Products	I	Y	R	R	R	R
FAR	52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products	I	Y	A			
FAR	52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts	I	Y		R	R	R
FAR	52.225-1	Buy American Act - Supplies	I	Y	R			
FAR	52.225-2	Buy American Act Certificate	K	N	R			
FAR	52.225-9	Buy American Act - Construction Materials		N				R

FAR	52.225-10	Notice of Buy American Act Requirement - Construction Materials	K	N				R
FAR	52.225-13	Restrictions on Certain Foreign Purchases	I	Y	R	R	R	R
FAR	52.225-18	Place of Manufacture	K	N	R			
FAR	52.227-1	Authorization and Consent	I	Y	R	R	R	R
FAR	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	I	Y	R			
FAR	52.227-3	Patent Indemnity	I	Y	R	R		
FAR	52.227-4	Patent Indemnity-Construction Contracts	I	Y				R
FAR	52.227-14	Rights in Data - General	I	Y	A	A	A	A
FAR	52.228-2	Additional Bond Security	I	N		A		R
FAR	52.228-12	Prospective Subcontractor Requests for Bonds	I	Y		A		R
FAR	52.228-13	Alternative Payment Protection	I	N		A		A
FAR	52.228-14	Irrevocable Letter of Credit	I	N		A		R
FAR	52.229-3	Federal, State and Local Taxes	I	Y	R	R	R	R
FAR	52.232-10	Payments Under Fixed-Price Architect-Engineer Contracts	I	Y			R	
FAR	52.232-11	Extras	I	Y	R	R		
FAR	52.232-18	Availability of Funds	I	N	A	A	A	A
FAR	52.232-19	Availability of Funds for the Next Fiscal Year	I	N	A	A	A	A
FAR	52.232-23	Assignment of Claims	I	Y	R	R	R	R
FAR	52.233-3	Protest after Award	I	N	R	R	R	R
FAR	52.233-4	Applicable Law for Breach of Contract Claim	I	Y	R	R	R	R
FAR	52.236-1	Performance of Work by the Contractor	I	N				R

FAR	52.236-2	Differing Site Conditions	I	Y				R
FAR	52.236-3	Site Investigation and Conditions Affecting the Work	I	Y				R
FAR	52.236-4	Physical Data	I	N				R
FAR	52.236-5	Materials and Workmanship	I	Y				R
FAR	52.236-6	Superintendence by the Contractor	I	Y				R
FAR	52.236-7	Permits and Responsibilities	I	Y				R
FAR	52.236-8	Other Contracts	I	Y				R
FAR	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	I	Y				R
FAR	52.236-10	Operations and Storage Areas	I	Y				R
FAR	52.236-11	Use and Possession Prior to Completion	I	Y				R
FAR	52.236-12	Cleaning Up	I	Y				R
FAR	52.236-13	Accident Prevention	I	Y				R
FAR	52.236-15	Schedules for Construction Contracts	I	Y				R
FAR	52.236-21	Specifications and Drawings for Construction	I	Y				R
FAR	52.236-21 Alternate I	Specifications and Drawings for Construction	I	Y				A
FAR	52.236-21 Alternate II	Specifications and Drawings for Construction	I	Y				A
FAR	52.236-22	Design Within Funding Limitations	I	N			R	
FAR	52.236-23	Responsibility of the Architect-Engineer Contractor	I	Y			R	
FAR	52.236-24	Work Oversight in Architect-Engineer Contracts	I	Y			R	

FAR	52.236-25	Requirements for Registration of Designers	I	Y			R	
FAR	52.236-26	Pre-Construction Conference	I	Y				R
FAR	52.237-2	Protection of Government Buildings, Equipment, and Vegetation	I	Y		R	R	
FAR	52.239-1	Privacy or Security Safeguards	I	Y	A	A		
FAR	52.242-13	Bankruptcy	I	Y	R	R	R	R
FAR	52.242-17	Government Delay of Work	I	Y			R	
FAR	52.243-1	Changes-Fixed-Price	I	Y	R			
FAR	52.243-1 Alternate I	Changes-Fixed-Price	I	Y		R		
FAR	52.243-1 Alternate II	Changes-Fixed-Price	I	Y	A	A		
FAR	52.243-1 Alternate III	Changes-Fixed-Price	I	Y		A	R	
FAR	52.243-4	Changes	I	N				R
FAR	52.243-6	Change Order Accounting	I	Y				R
FAR	52.243-7	Notification of Changes	I	N	A	A	R	R
FAR	52.244-4	Subcontractors and Outside Associates and Consultants - Architect-Engineer Services	I	Y			R	
FAR	52.245-1 Alternate I	Government Property	I	Y		A	A	R
FAR	52.246-2	Inspection of Supplies - Fixed-Price	E	Y	R			
FAR	52.246-4	Inspection of Services - Fixed-Price	E	Y		R		
FAR	52.246-12	Inspection of Construction	E	Y				R

FAR	52.246-13	Inspection—Dismantling, Demolition, or Removal of Improvements	I	Y		A		A
FAR	52.246-16	Responsibility for Supplies	E	Y	R	A		
FAR	52.246-17	Warranty of Supplies of a Noncomplex Nature	I	N	A			
FAR	52.246-20	Warranty of Services	I	N		R		
FAR	52.246-21	Warranty of Construction	I	Y				R
FAR	52.246-23	Limitation of Liability	I	Y	R			
FAR	52.246-25	Limitation of Liability - Services	I	Y		R		
FAR	52.247-34	F.O.B. Destination	F	Y	A			
FAR	52.248-1	Value Engineering	I	Y	A	A		
FAR	52.248-2	Value Engineering Program – Architect-Engineer	I	Y			R	
FAR	52.248-3	Value Engineering – Construction	I/GC	N				R
FAR	52.249-2	Termination for Convenience of the Government (Fixed-Price)	I	Y	R	R		
FAR	52.249-2 Alternate I	Termination for Convenience of the Government (Fixed-Price)	I	Y				R
FAR	52.249-7	Termination (Fixed-Price Architect-Engineer)	I	Y			R	
FAR	52.249-8	Default (Fixed-Price Supply and Service)	I	Y	R	R		
FAR	52.249-10	Default (Fixed-Price) Construction	I	Y				R
FAR	52.252-1	Solicitation Provisions Incorporated by Reference	L	N	R	R	R	R
FAR	52.252-2	Clauses Incorporated by Reference	I	N	R	R	R	R
FAR	52.253-1	Computer Generated Forms	I	Y	R	R	R	R
AOC	52.201-1	Contracting Officer's Authority	G/SC	N	R	R	R	R

AOC	52.201-2	Contracting Officer's Technical Representative (COTR)	G/SC	N	R	R	R	R
AOC	52.202-1	Definitions	I	N	R	R	R	
AOC	52.202-2	Definitions - Construction	GC	N				R
AOC	52.203-1	Advertising/Promotional Materials	I/GC	N	R	R	R	R
AOC	52.203-2	Disclosure of Information to the General Public	I/GC	N	R	R	R	R
AOC	52.203-3	Officials Not to Benefit	I	N		A	R	
AOC	52.203-4	Dissemination of Contract Information	I	N	R	R	R	R
AOC	52.203-5	Confidentiality Requirement	I/GC	N		A	R	A
AOC	52.204-1	Printed or Copied Double-Sided on Recycled Paper	I/GC	N	R	R	R	R
AOC	52.204-2	Data Universal Numbering Systems (DUNS)	K/RC	N	R	R	R	R
AOC	52.204-3	Representations and Certifications	K/RC	N	R	R	R	R
AOC	52.204-4	Personal Identity Verification of Contractor Personnel	I/GC	N		R	R	R
AOC	52.204-5	System for Award Management (SAM)	I/GC	N	R	R	R	R
AOC	52.204-6	Capitol Complex Conditions Affecting Contractor Operations	G/SC	N	R	R	R	R
AOC	52.206-1	Procurement Authority for the Architect of the Capitol	L/Sol	N	R	R	R	R
AOC	52.207-1	Right of First Refusal	I	N		A		
AOC	52.209-1	Organizational and Personal Conflicts of Interest	K/RC	N	R	R	R	R
AOC	52.209-2	Restrictions and Disclosures of Organizational and Personal Conflicts of Interest	I/GC	N	R	R	R	R

AOC	52.209-3	Company Principals	K/RC	N	R	R	R	R
AOC	52.211-1	Key Personnel	G/SC	N		A	A	A
AOC	52.211-2	Approval of Substitute Contractor Personnel	G/SC	N		A	A	A
AOC	52.211-3	Deficiencies in Contract Documents	I/GC	N				R
AOC	52.211-4	Term of Contract	F	N	A	A	A	A
AOC	52.211-5	Commencement, Prosecution and Completion of Work	SC	N				R
AOC	52.211-6	Notice to Proceed	GC	N				R
AOC	52.211-7	Identification of Contract Deliverables	D	N			R	
AOC	52.214-1	Submission of Bids – Supplement	L	N	A	A		A
AOC	52.214-2	Public Bid Opening	L	N	A	A		A
AOC	52.214-3	Mistakes in Bids	L	N	A	A		A
AOC	52.215-1	Instructions to Offerors	L/Sol	N	A	A	R	A
AOC	52.215-2	Interpretations and Amendments	L/Sol	N	A	A	R	A
AOC	52.215-3	Restriction on Disclosure and Use of Data	L/Sol	N	A	A	R	A
AOC	52.215-4	Contract Award – Lowest Price Technically Acceptable	M/Sol	N	A	A		A
AOC	52.215-5	Contract Award - Source Selection Procedures	M/Sol	N	A	A	R	A
AOC	52.215-6	Preparation of Proposals	L	N	A	A	R	
AOC	52.215-7	Preparation of Proposals - Construction	Sol	N				A
AOC	52.215-8	Authorized Negotiators	K/RC	N	A	A	R	A
AOC	52.215-9	Failure to Submit Offer	L/Sol	N	A	A	R	A
AOC	52.215-10	Examination of Records	I/GC	N	R	R	R	R
AOC	52.215-11	Examination of Costs	I/GC	N	A	A	R	A

AOC	52.215-12	Joint Venture Offeror Requirements	L/Sol	N	R	R	R	R
AOC	52.216-1	Economic Unit Price Adjustment	I	N	A	A		
AOC	52.216-2	Economic Price Adjustment	I	N	A			
AOC	52.216-3	Indefinite-Delivery Contract Awards	L/Sol	N	A	A	A	A
AOC	52.216-4	Work Orders	I	N		A		
AOC	52.216-5	Work Orders	I	N		A		
AOC	52.216-6	Undefinitized Contract Actions	I/GC	N		R	R	R
AOC	52.219-1	Utilization of Small Business Concerns	I/GC	N	R	R	R	R
AOC	52.219-2	Small Business Representations and Certifications	K/RC	N	R	R	R	R
AOC	52.219-3	Small Business Subcontracting Plan	I/GC	N			A	A
AOC	52.222-1	Overtime Work - Construction	GC	N				R
AOC	52.222-2	Supplemental Wage Determination Request	I/SC	N		A		A
AOC	52.222-3	Convict Labor	I/GC	N	R	R	R	R
AOC	52.222-4	Overtime Work	I	N		R		
AOC	52.222-5	Collective Bargaining Agreements	I	N		A		
AOC	52.222-7	Workmen's Compensation Laws	GC	N				R
AOC	52.222-8	Affirmative Recruitment	I	N		A		
AOC	52.223-1	Hazardous Material Identification and Material Safety Data - Supplement	I/GC	N	R			A
AOC	52.223-3	Security Markings	I/GC	N			R	R
AOC	52.223-4	Transmission or Posting of Drawings/Specifications	I/GC	N		A	R	R
AOC	52.223-5	Special Security Requirements	G/SC	N		A	A	A

AOC	52.223-6	Special Security Requirements - U.S. Supreme Court	G/SC	N	A	A	A	A
AOC	52.223-7	Special Security Clearance and Inspection Procedures	I	N		A	A	
AOC	52.223-8	Delivery Vehicle Inspection Requirements	G/SC	N	R	A	A	R
AOC	52.223-9	Accident Prevention and Safety and Health Programs	I	N	R	R	R	
AOC	52.223-10	Use of Radiography or other Nuclear Regulatory Commission Licensed Devices and Notice of Radioactive Materials	I	N	R	R	R	R
AOC	52.227-1	Patent Indemnity - Commercial Items	I	N	A			
AOC	52.227-2	Unlimited Government Rights	I	N		A	R	
AOC	52.227-3	Drawings and Other Data to Become Property of the Government (Note: for design-build contracts)	SC	N				A
AOC	52.228-1	Offer Guarantee	L/Sol	N	A	A		A
AOC	52.228-2	Insurance - Work on a Government Installation	I/GC	N		R	R	R
AOC	52.228-3	Professional Liability Insurance	I/GC	N		A	R	A
AOC	52.228-4	Indemnification and Hold Harmless Agreement	I	N		R		
AOC	52.228-5	Payment Protection and Performance Bonds - Construction	GC	N				R
AOC	52.228-6	Notice to Sureties	GC	N				R
AOC	52.228-7	Offer Guarantee - Construction	Sol	N				R
AOC	52.228-8	Pollution Liability Insurance	I/GC	N		A		A
AOC	52.231-1	Travel Costs	I	N		A	R	

AOC	52.232-1	Payment Requests	I	N	R	R	R	
AOC	52.232-4	Payments - Construction	GC	N				R
AOC	52.232-6	Payment by Electronic Funds Transfer	I/GC	N	R	R	R	R
AOC	52.232-7	Discounts	I	N	R	R		
AOC	52.232-12	Assignment - Supplement	I/GC	N	R	R	R	R
AOC	52.232-13	Availability of Funds - Continuing Resolution	I/GC	N	A	A	A	A
AOC	52.232-14	Submission of Electronic Funds Transfer Information	L/Sol	N	R	R	R	R
AOC	52.233-1	Disputes	I/GC	N	R	R	R	R
AOC	52.233-2	Waiver and Release of Claims	I/GC	N	R	R	R	R
AOC	52.233-3	Limitation on Damages for Government Delay	GC	N				R
AOC	52.233-5	Service of Protest	L/Sol	N	R	R	R	R
AOC	52.236-1	Access to Work	GC	N				R
AOC	52.236-2	Other Contracts and Work	GC	N				R
AOC	52.236-3	Accident Prevention and Safety and Health Programs - Construction	GC	N				R
AOC	52.236-4	Cutting and Patching	GC	N				R
AOC	52.236-5	Cleaning and Restoring	GC	N				R
AOC	52.236-6	Archeological or Historical Sites	I/GC	N		A	R	R
AOC	52.236-7	Specifications and Drawings for Design-Build Contracts	GC	N				A
AOC	52.236-8	Scheduling of Work	GC	N				R
AOC	52.236-9	Schedule of Values	GC	N				R
AOC	52.236-10	Specifications and Drawings for Construction	GC	N				R

AOC	52.236-11	Submittals	SC	N				R
AOC	52.236-12	Product Data and Samples	GC	N				R
AOC	52.236-13	Visit to the Site of the Work	Sol	N				R
AOC	52.236-14	National and Local Codes	I	N			R	
AOC	52.236-15	Responsibility of the Contractor for Design in Design-Build Contracts	GC	N				A
AOC	52.236-16	Sequence of Design and Construction in Design-Build Contracts	GC	N				A
AOC	52.236-17	Design-Build Contractor's Construction Management Role During Design	SC	N				A
AOC	52.237-1 or Alternate I	Site Visit	L	N		A	R	
AOC	52.239-1	Protection of AOC Information Technology Systems	I/GC	N	R	R	R	R
AOC	52.242-2	Contractor Performance Evaluations	G/SC	N	R	R	R	R
AOC	52.242-3	Suspension of Work	I/GC	N			R	R
AOC	52.242-4	Stop Work Order	I/GC	N	R	R		
AOC	52.243-1	Changes - Supplement	GC	N				R
AOC	52.243-2	Contract Status with Modifications	I/GC	N	A	A	A	A
AOC	52.243-3	Contractor's Statement of Release	I/GC	N	A	A	A	A
AOC	52.243-4	Task/Delivery Order Status with Modifications	I/GC	N	A	A	A	A
AOC	52.244-1	Award of Subcontracts and Other Contracts for Portions of the Work	GC	N				R
AOC	52.245-1	Inventory Control and Indemnification of Property	I	N		A		

AOC	52.245-2	Government-Furnished Property	I/GC	N	R	R	R	R
AOC	52.246-1	Final Inspection and Acceptance - Construction - Supplement	GC	N				R
AOC	52.246-3	Warranty of Commercial Items	I	N	A			
AOC	52.246-4	Warranty of Non-Commercial Items	I	N	A			
AOC	52.246-5	Inspection and Acceptance – A/E Services	E	N			R	
AOC	52.246-6	Additional Warranty Coverage	GC	N				R

SECTION J ATTACHMENTS				
ACH vendor payment form	A	A	A	A
Vendor request form	A	A	A	A
W-9	A	A	A	A
U.S. Capitol Police request for check of criminal history records (CP-491)	R	R	R	R
SOP - Capitol Power Plant - badging and site access policy and procedures (October 4, 2013)	A	A	A	A
Certificate of insurance sample		A	R	R
Service Contract Labor Standards wage determination		A		
Construction Wage Rate determination				R
USCP vehicle delivery procedures reference guide	R	A	A	R
Past performance questionnaire	A	A	A	A
Continuing contract performance during a pandemic influenza or other national emergency	R	R	R	R
Confined space policy (tunnels projects)				A
Custodial policies (3 different policies)		A		
Guidelines for conservators regarding handling of hazardous materials		A		

APPENDIX B. SUPERSEDED PUBLICATIONS

Orders

Number	Title	Date
34-01-01	AOC Procurement Division Order System and Authorities	June 19, 2006
34-02-01	Definitions	May 6, 2003
34-06-01	Competition Requirements	January 27, 2012
34-07-01	Acquisition Planning	August 17, 2012
34-13-01	Small Purchases	August 16, 2006
34-13-02	Government Purchase Cards	May 10, 2011
ME 34-11-01	Training Requirements for COTRs	May 17, 2013
ME 34-13-03	Request for Small Purchase Form	March 30, 2012
34-15-01	Contracting by Negotiation	June 10, 2005
ME 34-19-01	Small Business	February 22, 2008
ME 34-37-01	Service Contracting	July 8, 2011
34-42-01	Contract Administration	May 25, 2005
34-43-01	Contract Modifications	May 2, 2005
B34-18-01	Emergency Procurement	December 2, 2010

Standard Operating Procedures (SOPs)

PART		DATE
1.	Standard Operating Procedure System	
1-2	Ratification of Unauthorized Commitments	04/10/09
4.	Administrative Matters	
4-1	Contract File Maintenance	05/15/09
4-2	Distribution of Contractual Documents	02/19/08
4-4	Contract Closeout	03/10/09
4-7	Review of Contractual Actions	12/22/09
4-9	POP System	08/27/10
4-10	Receipt & Handling of Offers	03/19/10
4-13	Purchase Card Review Process	12/16/09
4-15	Vendor Request Form	05/02/08
5.	Publicizing Contract Actions	
5-1	Publicizing Contract Actions – FEDBIZOPPS	06/15/10
9.	Contractor Qualifications	
9-1	Determination of Responsibility	10/22/08
11.	Describing Agency Needs	
11-2	Liquidated Damages	04/07/10
13.	Small Purchase Procedures	
13-1	Small Purchase Procedures and Modifications	03/09/07
13-2	Small Purchases Files	12/07/11
15.	Contracting by Negotiation	
15-1	Amendment of Request for Proposals	04/10/09
15-2	Award of Contract	01/17/08
15-5	Source Selection Instruction	05/17/01
16.	Types of Contracts	
16-1	Contract Type – Fixed Price	05/02/11
17.	Special Contracting Methods	
17-1	Options	12/18/09
19.	Small Business Programs	
19-1	Subcontracting Plans	10/01/10
22	Application of Labor Laws to AOC Acquisitions	
22-1	Wage Determinations –Service Contracts Act and Davis Bacon Act	05/15/09
28.	Bonds and Insurance	
28-1	Performance/Payment Bond Review	11/20/01
28-2	Consent of Surety	04/25/05
29.	Taxes	
29-1	Federal, State and Local Tax Exemptions	04/07/04
33.	Protests, Disputes and Appeals	
33-1	Disputes and Contracting Officer's Final Decision	03/20/08
42.	Contract Administration and Audit Services	
42-1	Rescission of COTR Appointment	07/06/04
42-2	CPARS	03/16/09
42-3	CO Review of COTR Performance	04/03/13
43.1	Modifications	
43-1	Contract Modifications	04/27/09

Information Letters

IL #	Subject	Date
2005-4A	Retainage	10/26/ 2005
2006-01	Brand Name or Equal	11/20/2005
2006-02	Indefinite Delivery contracts (IDC)	11/04/2005
2006-03	Trade-In of Used Equipment and Excess Spare Parts	11/10/2005
2009-02	Requirements for Buy American	05/13/2009
2010-01	JWOD and the AbilityOne Program	03/19/ 2010
2011-01	AOC Policy on Personal Services Contracts	07/08/2011
2012-02	AOC Use of the E-Verify Program	12/21/2012