



PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

Advisory and Assistance Services A Practical Reference Guide

Inspection and Evaluation Committee

**Prepared by the
Inspections and Evaluation Roundtable**

December 2000

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PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

President's Council on Integrity and Efficiency (PCIE) is comprised of all Presidentially appointed Inspectors General. In addition, the Executive Order specifies the Office of Government Ethics, the Office of Special Counsel, the Federal Bureau of Investigations, and the Office of Management and Budget (OMB) as members of the PCIE. The Council is chaired by the Deputy Director for Management at OMB and an Inspector General holds the position of Vice Chair. The PCIE is charged with conducting interagency and inter-entity audit, inspection, and investigation projects to effectively and efficiently deal with government-wide issues of fraud, waste and abuse. The Council accomplishes this through committee activity. Established committees of the PCIE include Audit, Inspection & Evaluation, Integrity, Investigations, Legislation and Professional Development.

INSPECTIONS AND EVALUATION ROUNDTABLE

The Inspections and Evaluation Roundtable, created in 1993, is an organization of the directors of inspections and evaluation units within Federal Offices of Inspector General. It exists to promote the professional development of Offices of Inspector General employees working in inspection and evaluation units, to improve the practice of evaluation and analysis in the Inspector General environment, and to provide positive contributions to the Inspector General community as well as the Federal Government as a whole in improving the management of Federal programs. The Roundtable also serves as an adjunct to the Inspection and Evaluation Committee of the President's Council on Integrity and Efficiency (PCIE).

This guide was prepared at the request of the PCIE Inspection and Evaluation Committee and is carried out under the auspices of the Roundtable steering committee.

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PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

JAN 2 2001

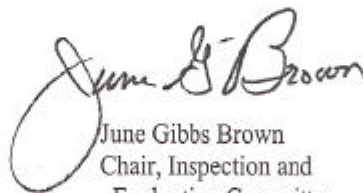
MEMORANDUM FOR THE MEMBERS OF THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

SUBJECT: Advisory and Assistance Services: A Practical Reference Guide

Attached is a reference guide to be used in the procurement of advisory and assistance services in the Inspector General community. This guide was prepared by the Inspections and Evaluation Roundtable at the request of the Inspection and Evaluation Committee. It provides some common sense advice on how to effectively obtain various "intellectual" services from contractors, as well as advice on the proper and effective use of such contracts.

There is a large body of complex regulations behind the practical tips and best practices offered in this guide. The guide is intended to be a supplement to or reminder of formal training, an "introduction to" document for project officers and others considering the use of advisory and assistance services contracts. It is not intended to replace or supercede Federal law, regulations, or internal agency guidelines.

I recommend that this guide be made available to project officers and others involved with managing contracts for advisory and assistance services. For additional information or questions, please contact George Grob, Deputy Inspector General for Evaluation and Inspections, at (202) 619-0480.


June Gibbs Brown
Chair, Inspection and
Evaluation Committee

Attachment



Memorandum

Date JAN 2 2001

From George Grob, Chair
Inspections and Evaluation Roundtable *George Grob*

Subject Advisory and Assistance Services: A Practical Reference Guide

To June Gibbs Brown, Chair
PCIE Inspections and Evaluation Committee

As you requested, the Inspections and Evaluation Roundtable has completed a reference guide to be used in the procurement of advisory and assistance services in the Inspector General community.

In the preparation of this guide, we held numerous interviews with Offices of Inspector General staff and contracting officers to obtain their perspectives on contracting issues of greatest concern to the Inspector General community. In addition, we obtained the services of an expert consultant and solicited guidance from other experts in the contracting community to prepare this guide.

I think you will agree that the guide provides some practical advice on how to effectively obtain advisory and assistance services, and other similar services from contractors. We believe it will be useful to both evaluators and auditors, as well as other staff who need to procure such professional services. I wish to emphasize, though, that it is not intended to replace required formal training in Federal procurement practices.

Please let me know if you have any questions or comments regarding the attached report.

Attachment

TABLE OF CONTENTS

| | PAGE |
|--|------|
| Introduction | 1 |
| Glossary | 4 |
| Acquisition Planning | 8 |
| Planning and Urgency | 8 |
| Contacts with Potential Contractors | 10 |
| Management of the Contracting Process | 11 |
| Teamwork | 11 |
| Acquisition Integrity | 13 |
| Acquisition Procedures | 14 |
| Identifying the Contractual Need | 16 |
| Deciding When to Contract | 16 |
| Uses for Contracts | 16 |
| Prohibited Contracting Actions | 18 |
| Prohibited Contract Work | 18 |
| Prohibited Contract Provisions | 18 |
| Key Pre-solicitation Decisions | 20 |
| Market Research | 20 |
| Methods of Contracting | 21 |
| Commercial Services | 22 |
| Types of Contracts | 23 |
| Preparing the Statement of Work | 26 |
| The Heart of the Contract | 26 |
| Performance-based and Performance-oriented | 27 |
| Preparing the Written Solicitation | 29 |
| Contract Clauses | 29 |
| Evaluation Factors | 30 |
| A “Best-value” Approach | 33 |
| Selecting the Winner(s) | 33 |
| Contract Prestige | 34 |
| Business Size | 34 |

| | PAGE |
|--|------|
| Quality Assurance Through Contract Administration | 36 |
| Before Work Begins | 36 |
| Monitoring the Contractor's Work | 37 |
| Modifications | 39 |
| Funds and Payments | 40 |

APPENDICES

| | |
|---|----|
| A: Resources for Further Study | 41 |
| B: A Typical Statement of Work for Advisory and Assistance Services .. | 42 |
| ▶ Sample Outline | 42 |
| ▶ Sample Statement of work | 44 |
| C: Sample Contract Clauses | 50 |
| ▶ Contractor's Conflict of Interest Statement | 50 |
| ▶ Sections G and H Considerations | 51 |
| ▶ Section H - Other Optional Contract Considerations | 53 |
| ▶ Key Personnel | 54 |
| ▶ Contractor's Pride of Authorship | 55 |
| ▶ Task Order Competition and Ordering Procedures | 56 |
| D: Federal Acquisition Regulation Definitions of Glossary Terms | 58 |

INTRODUCTION

This guide was prepared by the Inspections and Evaluation Roundtable at the request of the Committee on Inspection and Evaluation of the President's Council on Integrity and Efficiency. It provides an overview of the legal and practical aspects of obtaining various "intellectual" services from contractors as well as advice on the proper and effective use of such contracts. The Committee had determined that common sense advice on how to effectively obtain advisory and assistance services was needed.

This guide is written primarily for project officers considering the use of advisory and assistance services contracts. It should be regarded as a "coaching document". Also, it has corollary benefits for those considering the use of other services contracts and as an introduction to service contracts for new staff. It is not a substitute for formal training, nor does it replace or supercede Federal law, regulations [including the Federal Acquisition Regulation (FAR)], or internal agency guidelines. For most staff, especially those acting as project officers, additional training in contract management will be required.

We held numerous interviews with Offices of Inspector General staff and contracting officers to obtain their perspectives on contracting issues of greatest concern to the Inspector General community. In addition, we contracted with an expert consultant and solicited guidance from other experts in the contracting community to prepare this guide.

Service Contracts. This guide focuses on the effective use of advisory and assistance services contracts, but it applies as well to most other services contracts typically used by the Inspector General community. Advisory and assistance services contracts are useful when expertise is required, but the need is not great enough to justify hiring a staff person to perform the function. Use of outside contractors allows the Offices of Inspector General to get a higher payback for dollars expended due to the contractors' ability to specialize in one area. It is not cost effective for the Offices of Inspector General to internally perform all functions required by its mission. These contracts free up staff time for pursuing other activities important to the individual Offices of Inspector General. Through increased knowledge of the contracting process, advisory and assistance services contracts can be an effective tool of any Office of Inspector General.

The distinction between advisory and assistance services and other services contracts is important because the procedures and regulations vary somewhat depending upon which classification applies to a particular acquisition. However, distinguishing the type of service contract is not easy. It involves technical issues in addition to the nature of contract work to be performed. Therefore, the project officer and the contracting officer must work together to correctly classify each services contract.

The following definitions and discussions will assist project officers in fulfilling their responsibilities in distinguishing between the two types of services contracts and understanding why a contracting officer may take a particular stance on certain technical aspects of the classification.

- ▶ Advisory and assistance contracts. Advisory and assistance services contracts include those designed to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; research and development activities; and professional advice and assistance about management. Outputs from advisory and assistance contracts may include information, advice, opinions, alternatives, analysis, evaluations, recommendations, training, and the day-to-day aid of support personnel. [See Federal Acquisition Regulation Subparts 2.101 and 37.2 for further edification.]
- ▶ Other services contracts. Contracts, other than advisory and assistance services contracts, which directly engage the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Outputs from these contracts may include auditing functions such as the Chief Financial Officer audits.
- ▶ Exclusion for information technology. Routine information technology services generally are excluded from classification as advisory and assistance services contracts. [See Federal Acquisition Regulation Subpart 37.202.]
- ▶ Audit services. Categorization of audit services is discussed in Office of Management and Budget Circular A-11 (1999). Financial statement auditing is excluded from the advisory and assistance services category and, therefore, is categorized as other services. The Federal Acquisition Regulation includes performance auditing in its definition of advisory and assistance services. It is interesting to note that auditing constitutes the single largest category of services contracts for Offices of Inspector General.
- ▶ Importance of the distinction. The proper classification of service contracts is important since the resultant contract requirements and restrictions differ. [See Federal Acquisition Regulation Subpart 16.504(c).] When contracting for advisory and assistance services, use of multiple awards usually is required when the contract exceeds 3 years and \$10 million. However, the requirements for other services contracts are stricter, requiring the contracting officer to give strong consideration to the use of multiple contractors when the costs exceed the simplified acquisition threshold (currently \$100K). Under either classification, when multiple awards are made, all contractors must be given a fair opportunity to compete for each task order over \$2,500. [See Federal Acquisition Regulation Subpart 16.505(b)(1)(I).]

Contractor Selection and Monitoring. Advisory and assistance services contracts are most effective when attention is focused on contractor selection and monitoring of their performance.

- ▶ Contractor selection. Once a decision is made to acquire services through contracting, it is often difficult to quantify the criteria for selecting the contractor. Care must be taken to encourage competition and select a contractor who will perform as expected.
- ▶ Monitoring contractor performance. After contract award, care must be taken to monitor the contractor's performance to ensure it performs as expected throughout

the life of the contract. Performance of even the best contractors should be carefully reviewed.

Elements of the Contract Management Process. There is no uniform agreement on how to list the various steps in the contracting process. Contracts tend to go through similar processes, but different parts of the process get varying degrees of emphasis depending on the contract. This guide will discuss the nine most common contract elements associated with advisory and assistance services and other services contracts. These are:

- ▶ Acquisition planning,
- ▶ Management of the contracting process,
- ▶ Identifying the contractual need,
- ▶ Prohibited contracting actions,
- ▶ Key pre-solicitation decisions,
- ▶ Preparing the statement of work,
- ▶ Preparing the written solicitation,
- ▶ A “best-value” approach, and
- ▶ Quality assurance through contract administration.

These nine contract elements are reflected in the table of contents and throughout the guide. Accompanying each element is a discussion of issues important to the Offices of Inspector General along with a corresponding statement discussing why the issues are important and offering considerations for effectively dealing with the issues as they arise.

GLOSSARY

This glossary defines contracting terms in simple, practical language for program offices. However, technical definitions for many of these terms are contained in the Federal Acquisition Regulation, and a number of these terms are defined in Appendix D using Federal Acquisition Regulation wording. As needed, you should reference the Federal Acquisition Regulation or contact your contracting officer to obtain further clarification and guidance.

Advisory and Assistance Services Contracts. A category of services contracts where the purpose of obtaining the services is to improve policy making, decision-making, management, administration, etc.

Blanket Purchase Agreement. An agreement with a contractor or business to supply many inexpensive items or services upon request and then provide a monthly bill for all small items.

Commerce Business Daily. A daily publication listing Federal contracting opportunities above \$25K and other announcements relating to contracting. The list is available electronically or in hard copy. The web site is: <http://cbdnet.gpo.gov>. Depending on the method of contracting used, the formats of the list vary as do the number of days the government must wait before closing competition.

Commercial Services. Services offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions.

Conflict of Interest. When one has the opportunity to advance or protect one's own interest or the private interest of others, with whom one has a relationship, in a way detrimental to the interests, or potentially harmful to the integrity of the Federal Government.

Contracting Officer. A government employee with expertise in Federal contracting. Normally the only official authorized to negotiate with a contractor, award or modify contracts, change the terms of the contract, etc.

Contracting Officer Technical Representative (COTR). A government employee who has technical expertise associated with the services being provided by the contractor. The contracting officer relies on the COTR to manage the performance of the contractor from a technical perspective. The contracting officer appoints the COTR and specifies specific authorities in writing. This individual may perform only those functions that have been delegated by the contracting officer, and may not sign, modify contracts, or take other actions that are reserved to the contracting officer.

Critical Need. A sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, Executive Order, court order, regulation, or formal directive from the head of an agency or

subordinate official authorized to take final action on behalf of the agency head. A recurring, cyclical peak workload, by itself, is not a critical need.

8(a) Contracts. A Small Business Administration (SBA) program where Federal contracts may be awarded with limited competition. Only contractors with Small Business Administration 8(a) status are able to be considered for award of these contracts. The Small Business Administration determines if a company qualifies for 8(a) status based on its size and whether it is owned by someone classified as economically or socially disadvantaged. Contracts valued at less than \$3 million can be awarded under the 8(a) program without competition. Contracts in excess of \$3 million require competition among 8(a) firms.

Federal Supply Schedule (also referenced as GSA Schedule). General Services Administration (GSA) contractors available under pre-awarded task order contracts for common services. These schedules require minimum competition and may be used by Federal agencies, including Offices of Inspector General. These schedules may be used by others (e.g., contractors) if the contract permits.

Firm-fixed Price Contract. A contract in which the contractor agrees to perform the entire job for a pre-determined price.

Full and Open Competition. A basic tenet of Federal contracting in which all responsible sources are permitted to compete (large and small businesses). However, use of the term is confusing as many contracting officers refer to a buy as being full and open after sources have been excluded. For example, a contract may be set aside for small businesses, and no large contractor is permitted to compete. However, there are only seven legal exceptions considered appropriate for issuing a contract without allowing for full and open competition (reference FAR Part 6.302).

Indefinite-delivery-indefinite-quantity Contract. A contract where the precise amount of work and the time needed is not known. For example, the Offices of Inspector General could contract for audit services over a 1 year period and issue task orders when the need for the audits arise and then specify in the task order how much work is expected.

Labor-hour Contract. A contract where the contractor is paid only for hours worked and not for a completed task.

Open Market. All responsible sources are permitted to compete regardless of whether or not the solicitation may have some source restrictions. For example, a contract may be reserved for small businesses, but all responsible small businesses are permitted to compete. Also, in the contracting community this phrase is often used loosely to refer to a more competitive solicitation as compared to a one with narrow competition. As an example, the General Services Administration Federal Supply Schedule, limits competition to 8(a) contractors, or using other agency contracts.

Other Services Contracts. A contract, other than advisory and assistance services, that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

Performance-based Contracts. Contracts 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. These contracts usually (1) describe performance in terms of results required rather than the methods to be used to perform the work; (2) use measurable performance standards; (3) use positive incentives to encourage effective performance.

Personal Services Contract. A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be Federal employees. These contracts normally are not authorized unless a governmental entity has special legislative authority to do so.

Private Sector Temporaries. Employees of a temporary help service firm who are supervised and paid by that firm. Their employees are assigned to various client organizations who have contracted for the temporary use of their skills.

Project Officer. As used in this guide, staff representing the programmatic or operational expertise in the contract management process. This official works with the contracting officer to assure that contracting needs are appropriately and specifically described. S/he is primarily responsible for preparing the solicitation, conducting technical reviews of proposals, etc. This official does not have authority to negotiate, award, or modify contracts.

Request for Information (RFI). An announcement in the Commerce Business Daily asking contractors to provide marketing information about their services. The information received will help in the preparation of a synopsis for later publication in the Commerce Business Daily.

Simplified Acquisition Method. A prescribed approach to contracting that simplifies a number of traditional contracting procedures, such as shortened synopsis, reduced time for contractors to reply to a solicitation, simpler and faster contractor evaluation, etc.

Simplified Acquisition Threshold. The maximum dollar amount of a contract that may be awarded under the Simplified Acquisition Method (currently \$100K for non-commercial supplies or services and \$5 million for commercial supplies and services).

Small Business. A business defined as “small” in accordance with standards published in Part 19 of the Federal Acquisition Regulation. Basic Federal government policy is to restrict competition for any contract to small businesses if there are two or more responsible small businesses that can do the work at a fair and reasonable price.

Small Business Set-aside. A solicitation announcing that the Office of Inspector General will accept offers only from small businesses.

Sole Source Acquisition. Soliciting and negotiating with only one source.

Solicitation. A request for offers. The request may be written, electronic, or oral.

Statement of Work. The portion of a solicitation or contract that specifies the technical objectives and requirements of the contract.

Synopsis. A short description of a Government solicitation, acquisition, or other related contract announcement, published in the Commerce Business Daily for one of the following purposes: (1) alert interested parties to an upcoming acquisition; (2) find sources to provide services or items to the Government; or (3) inform interested parties of the result of an acquisition, etc.

Task Order. An order to perform work that is issued under the terms of an indefinite-delivery-indefinite-quantity contract.

Temporary Help Service Firm. A private sector entity that quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is a legally responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

ACQUISITION PLANNING

Planning and Urgency

The Importance of Planning. Planning for an acquisition is required by regulation and is the best way of ensuring that needed services will be obtained in an effective, economical, and timely manner. Acquisition planning involves a general consideration of the elements required for a particular contract. The process may be quite simple or very elaborate depending upon the dollar size of the anticipated contract and its complexity. Larger, more complex acquisitions generally have a written plan. Smaller and simpler ones may not need a written plan but will still require that the acquisition be thought through. Through planning, the many steps and personnel involved in the contracting process can be coordinated and potential problems identified and resolved.

During contract planning, the project officer and the contracting officer should work together to explore that particular Office of Inspector General's history in acquiring the needed services. Also, planning allows for a review of the acquisition to assure, for example, that the contract is not for "inherently governmental functions" (e.g., acquisition of criminal investigation services) which is prohibited under Federal law. [See the chapter on "Prohibited Contracting Actions" for a discussion of "inherently governmental functions."] Planning includes "market research" which may be needed to learn about the numbers and types of qualified contractors available and to identify the prevailing practices for acquiring these services. In addition, contract planning addresses various parts of the contract solicitation including:

- ▶ a statement of work,
- ▶ the process for evaluating the offerors, and
- ▶ the process for administering the contract after its award.

The solicitation specifies the number of awards anticipated and contract type (e.g., by the hour or by the contract).

Problems with Urgent Acquisitions. An urgent need for services frequently results in a shortened planning process resulting in the following types of contract problems.

- ▶ less competition
- ▶ increased prices
- ▶ electing to use an hourly rate when a more economical total contract price would have been appropriate
- ▶ selection of the wrong method or type of contract
- ▶ not using the most economical contract type

Urgent acquisitions can result in the award of unneeded contracts and/or contracts for unneeded or unintended services (e.g., due to fiscal year budget deadlines, contracts may sometimes be rushed through without careful review of the contract requirements, including the specified tasks).

Modifying such contracts to correct the statement of work can lead to increased costs. Further, urgent acquisitions can result in incorrect estimates of the contract costs, resulting in budget and funding problems. All of these problems are correctable but at a loss of time and money. These issues are specifically addressed in the Federal Acquisition Regulation, where it states, in essence, that urgency is not a sufficient reason for a lack of planning. [See Federal Acquisition Regulation Subpart 7.104(b).]

Caution: urgency and compelling situations

Even if the acquisition requirement is urgent, Offices of Inspector General are required to obtain offers from as many sources as is practicable. See Federal Acquisition Regulation Subpart 6.302-2.

Use of Private Sector Temporaries. Agencies may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Use of their services is subject to one of the following short-term situations:

- ▶ An employee is absent for a temporary period because of a personal need, but not including vacations or other circumstances which are not shown to be compelling in the judgment of the agency, or
- ▶ An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need.

An additional condition for use of temporaries is if the need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, or for the duration of time help is needed. Agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions. Services furnished by temporary help firms are not to be regarded or treated as personal services. To avoid creating any appearance of an employer-employee relationship, agencies must observe the following requirements:

- ▶ An agency may use a temporary help service firm(s) in a single situation initially for not more than 120 workdays, but may extend the use of the services up to the maximum limit of 240 workdays.
- ▶ An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of an agency for up to 120 workdays in a 24-month period; however, an agency may authorize an individual to work up to a maximum of 240 workdays when the agency determines that using the services of the same individual for the same situation will prevent a significant delay.

- ▶ Individual employees of a temporary help firm providing temporary service to a Federal agency are eligible for competitive civil service employment only if appropriate civil service hiring procedures are applied to them.

The temporary help firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to a governmental entity. The entity can provide technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and reviewing work products in order that the temporaries may properly perform their services under the contract.

The Office of Personnel Management has issued regulations on the use of private sector temporaries and may require governmental entities to provide information on their use of temporary help service firms. [See Federal Acquisition Regulation Section 37.112 and Code of Federal Regulations, Title 5, Part 300, Subpart E]

Contacts with Potential Contractors

When Contacts with Potential Contractors are Necessary. Generally, project officers are encouraged to have contact with the market as needed to learn about market conditions prior to contract solicitation. The purpose of the contacts is to learn about the market, obtain potential contractor capability statements, and collect other marketing information related to a possible solicitation for services.

The project officer should be careful not to negotiate in any way with a prospective contractor or suggest that s/he has personal authority to award contracts. Such representations lead to distrust by the contracting community. Formal contract solicitations are issued so that all contractors get the same information at the same time. After release of the solicitation, refer all inquiries to the contracting officer. The following suggestion will help maintain impartiality:

Give all interested contractors the same opportunities and courtesies. If staff members meet with one contractor, then they should be prepared to meet with others. Also, some contractors can become quite troublesome if they believe they can obtain a contract through you. The contracting officer can help select from a variety of forums to meet with prospective contractors, including pre-solicitation meetings if necessary.

[See FAR Subpart 15.201 for additional guidance on contacts with potential contractors.]

When a Contractor Helps Prepare the Solicitation. Generally, Office of Inspector General staff will prepare the “Statement of Work” and other parts of the solicitation. However, sometimes it is necessary to contract for technical help to prepare the Statement of Work or other parts of the solicitation. When a contractor is used to work on a solicitation, that contractor is precluded from being awarded the contract, due to a conflict of interest. Since these cases can be problematic, it is important to make such restrictions clear to any contractor before they begin working on pre-solicitation activities on behalf of the Office of Inspector General. Also, it is recommended that Offices of Inspector General consult with their Offices of General Counsel prior to informing such a contractor that their offer cannot be accepted. [See Federal Acquisition Regulation Subpart 9.505-2.]

MANAGEMENT OF THE CONTRACTING PROCESS

Teamwork

The Importance of Teamwork in Acquisition Management. Users of the acquisition process face a demanding management task. They are required by regulation to make acquisitions with consideration for the cost, quality, and timeliness of the delivered service. Additionally, they are required to minimize administrative costs and ensure the acquisition is conducted with integrity, fairness, openness; and in fulfillment of public policy objectives. Therefore, regulations require the use of a team approach, training in acquisition management, and knowledge and control of the acquisition process.

The Acquisition Team Approach. Federal acquisitions are always a team effort. Two of the more prominent members of the team are the project and contracting officers. They work together on much of the contract, and there is a need for close collaboration and coordination between these two organizations. The following examples illustrate the importance of this teamwork.

| Common Contract Tasks | Functions of the Project Officer | Functions of the Contract Officer |
|-----------------------|---|---|
| Market Research | Performs market research to learn about available contractors and practices in the commercial marketplace | Maintains information on available contractors and commercial practices |
| Statement of Work | Prepares the Statement of Work that is specific and complete for the contract needs | Reviews the Statement of Work for legal sufficiency |
| Contract Performance | Administers the day-to-day monitoring of the contractor's performance and prepares evaluation reports | Addresses contractor performance issues raised by the project officer |

Team members may include budgeting and fiscal staff, legal experts, small business specialists, the competition advocate, and a host of others, such as head of the contracting authority, governmental entity head and staff, senior procurement executive, quality assurance staff, etc. It is important that team members be trained and capable of performing their particular areas of responsibility.

**Tips for developing effective working relationships
with contracting officers**

- ▶ Contracting officers are an important resource because of their knowledge of the regulations and their background and training. Consider the advice of the contracting officer carefully, since their expertise and assistance is invaluable in moving a contract along quickly and efficiently. As part of your initial communication with the contracting officer, provide a complete explanation of the services needed and the expected time frames and quality of performance.
- ▶ Contracting regulations and legal activities impacting implementation of contracting regulations are extensive, complex, varied, and constantly changing. Navigating in contractual waters requires an experienced contracting officer. No matter where the contracting officer is located organizationally, a partnering-type relationship between the project officer and the contracting officer is necessary to get the job done efficiently and effectively within the regulations.
- ▶ Work with the Contracting officer as a valued team member to find the most efficient way to accomplish the project. The contracting officer cannot be expected to know intuitively what is needed in a contract. Openly inform a contracting officer what is needed and why (e.g., meeting urgent needs). A good technique is to ask them for options on how a particular contractual need can be effectively accomplished. Show your appreciation for a contracting officer who gets the job done efficiently within the parameters of the regulations.
- ▶ Have the contracting officer attend all planning meetings from the beginning. Their background, advice, and experience are invaluable in laying out an effective and efficient contract plan and time schedule for award.

Selecting appropriate contract methods, types, and terms and conditions is critical to contract success and requires a team approach. The contract vehicle affects: the extent and intensity of competition, amount and type of notice provided the private sector, the solutions and prices available and offered, the time to contract award, contractual terms and conditions, type of contract and incentives, degree of control over contract management, fees paid, and protest exposure. Acquisition reform has resulted in an unprecedented degree of choice, ranging from the use of existing contract instruments to the award of new contracts using full and open competitive source selection. Simplified acquisition procedures permit a competition that can be completed in days (under \$25,000) to weeks (over \$25,000). A guiding principle for the Federal Acquisition System is that each member of the Acquisition Team will exercise personal initiative and sound business judgment in providing the best value product or service to meet the Government's requirement. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is

not addressed in the Federal Acquisition Regulation, nor prohibited by law (statute or case law), Executive Order or other regulation, that the strategy, practice, policy, or procedure is a permissible exercise of authority. [See Federal Acquisition Regulation Subpart 1.102]

Acquisition Management Training. Project officers are encouraged by regulation to complete contract management training. The question is, however, How much technical training do project officers need when the contracting officer is considered to be the team's technical expert?

The pervasiveness of contracting for services and the growing use of such services by the Offices of Inspector General suggests that project officers need a solid understanding of the contracting process. As a general rule, project officers will do a better job when their contract knowledge is more extensive rather than less extensive. This knowledge is particularly important because the Offices of Inspector General frequently review contracting programs as part of their basic mission. In short, training in a wide range of contracting areas gives project officers a basis for more informed decisions. Minimum training needs include the "Project Officer" course, or training as a "Contracting Officer's Technical Representative." Both of these courses provide a comprehensive overview of the contracting process. Other basic courses to be considered include those with emphasis on an introduction to Federal contracts, contract administration, and the simplified acquisition method. Such courses are available from a wide variety of sources.

Acquisition Integrity

Maintaining Public Trust. An essential aspect of acquisition management is maintenance of public trust. Offices of Inspector General no doubt are held to an even higher ethical standard than other government entities due to the nature of oversight performed regarding the actions of other civil servants. General integrity applies not only to the system but to the actions of each team member. The foundation of integrity is a management team that is competent, experienced, well trained, and professional. Integrity requires fairness and openness in management of the acquisition process. Be objective in all elements of the acquisition process and be honest with the contracting community. Conflicts of interest, favoritism, nepotism, and cronyism in the contracting process are unlawful, contrary to Office of Inspector General objectives, and contrary to basic tenants of a democratic society. The Standards of Ethical Conduct for Employees of the Executive Branch set forth in 5 CFR 2635 and criminal conflict of interest statutes (i.e., 18 U.S.C. 201, 203, 205, 208, and 209) provide guidance in determining whether conduct is proper.

To help avoid conflict of interest situations, each Office of Inspector General should periodically evaluate the effectiveness of its management control systems for acquisition of services. Bring any potential conflict of interest to the attention of the contracting officer and/or a senior Office of Inspector General official so that it can be appropriately addressed. Do not let contractor marketing efforts, favors, or gratuities influence the determination of contract requirements, or create the appearance of impropriety in the acquisition process. Integrity goes beyond just being aware of it. Remember, passing an ethics exam does not automatically make you an ethical person. Ethics is an ongoing aspect of contracting. One inappropriate action can taint an Office of Inspector General, if not the entire Inspector General community.

Pay special attention to contracts that might be with former Inspector General employees. Such contracts are not necessarily illegal, but there are some prohibitions against directly contracting with recent Federal Government retirees that are based on integrity considerations. [See Federal Acquisition Regulation Part 3.] Also, departmental regulations may vary with respect to contracting with former employees. Most departments have an ethics officer for consultation regarding integrity issues. Consult with that officer and with the contracting officer if former employees are offering on a contract. Such contracts have a higher propensity for conflicts of interest.

Contractors also are held to ethical standards. See Appendix C for a sample contract clause about a “Contractor’s Conflict of Interest Statement” that may be inserted in the contract solicitation.

Tips on using the contractor’s conflict of interest clause

The contractor’s conflict of interest clause is designed to preclude contractors from being awarded contracts that cause them to have organizational conflicts of interest. For example, it may preclude contractors from auditing an entity for the Office of Inspector General when they have other contracts with that entity. Or, it might prevent them from auditing a system they designed and built. Another example of a common conflict is if any of the potential offerors were involved in preparation of the solicitation. A different example of conflict would occur if the contractor inappropriately uses one contract to set up receipt of another.

When conflicts of interest arise, they need to be resolved, and they will usually require assistance and guidance from the ethics officer and the Office of General Counsel. Legal assistance should also be sought if a contractor claims an apparent conflict of interest does not exist (e.g., a large firm with multiple contracts under different divisions and/or different lines of authority).

Acquisition Procedures

Clearance Procedures. Office of Inspector General managers should consider requiring that the *initiation* of advisory and assistance services contracts be cleared through a central point in their organization for oversight purposes. Several Inspectors General already have a standard clearance process and form for this purpose. However, such a clearance process may be more important in large offices having a dispersed field system.

Tip about acquisition procedures

Take the time to learn internal contracting procedures -- the “paperwork” process. This will expedite the award.

Location of Office Awarding Contract. The organizational location of the contract awarding authority has integrity implications and involves three basic options: (1) the contracting office awarding these contracts may be located organizationally within the Office of Inspector General itself; (2) the contracting office may be located outside the Office of Inspector General within the department it serves or in an entirely different department; or (3) a combination of these options that involve the issuance of small acquisitions from within the Office of Inspector General and use of an outside contracting component for the larger ones. The following discussion examines the positives and negatives of these options.

The Offices of Inspector General may have greater control over the contracting process when contracting officers are their own employees. The confidentiality of the project may warrant keeping the contracts in-house. Also, contracting expertise may not be available in an outside component.

However, a primary concern with keeping the contracting function in-house is that most Offices of Inspector General have very small contracting staffs. It is difficult for a small staff to maintain technical proficiency or to maintain the administrative apparatus necessary to support an up-to-date contracting operation. Therefore, outside advice may be better. Also, outside sources are better able to handle a sudden increase in contracting needs due to their larger and more flexible staffs. Equally important is the “liability” that goes with in-house procedural mistakes. If a mistake is made by a contracting officer located organizationally outside the Office of Inspector General, then the Office of Inspector General may be less culpable both legally and in the eyes of those who might be concerned about the operations or conduct of its staff. This may provide a greater level of comfort when implementing contracting regulations. Furthermore, using outside contracting officers is apt to save time, money, and effort.

There could be a conflict of interest for any Office of Inspector General to audit an acquisition to which it is a party. Such a conflict could exist even if a contracting officer is located in a different division of the department served by that Office of Inspector General or in an outside entity. Therefore, the Office of Inspector General should determine whether an in-house or outside contracting officer will better meet their needs, since acquisition sensitivity issues can be explained equally well to either contracting entity.

IDENTIFYING THE CONTRACTUAL NEED

Deciding When to Contract

Determining Bona fide Need. A decision must be made that a bona fide need exists for contract services. Determining whether or not such a need exists is not always easy since there is usually some in-house capability to perform these services. In addition, contracting always comes with attendant new problems and demands on a project officer's time.

Tip regarding the need for contracts

Consider contracting as a legitimate way of getting the work done. For example, more OIG work could be performed by contracted entities. Review this guide and be confident that contracting for services can work effectively to free up staff for higher organizational payoffs.

Uses for Contracts

Standard Uses for Contracts. There are six standard uses for advisory and assistance services contracts which are legitimate ways to accomplish organizational goals. According to Federal Acquisition Regulation Subpart 37.203, such contracts may be used to improve management of services and operations by ---

- (1) Obtaining outside points of view to avoid too limited judgment on critical issues;
- (2) Obtaining advice regarding developments in industry, university, or foundation research;
- (3) Obtaining the opinions, special knowledge, or skills of noted experts;
- (4) Enhancing the understanding of, and developing alternative solutions to, complex issues;
- (5) Supporting and improving the operation of organizations; or
- (6) Ensuring the more efficient or effective operation of managerial or hardware systems.

Typical Offices of Inspector General Uses for Services Contracts. The following list contains examples of uses for typical advisory and assistance services contracts:

- ▶ Compliance and/or Evaluation studies;
- ▶ Consultant and various professional expertise;
- ▶ Expert testimony or witness;
- ▶ Medical record review;

- ▶ Organizational reviews and studies;
- ▶ Personnel analyst services for position classification, staffing, and employee recruitment;
- ▶ Pre-trial consultation services for prosecution of criminal cases;
- ▶ Sampling;
- ▶ Specialized studies; and
- ▶ Telephone assistance (e.g., answering fraud hotline calls where the contractor is paid on a per call basis);

Typical Offices of Inspector General Uses for Other Services Contracts. The following list contains examples of uses for other services contracts:

- ▶ actuarial services
- ▶ financial statement auditing (e.g, internal controls; compliance issues, and computer based systems
- ▶ other auditing services, including
 - auditing of Department-wide systems;
 - auditing mandated by the Chief Financial Officer (CFO) Act;
 - auditing and reviews mandated by the Government Performance and Results Act (GPRA);
 - auditing of programs; and
 - consolidated financial reporting (preparing the audit report);

Inherently Governmental Functions.

When contracting for services, the Inspector General needs to determine in each and every case that the proposed contract is not for an item or service specifically defined by the FAR as being an inherently governmental function. [See more discussion of this topic in the next section of this handbook and refer Prohibited Contracting Actions and Federal Acquisition Regulation Subpart 7.503]. When there is some doubt or question concerning whether the contract may fall into this area, consult with the contracting officer and the Office of General Counsel for advice.

Tips on key situations to avoid when using services contracts

The following problem areas generally are the result of poor planning, inadequate contractor selection procedures, and not fully understanding and enforcing the contract terms;

- ▶ lack of creditable contractor staff and creditable findings or statements from the contractor;
- ▶ lack of confidence in contractors' staff;
- ▶ contractors submitting frequent requests for cost increases; and
- ▶ contractors failing to meet time frames.

Information presented throughout this guide will be useful in avoiding these problems. However, if the project officer feels that any of the above situations cannot be avoided when contracting, then consideration should be given to performing the required work with Federal employees.

PROHIBITED CONTRACTING ACTIONS

Prohibited Contract Work

Standard Prohibitions. The Federal Acquisition Regulation Subpart 37.203 lists five prohibited uses for advisory and assistance services contracts--

- (1) to perform work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials [see discussion of inherently governmental functions below];
- (2) to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;
- (3) to contract with former Government employees on a preferential basis;
- (4) to aid in influencing or enacting legislation; or
- (5) to obtain professional or technical advice which is readily available within the agency or another Federal agency.

Prohibition on Contracts for Inherently Governmental Functions. Services that are inherently governmental in nature shall not be acquired. The gathering of information and the provision of advice, opinions, or recommendations are normally acceptable for acquisition. However, contracting for policy decisions is not allowable as this is an inherently governmental function. Also, contracts should not be used to prepare testimony for presentation to Congress or for lobbying Congress. Review the statement of work to assure that no functions of this type have inadvertently crept into the writing. Finally, be careful about allowing the contractor to accept products or activities on behalf of the Government. Such actions are normally considered to be inherently governmental functions. [See Federal Acquisition Regulation Subpart 7.503.]

Prohibited Contract Provisions

Prohibition on Personal Services. Personal services contracts generally are not allowable. [See Federal Acquisition Regulation Subpart 37.104.] However, personal services are not always easy to identify and, therefore, may inadvertently slip into a contract. Also, contracts that begin as services contracts sometimes “slide” over into the personal services category. To avoid these problems, project officers need to understand the definition of personal services contracts and be alert when administering non-personal services contracts to prevent contract deliverables from becoming personal services.

Personal services contracts basically occur when a contractor’s employee is supervised by the Office of Inspector General as though that individual is a government employee. An example of such services is contract auditors who fall under the direct supervision and control of Office of

Inspector General management. Such control is evidenced by specifying duties, hours of work, approval of absence, appraisals of performance, and disciplinary actions. Unless specifically authorized by legislation, such contracts are illegal. Project officers should avoid acquisition of services where the purpose of the services is to bypass pay limitations or competitive employment procedures. Administrative and criminal sanctions for violation of this prohibition are severe (see 31 U.S.C. 1342 and 31 U.S.C. 1550).

Uncompensated Overtime. Some contractors may attempt to obtain the contract award by paying professional employees a salary as opposed to hourly wages and then require the employees to work inordinate numbers of hours to accomplish the job. Likewise, some contractors under labor hour contracts may seek to work employees overtime without proper compensation.

Federal regulation discourages contractors from making offers containing uncompensated overtime. For labor hour contracts greater than the simplified acquisition threshold, insertion of Federal Acquisition Regulation clause 52.237-10 will require contractors to divulge all such cases as a part of their offer. Also, contracting officers must conduct a risk assessment as required by Federal Acquisition Regulation Subpart 37.115-2(c), to assure that the use of uncompensated overtime in labor hour contracts will not adversely affect the level of technical expertise required to meet the contract requirements. This risk assessment must evaluate the impact of: (1) unrealistically low labor rates, or other costs that may impact the quality of the products or services; and (2) unbalanced distribution of uncompensated overtime among personnel with differing skill or technical expertise.

KEY PRE-SOLICITATION DECISIONS

Market Research

Know the Market. Market research identifies prospective contractors and the conditions for doing business in a particular industry. Without this research, the Office of Inspector General may miss out on the services of qualified contractors or may ask for non-standard services that are impractical or excessively expensive. The goal of market research is to determine how and what to buy and then obtain the best contractor(s) for the work needed. Market research may involve something as simple as looking in the yellow pages, or conducting a comprehensive Internet search. Available research tools are extensive, so consider requesting contracting personnel to (1) recommend research techniques, (2) participate in initial industry contacts, and (3) participate as part of the team developing the final requirements document for the acquisition.

Historical Research. One of the first steps in market research is to see if the particular services have been previously acquired. If so, obtain a copy of the earlier contract file including the statement of work as a guide for preparing the statement of work for the new acquisition. Do not orient the statement of work to a particular contractor. Thorough market research often identifies a wide variety of qualified contractors in the market.

Finding New Contractors and Work Techniques. Market research is used in part to compare the acquisition need to the capability of contractors in the market. In contracting areas where sources may be limited, such as performance of actuarial services, market research may identify additional qualified companies. If appropriate, but especially on new contractual requirements, consider issuance of a Request for Information (RFI). Send the request to key Offices of Inspector General asking if they have previously acquired such services. In addition, consider using pre-solicitation meetings with potential contractors to:

- ▶ get information on what is available in the market; and
- ▶ gather information for preparation of the statement of work and other aspects of the solicitation.

It is best to keep the contracting officer as the contact point with prospective contractors after the pre-solicitation meeting, but this is especially important after issuance of the solicitation. This practice helps protect the project officer from any legitimate claim of impartiality.

Tips for market research

- ▶ Expand the source selection list to include contractors known for their performance on the type of work needed.
 - ▶ Contractors are an extension of Offices of Inspector General staff. They are subject matter experts and a bargain when compared to use of employees working part-time in a technical area. Understanding your contractual needs is important in surveying the market, in conveying those needs to the right group of contractors, and making sure contractors have a thorough understanding of those needs.
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Documenting Results. Market research is critical to successful competitive and commercial item procurement. Consistent with this thought, Federal Acquisition Regulation Section 10.002(e) states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. Documentation should demonstrate a reasonable effort was made to identify potential sources and services. The record should address the seven elements identified in Federal Acquisition Regulation Section 10.002(b)(1) and should identify the initial statement of need, sources contacted or referred to, an appropriate discussion of why a commercial service will or will not meet the need, and the final statement of work. If a sole source decision is made (requiring a Justification for Other than Full and Open Competition), the documentation must clearly validate that only one source can provide the required services.

Methods of Contracting

Various Methods Available. An important step prior to preparation of the solicitation is to determine the method of acquisition. The project and contracting officers working together will make this decision. The three most likely open market possibilities used by the Offices of Inspector General are the following. (1) “Micro-purchase” is normally used for acquiring services up to \$2,500. (2) The “Simplified Acquisition Procedure” (SAP) normally is used for contracts above \$2,500 but not greater than \$100K. If the services are considered to be of a commercial nature, the simplified-method contract limit increases to \$5 million. [Both of these methods are described in the Federal Acquisition Regulation Part 13.] (3) Competitive proposals (also known as the negotiated method) normally is used to acquire non-commercial services above \$100K or for commercial services above \$5 million. These three methods comprise all of the methods likely to be used by the Offices of Inspector General for the acquisition of advisory and assistance services. Acquisition of architect-engineering and some construction needs require special methods (see Federal Acquisition Regulation Parts 36 and 37), but special methods are not normally needed for the acquisition of Offices of Inspector General services. Sealed bids is another method of contracting (see Federal Acquisition Regulation Part 14). However, it would be rare to use sealed bids for acquiring advisory and assistance services. Before using any of these methods for open market acquisitions it is important to consider use of General Service Administration Federal Supply Schedules and other more expedient sources as discussed below. The Federal Supply Schedule program contains contracts for both supplies and services.

Tips on contract methods

- ▶ Before using any method for contracting for services, determine that agency personnel are not available to perform the work. [See Federal Acquisition Regulation Subparts 7.103(o) and 37.204.]
- ▶ The simplified acquisition method is easier to use than the negotiated method. It is faster, less expensive, and reduces the chance of a sustainable protest. Its legal requirements are far less stringent.

Required Sources. Requestors should ensure that another Government organization cannot provide the needed services, and that existing scientific, technical, or management data cannot fulfill the requirement. [See Federal Acquisition Regulation Part 8.]

General Service Administration Federal Supply Schedules. Project officers should consider General Services Administration “Schedule” sources for acquisition of advisory and assistance services. Schedule contracts, including those exceeding the simplified threshold of \$100K can be made simply and quickly through evaluation of a limited number of contractors listed on this schedule. [See Federal Acquisition Regulation Subpart 8.4.]

Contracting officers may seek competitive quotes from schedule contractors and may request price reductions, such as, where the quantity of an individual order clearly indicates the potential for obtaining a reduced price. Schedule contractors can give "spot reductions" to individual agencies without passing them onto the entire Government under a schedule order.

The Small Business Administration’s 8(a) Program. Do not forget the value of 8(a) contractors and other small businesses. There are many well qualified 8(a) contractors. However, do not randomly select an 8(a) contractor just to meet an agency goal. Use an 8(a) contractor only if they are qualified to perform the tasks specified in the contract. The 8(a) procedure is not used for micro purchases and is seldom used for acquisitions under \$25K because the increased administrative burdens outweigh the advantages of reduced competition. The 8(a) process is considered most attractive for simplified acquisitions above \$25K and for competitive proposals because competition is limited and award time is speeded up.

Purchase Cards. Purchase cards may be used to obtain advisory and assistance services under the micro-purchase threshold of \$2,500 as long as the cost is known to be fair and reasonable. Be sure a written determination of a fair and reasonable price is placed into the contract file. Contracting officers frequently are authorized to use purchase cards for simplified acquisition purchases.

Consider Alternate Methods to Obtain Needed Expertise. Contracts are not the only way to get outside expertise. For example, some training can be obtained by use of a “training form” in lieu of a formal contract. A training form is issued to a contractor which allows an individual Office of Inspector General employee, or group of employees, to attend a training session offered by expert instructors. No other contract document is needed.

Commercial Services

Commercial Nature of Acquisitions. The history of what constitutes an advisory and assistance commercial service contract is not clear. The Federal Acquisition Regulation requires that such services have an established “. . . market price for a specific service performed.” [See Federal Acquisition Regulation Subpart 2.101.] Routine services performed at a fixed hourly rate established by the market, or by catalogue prices, most likely will meet the definition of a commercial service. For example, requirements over \$100K for performance auditing may well meet this definition when the prices are established by the market.

Commercial Services and the Simplified Acquisition Method. In selecting the method for obtaining services from the open market, it will be necessary to determine if the acquisition is a commercial or non-commercial service. Basically, if the service is commercially available, then the simplified acquisition method can be used up to \$5 million. If the service is non-commercial, then the simplified acquisition method is capped at \$100K (in accordance with Part 13 of the Federal Acquisition Regulation). There are many advantages to using the simplified method, but it is important to note one particular disadvantage involving modifications. For example, commercial contracts generally preclude unilateral modification, which means that a contractor must agree to any contract modifications. In some cases, this could make it more difficult to direct changes in the contract. If the contract is large and apt to require many changes, discuss these non-commercial services aspect of the acquisition with the contracting officer.

Types of Contracts

Sole Source. As a general rule, do not write initial sole source contracts. Although the Federal Acquisition Regulation permits sole source awards under a variety of conditions, competition is at the heart and spirit of Federal contracting. Furthermore, from a purely practical standpoint, preparing the justification and approvals required for a sole source acquisition frequently takes longer than just competing the buy in the first place. The result is that you may wind up making a late buy later by trying to justify a sole source buy. Sole source follow-on acquisitions require valid written justifications and, therefore, are rare. Making many awards to the same contractor could appear to other contractors as favoritism and is likely to result in less competition over time. Do not automatically assume the incumbent contractor is the best qualified for a new contract. There are many quality contractors in the marketplace.

Firm-Fixed-Price and Labor-Hour Contracts. Advisory and assistance contracts generally will be priced in one of two ways: (1) payment by the hour, or (2) a lump sum payment for the entire job or task. Payment by the hour is most common among Offices of Inspector General using services contracts. Either way is effective, but an added advantage of using hourly rates is it may allow for use of simplified acquisition procedures up to \$5 million. When there is a need for the acquisition of the same task over and over again, it is wise to consider a task order contract. Appendix C contains a sample clause for use with task order contracts.

Tip on contract pricing

Make it clear in the original contract that if it is modified, the original rates will be maintained. Obtain the rates for all optional years at the time of initial award. If this isn't done, the contractor could raise prices, resulting in either having to pay these increased costs or finding another contractor.

Multiple or Task Order Requirements. Consider establishing indefinite-delivery-indefinite-quantity task order contracts for quick delivery of services. This type of contract offers the

advantage of allowing for the repeated use of the same contractor. However, establishment of indefinite-delivery-indefinite-quantity contracts should follow and not precede the review of:

- ▶ General Services Administration Schedule contractors,
- ▶ other agencies indefinite-delivery-indefinite-quantity contracts which may be used,
- ▶ government-wide-area-contracts for information technology services, and
- ▶ government-wide multiple award contracts for advisory and assistance and other services.

Two additional advantages of using General Services Administration Schedules are that (1) rates are negotiable on larger contracts, and (2) Blanket Purchase Agreements with the General Services Administration vendors can be set up if appropriate for multiple small services.

There are some other conditions of concern when using task order and multiple award contracts. The Offices of Inspector General, not the contractor, should estimate the hours needed for a per hour task order. If the hours can't be estimated, then perform additional research to identify the scope of work needed. Use historical data as an aid in making the estimate. For example, a lot of historical data is available on audit costs. Consider changes that make this contract different from past contracts, and allow for contractor time to become acquainted with new work. In the solicitation, provide contractors with the estimated hours needed; otherwise, the offers will vary widely and the time and effort required to award the contract will be unnecessarily increased. Once a contractor's proposal is received, then discussions can take place if needed on the hours required to complete a task. Avoid having too many contractors for the work available when making multiple awards. When contractors routinely do not get task orders, they lose interest in the agency and the contract.

If the contract is under \$100K, avoid multiple awards. This practice is encouraged by the Federal Acquisition Regulation. Working with too many small contractors at one time can lead to inconsistent performance. If the contract is over \$100K consider the use of multiple awards.

Tip on multiple or task order contracts

Some Offices of Inspector General have multiple award contracts available for use by other OIGs. These contracting sources may be considered before choosing to go open market.

Finally, on task order contracts, the value of the total contract should correspond with expected contract use. It is not fair to the contracting community and is a violation of regulation to solicit for a larger dollar amount of services than is realistically planned for use. Additionally, an idle or unused amount likely will cause the contractor to move key resources to other contracts.

Cost-Reimbursement Contracts. Cost-reimbursement contracts are appropriate for services that can only be defined in general terms or for which the risk of performance is not reasonably manageable. They provide for payment of all allowable costs up to a contract ceiling. Performance-based service contracts encourage the use of fixed-price contracts and incentives to encourage optimal performance. Nevertheless, there may be an occasion when a cost-reimbursement contract is required. To the maximum extent practicable, performance-based service contract methods should be used for cost-reimbursement contracts with incentives. [See FAR 16.3 for a detailed description of cost contracts.]

PREPARING THE STATEMENT OF WORK

The Heart of the Contract

Writing Effective Work Statements. The statement of work is the heart of any contract. It describes what the contractor is expected to do under the contract. It drives many other contract actions including selection of quality evaluation factors and monitoring of contractor performance. The following four points will help guide the preparation of effective statements of work.

- ▶ Contracting officers can be extremely helpful when preparing the statement of work. However, do not expect the contracting office to know or be able to communicate your contractual needs. Therefore, prepare the statement of work using an experienced staff member.
- ▶ Take time to write the statement of work carefully and review each draft thoroughly.
- ▶ Define the contract needs clearly. Do not let a contractor build something from a general plan. Otherwise, the contractor may furnish what it thinks is needed rather than what is wanted.
- ▶ Describe the total need of the contract, and avoid statements of work that are written too broadly. To do less will lead to a series of costly contract add-ons. Clarify when the contract is for a piece of a larger project. For example, if contracting separately for individual parts of a complete audit, which is common in the Offices of Inspector General, be sure that all parties understand clearly which part they are responsible for! Without this written understanding, contractors may claim part of the work is outside the scope of the task order or they may claim a predecessor firm should be required to do the work under an earlier task order. Consider reviewing prior contractor's work papers when setting up such auditing contracts.

Learning Curves. Allow enough time for the contractor to effectively do the job. Otherwise, the project officer will be trying to correct late performance, and this sort of interaction can quickly lead to hard feelings. A new contractor frequently will require time to come up to speed concerning knowledge about the agency and how to meet contractual requirements. Allow for this in contracts. The "learning curve" works both ways, and there is much to be gained when both parties (the Office of Inspector General and the contractor) like each other. In short, new areas of contract work will contain areas of the "unknown." Be prepared for this.

Technical Writing Involving Work Beyond the First Draft. Often the preparer of the statement of work expects the contractor to prepare several drafts of technical writing, while the contractor expects the first draft to be the only deliverable. Where appropriate, such as when the contractor is conducting a study, specify in the contract that much of the work occurs after the

first draft product. A lot of Offices of Inspector General work requires draft versions and revisions of the contractor's first documents. It is important that this requirement be expressed in the contract. Otherwise, contractors will view the added work as a change in scope and will expect and ask for additional funding. [See Appendix C for a sample clause which could be placed in the contract's statement of work regarding the issue of multiple drafts.]

Contractor's Pride of Authorship. Often the Offices of Inspector General will contract with a consultant or professional to offer an opinion, and the contract may call for the contractor to put opinions in written form. Later, the contractor may be requested to make substantive changes to the written product. In some cases, the contractor may exert their "pride of authorship" and not want to make these changes. The language in Appendix C may be used in the statement of work to help address this issue.

This guidance may not apply in the case of audits in which the professional opinion of the auditor is the very object of the acquisition. That may also be the case with other acquisitions such as some evaluations. Clearly, different circumstances will lead to different expectations about the independence of the contractor. These expectations should be clarified before the contract is awarded.

Performance-Based and Performance-Oriented

Two Different Approaches. There are two fundamental aspects to writing a statement of work for the kinds of services most frequently used by Offices of the Inspector General. Both aspects involve aspects and issues of performance.

- ▶ A performance-based Statement of Work; and
- ▶ A performance-oriented Statement of Work.

Performance-Based Statements of Work. The Offices of Inspector General should consider use of performance-based statements of work to the maximum extent practicable and monitor contractor performance during the life of the contract against performance criteria established in the statement of work. It identifies the items and milestones during the contractor's performance that show how the contractor is doing.

A performance-based statement of work stresses monitoring and control of contractor performance. The statement of work should contain a description of how and when the contractor is performing satisfactorily. Without these provisions, it will be difficult or impossible to hold a contractor to any quality standards. Statements of work for contracted advisory and assistance services should be definitive and specific in regard to the tasks to be performed and the deliverables. However, remember these statements cannot cover everything. Changes are apt to occur, and there is no substitute for a helpful attitude between the contractor, the project officer, and the contract officer.

The contract should contain items and time-lines for receipt of those items that will allow the project officer to determine that the contractor's work is of an acceptable level. Such checkpoint

items may be of a somewhat subjective nature, but it is difficult to reject work that is unsatisfactory for subjective reasons. Therefore, strong consideration should be given to including positive incentives in the contract that reward the contractor for quality work. This is in contrast to placing penalties in the contract for less than quality work. Generally, when penalties are used in advisory and assistance services contracts, the quality of work is too compromised to be salvaged. For this reason, contracts with sanctions clauses are generally discouraged. Including the Federal Acquisition Regulation clause 52.246-4 will allow the Office of Inspector General to reject work that is not in compliance with the contract. However, this clause assumes that the solicitation (which is incorporated into the contract) contains a description of what constitutes acceptable work. Time of delivery is a standard quality factor, but it is hardly a valid judge of the contractor's performance.

Between the solicitation and the contractor's proposal, be sure to specify the process to be followed between the two parties to the contract, and provide a schedule of time frames for completion of contract requirements. This time frame applies to the actions of both parties. If the contractor must wait for Office of Inspector General staff to review products, then that should be factored into the time schedule. The Office of Inspector General must then stick to its part of the contract, since delays may allow the contractor to request additional payment.

Performance-Oriented Statements of Work. The statement of work should describe the contract in terms of results required as opposed to specifically trying to tell the contractor what to do. A performance-oriented statement of work describes the function or performance sought from the contractors as opposed to giving them step-by-step guidance for performing the job. For example, a performance-oriented statement of work might state that the Office of Inspector General is seeking an audit in accordance with "yellow book" standards. By contrast, a nonperformance statement of work might tell the contractor exactly how the "yellow book" standards are to be applied. The statement of work needs to be precise about how the services will be utilized, but it does not need to contain precision about how the contractor will do the work. The Offices of Inspector General are encouraged to write performance-oriented statements of work for services contracts. A performance-oriented and performance-based (discussed above) approach to a statement of work go together very nicely and in no way are mutually exclusive. In short, they involve two different objectives and are frequently incorporated into the same statement of work.

A Sample Statement of Work. Appendix B contains a broad listing of typical topics and divisions to consider when preparing any statement of work. In addition, since the statement of work is of critical importance to contract success and is the direct responsibility of the project officer, a sample is included in Appendix B. The sample is for analysis of financial reporting processes. While it is safe to say that there is no such thing as a totally perfect statement of work, the sample in Appendix B has the advantage of actually being used by an Office of Inspector General. The users reported that it worked well. It contains key elements needed in a statement of work and is both performance-based and performance-oriented. It is provided solely for information purposes.

PREPARING THE WRITTEN SOLICITATION

Contract Clauses

Standard and Special Contract Clauses. Primarily, it is the responsibility of the contracting officer to insure that proper and effective clauses are included in the solicitation and contract. However, there are a number of reasons for the project officer and contracting officer to discuss clauses for inclusion. Therefore, the project officer should work closely with the contracting officer to determine whether special contract clauses are appropriate or beneficial for a particular situation. Some special clauses may be placed in the contract exclusively at the request of the project officer, such as those sample clauses found in Appendix C. Standard pre-printed clauses typically used in Federal contracts are placed in individual sections of a contract or can be grouped together as determined by the contracting officer. However, input from the project officer on location and content of these clauses is an important topic for discussion with the contracting officer. It is important for both the project officer and the contracting officer to read all contract clauses to understand the obligations of the contractor and the Office of Inspector General.

It is important to identify the requirements for advisory and assistance services contracts early in the contract process to facilitate discussion between the project and contracting officers about useful clauses to be included in the solicitation. Specialized contract needs and the corresponding contract clauses should be described in the statement of work drafted by the project officer.

Professional Services Over \$500K -- Wage Busting Clause. Some contractors may attempt to obtain contracts by lowering staffing costs. Some contractors hire employees as professionals, who are not subject to hours worked laws, and then require them to work in excess of a standard 40 hours.

It is not in the best interest of the government to contract with individuals or entities who do not adequately compensate their professional employees. [Refer to Prohibited Contracting Practices.] For advisory and assistance services acquisitions expected to exceed \$500K, insertion of Federal Acquisition Regulation clause 52.222-46 will require an offeror to specify how they plan to compensate their staff. Also, make sure that the “benchmark compensation amount” (\$340,010 for the year 2000) is not exceeded for top executives’ compensation, as set by The Office of Federal Procurement Policy.

This clause on wage busting, 52.222-46, is just one example of standard clauses that typically are included in services contracts. A complete listing of such clauses is contained in the matrix section of the Federal Acquisition Regulation. The section immediately below on the “key personnel clause” is an example of a special clause that may be considered for inclusion but will not be found in the Federal Acquisition Regulation. See your contracting officer to discuss these and other contracting clauses.

Key Personnel Clause. Some contractors may identify key personnel when offering on a contract and then attempt to replace those personnel with others, who may be less qualified, or paid less, after a contract award. To avoid this practice and maintain greater control over the qualifications of contractor personnel working on the contract, a clause such as the one found in Appendix C on this topic may be included in the contract.

Evaluation Factors

Experience and Price. Evaluation factors are used in selecting the winning contractor. In most cases a contractor's past experience in the type of work being acquired is apt to be one of the qualities sought by the Office of Inspector General. In fact, past performance is a required factor, with certain exceptions, in contracts over \$100K. Evaluation factors should be used that closely relate to each contract. As a general rule, fewer factors are better than more factors. Fewer factors are easier to administer in the evaluation and award process, while more factors tend to dilute the importance of each factor. While there are no standard evaluation factors, some commonly used ones are listed below.

Evaluation Factors

- ▶ price
- ▶ technical capability and other technical factors
- ▶ past performance
- ▶ business factors (e.g., contractor's prestige and reputation) and
- ▶ note: sometimes the non-price factors collectively are referred to as "quality factors"

Price is always required as a factor. However, give strong consideration to technical factors in relation to price when setting up the evaluation factors in the solicitation. The solicitation will state the relationship between price and other factors. If the contracting need is routine, then price is more important. If the work is highly technical, complex, etc., then technical capability is more important. As an example, consider giving technical factors a 60/40 or 70/30 weighting relative to price.

Carefully select quality factors for contractor evaluation that reflect the qualities sought in a contractor. Also, to the maximum extent possible, assign added weight to contractor capability when establishing evaluation criteria for advisory and assistance services contracts, including the use of past performance as an evaluation factor. Business aspects may also be considered as evaluation factors, such as the contractor's prestige and reputation. The following are suggested quality factors, but the actual solicitation should contain fewer as opposed to more factors for ease of administration and to give proper weight to key factors.

Suggested Quantifiable Measures of Quality.

- ▶ Experience. The extent to which contractor demonstrates past experience in contract requirements such as prior testimony, prior contracts, specialized training, etc.

- ▶ Staffing profiles. The extent to which contractor's proposed staffing seems to meet staffing levels believed necessary by Office of Inspector General. Also, check to be sure that the abilities of key staff seem consonant with the contractor's experience. A contractor's staff must be experienced in the actual area of your contract, and the staff proposed must be used in the final contract. (See the key personnel clause in Appendix C.)
- ▶ Progress schedules. The extent to which contractor's proposed schedules and milestones for each stage of the project meet Office of Inspector General expectations.
- ▶ Permitted changes and error rates. For example, the contractor might be designing a system or approach to problems that (especially in the later stages of the proposal life-cycle) would require a significant number of changes to the system. Likewise, the number of errors in design which are permitted can be quantified at various stages of development. This kind of evaluation factor also is an excellent way to evaluate performance.
- ▶ Project design characteristics. The number of design changes needed because contractor misunderstood or ignored Office of Inspector General's requirements.

Suggested Qualitative Measures of Quality.

- ▶ Understanding of the project. The extent to which contractor indicates an understanding of project and constraints.
- ▶ Creativity. The extent to which contractor's proposal as a whole creatively approaches the job at hand.
- ▶ Ability to design. Especially the extent to which contractor is able to design and generate selected critical components of the project.
- ▶ Quality of sample work. The extent to which a review of sample work, for example a written project report, reflects the quality of expertise required by the Office of Inspector General.
- ▶ Creativity in sample work. When a sample is required, the extent to which contractor's sample creatively approaches the job at hand.
- ▶ Correctness and accuracy. The extent to which contractor's proposal satisfies contract specifications and Office of Inspector General's requirements.
- ▶ Reliability. The extent to which a contractor's proposal actually performs in comparison to its claimed functions.
- ▶ Security and integrity. Extent and effectiveness of controls to prevent unauthorized access to sensitive data.

- ▶ Usability of products produced. The effort required to learn, operate, and otherwise use the contractor's proposal.
 - ▶ Maintainability of systems produced. The effort required to detect, locate, and correct errors in the contractor's proposal.
 - ▶ Flexibility. The effort required to modify contractor's proposal if future changes are needed.
-

Tip for writing effective evaluation factors - one example

Regarding technical evaluation factors on a large multimillion dollar contract, one Office of Inspector General has successfully used an incentive for teaming with small businesses as an evaluation factor. They held a pre-proposal conference to explain the acquisition and then encouraged large and small contractors to meet with each other to discuss teaming arrangements. This process worked well and the Office of Inspector General was very satisfied with the contractor's performance after the award. In this acquisition, they made multiple awards to four different contractors.

A “BEST VALUE” APPROACH

Selecting the Winner(s)

The Preferred Approach. Prior to issuance of the solicitation, a decision needs to be made regarding the criteria for determining the winning contractor. There are a variety of ways to make this determination. For services contracts, generally the preferred way is known as the “best value” approach. This approach uses contract price and one or more quality or technical evaluation factors to determine the winning contractor.

Project officers have many responsibilities for assessing best value. S/he generally is responsible for preparing evaluation and selection criteria for competitive awards that result in “best value” acquisitions. Further, they should thoroughly document the reasons for selecting the contractor(s) at the time of the award, and not after the fact, to meet regulatory requirements and to address a contract award protest. [See the Federal Acquisition Regulation Subparts 13.106-3 and 15.308 for guidance in documenting the source selection decision.]

Value More Important Than Cost. Using the best value approach means acknowledging that low price is not necessarily the best deal. Therefore, the importance of price in relation to other factors likely will vary with each solicitation. However, be reasonable about cost. The old adage that you get what you pay for is not bad advice. There are a wide range of prices for the same level of work and a price should be paid that represents the “best value” for the organization. Acquiring the services of the lowest priced contractor without regard to the contractor’s capability most likely will result in substandard work. In addition, such contractors frequently ask for more money to complete contract tasks. The government strongly encourages the award of “best value” contracts. Therefore, it is legal to pay more for a contract if it results in a better overall value for the Offices of Inspector General. Estimate the costs of service contracts by analyzing the effort and associated costs for the contracted tasks. Most contracting officers have extensive experience in structuring effective “best value” solicitations. In addition, most agencies have pricing experts to help with the more difficult estimating jobs.

Tip for selecting a qualified contractor

Do not accept a questionable contractor because of time or cost constraints. There are interim contracting steps that can be taken to fill immediate needs while an acceptable contractor is obtained. For example, a series of smaller contracts can be issued using the simplified acquisition method until the larger contract is awarded. However, work must be underway on the larger contract while the series of smaller contracts are being used in order to avoid an illegal split of contractual needs. Your contracting officer will have other suggestions relating to specific circumstances of your immediate situation.

Limitations When Evaluating Contractor Proposals. Office of Inspector General personnel will normally be used to evaluate contractor proposals. If, for any reason, such staff is not available or qualified, the use of contractors to evaluate other contractor offers require special justification in accordance with Federal Acquisition Regulation Subparts 37.203 and 37.204. Office of Inspector General employees should not evaluate proposals from contractors with whom they have private business dealings or close social relationships, or be in any position to influence the award of the contract under such circumstances. Such a relationship will result in the appearance of a conflict of interest and will increase the likelihood of improper disclosure of procurement sensitive information during the pre-award period.

Contract Prestige

Prestige Associated with Office of Inspector General Work. There is no doubt that companies sometimes have “loss leaders” in their pricing structure. However, it is rare that a company wants to work for an Office of Inspector General at a loss in order to enhance the companies marketing “prestige.” So do not award a contract strictly on low price because of the belief that the company is providing a bargain price now in order to improve their chances for obtaining additional, more profitable contracts later. This philosophy generally fosters poor performance. When contractors are losing money on a contract, or can make more money on another contract, they generally put their best efforts and staff into the most profitable area. For example, a contractor might use less senior staff time in a low-priced contract, resulting in substandard quality and unmet time lines. Note: negotiating a contract that results in lower payments to a contractor than what s/he could obtain in the commercial arena is not necessarily a sign of good business skills or of a good value for the government.

Tip on contract ceilings

Set the total contract “not to exceed” amount of task order contracts at an expected use level. It is a violation of the Federal Acquisition Regulation to set the level at an unrealistic amount as a hedge against large unexpected contract needs!

Business Size

Business Size and Quality. Selecting a quality contractor is a key aspect of acquiring quality advisory and assistance services. The size of a contractor’s business is not necessarily an indicator of how they will perform. In fact, regulations require all federal contracts be set-aside for small businesses if there are two or more that can perform the terms of the contract at a fair and reasonable price. Additionally, regulations require agencies to consider dividing large contracts into smaller parcels whenever feasible in order to provide greater opportunities to small businesses. For example, multiple award contracts allow both small and large contractors to

receive an award under the same contract. Task orders may then be given to either large or small contractors depending upon need.

There are times when business size could be a quality factor. For example, there are some specialized areas of Offices of Inspector General work where large firms are needed. Do not contract with a small business and then find out it lacks the resources to complete the contract tasks. If a large business is required, for example to conduct specialized audits, past market research shows that there are only five or six large accounting firms performing audit contracts. However, the size of the firm alone does not necessarily correspond to quality contractor performance.

Small Business Goals. All agencies have goals for awarding contracts to small and various other categories of disadvantaged businesses. However, contract awards do not always have to go to small businesses. Even though small businesses may perform as well or better than large firms, consider each individual contract requirement before deciding whether a large or a small contractor can meet the scope of work.

QUALITY ASSURANCE THROUGH CONTRACT ADMINISTRATION

Before Work Begins

Planning for Contract Administration. Contract administration begins in the planning stage with the development of a clear concise performance-based statement of work. To the extent necessary, it continues with preparation of an administration plan that effectively measures the contractor's performance. Whether to prepare a written plan and, if so, how thoroughly to write out the plan is a unique element of each contract.

As appropriate, Offices of Inspector General, in conjunction with the contracting officer, are encouraged to prepare a written plan for contract administration of advisory and assistance services contracts and share a copy of that plan with contractors during a pre-work conference. However, small contracts or simple tasks may not require a written plan.

Record of Conversations. Contractors sometimes perform beyond the requirements of the contract and then request additional payments. Therefore, after an award, consider keeping a written record of conversations with a contractor in order to disprove a contractor's claim of expensive contract additions. This advice applies both before and after work starts.

Contract Start-up. Getting the contractor off to a good start is a key step in securing effective overall performance. The following three points will aid in the start-up process.

- ▶ Use pre-work meetings with new contractors to make sure the contractor understands precisely what is needed under the contract. This advice applies to individual task orders as well as to lump sum awards. Otherwise, the contractor may be doing work differently from what is expected.
- ▶ Once the contract is awarded, begin work right away. The contracting community loses interest if the work is not efficiently scheduled, and may conclude they do not want to do business with this Office of Inspector General in the future. Also, if the contractor's staff is not being used effectively, they often assign their people to other contracts, thereby delaying completion of the work. The contractor's replacement of experienced staff with new people starts the learning processes all over again. The contractor must be used effectively and efficiently in order to enforce the key personnel clause!
- ▶ If a contractor is being used to perform audit work, meet with the auditee ahead of time. It is embarrassing to have the contractor show up at the audit site when the auditee is unaware of the audit or the documentation review requirements. In addition to being embarrassing, such lapses waste money. The auditee needs to designate staff to work with the contractor, including obtaining a review site and having the needed records available.

Monitoring the Contractor's Work

Quality Control. Using all appropriate contracting clauses will not guarantee quality performance. At a minimum, the contractor should be monitored and evaluated, and feedback provided both in terms of recognition and noting the areas requiring improvement. The following methods are effective in encouraging quality contractor performance.

- ▶ Correct performance problems early and involve the contracting officer quickly to resolve performance problems. Some contractors react more quickly to the contracting officer than they do to the project staff. Unattended problems can become the normal level of performance.
- ▶ Read the contract before using it, including the clauses. Understand it. Make sure the contractor adheres to basics of the contract. The contractor will normally read their copy of the contract and know their rights. Project officers can't effectively represent the Office of Inspector General unless they know all the terms and conditions of the contract. Performance problems must be identified by the project officer and brought to the attention of the contracting officer if they cannot be resolved. Contracting officers generally get involved in performance problems only if they are alerted to problems.
- ▶ Monitor the contractor after award. Stay in touch with the work as it happens. Lack of communication with the contractor is the biggest single cause of contract failure, especially when s/he is working in an agency on a daily basis.
- ▶ Consider obtaining a work plan from the contractor. Review and approve the plan prior to authorizing the contractor to start work. This is especially helpful on complex projects. If a work plan is to be requested, plan for it in advance and include it in the contract's statement of work to avoid incurring additional charges.
- ▶ The first work products are a key problem resolution point, especially for audit contracts. Consider being on-site for early audit work in large, complex, or critical audits. This does not mean full-time oversight, but rather on-site monitoring for a week or so.
- ▶ Make contractors adhere to contract time frames. Some contractors feel that being behind schedule is not money lost. However, if the contract is terminated because of untimely work, it is expensive for all parties.
- ▶ Do not accept unresponsive contractors. There are plenty of contractors available who will perform quality work and there are ways to avoid unresponsive contractors and move to responsive ones. For example, if multiple awards have been made, it is not mandatory to continue using every contractor. Or, if an indefinite-quantity type contract has been awarded, it is not mandatory to use that contractor beyond the minimum amount required in the contract. There are other more drastic steps a contracting officer may take with a nonperforming contractor, but the difficulties

involved in correcting poor performance reinforce the importance of selecting a good contractor in the first place.

- ▶ Do not allow contractors to change project managers on a frequent basis. The key personnel clause is helpful in this regard. [See Appendix C.]

Unsatisfactory Performance. It is difficult to describe what constitutes good contract performance for advisory and assistance services. Therefore, careful thought must be given when describing what makes a contractor's work acceptable and exceptional. Furthermore, even a quality contractor can provide an unacceptable product if their work is not monitored and periodically reviewed. Contractors who do not perform should be dropped from further consideration. The contracting officer knows how to do this and what is needed to document less than fully satisfactory performance. When multiple awards are made for task order contracts, the contracting officer knows how to advise a poor performing contractor of the reasons that they may not be getting additional orders. Recipients of contracted services should perform documented evaluations of contractor performance upon completion of the contract.

Tips for avoiding poor contractor performance

- ▶ Document time spent in monitoring contractors because it may be indicative of performance issues.
- ▶ Do not let contractors come in and run the Office of Inspector General's business. Knowing what the contractor is supposed to do, and the specifics of the contract, should enable effective monitoring of the contractor's performance.
- ▶ Request a briefing from the contracting officer (prior to using the contract) on how the contract should work. Each contract has its own peculiarities. Without this knowledge, there is a risk of not using the contract to its maximum effectiveness and of encouraging the contractor to tell you how the work will proceed.

Regarding future use of contractors who do not perform well, consideration should be given to having the project officer rate contractors quarterly on active tasks (the Office of Federal Procurement Policy has suggested that evaluation include contractor's technical performance, management performance, and customer satisfaction). Such reports are not a substitute for promptly communicating potential and actual contractor performance problems to the contracting officer for corrective action. Remember, the contracting officer's success in resolving performance problems depends upon the active involvement of the project staff. Critical indicators of poor contractor performance include cost overruns and delays in receiving contract deliverables. Keep all negative performance documentation in the contract file so other

contracting officers can review the information when a new contract is awarded. Such information assists the contracting officer in identifying and maintaining quality contractors.

Contractor Requests More Time to Complete the Task Order. If a contractor requests more hours under an hourly task order type contract, make sure the justification for the request is well documented. This discourages contractors from padding the contract to obtain extra money.

Modifications

Prohibitions When Modifying Contracts. A contract may be modified without competition to add additional work when the additional work is within the scope of the original contract. However, new work outside the original scope may not be added to increase the dollar amount without following competitive procedures. In such cases, additional new work must be competed or a preparation of formal justification for not competing is needed. Competition is the watchword for awarding all contract dollars. It is possible, however, to place options in contracts to either increase the amount of work or the length of the contract. These options must be included in the contract at the time it is signed.

Unauthorized Contract Modifications. The contracting officer is empowered to legally modify a contract. However, discussions between the project staff and the contractor can sometimes lead to unauthorized and therefore illegal contract modifications. The following points will help guard against such changes.

- ▶ A project officer should not make changes in the basic terms of the contract. Such changes are unauthorized and the resulting costs could legally become the personal responsibility of the project officer for payment. [See the Federal Acquisition Regulation Subpart 4.101 and refer to the Anti-deficiency Act and related legal decisions.]
- ▶ To avoid an inadvertent change in contract terms, make sure the contractor agrees that any discussions do not constitute a change. Keep written notes of the conversation and of the contractor's acknowledgment that no change in the contract's level of effort has occurred.
- ▶ Be familiar with purpose and use of contract options. Options often are available to either extend the length of the contract or the amount of work to be performed. Exercising options requires a formal modification to the contract. Without such understanding, option clauses may be misapplied.
- ▶ Never meet with a contractor to discuss substantive non-technical contractual issues without the contracting officer being present. This will help avoid over commitments.
- ▶ Do not commit for more work without involving the contracting officer in preparing a modification to cover the new work. There's a tendency for some contracting officer's technical representatives and project officers to tell contractors it is okay to do something when it is not authorized under the contract's scope of work. Such

unauthorized commitments will cause the contracting officer's technical representative and the project officer to lose credibility with the contractor.

Tip for avoiding excessive costs

Do not call the contractor in for "10,000 meetings" as this increases contract costs.

Unauthorized Supervision of Contractor Staff. Do not attempt to supervise the contractor's staff. Their supervision is paid for by the contract. Attempts at supervision may quickly lead to unauthorized changes in contract scope. In addition, such supervision is contrary to regulation because it creates a personal services contract (refer to Prohibited Contracting Actions section of this guide).

Funds and Payments

Common Contract Payment Problems. The following suggestions to prevent payment problems are commonly overlooked.

- ▶ De-obligate unused contract funds where appropriate to avoid a lapse of funds through that particular contract.
- ▶ Numerous small bills can be a problem both in terms of time needed to make payments and in record keeping. Consider use of the purchase card as a payment vehicle as it also serves as a record of payments to the contractor. Convenience checks may be used to pay small contractors who do not accept purchase cards.
- ▶ Proper payment requires teamwork between program and contracting offices. Ensure that all contractor payments pass through the project office for certification that work has been completed and payment is proper. Ensure that all contractor payments pass through the contracting officer who then authorizes the finance office to make payment. Effective contracting and program officers monitor all payments under a contract. Payment office records are sometimes surprisingly incorrect. The contract file or program office file are often used as the official source to settle payment discrepancies.

Proper Payment. Contractors do not always invoice correctly! On hourly contracts, make sure the payment does not exceed the hours worked. Do not pay too much for too little. Verify that the hours billed correlate with the amount of work completed before authorizing payment through the contracting officer.

Resources for Further Reading

- ▶ Federal Acquisition Regulation Part 37 “Service Contracting”
- ▶ Federal Acquisition Regulation Subpart 9.5 “Organizational and Consultant Conflicts of Interest”
- ▶ Federal Acquisition Regulation Subpart 16.5 -- “Statutory and Regulatory Requirements for Use of Task Order Contracting for Services”
- ▶ Office of Management and Budget Circular A-11 and agency regulations -- especially regarding the statutory and regulatory definition of advisory and assistance services
- ▶ Office of Management and Budget Circular A-76 -- on contracting out policies
- ▶ Office of Federal Procurement Policy, Policy Letter 92-1 -- “Inherently Governmental Functions.”
- ▶ Office of Management and Budget’s:
 - [A Guide to Best Practices for Performance-Based Service Contracting](#)
 - [A Guide to Best Practices for Contract Administration](#)
 - [Best Practices for Past Performance](#)
 - [Best Practices for Multiple Award Task and Delivery Order Contracting](#)
- ▶ “Federal Agency Procurement of Audit Services” available from The Government Printing Office
- ▶ “Review of Independent Public Accounting Work” available from The Government Printing Office

The Statement of Work for Advisory and Assistance Services

Sample Outline

The exact content of any statement of work will of course be dictated by individual circumstances. The following contains a listing of typical sections in a statement of work, and you should feel free to use those that apply and disregard those that are not necessary. Seek to obtain a historical perspective on any given statement of work from the agency files and if necessary from other agency files. Note that all or part of the below sections may be deferred to each individual task order if appropriate.

▶ **Section 1 -- Scope**

A general overview of the objectives and the desired results

▶ **Section 2 -- Background**

A general description of technical considerations

▶ **Section 3 -- Applicable Documents**

All the known documents and referenced material the contractor will require to accomplish the tasks

▶ **Section 4 -- Tasks**

All the specific tasks, or steps, the contractor must perform in order to provide the end item, deliverable, or service

▶ **Section 5 -- Contract Deliverables**

A precise statement of what the contractor is to deliver at specified points in time as work progresses, and a statement of what is to be delivered, to include details concerning the type, form, media, and quantity of the deliverable

▶ **Section 6 -- Government Furnished Facilities and Services**

A list of all property and services that the Office of Inspector General will make available to the contractor for use during performance of the contract

▶ **Section 7 -- Contractor Furnished Property and Services**

A listing of the property and services the contractor will furnish to perform the contract

▶ **Section 8 -- Acceptance and Inspection**

A description on how each deliverable listed in Section 5 of the statement of work is to be received, inspected, tested, or verified by the contracting officer's technical representative and the time period for acceptance

▶ **Section 9 -- Place of Contract Performance**

A statement of where the work is to be performed or the place of delivery

▶ **Section 10 -- Task Completion date**

A statement concerning the period of performance for each deliverable end item and the delivery schedule

▶ **Section 11 -- Place of Inspection and Acceptance of Deliverables**

A statement where each deliverable is to be shipped, tested, inspected, accepted, installed, and who will receive, test, inspect, or accept it

▶ **Section 12 -- Security Requirements**

A description of the security issues that impact or are required for the contractor (including subcontractors) in the performance of work

▶ **Enclosures to the Statement of Work**

The following documents are attached at the end of the statement of work or may be placed in Section J of the contract:

- ▶ Attachments (Background Information);
- ▶ Appendices (Specifications and Requirements);
- ▶ Schedules (Delivery or Period of Performance); and
- ▶ Exhibits (miscellaneous material).

Sample Statement of Work

DELIVERY ORDER [insert #] FOR CONSULTATION, ANALYSIS AND REPROGRAMMING OF FINANCIAL REPORTING PROCESSES WITHIN THE PAYMENT MANAGEMENT SYSTEM APPLICATION of the DIVISION OF PAYMENT MANAGEMENT

I. STATEMENT OF WORK

This Delivery Order is to assist the Division of Payment Management (DPM) in identifying and implementing corrective action on processes, systems and controls for improving financial reporting processes of the Payment Management System application (PMS). Financial reports produced by PMS impact the financial statement data of all Health and Human Services (HHS) reporting divisions (OPDIVs) as well as the overall financial statements of the Department itself. Erroneous or unreliable data generated by PMS could negatively effect the HHS financial statement audits for the fiscal year (FY) ended September 30, 1998.

A. BACKGROUND

The Division of Payment Management (DPM) is a fiscal intermediary control point between awarding agencies and recipients of grants and contracts. Using the PMS application, DPM (1) disburses Federal funds to academic institutions, research organizations, and state and local governments, (2) transmits recipient disbursement data back to awarding agencies, and (3) manages cash advances to recipients. Annually, PMS processes over 200,000 transactions totaling \$170 billion for 44 agencies. PMS is a large, COBOL based application that utilizes the IBM information Management System (IMS). Both the IMS data and communications database management services are used by PMS. PMS operates on a mainframe computer located at the National Institutes of Health, Division of Computer Research and Technology (NIH/DCRT) data center. The application is large and complex. It consists of approximately 760 programs, 500,000 lines of code, 24 databases containing 2,100 data elements, and on-line processing that utilizes approximately 250 unique screens. PMS is a mature application that has existed for over 20 years.

The Government Management Reform Act (GMRA) expanded the CFO Act of 1990 to require the issuance of audited financial statements by HHS and other agencies. GMRA also requires the preparation of annual government-wide consolidated financial statements of the U.S. Government. The General Accounting Office (GAO) is responsible for auditing those statements. The DPM PMS application is a major source for the data used in the compilation of the OPDIV and HHS-wide financial statements required by GMRA.

B. OBJECTIVES

The objectives of this delivery order are to:

1. perform an analysis of the two financial reporting processes:
 - a) the grant accrual process that calculates grant expense accrual amounts and produces accrual transactions and supporting reports used by the HHS OPDIV's at the close of each fiscal year;
 - b) the Monthly Reconciliation Report produced by DPM/PMS and used by the HHS OPDIV's to reconcile monthly and annual changes to U.S. Treasury appropriations;
2. fully document the resulting systems in a manner that provides sufficient support for the PMS SAS 70 reviews and HHS OPDIV financial statement audits.

C. SCOPE AND METHODOLOGY

There are three elements of the engagement: (1) analysis, (2) recommendation and (3) documentation.

1. Analysis. In analysis, the Contractor shall obtain the description of the current PMS Accrual Process and Monthly Reconciliation Report process and develop an analysis program. DPM will provide technical assistance and a description of the report processes. The analysis culminates in preparation of an analysis program detailing the analysis methods, proposed alternative processes for review, and required testing. Proposed revisions to the analysis program must be discussed in advance with the Project Officer (PO). Before concluding this step, the Contractor shall arrange and attend meetings with DPM management to facilitate agreement on the analysis program.
2. Recommendation. In its recommendations, the Contractor conducts a review sufficient to render a view as to the effectiveness of the financial reporting processes described above and make recommendations for improvement, if necessary. The contractor may have to analyze alternative methodologies to existing PMS processes in order to form an opinion of the processes and make recommendations. No limitations shall be placed thereon.
3. Documentation. In its documentation, the Contractor shall prepare one report that separately documents the recommended financial reports and processes including recommended modifications to the report processes, if any. Proposed revisions to the financial reporting processes must be discussed in advance with the PO. The Contractor will include detailed specifications for any modifications required to implement the recommendations. Before concluding this step, the Contractor shall obtain the PO's concurrence on the recommended modifications to the report

processes. The Contractors shall arrange and attend meetings with DPM management to facilitate agreement on the recommended modifications to the report processes.

II. DELIVERABLES

The delivery date for both processes is 90 days from date of award, however, note that the accrual process is contingent upon timely completion of the first process of this contract.

A. ANALYSIS PROGRAM

The Contractor shall deliver to the PO for approval an analysis program in hard copy and on a WordPerfect 7.0 disk.

B. RECOMMENDATIONS

The Contractor shall deliver to the PO for approval recommended financial report process changes in hard copy and on a WordPerfect 7.0 disk.

C. DOCUMENTATION

The Contractor shall deliver to the PO for approval documentation in hard copy and on a WordPerfect 7.0 disk.

The contractor will consult with DPM management as DPM management and OPDIV's conduct testing of the modified financial reporting processes to validate the accuracy of the reports and compatibility of the reports with user financial accounting systems.

All draft contractor reports and final contractor reports must contain specific references to the applications, services, or other aspects of PMS and a description of the scope and nature of PMS procedures.

1. All reports should be written in sufficient detail so that a PMS user would be convinced by the validity and significance of the conclusions, and recommendations presented.
2. The Contractor shall provide the PO/Monitor with reports in both hard copy and on a WordPerfect disk file in accordance with the attached schedule of deliverables. The PO/Monitor will provide either written or oral comments to the Contractor within the period specified in Payment and Acceptance of Work section of this contract. The review comments are for consideration by the contractor and are not intended to compromise the contractor's professional responsibilities.
3. The Contractor shall issue the discussion draft report to DPM officials to solicit their comments.

4. Reports shall be unbound. The Contractor shall produce five copies of each report.
5. To facilitate timely DPM management responses to the deliverables, the Contractor should keep DPM management apprised of problems throughout the period of conducting the engagement.

III. PERIOD OF PERFORMANCE

The period of performance for this Delivery Order shall begin on the date of the Contracting Officer's signature and end no later than the date listed in the schedule of deliverables plus 60 days.

IV. PAYMENTS AND ACCEPTANCE OF WORK

Payment shall be made following acceptance by the Project Officer, within the period allotted, of the specified deliverables for that element. Payment shall not be due until the conclusion of the period allotted. In all cases, payment shall only be made upon acceptance by the Project Officer/Task Monitor (PO/TM) of satisfactory products and progress. Progress reports are considered prescribed products. The determination of whether products are satisfactory is at the sole discretion of the PO/TM.

V. CONTACTS

Performance under this Delivery Order will be closely coordinated with and monitored by the PO, the TM, and any other member designated by the PO. Questions pertaining to the scope of work and requests for technical guidance and direction should be directed to the PO/TM or other designated DPM representative. However, only the HHS Contracting Officer or the Contract Administrator for the basic contract may make changes to the terms and conditions of this Delivery Order. The PO/TM will provide the necessary background information and guidance and will facilitate, but not provide, access to responsible officials and records.

The name, address and phone number of the Project Officer is:

[insert name, address, voice phone, fax and e-mail]

The name, address and phone numbers of the Task Monitors are:

[insert name, address, voice phone, fax and e-mail]

VI. PROGRESS REPORTS and MEETINGS

Throughout the engagement the Contractor shall prepare and submit to the PO and the HHS Contracting Officer an oral progress report weekly and a detailed biweekly progress report both in hard copy and electronic file format. The biweekly report shall be submitted within 3 days of the conclusion of the weekly period. Biweekly progress reports shall be succinctly written and directly pertinent only to the work performed for this engagement.

The Contractor shall include in the reports the progress of the engagement, including discussions with the PO/TM, Contracting Officer, DPM and user agency management, and other contractors performing work under DPM contracts. The reports shall provide the following information under the headings shown:

- a. Work Performed in the previous two weeks
- b. Work Planned for the next two weeks
- c. Changes to the engagement
- d. Work Delays and Cause
- e. Time Summary: This information shall document the approximate time expended by Contractor staff on the engagement and shall be shown by staff level (e.g., partner, manager, auditor) for (1) the period of the report, and (2) commutatively, by contract element and total.

Progress reports are critical to effective monitoring of engagement progress, and they are to be the primary means of disclosing work progress and results. Reports considered inadequate by the PO will be returned to the Contractor for re-submission within three working days.

VII. KEY PERSONNEL

Names of the key personnel are to be listed in the task order proposal. The Contractor is requested to submit resumes of the staff proposed for the task order. Use of individuals other than those listed in the task order proposal must be approved, in advance and in writing, by the PO/TM.

VIII. LOCATION OF WORK

Records and systems to be examined under the contract are located in the vicinity of Rockville, MD.

IX. TYPE OF DELIVERY ORDER

This is a firm fixed price delivery order

X. SCHEDULE OF DELIVERABLES

The deliverable dates listed below — except for the discussion draft reports and the final reports — are approximations and may, at the discretion of the PO/TM be adjusted up to 60 working days later than indicated without contract modifications. However, if the Contractor cannot deliver the discussion draft reports or the final reports by the date scheduled below, the Contractor shall notify the CO and PO/TM immediately upon making that determination and provide a written justification for extension of the final delivery date.

SCHEDULE

Contractor’s Milestones

Delivery Dates

Complete Element I

65 days from date of contract award

Complete Element II

75 days from date of contract award

Complete Element III

90 days from date of contract award

Note: this appendix contains a limited number of clauses of special interest. There are many other “boiler plate” clauses that are required or should be considered for inclusion in a contract. Such clauses are listed in the FAR Matrix and may be obtained from your contracting officer.

Sample Contract Clauses — Contractor’s Conflict of Interest Statement

K. DECLARATION OF INDEPENDENCE AND CONFLICT OF INTEREST STATEMENT

(a) GENERAL PROVISION.

For proper performance of Office of Inspector General business and to maintain the independence of the Inspector General, Contractors shall certify that they are not aware of any conflict of interest situations at the time the contract is awarded and agree not to enter into any contract that will create or appear to create a conflict of interest for the Inspector General.

(b) REQUIREMENTS.

The Contractor must comply with the following requirements.

- i. Sign a Declaration of Independence and Conflict of Interest Statement.
- ii. Notify the Office of Inspector General of any identity of all other clients contracted with during the past 2 years and currently under contract and provide any information needed concerning the work performed for these clients as determined by the Office of Inspector General.
- iii. Notify the Office of Inspector General of any potential new contract with the entity being audited or reviewed under current Office of Inspector General contract that might pose a conflict of interest.
- iv. Comply with all contract conflict of interest clauses, such as complying with Government Auditing Standards.

(c) EXAMPLES.

The following examples illustrate situations in which questions concerning conflict of interest may arise, and are not inclusive.

- i. Employing a former employee of the Office of Inspector General or the entity to be audited who has information that enables the Contractor to gain an unfair competitive advantage.
- ii. Auditing a system that was developed or designed by the Contractor or an employee of the Contractor.

(d) PENALTIES.

If the Contractor fails to comply with the above requirements, it may be considered a material breach of the contract subject to monetary penalty and termination for default or other legal action, such as debarment from future Federal contracts.

(e) CERTIFICATION.

I certify that I have read and fully understand the above information and what is required under the contract concerning conflict of interest.

Signature: _____ Date: _____

Sample Contract Clause — Sections G and H of Considerations

[Note, most agencies have internal approval procedures when using special clauses such as the following. Sections G and H are suggestions for placement in the contract if the uniform contract format is used.]

G. TECHNICAL DIRECTION (date)

Performance of the work under this contract shall be subject to the technical direction of the Project Officer. The term “technical direction” is defined to include directions which serve to accomplish the contractual statement of work such as interpretation of the work description or review, and where required by the contract, approval of technical information to be delivered by the Contractor to the Office of Inspector General, under the contract.

Technical direction must be within the general scope of work stated in the contract. The Project Officer does not have authority to and may not issue any technical directions which (i) constitutes an assignment of additional work outside the general scope of the contract; (ii) constitutes a change as defined in the contract clause entitled “Changes”; (iii) in any manner causes an increase or decrease in the total estimated contract performance; or, (iv) changes any of the expressed terms, conditions, or specifications of the contract.

All technical directions shall be issued in writing by the Project Officer or shall be confirmed by the Project Officer in writing as soon as possible but in any event within five working days of oral issuance. The Contractor shall proceed promptly with the implementation of all technical directions from the Project Officer in the manner prescribed by this clause and within the authority of the provisions of this clause.

If in the opinion of the Contractor, any instruction or direction issued by the Project Officer is within one of the categories defined in (i) through (iv) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing as soon as practicable but in any event within five working days after the receipt of any such instructions or directions, and shall request the Contracting Officer to modify the contract accordingly. Upon receiving such notification from the Contractor, the Contracting Officer shall determine if the direction given is within or outside the terms of the contract and if outside issue a modification (hopefully bilaterally after discussions with the Contractor), or advise the Contractor in writing that the technical direction is within the terms of this clause and does not constitute a change under the “Changes” clause of this contract. If the Contractor should not concur with the Contracting Officer’s determination, the Contractor shall proceed immediately with the direction given. A failure of the parties to agree upon the nature of an instruction or direction, or upon the contract action to be taken with respect thereto shall be subject to the provisions of the contract clause entitled “Disputes.”

H. SAFEGUARDING OF INFORMATION (date)

The Contractor and its employees shall not communicate to any person any information known to them by reason of their performance of services under this contract which has not been made public, except in the necessary performance of their duties or upon written authorization of the

Contracting Officer. All documents and records (including photographs) generated during the performance of work under this contract shall be for the sole use of and become the exclusive property of the U.S. Government. Furthermore, no article, book, pamphlet, recording, broadcast, speech, television appearance, film or photograph concerning any aspect of work performed under this contract shall be published or disseminated through any media without the prior written authorization of the Contracting Officer. These obligations do not cease upon the expiration or termination of this contract. The Contractor shall include the substance of this provision in all contracts of employment and in all subcontracts hereunder.

H. RESTRICTIONS AGAINST DISCLOSURE (date)

- a. Subject to the provisions of paragraph (c) below, the contractor agrees, in the performance of this contract, to keep all information which is obtained or otherwise unavailable to the general public, in the strictest of confidence. The Contractor acquires neither possessory nor proprietary interests in such information. The Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form, at any time, during or following contract performance, nor authorize or permit others to do so. The Contractor agrees to take such reasonable measures as are necessary to restrict access to such information to those employees needing such information to perform the work provided herein, i.e., on a “need to know basis.” The Contractor agrees to immediately notify the Contracting Officer’s Representative, in the event that he or she determines or had reason to suspect a breach of any of these requirements or restrictions, and to provide written notification as soon as possible.
- b. The Contractor agrees to include the above clause or equivalent language in any agreement or subcontract hereunder.
- c. The Contractor agrees not to disclose any information concerning the work under this contract to any persons or entities unless prior written approval is obtained from the Contracting Officer.

H. CONTRACTOR GENERATED MATERIAL (date)

All material generated by the Contractor under this contract, including printouts and analytical reports in whatever form (e.g., computer tapes, audio, video) is the property of the Government. An inventory list of all such material shall be provided to the Government not less than sixty (60) days prior to the end of the contract. The material shall be delivered to the Office of Inspector General upon completion of the contract except for any items of material for which the Office of Inspector General has elected in writing not to take delivery. No Contractor generated material shall be made available or sold to any requesting Government or private entity without the prior written approval of the Contracting Officer. “Material” for purposes of this clause shall not be deemed to include Contractor’s business and financial records, such as time sheets, payroll records, and internal memoranda that does not contain classified, proprietary or otherwise sensitive information obtained during contract performance. In addition, no mailing lists are to be made by the Contractor using this contract’s material for any reason or purpose unless specifically authorized or required elsewhere in the contract.

Sample Contract Clause — Section H - Other Optional Contract Considerations

[The following clauses should be considered for inclusion based on need. They should be tailored to the individual Offices of Inspector General and to the individual contract. If the standard contract format is being used they normally appear in section H.]

H. ADVISORY AND ASSISTANCE SERVICES (date)

The contractor agrees to determine whether or not any consultant to be utilized under this contract has in effect an agreement with the Federal Government for similar services at a lesser consultant rate than that offered under this contract and, if so, to advise the Contracting Officer accordingly, prior to the formalization of an agreement for consultant services.

H. PROJECT PERFORMANCE (date)

The activities and milestones outlined in the Contractor's work plan will serve as the mechanism by which the Contractor's performance will be measured. The monthly progress reports submitted by the Contractor will reflect accomplishments according to this plan. Any changes to the milestones' completion dates must be approved, in writing, by the Project Officer.

Sample Contract Clause — Key Personnel

[Note, most agencies have contract clauses addressing key personnel. The Uniform Contract Format sections C and H are suggestions for placement in the contract.]

Section C of the contract:

KEY PERSONNEL

Key personnel, by labor category, have an asterisk in Section B of the contract. They are essential to performance of the contract. The contractor shall not divert key personnel working under a delivery order without the written consent of the Contracting Officer or his or her representative. The contractor shall submit requests for proposed changes as stated in Section H -- Key Personnel. [Security clearance provisions may be added to this clause as needed.]

Section H of the contract:

H. KEY PERSONNEL (date)

[Note: one Office of Inspector General applied the following type of clause to all of the contractor's staff. However, including all of the contractor's staff for coverage might work well on small contracts but would probably be administratively unworkable for larger contracts.]

- (a) The Contractor shall assign to this contract the following key personnel:

| <u>Labor Category</u> | <u>Name</u> |
|------------------------------|--------------------|
| Partner/Principal | (names) |
| Audit Manager | (names) |
| Supervisor | (name) |
| Project Manager | (names) |

- (b) The Contractor agrees that a partial basis for award of this contract is the list of key personnel proposed. Accordingly, the Contractor agrees to assign to this contract those key persons whose resumes were submitted with the proposal to fulfill the requirements of the contract. No substitution shall be made without prior notification to and concurrence of the Contracting Officer. During the first ninety days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment.
- (c) All proposed substitutes shall meet or exceed the qualifications of the person to be replaced. The Contracting Officer shall be notified in writing of any proposed substitution at least forty-five days, or ninety days if a security clearance is to be obtained, in advance of the proposed substitution. Such notification shall include: (1) an explanation of the circumstances necessitating the substitution; (2) a complete resume of the proposed substitute; and (3) any other information requested by the Contracting Officer to render a judgment whether or not the Contractor is maintaining the same quality of personnel that provided the partial basis for award.

Sample Contract Clause -- Contractor's Pride of Authorship

As delineated in this statement of work, the Contractor is required to prepare written material including opinions and advice. The Contractor is hereby put on notice that the Office of Inspector General (through the Contracting Officer's Technical Representative) may require the Contractor to make numerous revisions to the material (and should anticipate up to [*insert number*] extensive revisions or equivalent to the entire document in terms of effort required under this contract) in addition to the Contractor's first draft. If the Contractor feels the equivalent of previously said number of extensive revisions has been reached and that further work requires a change in terms of the contract, he or she must advise the Contracting officer and request and obtain written guidance before continuing with additional changes. Furthermore, the Contractor will not be held responsible for the content of the changes directed by the Office of Inspector General, nor should Contractor expect that a "pride of authorship" will relieve them from the responsibility of preparing the changes as requested. In short, the Contractor should expect to make changes in the material prepared by the Contractor and as directed by the Office of Inspector General without hesitancy on a basis of "pride of authorship" or because their professional opinion dictates the material should not be changed, etc.

Sample Contract Clause -- Task Order Competition and Ordering Procedures

G. TASK ORDERS (date)

- (a) Task order requests normally shall be issued in writing to the Contractor by the Contracting Officer and will describe the specific support required by the Office of Inspector General. A “Task Order Request” is a request for proposal; it is not a “Task Order” and does not authorize performance. These documents may be issued by facsimile and the Contractor’s response may be permitted by facsimile in accordance with Federal Acquisition Regulation clause 52.214.31 Facsimile Bids (Dec. 1989). Or, these communications may be made using electronic commerce if both parties agree.

- (b) Each Task Order Request shall include, at a minimum:
 - (1) a description of the work to be performed;
 - (2) reporting, briefings, and other deliverable requirements; and
 - (3) the estimated period of performance or required completion date.

- (c) The Contractor shall, within five working days (unless a different time is given) of the receipt of a Task Order Request, submit to the Contracting Officer’s Technical Representative a written technical proposal and a separate detailed cost proposal. Late responses need not be considered. A cost proposal shall include the following, as applicable:
 - (1) the required number of labor hours by labor classification and labor rates;
 - (2) overtime hours and rates by labor category;
 - (3) direct material, travel, subsistence, and similar costs;
 - (4) dollar amount and type of any proposed subcontracts(s);
 - (5) total estimated price; and,
 - (6) proposed completion or delivery dates.

- (d) The Contracting Officer’s Technical Representative shall review the proposal and forward written recommendations, along with a copy of the proposal, to the Contracting Officer. Following successful negotiations of the Contractor’s proposal, the Contracting Officer shall issue a written Task Order to the Contractor providing the necessary funding and authorizing the Contractor to begin work.

- (e) If multiple awards have been made, procedures may vary from contract to contract about how to decide which contractor will get which task order. Most service contracts provide for all Contractors to be given a fair chance to compete for each task order. In such cases, task order award will be made on a best value basis. However, greater consideration will be given to price in determining which Contractor will receive the task order because all contractors are considered technically capable.

- (f) The Office of Inspector General shall not be obligated to pay the Contractor any amount in excess of the Total Task Order amount, and the Contractor shall not be obligated to continue performance if to do so would exceed the total Task Order amount.
- (g) Protests are not authorized in connection with the issuance or proposed issuance of a Task Order except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract under which the order is issued.
- (h) The Contractor shall not be required to compete. The Contractor may elect not to submit a quotation and such election shall not preclude the Contractor from an opportunity to quote on future orders.
- (i) A customer satisfaction survey may be used to evaluate the Contractor in performance of each task order. The Office of Inspector General (or other agencies) may use the results of these surveys as a measure of past performance when making future Task Order awards under this contract or for future contracts.

Federal Acquisition Regulation Technical Definitions of Glossary Terms

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, output may take the form of information, advice, opinions, alternatives, analyzes, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, i.e., contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyzes and evaluations, i.e., contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyzes or evaluations.

(3) Engineering and technical services, i.e., contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505-1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system. [2.101]

“A blanket purchase agreement” (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements). [13.303-1]

“Commercial item” means --

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed; [2.101]

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. [9.501]

“Section 8(a) of the Small Business Act” (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA’s subcontractors are referred to as “8(a) contractors.” [19.800]

“A firm-fixed-price contract” provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. [16.202-1]

“Full and open competition” when used with respect to a contract action, means that all responsible sources are permitted to compete. [6.003]

“A labor-hour contract” is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See 16.601(b) and 16.601(c) for application and limitations, respectively. [16.602]

“Performance-based contracting” means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which work is to be performed or broad and imprecise statements of work. [37.1]

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see 37.104). [37.101]

“Simplified acquisition procedures” means the methods prescribed in Part 13 for making purchases of supplies or services. [2.201]

“Simplified acquisition threshold” means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in 10 U.S.C. 2302(8) and 41 U.S.C. 259(d)), the term means \$200,000. [2.201]

“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 in 13 CFR {art 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity. [19.001]

A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. [19.501]

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source. [6.003]

“Synopsis”. As required by the Small Business act (15 U.S.C. 637(e) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions as specified in paragraph (b) of this section. [5.201(a)]

“Task order” means an order for services placed against an established contract or with Government sources. [2.101]