

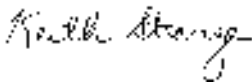
## Purchasing Manual

Issue 2

January 31, 2002

- A. Explanation.** This *Purchasing Manual* (PM) is published and maintained by Purchasing Policies and Programs, Purchasing and Materials and contains the Postal Service's purchasing policy.
- B. Material Transmitted.** Issue 2 contains numerous new and significant changes in Postal Service purchasing policy and users are encouraged to consult the Summary of Changes which identifies general and specific policy changes. Issue 2 also contains all changes made to Issue 1 between January 31, 1997, and November 15, 2001, which are still in effect.
- C. Other Directives.** Topics addressed in the PM may also be addressed in other purchasing-related directives such as Handbooks P-1, *General Purchasing Concepts and Practices*, P-2, *Design and Construction Purchasing Practices*, and PO-503, *Mail Transportation Procurement Handbook*. Should material in these handbooks or any other purchasing-related directive (pending their revision or replacement) conflict with material contained in the PM, the PM prevails.
- D. Availability.** The PM is published and available to all users on the World Wide Web at <http://www.usps.com/business>.
- F. Issuance Date/Effective Date/Transition Period.** Issue 2 is being issued on January 31, 2002. Pending the updating of purchasing support systems for consistency with the new policies contained in Issue 2, purchasing organizations may adopt the policies and procedures contained herein immediately, or may follow the policies and procedures contained in Issue 1. The end of this transition period will be announced in the *Postal Bulletin*.

If a purchasing organization adopts Issue 2 policies and procedures for any category or categories of purchases, it must use those policies and procedures consistently for that category or categories, and not revert to previous policies and procedures. Contracting officers must ensure that solicitations and other purchasing documents make prospective offerors fully aware of the authority (Issue 2 or Issue 1, as revised through November 15, 2001) pursuant to which an individual purchase is made. Particular care must be taken that previous versions of provisions and clauses are not used in purchases made under the policies and procedures of Issue 2, and vice versa.



Keith Strange  
Vice President  
Purchasing and Materials

# Summary of Changes

## Major Policy Changes

This Issue 2 of the Postal Service *Purchasing Manual* (PM) contains a number of significant PM changes, grouped into two categories: Major Policy Changes, which are discussed immediately below, and Other Significant Changes, which are grouped and discussed by PM Chapter. The major changes are centered on the Postal Service's continuing efforts (1) to reflect the best practices of the private and public sectors, (2) to streamline the purchasing process and ensure it concentrates on furthering the business and competitive interests of the Postal Service, and (3) to provide a policy structure that furthers the Postal Service's use of supply chain management business practices. This PM Issue 2 also contains all changes published in the *Postal Bulletin* since January 31, 1997, which are still in effect.

**Supply Chain Management.** Supply chain management is a business philosophy that concentrates on analyzing the purchasing process and the supply stream in order to increase customer satisfaction and lower overall cost. It involves a number of business practices, including close coordination between end-users, buyers and suppliers, long-term contracts, and ongoing analysis and improvement of operating and administrative processes. With the issuance of PM Issue 1, the Postal Service began to make many of these practices a central part of its purchasing policies; that foundation has been built upon and is reflected throughout this Issue 2 (many of the relevant changes are discussed in Other Significant Changes, below). The supply chain management philosophy and its importance to Postal Service purchasing is discussed in a new section 3.1.2. Additionally, new text has been added to section 3.1.1 addressing the fact that some Postal Service-supplier relationships are closer and more interdependent than others, based upon the impact the relationship has or may have on the Postal Service's business and competitive interests.

**Establishment of Standard Solicitation Provisions and Clauses.** PM Issue 1 established a single, streamlined purchasing process modeled on private sector business practices while maintaining the Postal Service's commitment to the accountability and fairness expected of a public institution. To further this continuing objective, PM Issue 2 establishes basic solicitation provisions and contract clauses that may be modified, added to or supplemented as required by the particular purchase. These provisions (Provisions 4-1, *Standard Solicitation Provisions*, 4-2, *Evaluation*, and 4-3, *Representation and Certifications*) and clauses (Clauses 4-1, *General Terms and Conditions* and 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*) are based on and replace the commercial-purchasing provisions and clauses in PM Issue 1. With their

establishment as the basic contractual documentation, the need for a specific commercial purchasing process has been obviated. The new provisions and clauses are contained in Appendices A, Solicitations, and B, Contract Clauses, and their use is discussed in the appendices and in 4.2.2.e, Solicitation Provisions, and 4.2.7, Contract Clauses.

**Prescriptions for Use of Provisions and Clauses.** The provisions and clauses noted above incorporate by reference a number of other provisions and clauses that are: (1) required by Postal Service policy (such as the Postal Service's preference for domestic supplies or construction materials); (2) required by law (such as the Service Contract Act and the Davis-Bacon Act); or applicable by Executive Order (such as Equal Employment Opportunity). In some cases, these incorporations are included in the basic provision or clause, and in others they are incorporated when checked-off by the contracting officer in light of the particular purchase. This modular approach to solicitation and contract formation ensures that contractual documentation remains simple and streamlined while also ensuring that the Postal Service continues to meet its policy, legislative, and other mandates. At the same time, provisions and clauses that address other aspects of the purchasing process, such as contract type, have been left available to contracting officers to use when their terms and conditions match the needs of the particular purchase. This means that there are a number of subjects in the basic provisions and clauses that may be replaced by more effective terms and conditions, and that the provision and clause prescriptions throughout PM Issue 2 allow contracting officers to make such additions and replacements as they feel necessary. Contracting officers have also been given the discretion to modify, add to or supplement provisions and clauses as they see fit, subject to review of assigned counsel.

**Purchase Method.** A new section 2.1.6, Purchase Method, has been included in PM Issue 2. This section addresses the responsibility of the purchase team to decide during purchase planning and as part of the individual purchase plan whether a purchase should be made competitively or noncompetitively. This section spells-out under what business scenarios the noncompetitive method may best meet the Postal Service's business and competitive interests, and also requires the purchase team to prepare a business case documenting the rationale for the decision. This section also delineates review and approval thresholds for the business case and the purchase. A new section 1.6.1, Business Objectives and Practices, discusses in general how these objectives and practices fit into overall organizational strategy, and there have been ancillary changes in sections 1.6.2, Best Value, and 1.6.3, Competition. PM Issue 1 section 3.5.5, Noncompetitive Purchases, has been deleted.

**Publicizing.** PM section 3.5.3, Publicizing Purchasing Opportunities, has been retitled Publicizing Purchase Opportunities and Contract Awards. This part has been revised to: (1) maintain the \$1 million publicizing threshold for commercially available goods and services; (2) provide purchase teams the discretion to publicize noncompetitive purchase opportunities when the team determines that such publicizing would improve market research, while at the same time changing the mandatory publicizing threshold for noncompetitive

awards from \$500,000 to \$1 million; (3) encourage purchase teams to publicize other noncompetitive awards (generally over \$500,000) when it feels the award holds significant subcontracting opportunities; and (4) encourage the team to publicize other awards when it feels such an announcement would benefit future competition. In addition, previous references to the *Commerce Business Daily* (CBD) throughout the PM have been replaced by the term "Governmentwide point of entry (GPE)" which has replaced the CBD as the means of publicizing purchase opportunities and contract awards.

**Publication and Availability of the *Purchasing Manual*.** With the publication of PM Issue 2, the printing and distribution of hard copies of the PM will cease. The PM will be available to the public at the Postal Service's Web site ([www.usps.com](http://www.usps.com)) and to Postal Service readers at both [www.usps.com](http://www.usps.com) and [www.usps.gov](http://www.usps.gov). Revisions will be published as needed in the *Postal Bulletin* and these will be rolled into the electronic version at least every six months.

**Appendix A, Solicitations.** Appendix A has been revised to reflect the establishment of the basic solicitation provisions discussed above and to address their use. Several provisions included in PM Issue 1 have been deleted due to the subject matter being covered in the new standard provisions or because they were inconsistent with the Postal Service's continuing efforts to streamline purchasing policies and procedures.

**Appendix B, Contract Clauses.** Appendix B has been revised to reflect the establishment of the basic contract clauses discussed above and to address their use. Several clauses included in PM Issue 1 have been deleted due to the subject matter being covered in the new general clauses or because they were inconsistent with the Postal Service's continuing efforts to streamline purchasing policies and procedures. Commodity-specific clauses used in design and construction, and mail transportation contracts are listed as they were in PM Issue 1.

**Appendix C, Contract Format.** Appendix C, Forms and Formats, of PM Issue 1, has been replaced by a new Appendix C, Contract Format. This appendix describes the four-part contract format used in Postal Service purchasing.

## Other Significant Changes

### Chapter 1, Authority, Responsibility, and Policy

**1.1.1.c, Applicability (Purchasing Manual),** has been revised to reference new Handbooks P-1, *General Purchasing Concepts and Practices*, P-2, *Design and Construction Purchasing Practices*, and to provide the Web site where they may be accessed.

**1.1.2.b, Purchasing Policy Committee (Responsibility for Purchasing Policy),** has been revised to state that the PPC evaluates proposed changes to the PM for the vice president, Purchasing and Materials.

**1.1.2.c, Membership,** has been revised to add the manager, Supplier Development and Diversity (Purchasing and Materials), and the manager,

Materials, to the PPC and to remove the managers, Facilities Program Management, and Supplier Diversity, (Diversity Development).

**1.2, Publication and Changes**, has been revised as discussed in Major Policy Changes above.

**1.3.1.b.1 (Deviations)** has been revised to state that replacing text contained in Provisions 4-1, *Standard Solicitation Provisions* and 4-2, *Evaluation*, and Clause 4-1, *General Terms and Conditions*, with another PM provision or clause does not constitute a deviation and does not require review and approval. As a result of this change, previous 1.3.1.b.2 has been deleted.

**1.3.2.c, Records (Authorization of Deviations)**, has been revised to require approval officials to retain copies of approved deviations.

**1.4.1.b.4, Required Approvals (Contracting Authority — Vice President, Purchasing and Materials)**, has been revised to clarify that the subject approvals are the responsibility of the vice president, Purchasing and Materials.

**1.4.2, Contracting Officers**, has been revised and reorganized for clarity.

**1.4.3, Contracting Officer's Representatives**, has been revised to reference Management Instruction PM-610-2001-1, *Contracting Officer's Representative Program*.

**1.4.4.b.3(d), Training (Selection)**, has been revised to state that Level I design and construction contracting officers are required to complete the training courses on Contract Administration, Pricing and Claims, and Introduction to Facilities R&A Contracting.

**1.6.1, Business Objectives and Practices**, is a new section and has been added as a general statement addressing the primary goal of Postal Service purchasing and the business practices used to further that goal. **1.6.2, Best Value**, and **1.6.3, Competition**, have been revised to reinforce the new policy discussed in Major Policy Changes above.

**1.6.5, Release and Exchange of Information**, and **1.6.6, Privacy Protection**, have been revised as was discussed in *Postal Bulletin* 22063 (11/15/01). As a result of these changes, **Clause 1-1, Privacy Protection**, has been revised and retitled, **Clause 1-7, Nondisclosure of Address Information**, has been deleted, and ancillary changes have been made to subparagraphs 4.5.3.c.4 and 4.5.5.f.

**1.6.7.c.1, Progress Payments**, has been revised to exclude the required approval of the vice president, Finance, when the contract is for architect/engineer and construction management services.

**1.6.13, Domestic Preference**, replaces previous part 1.7.12, Buy American Policy. The new title is intended to reflect the voluntary aspect of the Postal Service's policy in this area. The titles of the related provisions and clauses have also been changed to reflect the new term.

**1.6.13.b.2(c), Domestic End Products**, and **1.6.13.b.2(g), Canadian End Products** (previous 1.7.13.b.2.(c) and 1.7.13.b.(g)) have been revised as was discussed in *Postal Bulletin* 22021 (4/6/00).

**1.6.14, Contracts with Former Postal Service Officers, Executives, and Employees**, is a new section that replaces previous 1.7.13. This revision was previously discussed in *Postal Bulletin* 22061 (10/18/01), and resulted in related changes to **4.5.3, Professional/Technical and Consultant Services**, and a new section **4.5.4, Personal Services Contracts**. Lastly, this change also resulted in a new **Provision 1-5, Proposed Use of Former Postal Service Employees**, and a new **Clause 1-12, Use of Former Postal Service Employees**.

Previous **1.7.14, Year 2000 Compliance**, has been deleted as have **Clauses 1-12, Year 2000 Warranty — Commercial Items**, and **1-13, Year 2000 Warranty — Noncommercial Items**.

Previous **1.9.4, Supplier's Statement of Contingent Fees**, has been deleted, as has **Provision 1-2, Contingent Fee Representation**, as was discussed in *Postal Bulletin* 21991 (2/11/99). Contingent fees are now addressed in subchapter 1.8.

## **Chapter 2, Purchase Planning**

**2.1.1, The Importance of Purchase Planning**, is a new section discussing the central role purchase planning plays in a successful purchase, and the factors that go into effective planning.

**2.1.3.a (Purchase Planning)** has been revised to further discuss the role of the contracting officer as leader of the purchase team.

**2.1.3.b 2(b) (Responsibilities)** has been revised to state that the purchasing organization is responsible for gathering and analyzing spend and demand data in order to identify opportunities for strategic sourcing and consolidated purchases. **2.1.3.b.3** is a new subparagraph describing the expertise the materials organization can bring to a purchase team.

**2.1.4.a, Importance (Market Research)**, has been revised to add commodity or industry trends as an important element of successful market research.

**2.1.5.b, Elements (Individual Purchase Plans)**, has been revised to include a statement that effective plans should address the total cost of ownership of the purchase (subparagraph 2.1.5.b.6) and to require that individual purchase plans contain a written description of the purchase method to be used (subparagraph 2.1.5.b.14). See Major Policy Changes above.

**2.1.6, Purchase Method**, is a new part discussing the manner in which a purchase will be conducted, specifically, whether the purchase will be made competitively or noncompetitively. This part discusses when either method is appropriate, and describes the various business scenarios under which a noncompetitive purchase is most appropriate and the business case required when the noncompetitive method is used. See Major Policy Changes above.

**2.1.7.b.5 (Developing Strategies)** has been revised to state that, depending on the particular purchase, it is a good business practice to develop supplier selection strategies that invite new and emerging suppliers to compete for Postal Service purchases.

**2.1.9.c.2, Past Performance**, has been revised to remove supply chain management as a subfactor of past performance and to address it as a more general aspect of past performance as a whole.

**2.1.9.c.3, Supplier Capability: Subparagraph 2.1.9.c.3(b)(4)**, has been revised to require that suppliers have a sound quality control program that complies with solicitation requirements in order to be deemed capable.

**Subparagraph 2.1.9.c.3(b)(7)** has been revised to state that the fact that a supplier is suspended, debarred or otherwise declared ineligible, bars award without regard to the weight assigned to capability as an evaluation factor.

**Subparagraph 2.1.9.c.3(c)(1)** has been revised to state that the Postal Service's list of debarred and suspended suppliers, and GSA's consolidated list of debarred, suspended or declared ineligible suppliers are sources of information for determining that a supplier is capable. **Subparagraph**

**2.1.9.c.3(d)** has been revised to include workforce, subcontractors and other resources to be used in contract performance as appropriate subjects of a preaward survey, and **Subparagraph 2.1.9.c.3(e)** has been revised to require that preaward survey results must be in writing.

**2.1.10, Performance Evaluation and Cost/Price Factors**, is a new section combining text from previous sections 2.1.7 and 2.1.8.

**2.2.1.a Policy (Quality Requirements)** has been revised to clarify that the supplier is responsible for providing supplies or services conforming with the requirements of the purchase and for providing reasonable assurance that requirements are met, and that the purchase team is responsible for determining the necessary quality requirements.

**2.2.1.b, Quality Assurance Requirements**, has been revised to state that the supplier is responsible in most cases for performing necessary inspection and testing and that the Postal Service may opt to perform these functions.

**2.2.2.a, Uses (First Article Approval)**, has been revised for clarity.

**2.2.3.b, Delayed Acceptance (Acceptance)**, has been revised for clarity.

**2.2.5.f, FOB Points (Delivery or Performance Schedule)**, has been revised for clarity.

**2.2.5.h, Using Mail**, has been revised to state that contracting officers should consult with a material management specialist when the weight of a consolidated mailing to a single destination exceeds 300 pounds.

**2.2.5.i, Packing and Packaging**, is a new paragraph stating that, generally, suppliers are expected to use standard packing and packaging practices, but that the purchase team may require more stringent standards when needed.

**2.2.10.d, Noncompetitive Purchases (Value Engineering)**, has been revised to state the conditions under which a contracting officer may negotiate a noncompetitive contract or contract modification incorporating a change proposal.

**2.4.6.e, Ordering (Indefinite Delivery Contracts),** and **2.4.6, Provisions,** have been revised as was discussed in *Postal Bulletin* 22037 (11/16/00).

**2.4.7.b, Limitations (Ordering Agreements),** has been revised to require the periodic — rather than annual — review of ordering agreements extending more than one year.

### **Chapter 3, Supplier Relations**

**3.1.1, General (Policy),** has been revised to address the fact that the nature of the partnership between the Postal Service and a given supplier will depend on the potential impact of the supplier's performance on the Postal Service's competitive and financial position. See Major Policy Changes above.

**3.1.2, Supply Chain Management,** is a new part discussing the Postal Service's use of this business philosophy. See Major Policy Changes above.

**3.2.2a, Definition (Sourcing),** has been revised to provide a clearer definition of this business practice.

**3.2.2.c, Assistance (Sourcing),** has been revised to direct purchase teams to Supplier Development and Diversity (Purchasing and Materials), when they need sourcing assistance.

**3.2.3, Subcontracting with Small, Minority, and Woman-owned Businesses,** has been revised as was discussed in *Postal Bulletin* 21992 (2/25/99). Since then, **3.2.3.d.1, Contracts Valued at \$1 Million or More,** has been revised in subparagraph b to state that Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements,* need not be included in subject contracts when the contract is an indefinite delivery contract or ordering agreement and the purchase team has determined that requiring a subcontracting plan would not be feasible. In addition, **3.2.3.d.2, Contracts Valued at \$500,000 or More,** has been revised to require the inclusion of Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses,* in design and construction contracts valued at \$250,000 or more.

**3.3.2, Existing Assets,** has been revised to redefine this term, and to illustrate when they should be considered in lieu of new purchases.

**3.3.5, Defense Energy Support Center,** has been revised to provide the new name of this organization (previously called the Defense Fuel Supply Center).

**3.5.1, Policy (Commercial Suppliers),** has been revised to emphasize that, except for commodities available from mandatory sources, it is Postal Service policy to purchase goods and services from commercial suppliers using the business practices and terms and conditions customary to the commercial marketplace, or to purchase goods and services from the nonmandatory government sources in 3.4.

**3.5.2.a, Policy (Prequalification),** has been revised for clarity.

**3.5.2.b.3 (General)** has been revised as was discussed in *Postal Bulletin* 21972 (5/21/98).



**3.5.2.b.4 (General)** has been revised to state that during the prequalification process suppliers should be evaluated in the same manner as for any other purchase.

**3.5.3, Publicizing Purchasing Opportunities and Contract Awards**, is new and replaces PM Issue 1, 3.5.3, Publicizing Purchase Opportunities. See Major Policy Changes above.

**3.5.4, Unsolicited Proposals**, has been revised to direct readers to Publication 131, *The Postal Service Unsolicited Proposal Program*, for information regarding the submission and processing of unsolicited proposals.

**3.7, Debarment, Suspension, and Ineligibility**, has been revised to: (1) provide a new definition of “Ineligible Suppliers”; (2) discuss the handling of the Postal Service’s and the General Services Administration’s lists of debarred and suspended suppliers; (3) require contracting officers to review the Postal Service’s and GSA’s lists before making a contract award; and (4) discuss the treatment of suppliers on the Postal Service’s list.

## Chapter 4, Purchasing

**4.1, Policy**, has been revised to discuss in general the purchasing process and the basic terms and conditions used in Postal Service purchases.

**4.2.2.b, Types (Solicitations)**, has been revised to discuss the use of written and oral solicitations and to state that the use of Form 8203, Order/Solicitation/Offer/Award, or equivalent, should be used as the request for proposal and subsequent award.

**4.2.2.e, Solicitation Provisions**, has been revised as discussed in Major Policy Changes above.

**4.2.2.g, Availability of Solicitations**, has been revised to state that requests for copies of solicitations may be denied once a reasonable number of copies have been distributed to the solicited suppliers and others who have requested them.

**4.2.6.a (Contract Award)** has been revised to state that contract award is made by the execution of a contract by both parties or by written acceptance of or performance against a purchase order.

**4.2.7, Contract Clauses**, is a new part discussing the new basic clauses (4-1, *General Terms and Conditions*, and 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*) and their use. See Major Policy Changes above.

**4.5.5.a.5, Information Technology (Definitions)**, has been revised and a new subparagraph **4.5.5.a.7, Undue Burden**, has been added as was discussed in *Postal Bulletin 22052 (6/14/01)*. **Paragraph 4.5.5.b.2** has been revised as was also discussed in that edition of the *Postal Bulletin*. Lastly, a new **Clause 4-18, Information Technology Accessibility Standards**, has been added to Appendix B, Contract Clauses.

**4.5.5.d.2, General Services Administration (Sources — Information Technology)**, has been revised to provide new addresses, including an Internet address, for information regarding GSA contracts for information technology.

Previous subparagraph **4.6.5.b.3, Year 2000 Compliance**, has been deleted.

#### **Chapter 5, Contract Pricing**

**5.2.5.a.13 (Unallowable Costs)** is a new subparagraph and has been added to delineate a new category of unallowable costs: legal costs related to a defense against a Postal Service claim or appeal and legal costs related to the prosecution of a claim or appeal against the Postal Service.

#### **Chapter 6, Contract Administration**

**6.1.1.b, Contracting Officer's Representatives**, has been revised to specifically describe what sort of authorities may be delegated to a contracting officer's representative (COR), what must be contained in the COR's appointment letter, and to reference Management Instruction PM-610-2001-1, *Contracting Officer's Representative Program*.

**6.2.1.b.12 (Postaward Orientation)** has been deleted in order to reinforce that commercially accepted accounting procedures should be used.

**6.2.3.b.2, Other Contracts (Using Suppliers to Monitor Performance)**, has been revised to allow third parties to perform acceptance in addition to other contract administration responsibilities.

**6.2.6.c, Clause (Bankruptcy)**, has been deleted, as has **Clause 6-1, Bankruptcy**, as part of the overall effort to reflect common commercial terms and conditions in Postal Service contracts.

**6.3.2.b, Responsibility (Acceptance)**, has been revised to remove the reference to "another postal employee" and replace it with "other party."

**6.3.3, Receiving Reports (Quality Assurance)**, has been revised as discussed in *Postal Bulletin 22016 (1/27/00)*.

#### **Chapter 7, Bonds, Insurance, and Taxes**

**7.1.2.a.5, Amount (Performance and Payment Bonds for Construction Contracts)**, has been revised as was discussed in *Postal Bulletin 22033 (9/21/00)*.

**7.2.2.c, Automobile Liability Insurance**, has been revised to set a new minimum limit of \$100,000 per accident for property damage.

#### **Chapter 8, Patents and Data Rights**

No significant changes have been made in this Chapter.

#### **Chapter 9, Labor Policies**

**9.2.1, Convict Labor (Policy)**, has been revised to state that the Postal Service may purchase supplies from firms employing persons on parole or probation under the terms of Executive Order 11755, December 29, 1973, as amended.

**9.7.3, Preaward Compliance Reviews**, has been revised as discussed in *Postal Bulletin* 21963 (1/15/98), as have **Provision 9-4, Preaward Equal Opportunity Compliance Review**, and **Clause 9-9, Equal Opportunity Preaward Compliance of Subcontracts**.

**9.10.1, Requirement (Veterans)**, has been revised to reference the Veterans Employment Opportunities Act of 1999.

#### **Appendix A, Solicitations**

This appendix has been revised as discussed in Major Policy Changes above.

#### **Individual Provisions**

**Provision 1-5, Proposed Use of Former Employees**, is a new provision as discussed above.

#### **Appendix B, Contract Clauses**

This appendix has been revised as discussed in Major Policy Changes above.

#### **Individual Clauses**

**Clause 1-1, Privacy Protection**, is a new clause as discussed above.

**Clause 1-12, Use of Former Postal Service Employees**, is a new clause as discussed above.

**Clause 7-4, Insurance**, has also been revised to establish new minimum liability coverage for automobile insurance.

#### **Appendix C, Contract Format**

This appendix has been changed as discussed in Major Policy Changes above.

#### **Appendix D, Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting**

No changes have been made to this appendix.

#### **Appendix E, Rules of Practice Before the Postal Service Board of Contract Appeals**

No changes have been made to this appendix.

#### **Appendix F, Index**

(This appendix will be revised to reflect the changes throughout PM Issue 2.)

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# 1 Authority, Responsibility and Policy

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# 1 Authority, Responsibility and Policy

## 1.1 Authority and Responsibility

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### 1.1.1 ***Purchasing Manual***

1.1.1.a *Authority.* The *Purchasing Manual* (PM) is authorized by Title 39, United States Code.

#### 1.1.1.b *Background*

1. The United States Postal Service was established by the Postal Reorganization Act, Public Law 91-375 (codified at Title 39 of the United States Code) as an independent establishment within the executive branch whose purpose it is to bind the nation.
2. The Postal Service operates from its own revenues in providing its public service. Since it was established, it has faced rapidly increasing competition from both technology and businesses targeting market niches within the postal product line. Consequently, the Postal Service's ability to provide efficient, economical service is driven by market forces. Congress gave the Postal Service broad power to operate in the marketplace, excluding it from most federal laws and regulations concerning contracts, property, works, officers, employees, budgets, funding, and the establishment, adjudication, and judicial review of administrative procedures and determinations. While the Postal Service has adopted some federal purchasing practices to help achieve national priorities, it has also charted a more businesslike purchasing approach in order to operate more effectively in the marketplace. One element of its status as a public entity is reflected throughout these policies — its commitment to fairness in its business relationships with all suppliers.
3. The Postal Service has established the PM in order to purchase supplies and services that meet its competitive and business needs, thereby contributing to the basic Postal Service purpose of serving the people of the United States.
4. The policies and procedures established by the PM are intended to further the objectives expressed herein, but are not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by a party against the Postal Service or the United States, or their officers or employees, except to the extent expressly provided within the PM.

1.1.1.c *Applicability.* Except as noted in the PM, the PM applies to all purchasing activities. Additional guidance of both a general and commodity-specific nature is contained in:

1. Handbook P-1, *General Purchasing Concepts and Practices*.
2. Handbook P-2, *Design and Construction Purchasing Practices*.
3. Handbook PO-513, *Mail Transportation Purchasing Handbook*.
4. Each handbook is available on the World Wide Web at:  
<http://www.usps.com/business>.

## 1.1.2 **Responsibility for Purchasing Policy**

1.1.2.a *Vice President, Purchasing and Materials.* The Vice President (VP), Purchasing and Materials (P&M), is responsible for all purchasing policies and procedures. The VP has delegated that authority as follows:

1. Responsibility for policies and procedures unique to the acquisition, lease and disposal of real estate and to services related to those transactions has been delegated to the Vice President, Facilities (see 1.5.2.r for a definition of real estate and related services).
2. Responsibility for supplemental policies and procedural directives with respect to the requirement categories listed in [Exhibit 4.5.2](#), Supplemental Policy and Procedural Authority, has been delegated to the positions described in that exhibit.

### 1.1.2.b *Purchasing Policy Committee*

The Purchasing Policy Committee (PPC) oversees the development of Postal Service purchasing policy. It reviews policy direction and evaluates proposed changes to the PM for the VP, P&M. The PPC meets at least annually.

1.1.2.c *Membership.* The permanent members of the PPC are:

1. The manager, Purchasing Policies and Programs (the Chair).
2. The senior counsel, Contract Protests and Policies.
3. The manager, Field Customer Support.
4. The manager, Headquarters Purchasing.
5. The manager, Major Facilities Purchasing.
6. The manager, National Mail Transportation Purchasing.
7. The manager, Supplier Development and Diversity.
8. The manager, Materials.

1.1.2.d *Purchasing Policies and Programs.* The staff of Purchasing Policies and Programs, P&M, prepares PM cases and other matters for the PPC's consideration.

## 1.2 Publication and Changes

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### 1.2.1 Publication

- 1.2.1.a *Issuance.* The PM is issued and maintained by the VP, P&M, and is incorporated by reference in 39 CFR 601.
- 1.2.1.b *Publication and Availability.* The PM is published and available to users on the World Wide Web at <http://www.usps.com/business>.

### 1.2.2 Changes

- 1.2.2.a *Proposed Changes.* Anyone may propose changes to the PM. Proposed changes should be sent to the manager, Purchasing Policies and Programs and should address the following areas (supporting documentation should be included as necessary):
  1. The text (chapter, part, etc.) in which the change is sought.
  2. The proposed wording.
  3. The rationale for the change.
  4. Potential effects of the change in terms of cost and personnel.
  5. Other documents or directives which will be affected by the proposed change.
  6. Any other relevant information.
- 1.2.2.b *Issuance.* Changes to the PM are published in the *Postal Bulletin* and PM Transmittal Letters.

## 1.3 Deviations

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### 1.3.1 General

- 1.3.1.a Conformance with PM requirements promotes consistency and integrity throughout Postal Service purchasing. There are circumstances, however, when departures from PM requirements are necessary or desirable. Deviations may be authorized in such circumstances.
- 1.3.1.b The following are examples of deviations requiring authorization:
  1. Omitting or modifying any required PM provision or clause, supplementing a required PM provision or clause with another which modifies its substance or intent, or using a provision or clause that differs from a required PM clause covering the same subject. However, using PM provisions or clauses to replace selected text contained in Provisions 4-1, *Standard Solicitation Provisions*, and 4-2, *Evaluation*, and Clause 4-1, *General Terms and Conditions*, does not constitute a deviation and does not require authorization (see also 4.2.2.e and 4.2.7.d).
  2. Using a clause that is inconsistent with the substance or intent of a PM clause covering the same subject, or inconsistent with the PM coverage of the subject, even when the PM clause is not required to be used verbatim.

3. Any procedure, method, or practice which is inconsistent with the PM and any variance from PM limitations on the use of clauses, procedures or types of contracts.
- 1.3.1.c The following are not deviations from the PM:
1. Clauses drafted specifically to meet unique requirements when not inconsistent with the substance or intent of a PM clause covering the same subject.
  2. Procedures or instructions that are (a) developed to meet specific operational needs or the needs of specialized commodity areas and (b) approved by the VP, P&M.
  3. Interim procedures or instructions to (a) test new purchasing techniques or methods, or (b) promote Postal Service efficiency.

### 1.3.2 **Authorization of Deviations**

- 1.3.2.a *Request for Authorization.* Deviations must be authorized in advance of their use. Contracting officers must forward a request through organizational levels to an individual authorized deviation approval authority (see 1.3.2.b). Each request must include:
1. Identification of the PM requirement from which deviation is sought.
  2. A full description of the deviation and the period of time and circumstances under which it will be used.
  3. An explanation of why the deviation is necessary or desirable.
  4. Copies of any documents involved, such as forms, clauses, memoranda of negotiations, or correspondence.
- 1.3.2.b *Approval*
1. The VP, P&M, may approve any request for deviation regarding a single purchase or series of purchases.
  2. Deviations concerning a single purchase of supplies, services, or equipment may be approved by the following:
    - (a) Manager, Materials.
    - (b) Manager, Headquarters Purchasing (this authority may be redelegated).
    - (c) Manager, Field Customer Support (this authority may be redelegated).
  3. Deviations concerning a single purchase of facility design, construction and related services may be approved by the manager, Major Facilities Purchasing (this authority may be redelegated).
  4. Deviations concerning a single purchase of mail transportation may be approved by the manager, National Mail Transportation Purchasing (this authority may be redelegated).
- 1.3.2.c *Records.* Approval officials must keep copies of all deviation approvals.

## 1.4 Purchasing Authority

### 1.4.1 Vice President, Purchasing and Materials

- 1.4.1.a *General.* The VP, P&M, has unlimited contracting authority. This authority includes the authority to award and administer contracts and to carry out all related responsibilities.
- 1.4.1.b *Contracting Authority*
1. *General.* The VP, P&M, has delegated contracting authority, including redelegation authority, throughout Postal Service purchasing organizations. An individual contracting officer's contracting and related authorities are enumerated in his or her letter of delegation (see 1.4.2).
  2. *Special Purchases.* The VP, P&M, has delegated contracting authority for certain special requirements to other Postal Service officials. Some of these delegations are set out in [Exhibit 4.5.2, Supplemental Policy and Procedural Authority](#).
  3. *Local Buying Authority.* In the *Administrative Support Manual (ASM)* the VP, P&M, has delegated local buying authority to various positions throughout the Postal Service. [Exhibit 1.4.1.b, Local Buying Authorities](#), shows these delegations by position. Local buying authority is defined in 1.5.2.i.
  4. *Required Approvals.* If a proposed contract award or modification will exceed \$10 million, the VP, P&M must give prior written approval to the individual purchase plan and the proposed contract award or modification (however, see 2.1.6.c.4 regarding noncompetitive purchases). In addition, see 6.9.1.b for information regarding prior VP approval of certain contract termination actions.

Exhibit 1.4.1.b

#### Local Buying Authorities

Amount	Position	Commodity
\$10,000	Officers/Vice Presidents at Headquarters	Supplies, Services Capital Equipment
\$10,000	Vice Presidents Area Operations	Supplies, Services Capital Equipment
\$10,000	Plant Managers, P&D	Supplies, Services Capital Equipment
\$10,000	District Managers Customer Services	Supplies, Services Capital Equipment
\$10,000	PCES Postmasters	Supplies and Services
\$10,000	Inspectors in Charge	Supplies and Services
\$2,000	Postmasters CAGs A-J, Vehicle Managers	Supplies and Services
\$1,000	Postmasters CAGs K&L	Supplies and Services



## 1.4.2 Contracting Officers

- 1.4.2.a *General Responsibilities.* Contracting officers have the authority to enter into, administer, and terminate contracts and to make related decisions. They are responsible for ensuring the performance of all actions necessary for efficient and effective purchasing, ensuring compliance with the terms of contracts, and with protecting the interests of the Postal Service in all of its contractual relationships. Operating under the general policies of the PM (and, when necessary, seeking and gaining approval for deviations to those policies), contracting officers have wide latitude to exercise sound business judgment based on the competitive and business needs of the Postal Service. In meeting these responsibilities, contracting officers are expected to consult and confer with their internal business partners and purchase teams (see 1.5.2.n for a definition of purchase teams). Lastly, contracting officers are also responsible for managing supplier relationships by overseeing the integrity and effectiveness of the purchasing process, ensuring that all suppliers are treated fairly and objectively, and maintaining effective communications with suppliers during contract performance.
- 1.4.2.b *Funding Availability.* Contracting officers must ensure that sufficient funding is available before taking a contractual action (such as a purchase, modification or termination) requiring additional funds.
- 1.4.2.c *Delegations of Authority.* Contracting authority is delegated to named individuals, rather than to positions, based on the individual's education, experience and training. Only individuals with this delegated authority may contractually bind the Postal Service. See Management Instruction AS-710-1999-2, *Unauthorized Contractual Commitments*. Information on the limits of contracting officers' authority must be readily available to the public and to Postal Service personnel.
- 1.4.2.d *Actions Exceeding a Contracting Officer's Delegated Authority.* A contracting officer may take a contractual action (a purchase, modification, or termination) exceeding his or her authority after receiving a written delegation of authority from a contracting officer delegated and authorized to redelegate the required authority. The delegation must be placed in the contract file. When determining the appropriate redelegation authority, contracting officers must consider the anticipated total dollar value of the action.

## 1.4.3 Contracting Officers' Representatives

A contracting officer may delegate certain responsibilities to individuals to act on behalf of the contracting officer. These individuals are referred to as contracting officers' representatives (see also 4.4.3, 6.1.1.b, and Management Instruction PM-610-2001-1, *Contracting Officer's Representative Program*).

## 1.4.4 Appointment and Selection

### 1.4.4.a Appointment Authority

1. Contracting officers are appointed by the VP, P&M, and by individuals delegated that authority by the VP. Appointees to the position of contracting officer levels I through IV must be career employees in good standing, and must meet the qualifications for the particular level (see 1.4.4.b.3).
2. Contracting officers must be appointed by letter and on Form 7378, *Certificate of Appointment*. The letter must state any limitations on the contracting officer's authority. Appointing officials must keep copies of all letters and certificates of appointment.

### 1.4.4.b Selection

1. *General*. Appointing officials must ensure that contracting officers are fully qualified by education, experience and training to solicit, negotiate, award and administer contracts on behalf of the Postal Service.
2. *Contracting Officer Levels*. Generally, contracting authorities are grouped by contracting officer level. There are four general levels of contracting officer:
  - (a) *Level I contracting officers*. Generally, these contracting officers are delegated up to \$100,000 of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
  - (b) *Level II contracting officers*. Generally, these contracting officers are delegated up to \$1 million of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
  - (c) *Level III contracting officers*. Generally, these contracting officers are delegated up to \$10 million of contracting authority, and up to the maximum limit for orders placed against indefinite delivery contracts and ordering agreements.
  - (d) *Level IV contracting officers*. Level IV contracting officers are delegated unlimited contracting authority.
3. *Qualifications*. Appointment to a particular contracting officer level requires progressively more exacting qualifications. However, all individuals nominated to be contracting officers, with the exception of those individuals nominated and holding a certification described in (c) below must have baccalaureate degrees. The individual nominated must have earned at least 24 semester hours in subjects related to purchasing, such as accounting, business finance, commercial (business) law, economics, quantitative analysis, marketing, contracting or purchasing, organization, or management. The required 24 hours may have been earned during the individual's pursuit of a baccalaureate degree, or at any other time. In addition, the following qualifications apply to contracting officers appointed by the VP, P&M:

- (a) Contracting Officer Level I:
- (1) *Experience:* One year of experience performing substantive purchasing tasks.
  - (2) *Education:* The following professional certifications may serve as a substitute for the baccalaureate degree for level I contracting officers:
    - (i) Certified Professional Contract Manager from the National Contract Management Association.
    - (ii) Certified Purchasing Manager from the National Association of Purchasing Management.
    - (iii) Certified Public Purchasing Officer from the National Institute of Governmental Purchasing.
  - (3) *Training:* Satisfactory completion of the following purchasing courses:
    - (i) Fundamentals of Purchasing — Theory and Practice.
    - (ii) Commercial Purchasing.
    - (iii) And, if the contracting officer will be delegated purchasing authority for design and construction purchases: (1) Introduction to Facilities R&A Contracting and (2) Contract Administration, Pricing and Claims.

**Note:** Coursework and earned credits in subjects covering the same general topics taken at an accredited college or university may serve as a substitute for this training requirement.

- (b) Contracting Officer Level II:
- (1) *Experience:* Three years of current, progressively complex and responsible experience in performing competitive and noncompetitive purchasing (not including simplified purchasing). Generally, this experience must have been gained in intermediate level contracting positions.
  - (2) *Training:* Satisfactory completion of the following purchasing courses:
    - (i) All level I courses.
    - (ii) Negotiation Strategies.
    - (iii) Cost and Price Analysis.
    - (iv) Contract Administration.
    - (v) Advanced Purchasing.
    - (vi) Contract Law.

**Note:** Coursework and earned credits in subjects covering the same general topics taken at an accredited college or university may serve as a substitute for this training requirement.

- (c) Contracting Officer Level III:
  - (1) *Experience*: Five years of current, progressively complex and responsible experience in soliciting, negotiating, awarding and administering competitive and noncompetitive purchasing actions. Ordinarily, this experience must have been in higher-level purchasing positions.
  - (2) *Training*: Satisfactory completion of the following courses:
    - (i) All level II courses.
    - (ii) Strategic Issues in Purchasing and Materials.

**Note:** Coursework and earned credits in subjects covering the same general topics taken at an accredited college or university may serve as a substitute for this training requirement.

- (d) Contracting Officer Level IV. A Level IV contracting officer must hold one of the following positions:
  - (1) Manager, Headquarters Purchasing.
  - (2) Manager, National Mail Transportation Purchasing.
  - (3) Manager, Major Facilities Purchasing.
  - (4) Manager, Field Customer Support.
  - (5) Manager, Materials.

#### 1.4.5 **Waivers and Interim Appointments**

- 1.4.5.a *Waivers*. Waivers to the qualification requirements may be requested for individuals who, due to their extraordinary experience or extraordinary circumstances, should be granted contracting officer authority. Requests must be submitted through organizational levels to the VP, P&M.
- 1.4.5.b *Interim Appointments*. Ordinarily, individuals will not be appointed as contracting officers if they do not meet the relevant qualification criteria. However, when necessary, appointing officials may grant an interim appointment to an individual who has not yet completed necessary training or education. No interim appointment may exceed one year, and no interim appointment may be granted to an individual more than once if the individual fails to complete the required training or education.

#### 1.4.6 **Continuing Professionalism**

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

1. Attend 21 hours of formal purchasing training covering such areas as new requirements, techniques, or policies and procedures brought about by changes in statutes, regulations, business research or evaluations of postal purchasing practices.

2. Maintain their professionalism through (a) attendance at seminars, conferences, meetings or other professional activities and (b) performing coursework in contracting and purchasing commensurate with their CO level and responsibilities. The appointing official will determine whether a particular CO's efforts in these areas meet the professional development requirements.
3. Sustain and expand their knowledge of the purchasing field through reading professional literature.

#### 1.4.7 Termination

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

## 1.5 Meaning of Words and Terms

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### 1.5.1 General

The words and terms defined in this section have the meanings given in this section whenever they are used in the PM, unless the context clearly indicates a different meaning or a different definition is given for a particular section, part, solicitation provision or contract clause. Definitions are in alphabetical order.

### 1.5.2 Definitions

- 1.5.2.a *Agreement.* A set of pre-established terms and conditions negotiated between the Postal Service and a supplier which only becomes a contract when an order is placed and accepted by the supplier. A contract is always an agreement; but an agreement is not always a contract.
- 1.5.2.b *Assigned Counsel.* The person or persons assigned by the General Counsel to provide legal advice to a VP or contracting officer. In general, contracting advice to Headquarters purchasing offices is provided by the Corporate Law section of the Law Department, and advice to field purchasing offices is provided by the Law Department's Area Legal Offices.
- 1.5.2.c *Change Order.* A written order signed by the contracting officer directing the supplier to make changes that the *Changes* clause (see paragraph c of Clause 4-1) authorizes the contracting officer to make without the specific consent of the supplier.

- 1.5.2.d *Contract.* Any understanding that can be legally enforced, formed by two or more parties who promise to perform or to refrain from performing some act. For purposes of this manual, a contract exists when there is a bilateral agreement, a unilateral order (such as a purchase order) by the Postal Service that becomes effective upon performance by the other party, or a binding order under an agreement that did not in itself bind the parties.
- 1.5.2.e *Contract Modification.* A written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other provisions of an existing contract whether made unilaterally under a provision in the contract or bilaterally by mutual parties to the contract. It includes such bilateral actions as supplemental agreements, and such unilateral actions as change orders, administrative changes, notice of termination, and exercise of options.
- 1.5.2.f *Contracting Officer.* A person who has direct purchasing authority or has been delegated purchasing authority (see 1.4). The term includes an authorized representative of a contracting officer acting within the limits of the authority delegated by the contracting officer.
- 1.5.2.g *Days.* This means calendar days unless working days are specified.
- 1.5.2.h *Includes.* This means “includes but is not limited to.”
- 1.5.2.i *Local Buying Authority.* The authority to locally buy and pay for day-to-day operational needs. Local buying authority may not be used for certain commodities; see ASM 72 for more information regarding local buying authority.
- 1.5.2.j *May.* This is permissive. “May not” and “no [person or thing] may” mean that the act described is prohibited.
- 1.5.2.k *Must.* This is imperative.
- 1.5.2.l *Performance Evaluation Factors.* A standard by which the worth of a proposal is judged. Solicitations must state the factors that will be applied in evaluating proposals. The terms performance evaluation factors and evaluation criteria are used interchangeably. There are two types of factors: proposal-specific and supplier-specific.
- 1.5.2.m *Proposal.* An offer that, if accepted, creates a contract. A proposal may be made in response to a solicitation, or may be unsolicited.
- 1.5.2.n *Purchase Team.* A group of Postal Service internal business partners with an interest in a specific purchase or series of purchases. In addition to other responsibilities, the contracting officer serves as the business leader of the purchase team, and directs and oversees the purchase team’s efforts from purchase planning to contract closeout.
- 1.5.2.o *Purchasing.* All activities related to the purchase of supplies, services, equipment, design and construction and related services, and mail transportation, including planning, solicitation, source selection, contract award, and contract administration. It does not include activities related to the determination of requirements.

- 1.5.2.p *Purchasing Office.* An organizational element responsible for the purchase of supplies, services and equipment, facility design and construction and related services, or mail transportation.
- 1.5.2.q *Quotation.* A response to a request for quotation; it is informational in character, and, unlike a proposal, it is not an offer that can be accepted by the Postal Service to form a binding contract.
- 1.5.2.r *Real Estate and Related Services.* The term real estate includes the acquisition of real property (including improvements on real property), and any interests in real property, by easement, license, sale, lease, or exchange; the disposal of real property (including improvements on real property); and any interests in real property, by easement, license, sale, lease, exchange; and the development and redevelopment of real property under lease agreements, including acquisition, disposal, or development and redevelopment by contract or agreement with government entities at any level. Related services includes professional services, planning efforts, studies, and the like, in support of the acquisition, disposal, development and redevelopment of real estate (as defined above) including design/engineer, environmental, geo-technical, brokerage, legal, relocation, title, and similar services (other than services in connection with Postal Service-financed construction).
- 1.5.2.s *Services.* The performance of identifiable tasks.
- 1.5.2.t *Should.* This means desirable but not required.
- 1.5.2.u *Supplemental Agreement.* A contract modification that is mutually agreed to by the parties.
- 1.5.2.v *Supplies.* Property and rights or interest in property of any kind except real property.
- 1.5.2.w *Vice President.* When not otherwise specified, means the Vice President of Purchasing and Materials.
- 1.5.2.x *Will.* This signifies intent or obligation.

## 1.6 General Policies

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### 1.6.1 Business Objectives and Practices

The primary goal of Postal Service purchasing is to support the Postal Service's business and competitive objectives. To meet this mandate, purchase teams, headed by the contracting officer, determine the most effective business practices for a given purchase. These business practices include such matters as whether a purchase should be made competitively or noncompetitively and whether suppliers should be prequalified. In making these determinations, purchase teams must consider the potential ramifications on other important business objectives, such as supplier diversity, supplier relations, and the Postal Service's obligation to be fair in, and accountable for, its actions.

### 1.6.2 **Best Value**

It is the policy of the Postal Service to award its contracts to the suppliers offering the best value to the Postal Service. What constitutes the best value will depend on the goods or services being purchased. When a purchase is made competitively, best value is determined by the comparative analysis of proposals in accordance with the evaluation factors in the solicitation, taking into consideration such matters as the Postal Service's business objectives, suppliers' past performance and capability, price and total cost of ownership, quality and risk (see, generally, 2.1.9). Ordinarily, a best value determination is made by the purchase team, subject to applicable review and approval.

### 1.6.3 **Competition**

- 1.6.3.a Generally, purchases valued at more than \$10,000 should be made on the basis of adequate competition, although, in some cases, purchase teams may decide during purchase planning that the most effective business practice is to make the purchase noncompetitively (see 2.1.6). Adequate competition means the solicitation of a sufficient number of qualified suppliers to ensure that the required quality and quantity of goods and services is obtained when needed and that the price is fair and reasonable.
- 1.6.3.b Contracting officers, working with the purchase team, must determine that adequate competition has been obtained when competition is used. In making that determination, contracting officers must take into account both the Postal Service's business objectives and its commitment to identifying new suppliers and providing opportunities for them to join the Postal Service's supplier base.
- 1.6.3.c Competition among prequalified suppliers is sufficient to meet the adequate competition standard.

### 1.6.4 **Contracts with Postal Service Employees and Their Immediate Families**

- 1.6.4.a Except as provided in b and c below, contracts may not be awarded to Postal Service employees, their immediate families, or business organizations substantially owned or controlled by Postal Service employees or their immediate families. Postal Service employees means all postal officers and employees, whether in full-time, part-time, career or noncareer positions, including specifically persons in temporary positions such as postmaster replacements and rural carrier reliefs. Immediate family means spouse, minor child or children, and individuals related to an employee by blood who are residents of the employee's household.
- 1.6.4.b The prohibition against contracting with Postal Service employees and their immediate families may be waived (all waivers must be in writing), by the contracting officer for:
  - 1. New real estate leases of interior space of 3,000 square feet or less.



2. Renewals of existing highway contract routes with immediate family members of a postal employee, subject to review and concurrence by the Associate Ethical Conduct Officer.
  3. Cleaning service contracts with immediate family members of nonsupervisory employees.
  4. The licensing of a patented invention that is the sole property of the employee.
- 1.6.4.c This prohibition does not apply to the lease of an individual employee's vehicle in connection with his or her employment, and renewals and extensions of leases of interior space of 3,000 square feet or less. When to do so is in the best interests of the Postal Service, contracting officers may renew or extend existing leases of over 3,000 square feet from Postal Service employees or their immediate families, or business organizations substantially owned or controlled by them, with the concurrence of the Associate Ethical Conduct Officer (see 39 CFR 447.31).

## 1.6.5 Release and Exchange of Information

- 1.6.5.a *General.* The Postal Service makes records, data, and information available to the public to the maximum extent consistent with the Postal Service's interest, the privacy rights of individuals, ownership of rights in the data requested (see Chapter 8), and the need to protect Postal Service and other confidential business information (including information relating to the Postal Service's commercial operations) from disclosure.
- 1.6.5.b *Release.* Records properly identified and requested by any member of the public must be made available in accordance with subchapter 35, Administrative Support Manual, and 39 CFR 265, implementing the Freedom of Information Act (FOIA) (6 U.S.C. 552), unless exempt from disclosure.
- 1.6.5.c *Exchange.* Subject to any restrictions on disclosure, the Postal Service exchanges information with other government agencies regarding the performance of suppliers.

## 1.6.6 Privacy Protection

- 1.6.6.a *Policy.* Whenever a supplier will be required to design, develop, or operate a system of records within the meaning of the Privacy Act (that is, any group of records under the control of the Postal Service, including mailing lists, from which information is retrieved by the name of an individual or by some personal identifier assigned to the individual, such as a Social Security number), the contract must require that the supplier and any subcontractors comply with the Privacy Act (5 U.S.C. 552a). As required by 1.6.6.b below, contracts must direct suppliers and subcontractors to comply with the Postal Service's policies protecting individual privacy and postal information and records (39 CFR 266-267), and the Postal Service's Internet Privacy Policy contained at [www.usps.com](http://www.usps.com).

- 1.6.6.b *Clause 1-1, Privacy Protection.* Clause 1-1, *Privacy Protection*, addresses privacy protections. It is incorporated by reference in Clause 4-2, *Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, and must be checked-off by the contracting officer and included in:
1. Contracts in which a supplier or subcontractor operates a Privacy Act system on the Postal Service's behalf.
  2. Contracts in which a supplier or subcontractor will have access to any Postal Service customer data, including information or data regarding visitors to Postal Service Web sites.
  3. Contracts in which a supplier or subcontractor will have access to customer or visitor data on a Postal Service Web site operated by the Postal Service or the supplier or subcontractor, or in which a supplier or subcontractor assists the Postal Service in establishing or administering a Web site.
  4. Contracts in which a supplier or subcontractor designs or places a link or ad banner on a Postal Service Web site or any Web site on the Postal Service's behalf.

## 1.6.7 **Advance Payments and Progress Payments**

- 1.6.7.a *Policy.* Usually, the Postal Service pays for supplies and services after delivery or performance. However, for some purchases, sources may be unavailable or competition too limited without the availability of advance payments or progress payments.
- 1.6.7.b *Advance Payments.* Approval to make advance payments must be obtained as required by Management Instruction FM-610-96-1, *Advance Payments*.
- 1.6.7.c *Progress Payments*
1. If the dollar value of a prospective contract is within the contracting officer's delegated contracting authority, he or she may approve the use of progress payments for the particular contract. For contracts over \$1,000,000 (excluding construction, architect/engineer and construction management contracts), progress payments must also be approved by the VP, Finance.
  2. Before approving progress payments, the contracting officer must make a written determination establishing that:
    - (a) Progress payments are in the Postal Service's best interests.
    - (b) The supplier's accounting system and controls are adequate for proper administration of progress payments, or their adequacy will be ascertained before contract award.
    - (c) Monthly progress reports will be obtained from the supplier, showing progress of the work as related to progress payments made.
- 1.6.7.d *Clauses.* Any contract providing for advance payments must include Clause 1-2, *Advance Payments*. Any contract, other than a construction contract, providing for progress payments must include Clause 1-3, *Progress Payments*. (For construction contracts, see Clause B-48, *Payment (Construction)*.)
- 1.6.7.e *Partial Payment.* See 6.4.1.b regarding partial payments to suppliers.

## 1.6.8 Conflicts of Interest

### 1.6.8.a Organizational Conflicts of Interest

1. An organizational conflict of interest exists when the nature of the work to be performed under a contract may give an offeror an unfair competitive advantage, or when an offeror has other interests that may impair its objectivity or ability to perform satisfactorily. Such conflicts are not limited to any particular type of purchase, but are more likely to occur in contracts involving:
  - (a) Professional services (see 4.5.3).
  - (b) Consultant services (see 4.5.3).
  - (c) Performance of or assistance in technical evaluations.
  - (d) Projects that are procured in separate phases, such as design and then construction or research and development and then production.
2. As part of purchasing planning (see 2.1) contracting officers, with the assistance of the purchase team, must attempt to identify potential conflicts of interest so that they may be avoided or mitigated. When a potential conflict is foreseen, the contracting officer should consult with assigned counsel and obtain the assistance of appropriate technical specialists to mitigate or avoid conflict. Such mitigation actions may include, but are not limited to, the development of solicitation provisions restricting competition to offerors not subject to a conflict of interest, or a contract clause limiting the supplier's eligibility for future contracts or subcontracts or other actions to mitigate or avoid an apparent conflict such as the adoption of measures to ensure as even a competition as possible, as may be in the interest of the Postal Service and the offerors. Any limit on future contracts must be for a reasonable period sufficient to avoid unfair competitive advantage or potential bias. See, for example, Clause 1-7, *Organizational Conflict of Interest*.
3. If it does not become apparent until proposals are received that participation by a particular offeror could lead to a conflict of interest and unfair competition, the offeror may be disqualified and its proposal rejected, or the contracting officer may take such other actions as deemed necessary in the interest of the Postal Service and the offerors to avoid or mitigate the situation, acting in the interest of the Postal Service, and in consultation with assigned counsel and appropriate technical specialists to ensure a fair competition.
4. If the contracting officer determines to mitigate a situation that could lead to a conflict or which appears to constitute a conflict of interest, such determination should be reduced to a written analysis of the course of action chosen. Such analysis should include a consideration of benefits and detriments to the Postal Service and the offerors and may consider information provided by offerors in response to the solicitation or obtained during negotiations.

5. The provisions of this section may be waived as to any procedure or rule by determining that its application in a particular situation would not be in the Postal Service's interest. Any such waiver should be in writing by the contracting officer and processed in accordance with 1.3.

- 1.6.8.b *Participation by Members of Congress.* The participation of members of Congress in contracts or agreements made on behalf of the United States (including the United States Postal Service) is prohibited by 41 U.S.C. section 22.

### 1.6.9 **Standards of Conduct**

Postal Service employees are held to the highest standard of conduct in the performance of their duties, and must conduct themselves so as to avoid even the appearance of any impropriety. All employees must adhere to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.

### 1.6.10 **Gratuities or Gifts**

- 1.6.10.a Postal Service employees, with limited exceptions, are prohibited from accepting gratuities or gifts from suppliers or persons seeking postal contracts or other business under detailed rules prescribed in 5 CFR 201-205.
- 1.6.10.b Clause 1-5, *Gratuities or Gifts*, which is incorporated by reference in Clause 4-2, *Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, provides for termination of the contract for default upon a finding by the Postal Service Board of Contract Appeals that a supplier, or the supplier's agent or representative, offered or gave a gratuity or gift to a Postal Service employee to obtain a contract or favorable treatment under a contract.
- 1.6.10.c Information or allegations concerning unlawful gratuities or gifts must promptly be referred to the Office of the Inspector General (OIG). If the OIG finds evidence that an unlawful gratuity or gift was offered or given, the contracting officer must determine whether debarment is appropriate (see 3.7), in addition to actions taken under a specific contract.

### 1.6.11 **Supplier Clearances**

- 1.6.11.a ASM 272.3 requires that all individuals performing services pursuant to Postal Service purchases (other than mail transportation contracts, see 4.4) who have access to occupied Postal Service facilities, and/or Postal Service information and resources, including Postal Service computer systems, must obtain clearance before being provided that access. In accordance with that regulation, the contracting officer and the purchase team determine, with the concurrence of the Inspection Service, when a clearance requirement exists.
- 1.6.11.b Include Provision 1-1, *Supplier Clearance Requirements*, in any service contract, other than a mail transportation contract, for which a supplier clearance requirement exists.

## 1.6.12 Strategic Alliances

Strategic alliances are contractual agreements used to promote marketing initiatives that benefit the Postal Service, enhancing postal business performance through increased revenues, reduced costs, or improved customer satisfaction. They result in partnerships that combine the core strengths, competitive advantages, or needs of the Postal Service with the attributes of other companies for mutual market advantage. Strategic alliances are not purchasing contracts, and may not be used to replace or supplement the purchasing methods prescribed in this PM, which does not apply to strategic alliances. Handbook F-66D, *Other Investment-Related Policies and Procedures*, contains further guidance on strategic alliances.

## 1.6.13 Domestic Preference

1.6.13.a *Policy.* Postal Service policy is to give preference to domestic-source products and materials when purchasing supplies and services. With respect to individual purchases or purchase categories, the Postmaster General may adopt more stringent standards for domestic manufacture when in the best interests of the Postal Service.

### 1.6.13.b *Supplies*

1. *Applicability.* These procedures apply to all purchases of supplies or services that involve the furnishing of supplies. Deviations may be authorized by the VP, Purchasing and Materials.
2. *Definitions*
  - (a) *End products.* Articles, materials and supplies to be purchased for Postal Service use.
  - (b) *Components.* Articles, materials and supplies directly incorporated in end products.
  - (c) *Domestic-source end products.* An unmanufactured end product mined or produced in the United States or an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all of its components. The cost of components includes transportation costs to the place of incorporation into the end product and, in the case of components of foreign origin, duty (whether or not a duty-free entry certificate is issued). For purchases in excess of \$25,000, Canadian end products are treated as domestic source end products. The articles and materials listed in 1.6.13.d are considered to have been mined, produced, or manufactured in the United States, regardless of their source in fact.
  - (d) *Foreign end product.* An end product other than a domestic-source end product.
  - (e) *Domestic proposal.* A proposed price for a domestic-source end product, including transportation to destination.

- (f) *Foreign proposal.* A proposed price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).
  - (g) *Canadian end product.* An article that is wholly the growth, product, or manufacture of Canada or, in the case of an article consisting in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce distinct from that from which it was transformed. For purposes of calculating the value of the end product, it includes the value of services (except transportation services) incidental to the article, provided that the value of the incidental services does not exceed the value of the article itself.
3. *Requirement.* Only domestic-source end products may be purchased, except when the VP, Purchasing and Materials, determines that:
- (a) The articles, materials or supplies are of a class or kind not mined, produced or manufactured in the United States in sufficient and reasonable available commercial quantities of satisfactory quality (see 1.6.13.d); or
  - (b) Purchases of domestic-source end products would be inconsistent with the interest of the Postal Service, or that its cost would be unreasonable, as when the price comparison procedures described in 1.6.13.b.5 result in the purchase of a foreign end product.
4. *Proposal Evaluation*
- (a) If performance evaluation factors will have a significant weight in proposal evaluation, domestic-source end products receive a preference in the case of closely ranked proposals, but no price comparison should be made.
  - (b) If award is to be based solely on price, each foreign price proposal must be adjusted for purposes of evaluation by adding to the foreign proposal (inclusive of duty) a factor of six percent of that proposal. If a tie results between a foreign proposal and a domestic proposal, the domestic proposal must be selected for award. When more than one line item is involved, the six percent evaluation factor is applied on an item-by-item basis, except that the factor may be applied to any group of items that the solicitation specifies will be awarded as a group.
5. *Solicitation Provision.* Provision 1-2, *Domestic Source Certificate — Supplies*, is incorporated by reference in Provision 4-3, *Representations and Certifications*, and must be checked-off by contracting officers when the solicitation calls for the purchase of supplies.
6. *Clause.* Clause 1-9, *Preference for Domestic Supplies*, is incorporated by reference in Clause 4-2, *Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, and must be checked-off by contracting officers when the contract calls for the purchase of supplies.

1.6.13.c *Construction Materials*

1. *Applicability.* The procedures in this part apply to all construction contracts. Deviations may be authorized by the VP, P&M.
2. *Definitions*
  - (a) *Components.* Articles, materials, and supplies incorporated directly into construction materials.
  - (b) *Construction materials.* Articles, materials, and supplies brought to the construction site for incorporation into the building or work.
  - (c) *Domestic construction material.* This means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind as those listed in 1.6.13.d are treated as domestic.
  - (d) *Foreign construction material.* A construction material other than a domestic construction material.
3. *Requirement.* Only domestic construction materials may be used in construction, except:
  - (a) When the contracting officer determines that use of a particular domestic construction material would be impracticable, or that its cost would be unreasonable, under guidelines established by the VP, P&M, in the relevant handbook; or
  - (b) When the VP, P&M, determines that a construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of satisfactory quality (see 1.6.13.d).
4. *Solicitation Provision.* Provision 1-3, *Domestic Source Certificate — Construction Materials*, is incorporated by reference in Provision 4-3, and must be checked-off by contracting officers when the solicitation calls for the purchase of construction materials.
5. *Clause.* Clause 1-10, *Preference for Domestic Construction Materials*, is incorporated by reference in Clause 4-2, and must be checked-off by contracting officers when the contract calls for the purchase of construction materials.

1.6.13.d *List of Excepted Articles and Materials*

1. *General.* The VP, Purchasing and Materials, has determined that the articles and materials listed below are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of satisfactory quality, or that it would be inconsistent with the interest of the Postal Service to apply the domestic preference policy to these articles and materials. When incorporated into end products or construction materials manufactured in the United States, these items may be regarded as components of domestic origin for the purpose of determining the origin of the manufactured end products or construction materials:

Acetylene, black

Asbestos, amosite

Books/pamphlets/newspapers/magazines/periodicals: printed briefs and films not printed in the United States and for which domestic editions are not available

Cadmium, ores and flue dust

Calcium cyanamide

Chrome ore or chromite

Cobalt, in cathodes, rondelles, or other primary forms

Cork, wood or bark and waste

Cover glass, microscope slide

Diamonds, industrial, stones

Emetine, bulk

Ergot, crude

Fibers of the following types: agave, coir, jute, and palmyra

Graphite, natural

Hand sewing needles

Hyoscine, bulk

Leather, sheepskin, hair type

Mica

Nickel, primary, in ingots, pigs, shot, cathodes, or similar form; nickel oxide and nickel salts

Nitroguanidine (also known as picrite)

Petroleum, crude oil, finished products, and unfinished oils (see petroleum definitions in paragraph 3.(a)-(c) below)

Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars

Pyrethrum flowers



Quartz crystals

Quebracho

Radium salts

Rosettes

Rubber, crude and latex

Rutile

Wire glass

Woods of the following species: angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak

2. *Crude oil.* Crude petroleum as produced at the wellhead and liquids (under atmospheric conditions) recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and are not natural gas products.
3. *Finished products.* Any one or more of the following petroleum oils, or a mixture or combination of them to be used without further processing except blending by mechanical means:
  - (a) Liquefied gases — hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.
  - (b) Gasoline — a refined petroleum distillate that, by its composition, is suitable for use as a carburetant in internal combustion engines.
  - (c) Jet fuel — a refined petroleum distillate used to fuel jet propulsion engines.
  - (d) Naphtha — a refined petroleum distillate falling within a distillation range overlapping the higher gasolines and lower kerosenes.
  - (e) Fuel oil — a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, and residues.
  - (f) Lubricating oil — a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.
  - (g) Residual fuel oil — a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specifications Mil-F-859.
  - (h) Asphalt — a solid or semisolid cementitious material that gradually liquefies when heated, in which the predominating constituents are bitumens, and that is obtained in refining crude oil.
  - (i) Natural gas products — liquids (under atmospheric conditions), including natural gasoline, that are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that, when recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in (b) through (e) above.

4. *Unfinished oils.* One or more of the petroleum oils listed in paragraph (b) above, or a mixture or combination of such oils, to be further processed other than by blending by mechanical means.

#### 1.6.14 **Contracts With Former Postal Service Officers, Executives, and Employees**

- 1.6.14.a *General.* The Postal Service contracts with former officers, executives, and employees when their expertise is deemed important to furthering the business and competitive interests of the Postal Service. Whether these individuals are the subject of personal services contracts, or are key personnel, experts or consultants employed by a supplier, the following restrictions apply and these procedures must be followed.
- 1.6.14.b *Contracts With Former Officers and Executives*
  1. *Policy.* It is Postal Service policy not to contract with former officers or Postal Service Executive Service (PCES) executives or entities with which such individuals have a substantial interest for five years after the date of their separation from the Postal Service (whether by retirement or otherwise) if the contract calls for substantially the same duties as they performed during their career with the Postal Service, as determined by the Vice President of Human Resources. Purchase teams must enforce this policy when purchasing professional/technical or consulting services (see 4.5.3 for definitions of these types of services), and include Provision 1-4, *Prohibition Against Contracting with Former Officers or PCES Executives*, in relevant solicitations, and Clause 1-11, *Prohibition Against Contracting with Former Postal Service Officers or PCES Executives*, in resulting contracts.
  2. *Exceptions.* The Vice President of Human Resources may grant exceptions to this policy when he or she determines that doing so is in the best interest of the Postal Service. All such exceptions must be documented and included in the contract file.
- 1.6.14.c *Contracts With Other Former Employees*
  1. *Policy.* The Postal Service may contract with former employees (other than former officers or PCES executives) or with suppliers proposing the use of former employees during contract performance when the former employee's expertise will further the success of the purchase and the business and competitive interests of the Postal Service. Contracts with former employees or with suppliers offering the services of former employees should not be confused with the employment of annuitants (see 1.6.14.c.2).
  2. *Reviews and Approvals*
    - (a) All requests for contracts with former employees (non-officer or executive) must be forwarded by the purchasing organization to the manager of Corporate Personnel Management (CPM), for review and approval. The manager of CPM will decide whether the former employee should be hired as a retired annuitant (see *Employee and Labor Relations Manual* 323.33) or should be

- contracted with by the purchasing organization. When appropriate, the purchasing organization may award a personal services contract to the former employee (see 4.5.4).
- (b) When a supplier proposes using a former employee, the manager of CPM will review the former employee's employment history and advise the purchase team as to whether the substitution of another individual is in the best interests of the Postal Service. If such substitution is the case, the contracting officer must advise the supplier to propose another individual to perform the duties called for. If, following contract award, the supplier proposes the use of a former employee, the same review and approval process is required before the former employee may begin work.
3. *Provision and Clause.* Purchase teams must consider this policy in light of the particular purchase, and the potential need for reviews and approvals, and as necessary, include Provision 1-5, *Proposed Use of Former Postal Service Employees*, in relevant solicitations, and Clause 1-12, *Use of Former Postal Service Employees*, in resulting contracts.

## 1.7 Anticompetitive Practices

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### 1.7.1 General

An anticompetitive practice is any practice designed to eliminate competition or restrain trade. Such practices include collusion, follow-the-leader pricing, rotated low price proposals, sharing of business, identical prices, and any other device intended to deprive the Postal Service of the benefits of competition. These practices may violate federal antitrust laws and be subject to prosecution by the Attorney General. Proposals suspected of reflecting anticompetitive practices may be rejected.

### 1.7.2 Reports

Any suspected anticompetitive practice must be reported promptly through normal management channels to the VP, P&M (or the VP, Facilities, if the matter involves real estate). Identical prices are not reported automatically, but only if there is reason to suspect an anticompetitive practice. If the VP believes that there is reasonable evidence of violation of federal antitrust laws, the report must be forwarded to the Office of Inspector General (OIG). The OIG will refer the matter to the Attorney General for prosecution, if appropriate.

## 1.8 Contingent Fees

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### 1.8.1 General

A supplier may not pay a fee to an agent contingent upon the agent's soliciting or obtaining the award of a contract. Such a fee arrangement is improper because it may lead to the attempted or actual exercise of improper influence. The prohibition does not apply to contingent fee arrangements between suppliers and bona fide employees or bona fide agencies employed by suppliers to secure business.

### 1.8.2 Clause

Clause 1-6, *Contingent Fees*, is incorporated by reference in Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders*, when checked-off by the contracting officer. Clause 1-6 is not to be used in:

1. Contracts for public utility services furnished by a public utility company when the utility company's rates for the services are subject to regulation by a federal, state, or other regulatory body and the public utility company is the sole source of supply.
2. Other contracts, individually or by class, as designated by the VP, P&M.

### 1.8.3 Bona Fide Employee or Agency

- 1.8.3.a *Bona Fide Employee*. For the purpose of Clause 1-6, this means an individual employed by the concern in good faith and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work.
- 1.8.3.b *Bona Fide Agency*. In determining whether an agency is a bona fide established commercial selling agency employed by the supplier for the purpose of securing business, the factors below must be considered:
1. The fee must be commensurate with the nature and extent of the services and not excessive compared with the fees customarily allowed in the trade for similar services related to commercial business. In evaluating reasonableness of the fee, services of the agent other than actual solicitation should be considered, such as technical, consultant, or managerial services, and assistance in obtaining personnel, facilities, equipment, materials, or subcontractors for the performance of the contract.
  2. The agency should be an established concern, with knowledge of the products and the business of the concern represented and other qualifications necessary to sell the products or services on their merits, and there should ordinarily be a continuity of relationship between the supplier and the agency.

- 1.8.3.c *Use of Improper Influence.* No employee or agency is bona fide if the employee or agency seeks to obtain or claims to be able to obtain a contract through the use of improper influence.

#### 1.8.4 **Misrepresentation or Violation**

In case of misrepresentation concerning contingent fees, or violation or breach of Clause 1-6, the VP, P&M, may take one or more of the following actions, or other action, as is appropriate:

- 1.8.4.a If the award has not been made, determine whether the proposal should be rejected.
- 1.8.4.b If award has been made, take action to enforce the clause, either annulling the contract without liability or recovering the amount of the fee involved.
- 1.8.4.c Consider suspension or debarment.
- 1.8.4.d Consider referring the matter to the Attorney General, through the same channels as in 1.7.2.

## 1.9 **Administrative Matters**

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### 1.9.1 **Electronic Commerce**

- 1.9.1.a *Policy.* Whenever possible, and depending on whether the means are available, the Postal Service will seek to reengineer paper-driven processes with its suppliers in order to capture the benefits of conducting routine purchasing transactions by electronic commerce (EC). Electronic commerce is an approach to performing routine business transactions using existing information systems technology and will be used to:
1. Provide business opportunities for large and small businesses throughout the electronic marketplace.
  2. Improve overall quality through better record keeping, fewer errors in data, and reduced processing time.
  3. Reduce inventory by faster and more accurate filling of orders and assist just-in time inventory management.
  4. Provide postal management with improved decision making tools through near real-time access to business information.
- 1.9.1.b *Use.* Electronic commerce includes the application of national and international standards, business practices, and various information system technologies. Representative aspects of EC include, but are not limited to, electronic data interchange (EDI), facsimile (FAX), the Internet, and remote bulletin boards. The Postal Service may, depending on the nature and scope of a particular purchase, limit competition to EDI-capable trading partners.

# 2 Purchase Planning

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# 2 Purchase Planning

## 2.1 Policy

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### 2.1.1 The Importance of Purchase Planning

Effective purchase planning is essential to furthering the business and competitive interests of the Postal Service. As such, it requires the coordination and cooperation of a number of organizations and must address a number of topics. As stated in 2.1.2, early involvement among all of the stakeholders often proves critical to successful planning and successful purchasing. The extent of the planning will depend on the nature of the purchase and its effect on the business and competitive objectives of the Postal Service. The success of major purchases, which are those with the potential to impact these objectives, should be planned for by a purchase team that fully reflects the strategic importance of the purchase, and should involve the team's use of a wide range of supply chain business practices (such as strategic sourcing, demand analysis, prequalification, supplier selection strategy, and resource planning). The success of other purchases will not require the same level of investment, but will require some degree of planning. In all cases, the effectiveness of the purchase planning will directly affect the success of the purchase.

### 2.1.2 Preliminary Planning

Organizations normally plan their purchasing needs during the budget process. Because purchase planning should involve everyone with a stake in the outcome, coordination between internal postal business partners should begin as early as possible. Planning for high-dollar purchases should begin in the concept-development phase and consider best value in relation to business strategy and total cost of ownership. The goal of this preliminary planning is to define the Postal Service requirement to be purchased.

### 2.1.3 Purchase Planning

- 2.1.3.a *The Process.* Purchase planning is the process of establishing objectives and tactics to obtain the best value in a specific purchase. It is done by a purchase team made up of the Postal Service business partners with an interest in the purchase, including the organization requesting the purchase, the purchasing organization, and other organizations needed to help

determine best value. The contracting officer responsible for the purchase is the business leader of the purchase team, and it is his or her responsibility to ensure that the team concentrates on purchase planning as part of an overall business strategy. As business leader, the contracting officer should also ensure that the team takes advantage of the most effective supply chain management business practices for a given purchase. Customer satisfaction and business success should be the primary focus of purchase planning as they will ultimately define best value in a purchase.

- 2.1.3.b *Responsibilities.* Purchase team members have specific roles in purchase planning.
1. The organization requesting the purchase:
    - (a) Determines the supply or service required.
    - (b) Helps to identify potential suppliers.
    - (c) Ensures that funds are available and authorized.
    - (d) Provides a purchase description.
    - (e) Prepares a price or cost estimate.
    - (f) Defines the period of performance or delivery.
    - (g) Establishes any supplier reporting requirements.
    - (h) Assists in developing evaluation criteria.
  2. The purchasing organization:
    - (a) Through the contracting officer, serves as business leader of the purchase team.
    - (b) Gathers and analyzes relevant spend and demand data to identify opportunities for strategic sourcing and consolidated purchases.
    - (c) Provides advice and assistance.
    - (d) Identifies new or competitive sources, including small, minority, and woman-owned businesses (see also Handbook P-1, *General Purchasing Concepts and Practices*, section 2.3.5), and, when appropriate, ensures that enough suppliers are available to ensure adequate competition.
    - (e) Prequalifies suppliers and maintains source lists.
  3. For many purchases, the materials organization may provide specific expertise, including:
    - (a) Identifying the total cost of ownership related to logistics activities (movement, storage, redistribution, and disposal).
    - (b) Providing alternatives and recommendations for the ordering and delivery of supplies and services.
    - (c) Providing alternatives and recommendations regarding freight transportation.
  4. The purchase team may include other members whose specialized support (for example, legal or technical) will ensure that business considerations outside the purchasing process are included (for example, maintenance or training).

## 2.1.4 **Market Research**

- 2.1.4.a *Importance.* Market research is central to sound purchase planning. Market research helps determine:
1. What supplies or services are available.
  2. What suppliers are available.
  3. How to best state requirements.
  4. Whether price or cost estimates are realistic.
  5. Commodity or industry trends.
- 2.1.4.b *Methods.* Market research methods include:
1. Assessing whether commercial products and services meet (or are adaptable to) postal needs.
  2. Surveying the state of technology, and the extent and success of commercial applications.
  3. Holding industry briefings or presolicitation conferences to discuss postal needs and obtain recommendations.
  4. Determining why potential suppliers did not respond to solicitations.
  5. Attending conferences and researching commercially available products, industry trends, product availability, reliability, and prices.
  6. Testing and evaluating commercially available products in a postal operating environment to collect reliable performance data, determine if modifications are necessary, and develop operational cost information.
  7. Analyzing the purchase history of an item or service to determine the level of competition, prices, and performance results.
  8. Publicizing new specifications and, when appropriate, issuing solicitations for information or planning purposes (see 4.2.2.d) far enough in advance to consider industry comments.
  9. Publicizing through the *Governmentwide Point of Entry* (see 3.5.3.b.1) and other appropriate media, competitive purchasing or prequalification opportunities valued at more than \$100,000, except:
    - (a) Purchase or prequalification opportunities for commercially available goods and services. If the purchase or prequalification opportunity is valued at more than \$1 million, it must be publicized as discussed above;
    - (b) Purchase or prequalification opportunities for mail transportation and related services (see 4.4.4.d); and
    - (c) Certain noncompetitive contract awards (see 3.5.3).

## 2.1.5 Individual Purchase Plans

- 2.1.5.a *Responsibility.* The contracting officer determines the extent of the planning and leads the planning effort. For complex purchases, the purchasing organization, guided by the purchase team, usually prepares the plan. Plans are developed when the purchasing organization becomes aware of a customer's requirement, or receives a purchase request, statement of work, or other information sufficient to begin the planning process.
- 2.1.5.b *Elements.* Normally, a purchase plan should include:
1. The purpose of the purchase.
  2. A statement of work that may include specifications or a product description (see 2.3.1).
  3. The history of purchasing similar supplies or services.
  4. Special considerations such as compatibility with other equipment; cost, schedule, or performance constraints; or environmental issues.
  5. The cost estimate and availability of funds.
  6. The estimated total cost of ownership.
  7. Delivery schedule or period of performance requirements, including considerations for shipping f.o.b. destination or origin (see 2.2.5).
  8. Potential risks and any plans to reduce them, including contingency plans and alternatives, and bonds.
  9. The type of contract (see 2.4).
  10. Supplier prequalification plans (see 3.5.2) or other approaches to the purchase.
  11. Any proposal-specific performance evaluation factors crucial to the success of the purchase, and their order of importance (see 2.1.9 and 2.1.10).
  12. A supplier-selection strategy, if proposal-evaluation performance evaluation factors will be used (this strategy will become part of the individual plan; see 2.1.7).
  13. Sources (see Chapter 3).
  14. A written description of the purchase method to be used, specifically, whether the purchase will be competitive or noncompetitive. If the purchase will be made noncompetitively, the business case for this decision must be included in the plan (see 2.1.6).
  15. Quality requirements, including warranties.
  16. Supplier reporting requirements.
  17. Requirements for supplier data and data rights, their estimated cost, and how they will be used (see Chapter 8).
  18. The potential for alternate agreements on intellectual property (see Chapter 8).
  19. Postal property or facilities that will be furnished to the supplier.
  20. Possible conflicts of interest (see 1.6.8).

- 2.1.5.c *Milestones.* The purchase plan must include significant milestones critical to the success of the purchase, including publicizing the purchase, issuing the solicitation, receiving proposals, evaluation, discussions, and any reviews and approvals needed. Once the purchase team has set the milestones, if the contracting officer becomes aware that changes are necessary, he or she must inform the rest of the purchase team.

## 2.1.6 **Purchase Method**

- 2.1.6.a *General.* The individual purchase plan must address the purchase method that will be used. The purchase method is the manner in which the purchase will be conducted, specifically, whether it will be competitive or noncompetitive. This decision should be reached by consensus, but if the team is unsuccessful in doing so, the contracting officer is responsible for determining the purchase method.
- 2.1.6.b *Competitive Purchase Method.* In most cases, competition is the most effective purchasing method because it brings market forces to bear and helps purchase teams compare the relative value of competing proposals and prices and thereby determine the best value.
- 2.1.6.c *Noncompetitive Purchase Method.*
1. *General.* In some cases, the business and competitive objectives of the Postal Service may best be met through the noncompetitive purchase method. The decision to use this method must be weighed by the purchase team, and must be considered in light of the potential benefits of competition and other worthwhile business practices.
  2. *Business Scenarios.* Whether the noncompetitive method is appropriate depends on the particular purchase. The following four business scenarios are representative of instances in which the noncompetitive method may prove the most effective:
    - (a) *Compelling Business Interests.* This scenario is used when the purchase team determines that a specific supplier or source can meet Postal Service needs quickly and efficiently and that the benefits of doing so outweigh those that may be realized through competition, as when the need is so urgent that the competitive method cannot add value.
    - (b) *Industry Structure or Practice.* This scenario is used when the industry producing or supplying the required goods or services is structured in a manner that renders competition ineffective (for example, when purchasing goods or services that are regulated, such as many utilities, or when purchasing from nonprofit or educational institutions that do not compete in the market place).

- (c) *Single Source*. This scenario is used when only one supplier is capable of providing the required goods or services (for example, when only one supplier has proprietary knowledge, trade secrets, or other proprietary interests in a necessary technology or when a supplier, working in partnership with the Postal Service, has developed exceptional expertise which has and will continue to further the business and competitive objectives of the Postal Service).
      - (d) *Superior Performance*. This scenario is used when a supplier's superior performance, and its contributions to the Postal Service's business and competitive objectives, merit award of a particular purchase (for example, extending the term or expanding the scope of a contract when a supplier has performed at such a high level that the extension or expansion is well-deserved, or when a supplier's superior performance has made such performance beneficial to Postal Service operations).
- 3. *Business Case*. Purchase teams may decide to use the noncompetitive purchasing method when noncompetitive purchasing is deemed the most effective business practice for the given purchase. The rationale for the decision must be documented in a business case and included in the contract file. The extent and detail of the business case will depend on the particular purchase, its complexity, and its potential dollar value, but in all cases the following must be addressed:
  - (a) The business scenario justifying the decision, and why it is appropriate.
  - (b) The extent and result of market research performed to ensure that a noncompetitive purchase is the most effective business practice.
  - (c) If applicable, whether the purchase team believes that future purchases of the goods or services should be made noncompetitively, and why.
  - (d) Any other issues that should be considered in the interest of sound and effective purchasing (subcontracting plans, upcoming changes in market conditions, etc.).
- 4. *Reviews and Approvals*
  - (a) If the estimated value of the noncompetitive purchase is expected to exceed \$10 million, the VP, P&M, must give prior review and approval of either the purchase plan or proposed contract award.
  - (b) The managers, Headquarters Purchasing, Field Customer Support, Major Facilities Purchasing, and National Mail Transportation Purchasing, may approve noncompetitive purchases up to and including \$10 million, and may delegate some or all of this approval authority to contracting officers via letter of delegation.
- 5. *Publicizing*. See 3.5.3.



## 2.1.7 **Supplier-Selection Strategy**

2.1.7.a *General.* To obtain the best value, the purchase team should develop a supplier-selection strategy. The strategy should form the general framework for establishing the aspects of value sought in the purchase and the performance evaluation factors to be used. Purchase teams should remember that supplier-specific factors (past performance and supplier capability, see 2.1.9.c) should always be evaluated even when price may serve as the most important factor (for example, when suppliers have been prequalified). The supplier selection should be reached through the consensus of the purchase team. If consensus cannot be reached, the contracting officer, as business leader of the purchase team, has final responsibility and authority for the selection decision.

### 2.1.7.b *Developing Strategies*

1. Before developing a supplier-selection strategy, see 3.3 to make sure the purchase does not require using mandatory sources.
2. The supplier-selection strategy is developed by the purchase team, under the general direction of the contracting officer or purchasing organization. The evaluation team (see 2.1.8) may assist, as well as any other advisors needed.
3. The supplier-selection strategy must list the performance evaluation factors, their relative significance, and the performance evaluation method and procedures that will be used for supplier selection. Factors must be tailored to the purchase, and must address all areas that will be considered in determining best value.
4. The strategy must also address how price will be compared with the performance evaluation factors to determine which supplier (or suppliers) offers the best value.
5. Unless suppliers have been or will be prequalified, or the noncompetitive purchase method will be used, purchase teams should remember that it is good business practice to develop strategies that invite new and emerging suppliers to compete for Postal Service purchases.

## 2.1.8 **Evaluation Teams**

2.1.8.a *General.* When a supplier-selection strategy is needed, the purchase team must establish an evaluation team (which may include members of the purchase team). Its membership depends upon the scope and complexity of the purchase, and the complexity of the performance evaluation factors that will be evaluated. When necessary, people from outside the Postal Service may be named to the evaluation team or as advisors. Caution must be exercised when appointing people outside the Postal Service to evaluation teams in order to prevent conflicts of interest (see 1.6.8).

2.1.8.b *Reports.* The evaluation team must present its findings to the purchase team in a written report with narrative statements identifying the major strengths and weaknesses of the various proposals. The report will be used to help the purchase team conduct discussions with suppliers and to select the supplier or suppliers offering the best value to the Postal Service.

## 2.1.9 Performance Evaluation Factors

### 2.1.9.a General

1. Performance evaluation factors provide vital information to both the purchase team and the supplier: to the first by requiring the supplier to describe its approach to the purchase and its past record of performance in the specific area; to the second by informing suppliers what particular aspects of value are sought by the Postal Service in relation to the purchase. There are two types of performance evaluation factors: proposal-specific, which address aspects of a particular purchase; and supplier-specific, which address aspects central to the supplier being evaluated. The purchase team determines which performance evaluation factors will be used in any one particular purchase. For information regarding the role of price or cost see 2.1.10; information regarding performance evaluations is in 4.2.5.
2. Risk of successful performance should almost always be considered as a performance evaluation factor. It may be included as a separate factor, or as an element of other factors.
3. There may be overlaps between supplier-specific and proposal-specific factors. This usually happens when proposal-specific factors cover areas which are also considered in evaluating a supplier's capability, such as production capacity.
4. Suppliers should be evaluated for prequalification in the same manner as for any other purchase.

### 2.1.9.b Proposal-Specific Factors

1. The appropriateness and proper weighting of proposal-specific factors are essential to effective performance evaluation. The proposal-specific factors should represent the elements of the purchase critical to its success and should be designed to achieve it. Using too many factors should be avoided, as it can unintentionally level evaluation scores (as when high scores for less significant factors offset low scores in more important factors).
2. Proposal-specific factors used in a purchase must be tailored to and consistent with the purchase. Examples of proposal-specific factors include:
  - (a) The supplier's understanding of the requirement.
  - (b) The supplier's management plan (including, where appropriate, its subcontractor plans).
  - (c) The qualifications and experience of the supplier's key personnel.
  - (d) The superiority of the supplier's technical approach.
  - (e) The supplier's offered delivery terms (see 2.2.5).
3. Subfactors may be established under any evaluation factor; for example, under "management plan," there could be subfactors for "organization" and "operational concepts."

### 2.1.9.c *Supplier-Specific Factors*

1. There are two supplier-specific factors: past performance and supplier capability. Unless price will serve as the deciding factor (see 2.1.10e), they must be evaluated during the purchasing process regardless of the purchasing method being used.
2. *Past Performance*
  - (a) A company or individual that has performed well on previous contracts and has shown proven results in using supply-chain management business practices is likely to do the same on similar contracts in the future. Including past performance as an evaluation factor helps ensure quality suppliers.
  - (b) All past performance evaluations must include the following factors:
    - (1) Quality (a record of conformance to contract requirements and standards of good workmanship).
    - (2) Timeliness of performance (adherence to contract schedules, including the administrative aspects of performance).
    - (3) Business relations (a history of being reasonable and cooperative with customers; commitment to customer satisfaction; integrity and ethics).
    - (4) Cost control (a record of forecasting and containing costs on changes and cost-reimbursement contracts).
  - (c) When evaluating past performance, emphasis should be placed on similar contracts with the Postal Service. Overall performance for private and public sector customers should also be reviewed. If a newly established supplier cannot provide past performance information, the past performance of the supplier's key personnel on similar projects may be evaluated.
  - (d) The review of past performance should generally be limited to contracts completed within the last 3 years. However, longer periods may be reviewed when the purchase team deems they are appropriate.
3. *Supplier Capability*
  - (a) Supplier capability is evaluated in order to determine a supplier's ability to perform upon award of a contract. It should be used as a snapshot of the quality and reliability of that performance. The supplier must demonstrate its current capability. For joint ventures, each party must be deemed capable.
  - (b) Certain key areas must be considered when determining a supplier's capability. To be deemed capable, the supplier must:
    - (1) Have, or have the ability to obtain, resources (financial, technical, etc.) adequate to perform the work.
    - (2) Be able to meet the required or proposed delivery schedule, considering all existing commitments, including awards pending.
    - (3) Have a sound record of integrity and business ethics.

- (4) Have a sound quality control program that complies with solicitation requirements.
  - (5) Have the necessary organization, experience, accounting and operational controls, technical skills, and production and property controls.
  - (6) Have, or have the ability to obtain, the necessary production, construction, and technical equipment and facilities.
  - (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations. That a supplier is suspended, debarred or otherwise declared ineligible (see 3.7.1), is a bar to award without regard to the weight assigned to capability as an evaluation factor.
- (c) Certain business information must be obtained in order to determine that a supplier is capable. Sources of this information include:
- (1) The Postal Service list of debarred and suspended suppliers, and GSA's consolidated list of suppliers debarred, suspended or declared ineligible (see 3.7.1).
  - (2) Records and experience data, including the knowledge of other contracting officers, purchasing specialists, and audit personnel.
  - (3) The supplier's proposal information, business profile, financial data, information on production equipment, production data, questionnaire replies and personnel information.
  - (4) Subcontractors, customers, financial institutions, and government agencies who have done business with the supplier.
  - (5) Business and trade associations.
- (d) If the required information and discussions (see 4.2.5.c) do not provide an adequate basis for determining capability, purchase teams may conduct a preaward survey, with the assistance of any needed specialists. The extent of the survey must be consistent with the dollar-value, complexity or sensitivity of the purchase, and may include any of the following:
- (1) Data on hand or from other government or commercial sources.
  - (2) Examination of financial statements and records.
  - (3) On-site assessment of plant, facilities, work force, subcontractors and other resources to be used in contract performance.
- (e) Results of the preaward survey must be in writing and included with the capability determination, and the report included in the contract file. Information obtained for a determination of capability must not be disclosed outside of the Postal Service, unless disclosure is required by the Freedom of Information Act (see 1.6.5).

- (f) Generally, suppliers are responsible for determining the capability of their subcontractors (but see 3.7 regarding debarred, ineligible or suspended firms), and may be required to provide evidence of a subcontractor's capability. Subcontractor capability considerations may affect whether the prime supplier is deemed capable. When necessary, subcontractor capability may be determined using the same criteria used to determine prime supplier capability.

## 2.1.10 **Performance Evaluation and Cost/Price Factors**

- 2.1.10.a *Decision Logic.* Using sound decision logic helps ensure that the contract is awarded to the supplier offering the best value. In establishing this logic, the relative importance of the evaluation factors and their interrelationships in various combinations must be determined.
- 2.1.10.b *Significance of Performance Evaluation Factors and Cost/Price Factors.* Solicitations must indicate the relative significance of the identified performance evaluation factors and the relationship of those factors to the solicitation's cost/price factors. All evaluation factors must be clearly stated in enough detail to give suppliers a reasonable opportunity to understand the aspects of value important to the Postal Service.
- 2.1.10.c *Scoring Systems for Performance Evaluation.* Many forms of scoring systems are suitable for performance evaluation, from adjective ratings to numerical systems, and some are more suitable than others depending on the situation. However, the scoring system should be simple and practical.
- 2.1.10.d *Relationship of Cost or Price Factors to Performance Evaluation Factors.* Cost or price factors (including, when appropriate, cost-related factors such as life-cycle costs and the like) are treated separately from performance evaluation factors. The relationship of cost/price factors should be stated in general terms (for example, that cost/price will be considered to be more important, less important, or as important as the performance evaluation factors, or that cost/price will be the determining factor in choosing among all offers which meet the minimum acceptable performance evaluation factors), and no solicitation should establish a strict mechanical relationship between the cost/price factors and any other factors.
- 2.1.10.e *Price as the Determining Factor.* When there are known sources capable of meeting the postal requirements with products of sufficient quality, or when suppliers have been prequalified, price may be the determining factor. In these cases, however, past performance and supplier capability should be reexamined before awarding the contract.

- 2.1.10.f *Determining Factors in Addition to Price.* When performance evaluation factors other than price are used, the decision logic must compare price differences with the value of other differences to determine which proposal offers the best value. The relative significance of the price and non-price factors should correspond to their value to the Postal Service. For example, when factors must be established to ensure minimal technical acceptability, but technical superiority at additional cost would be of no benefit, the selection should be based on price from among the proposals evaluated as minimally acceptable.

## 2.2 Planning Considerations

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### 2.2.1 Quality Requirements

#### 2.2.1.a Policy

1. The supplier is responsible for providing supplies or services in conformance with the purchase requirements, and for providing reasonable assurance that requirements are met. The Postal Service retains the right to verify conformance through process audits, inspections and testing.
2. The purchase team must determine what quality requirements are needed, and the contracting officer must put them in all solicitations and contracts.

- 2.2.1.b *Quality Assurance Requirements.* In most cases, the supplier performs all necessary inspection and testing for conformance before delivery. The Postal Service may opt to test or inspect supplies or services before delivery.

#### 2.2.1.c Clauses

1. *General.* Paragraph a of Clause 4-1, *General Terms and Conditions*, addresses the basic inspection and acceptance requirements for Postal Service contracts. As appropriate, the purchase team may replace or supplement these requirements by the following inspection and quality assurance clauses which:
  - (a) Require the supplier to maintain a quality system acceptable to the Postal Service and make documentation available.
  - (b) Give the Postal Service the right to test and inspect while work is in process.
  - (c) Require the supplier to keep complete records of inspections and make them available to the Postal Service.
2. *Use*
  - (a) Clause 2-1, *Inspection and Acceptance — Supplies*, may be included in supply contracts.
  - (b) Clause 2-24, *Inspection and Acceptance — Supplies — Nonfixed Price*, may be included in supply contracts that are not fixed price.

- (c) Clause 2-48, *Inspection and Acceptance — Services*, may be included in service contracts, except when the service contract will include Clause 2-49, *Quality Assurance — Services*.
- (d) Clause 2-49, *Quality Assurance — Services*, should be included in service contracts where the supplier maintains a quality system and the service is extensive, complex, or unique.
- (e) Clause 2-2, *Quality Assurance I — Supplies*, or Clause 2-3, *Quality Assurance II - Supplies*, may be included in supply contracts where the supplier maintains a quality system.
  - (1) Clause 2-2 covers the production aspects of a supplier's operation.
  - (2) Clause 2-3 is suitable if the Postal Service needs to supervise the supplier's design and production controls. For example, this clause would be used for automation purchases that require the supplier to develop, design, produce, install, and test the equipment.
- (f) Contracts for Both Supplies and Services. When a contract calls for delivery of both supplies and services, the appropriate Quality Assurance clause for the predominant portion of the contract may be used. Or, where appropriate, contracts encompassing both supplies and services may include separate Quality Assurance clauses for the supplies and services portions of the work.
- (g) Clause 2-23, *Reimbursement — Postal Service Testing*, must be included when Clauses 2-2 or 2-3 are included in the contract.

2.2.1.d *Inspection at Destination*. Inspection performed at destination is generally limited to inspecting the supplies or services.

## 2.2.2 **First-Article Approval**

2.2.2.a *Uses*. The purpose of first-article approval is to validate the capability of a supplier's production process. Approval is the testing and evaluation of the first article for conformance with contract requirements at the initial stage of production. The first article should be manufactured using the contract drawings and specifications, the production drawings developed from them and production tooling. The approved first article then serves as the manufacturing baseline for production units.

### 2.2.2.b *General*

1. First-article approval is particularly appropriate when the first article will serve as a manufacturing standard or is described by a performance specification. In deciding whether first-article approval should be required, the purchase team should consider the increased costs and time of delivery resulting from first-article tests, the risk of foregoing the tests, and the availability of other, less costly, methods of achieving the desired quality.

2. Normally, first-article approval should not be required for:
  - (a) Research or development.
  - (b) Prequalified products.
  - (c) Commercially available products.

#### 2.2.2.c *Solicitation and Contract Requirements*

1. When the supplier is responsible for first-article testing, the solicitation and contract must contain or reference the performance factors or other characteristics that must be met, including the data that must be submitted in the first-article approval test report, and Clause 2-4, *First-Article Approval — Supplier Testing*.
2. When the Postal Service is responsible for first-article testing, the solicitation and contract must contain or reference:
  - (a) The performance factors or other characteristics that must be met;
  - (b) The tests to which the first article will be subjected; and
  - (c) Clause 2-5, *First Article Approval — Postal Service Testing*.

### 2.2.3 **Acceptance**

- 2.2.3.a *Place of Acceptance.* The solicitation and contract must specify where acceptance will take place.
- 2.2.3.b *Delayed Acceptance.* The purchase team may consider using a special testing requirement after delivery and before acceptance (such as a preacceptance test) for purchases of complex equipment (such as mail-handling systems, telecommunications equipment, computers, and building systems). Requirements should be thoroughly described in the solicitation. When a preacceptance test program is specified, the contract must include Clause 2-6, *Delayed Acceptance*.

### 2.2.4 **Warranties**

- 2.2.4.a Generally, it is Postal Service policy to take advantage of commercially available warranties to the extent practical. Paragraph o of Clause 4-1 requires the supplier to warrant that items purchased are merchantable and fit for use. In most cases, this should suffice to meet Postal Service needs. However, purchase teams should also consider the following during purchase planning.
- 2.2.4.b Warranty clauses should be used when it is in the Postal Service's interest to reserve the right to assert claims regarding defective supplies or services after acceptance. A warranty clause gives the Postal Service additional time after acceptance to require correction of deficiencies or defects, reperformance, an equitable adjustment in the contract price, or other remedies. Warranty coverage may begin with delivery, or when a specific event occurs. This coverage may continue for a given number of days or months, or until the occurrence of another specific event. The value of a warranty clause depends on the supplies or services purchased. The clause, its use, terms, and conditions are influenced by many factors and should be tailored to fit the purchase or a specific type of purchase. Warranty clauses



usually increase the purchase price and this should be carefully weighed before deciding to use one (see 2.2.4.c).

- 2.2.4.c *Considerations.* A warranty clause or provision may be used for either individual purchases or classes of purchases. Before making this decision, the purchase team should consider, for example, such matters as the cost of the warranty, potential damage to the Postal Service resulting from defective performance, and the ability of the Postal Service to enforce the warranty.
- 2.2.4.d *Cost.* Offerors usually include a price estimate for warranty work in their proposals. Because the cost of warranty work might not equal the benefits, the purchase team should carefully evaluate the cost of a warranty by requiring alternate price proposals with and without a warranty; comparing the cost of a separate service contract that provides similar protection; or requiring separate pricing for warranties, when feasible.
- 2.2.4.e *Marking and Notices.* When a warranty clause is used, the purchase team should consider requiring the warranted items to be marked or having a warranty notice furnished with the items. This tells people who store, stock, and use the items that they are warranted and encourages them to advise the contracting officer of any defects. The marking or notice need not state the complete warranty; a short statement that a warranty exists, its duration, and whom to notify if an item is defective is usually sufficient. In deciding whether to require marking or a notice, the purchase team should consider the feasibility of marking the items and the added cost of the marking or the notice in relation to its benefits.
- 2.2.4.f *Terms.* The terms of a warranty clause vary with the item or service being purchased, but factors such as the following should be considered:
1. The schedule must state the warranty's duration. It may provide that the supplier will be liable for defects or nonconformance that either exist at the time of delivery or that develop within a specified period or before the occurrence of a specified event.
  2. The schedule must state the specific period during which a notice of defects or nonconformance may be given to the supplier. Generally, the Postal Service will be protected if this "warranty period" starts "at the time of delivery" or "upon acceptance of the service." However, in some cases, it may be necessary to start the warranty period later. For example, if it cannot be determined that supplies conform until they are used, the warranty period should not begin until the items are actually used; or if supplies are purchased in lots inspected by sampling and delivered in increments for storage, the warranty period may begin when the supplies are actually used or from the date of the last delivery.
  3. If the Postal Service specifies the item's design and precise measurements, tolerances, materials, test requirements, or inspection requirements, the supplier's liability for defects or nonconformance is usually limited to those that exist at the time of delivery.

4. If a contract contains performance specifications, and design is of minor importance, a supplier's liability may extend to defects that arise after delivery of the supplies or acceptance. When appropriate, the warranty may be limited to defects or nonconformance existing at the time of delivery or acceptance.
5. The right to return nonconforming supplies for correction or replacement generally satisfies the Postal Service's need under a warranty. However, when correction or replacement will not be possible (for example, perishable items), the clause should provide that:
  - (a) The Postal Service may return the supplies to the supplier, dispose of them in a reasonable manner, or replace them with similar supplies; and
  - (b) The supplier is liable for any costs incurred by the Postal Service.
6. When it is foreseen that, due to the nature of its use, or the cost of return, it would be impracticable to return an item for correction or replacement, the clause should provide that the Postal Service, at the supplier's expense, may correct or require the supplier to correct the article in its place.
7. A warranty may be required only for a particular aspect of an item that may need special protection (for example, components, accessories, parts, or packaging).

2.2.4.g *Clause 2-8, Warranty.* When the terms of Paragraph o of Clause 4-1 are insufficient to protect the interests of the Postal Service, solicitations and contracts should include Clause 2-8, *Warranty*, modified as needed.

## 2.2.5 Delivery or Performance Schedule

- 2.2.5.a *General.* A realistic delivery or performance schedule is an essential element of a contract and must be stated clearly in the solicitation. Schedules that are unreasonably short or difficult to attain may restrict competition and result in higher contract prices.
- 2.2.5.b *Use.* Except when clearly unnecessary, solicitations must inform suppliers of the basis of which their proposals will be evaluated in terms of time of delivery or performance. For example, delivery schedules may be identified as "required" or "desired." If the delivery schedule is expressed as "desired," the solicitation's performance evaluation factors must indicate the extent to which proposals offering more or less favorable delivery terms will be considered and the relationship of that consideration to the other performance evaluation factors.

### 2.2.5.c *Considerations*

1. *Supplies and Services.* When developing delivery or performance schedules for supplies and services, purchase teams must consider applicable matters such as urgency of need, industry practices, market conditions, administrative time needed for evaluating offers and awarding contracts, and the sufficient time for suppliers to comply with conditions affecting performance, such as the furnishing of Postal Service property.
2. *Construction.* When scheduling the time for completion of a construction contract, purchase teams must consider applicable matters such as the nature and complexity of the project, the construction seasons involved, the required completion date, availability of materials and equipment, and the supplier's capacity to perform.
3. *Separable Items and Dates.* Separable completion dates may be established for separable items of work in any contract. When multiple completion dates are used, requests for extension of time must be evaluated for each item, and the affected completion dates modified as appropriate.

### 2.2.5.d *Delivery Terms*

1. *Supplies and Services.* Contract delivery or performance schedules may be expressed in terms of:
  - (a) Specific calendar dates;
  - (b) Specific periods from the date of the purchase (i.e., date of award or acceptance by the Postal Service, or date shown on the contractual documentation as the effective date of the purchase);
  - (c) Specified periods from the date of receipt by the supplier of the notice of award or acceptance by the Postal Service (including notice by receipt of contract document executed by the Postal Service); or
  - (d) Specific time for delivery after receipt by the supplier of each individual order issued under the contract, as in indefinite delivery type contracts.
2. *Notice*
  - (a) The time specified for contract performance should not be curtailed to the prejudice of the supplier because of delay in the Postal Service's giving notice of award.
  - (b) If the delivery schedule is based on the date of the contract, the contracting officer must mail or otherwise furnish the supplier the contract, notice of award, acceptance of proposal, or other contract document not later than the date of the contract.
  - (c) If the delivery schedule is based on the date the supplier receives the notice of award, or if the delivery schedule is expressed in terms of specific calendar dates on the assumption that the notice of award will be received by a specific date, the contracting officer must send the contract, notice of award, acceptance of proposal, or other contract document by certified mail, return receipt

requested, or by any other method that will provide evidence of the date of receipt. In the event that the notice of award is not timely received by the specified date, the delivery schedule must provide that the schedule will be extended by the number of days after the date that the supplier actually received notice of award.

#### 2.2.5.e Provisions

##### 1. *Supplies and Services*

- (a) *General.* Provision 2-2, *Time of Delivery*, and its alternatives may be used as provided or adapted as necessary for solicitations and contracts other than those for construction and architect/engineering services. Because the actual delivery schedule is set out in Part 1 of the contract and not in the provision, particular care must be taken that the terms of the delivery provision are consistent with the delivery schedule.
- (b) *Required or Desired Delivery.* Paragraph (a) of Provision 2-2 assumes that the solicitation contains a schedule by which delivery is required and that no additional consideration will be given for accelerated delivery. Alternate paragraph (a)(1) may be substituted for paragraph (a) if the schedule includes a desired delivery schedule as well as a required schedule, and if suppliers will not be penalized for their inability to meet the required delivery date.
- (c) *Alternative Calculations of Performance Time*
  - (1) Paragraph (b) of Provision 2-2 assumes that the delivery schedule will be based on the date of contract award. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on assumed date of award, substitute alternate paragraph (b)(1) for paragraph (b).
  - (2) If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the supplier will receive notice of award, substitute alternate paragraph (b)(2) for paragraph (b).
  - (3) If the delivery schedule will be based on the actual date the supplier receives a written notice of award, delete paragraph (b).

##### 2. *Construction.* See 4.3.3.a.9 and Clause B-7.

#### 2.2.5.f *F.O.B. Points*

- 1. Delivery instructions for supplies must specify an f.o.b. (free on board) point, which is determined on the basis of overall costs, including rates, delivery terms, redirection in transit costs, and other factors. Generally, f.o.b. origin will produce lower costs for large scale and consolidated purchases, or when the Postal Service may benefit from determining and managing the transportation provider. Assistance in determining transportation costs, claims resolution, and management support is available from materials management specialists at District and Area offices, and Materials Distribution at Headquarters.

2. F.o.b. destination means delivery, free of expense to the Postal Service, to a destination specified in the purchase document. Title to the supplies passes to the Postal Service when they arrive at the stated destination. The supplier pays the carrier and assumes the risk for loss or damage until delivery to the specified destination.
  3. F.o.b. origin means that the Postal Service makes the arrangements for the pickup, transportation and delivery to the required destination. Title passes to the Postal Service when delivery is made to the carrier. The supplier's risk is limited to loss or damage caused by improper marking or packing of the goods, while the transportation carrier is accountable to the Postal Service for loss or damage to the shipment. This payment for transportation services is separate from the price of the purchased supplies.
- 2.2.5.g *Acceptance.* When goods are being accepted at destination, delivery terms in the purchase document must specify f.o.b. destination.
- 2.2.5.h *Using Mail*
1. Unless delivery will be made by the supplier's own personnel or equipment, delivery of mailable items (according to the *Domestic Mail Manual*) to postal facilities must be made by the Postal Service. This requirement may be waived by the contracting officer if in the best interest of the Postal Service.
  2. Large mailings that exceed 500 pieces must be coordinated with the area distribution network office. This must be done by the contracting officer or contracting officer's representative at least 30 days before shipment to minimize problems during receipt and processing.
  3. When the weight of a consolidated mailing to a single destination exceeds 300 pounds, the contracting officer should consult a material management specialist for cost analysis. If freight deliveries will result in lower costs, the material management specialist will arrange for a carrier.
- 2.2.5.i *Packing and Packaging.* All supplies require some form of protection to ensure that they are useable upon receipt. Generally, suppliers are expected to use packing and packaging practices standard for the supplies being purchased. However, depending on the nature of the purchase, purchase teams may require specialized packing and packaging.
- 2.2.5.j *Clause.* Contracts specifying an f.o.b. point must include Clause 2-9, *Definition of Delivery Terms and Supplier's Responsibilities.*

## 2.2.6 **Liquidated Damages**

- 2.2.6.a *General.* Liquidated damages are a contractual remedy the Postal Service may use when there are delays in delivery or performance. Liquidated damages are based on an estimate of daily losses that would result directly from a delay in delivery or performance. It is important to remember that providing for liquidated damages usually increases the contract price; therefore, their use should be carefully considered.

**2.2.6.b Use**

1. Generally, liquidated damages are included in all construction contracts, and may be included in other contracts when:
  - (a) The Postal Service may suffer disruption of mail service or substantial financial loss due to a delay in delivery or performance;
  - (b) Delivery or performance is so critical that the probable increase in contract price is warranted; and
  - (c) The amount of actual damages would be difficult or impossible to prove.
2. Liquidated damages may not be used as a penalty for failure to deliver or perform on time.

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

1. The cost of substitute facilities.
2. The cost of lost workhours/productivity.
3. Rental of buildings or equipment.
4. The cost of additional inspection.

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

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

**2.2.7 Postal Service Property**

**2.2.7.a Policy.** The Postal Service may provide materials or other property to suppliers when it will result in significant economies, standardization, expedited production, or when it is otherwise in the Postal Service's interest.

**2.2.7.b Solicitations.** The property to be furnished must be specified in the solicitation in sufficient detail (including requisitioning procedures) to enable offerors to evaluate it accurately.

### 2.2.7.c *Special Tooling and Test Equipment*

1. The purchase team may decide to provide Postal Service special tooling and test equipment to suppliers for use in contract work, if doing so will not disrupt programs of equal or higher priority, or it is in the Postal Service's best interests.
2. Contracts authorizing the furnishing of special tooling or test equipment must contain:
  - (a) A complete description of the tooling or equipment;
  - (b) The terms and conditions of shipment; and
  - (c) The terms covering the cost of adaptation and installation.
3. In competitive purchases when Postal Service special tooling or test equipment is not available, suppliers ordinarily provide and retain title to special tooling and test equipment required for contract performance. Competition usually results in fair charges for amortizing the costs of such tooling and equipment. In noncompetitive situations, the Postal Service should obtain the special tooling or test equipment, or the rights to it, because it may facilitate future competition.
4. When special tooling or equipment is provided by the supplier, the purchase team should decide whether to purchase the tooling or equipment, or rights to it, by considering:
  - (a) Future needs for the items (including in-house use);
  - (b) The estimated residual value of the items;
  - (c) The added administrative burden of reporting, record-keeping, preparation, handling, transportation, and storage;
  - (d) The feasibility and probable cost of making the items available to other offerors in future purchases;
  - (e) The amount, if any, offered by the supplier for the right to keep the items; and
  - (f) The effect on future competition and prices.
5. When the Postal Service obtains identifiable special tooling or test equipment under a contract, the solicitation must specify each item or category as a contract line item. A category of items costing less than \$1,000 may be grouped as a single line item.
6. When there is a possibility of future purchases of the same item and the purchase team has decided not to obtain rights or title, the solicitation must indicate current estimates of the future requirements, in the interest of reducing amortization charges. Offerors must be cautioned that these are only estimates and not a guarantee to purchase future quantities.

#### 2.2.7.d Clauses

1. When the Postal Service will furnish property, include one of the following clauses in the contract:
  - (a) Clause 2-11, *Postal Service Property — Fixed-Price*, when a fixed-price contract will be awarded and the total value of Postal Service property is \$50,000 or more. If the contract provides for reimbursement of costs for certain materials, use the clause with its alternate paragraph c.
  - (b) Clause 2-12, *Postal Service Property — Short Form*, when a fixed-price, time-and-materials, or labor-hour contract will be awarded and the total value of Postal Service property is less than \$50,000.
  - (c) Clause 2-13, *Postal Service Property — Non-Fixed-Price*, when a cost-reimbursement, time-and-materials, or labor-hour contract will be awarded with Postal Service property valued at \$50,000 or more. If the contract is for basic or applied research at a nonprofit institution of higher education or nonprofit organization whose primary purpose is to conduct scientific research, use the clause with its alternate paragraph c.
2. When Postal Service property will be furnished “as is,” the contract must also include Clause 2-14, *Postal Service Property Furnished “As Is.”*
3. Clause 2-15, *Special Tooling*, or Clause 2-16, *Special Test Equipment*, must be included in solicitations for fixed-price contracts when the rights or title to special tooling or test equipment will be required but cannot be identified as a specific line item. Rights or title to special tooling or test equipment in a cost-reimbursement contract are obtained using Clause 2-13, *Postal Service Property — Non-Fixed-Price*.
4. When a contract is for repair of Postal Service property, and the property is valued under \$10,000, no Postal Service property clause is required.

#### 2.2.8 Options

##### 2.2.8.a Use

1. Option clauses may be included in contracts when increased requirements are foreseeable during the contract period, or when continuing performance past the original period is in the best interest of the Postal Service. Option clauses may require that additional quantities be priced the same as the basic quantities or at a different price. The clauses may also allow for unpriced options at the time of award. The price for these options is subject to discussions when the option is exercised. Priced options may require suppliers to guarantee prices for definite time periods, with no guarantee that the option will be exercised. Their improper use may result in unfair prices to the Postal Service or an unfair financial burden on the supplier. When additional requirements are foreseeable and subsequent competition would be impracticable because of factors such as production lead time and delivery requirements, the use of priced options may be preferable to negotiating a price later when the supplier is the only practicable source.



2. Contracts containing priced options that exceed 5 years must include an economic price adjustment clause (see 2.4.3.c and 2.4.3.d).
3. Option provisions and clauses may not be included in contracts when:
  - (a) The supplier would be required to incur undue risks (as when the price or availability of necessary materials or labor is not reasonably foreseeable);
  - (b) An indefinite quantity or requirements contract is appropriate, except that options for continuing performance may be used;
  - (c) Market prices for the supplies or services involved are likely to change substantially; or
  - (d) The option quantities represent known firm requirements for which funds have been budgeted and approved, unless (1) the basic quantity is a learning or testing quantity and there is some uncertainty as to supplier or equipment performance, and (2) realistic competition for the option quantity is impracticable once the initial contract is awarded.

#### 2.2.8.b *Evaluating Options*

1. Options need not be evaluated to award a contract when:
  - (a) The option would have no effect on the outcome of the evaluation (when the option quantity must be offered at the same price as the basic quantity, the option is for a time extension only, or the option is unpriced); or
  - (b) When there is a reasonable certainty that funds will not be available to exercise the option.
2. When options will not be evaluated, the contract file must contain the rationale for the decision. When the purchase team decides before issuing the solicitation that options will not be evaluated, the solicitation must include Provision 2-4, *Evaluation Exclusive of Options*, or Provision 2-5, *Evaluation Exclusive of Unpriced Options*. In all other cases, purchase teams must follow the instructions in paragraph b of Provision 4-2, *Evaluation*, or include Provision 2-3, *Evaluation of Options*, in the solicitation.

2.2.8.c *Setting Limits*. The contract must limit the additional quantities of supplies or services that may be purchased or the duration of the period for which performance of the contract may be extended under the option, and must fix the period within which the option may be exercised. This period should be set to give the supplier adequate notice for performance under the option. In fixing the period, consider the lead time needed to ensure continuous production and the time required for additional funding and other approvals. The period for exercising the option should always be kept to a minimum. When a solicitation contains an option for additional quantities of supplies at prices no higher than those for the initial quantities, care should be taken to ensure that the option quantities are reasonable and do not cause the supplier financial hardship. The quantities or the period under option and the period during which the option may be exercised must be justified and documented in the contract file by the contracting officer.

- 2.2.8.d *Prices.* The solicitation may allow varying prices to be offered for the option quantities depending on the quantities actually ordered and the dates when ordered. If so, the solicitation must specify the price at which the options will be evaluated (for example, highest option price offered or option price for specified quantities or dates).
- 2.2.8.e *Expressing Options in a Contract.* An option for increased quantities may be expressed as (1) a percentage of specific line items; (2) a number of additional units of specific line items; or (3) additional numbered line items (identified as the option quantity) with the same name as the items initially included in the contract. An option for increased services (including construction) may similarly be expressed in terms of (1) percentages; (2) increases in specific line items; or (3) additional numbered line items expressed in the units of work initially used in the contract (for example, labor hours, square feet, or pounds or tons handled). When exercising the option would result in extending the duration of the contract, the option may be expressed in terms of an extended completion date or an additional time period.
- 2.2.8.f *Clauses.* When a priced option will be used, purchase teams must follow the instructions in paragraph b of Provision 4-2, or the solicitation must include either Provision 2-3, *Evaluation of Options*, or Provision 2-4, *Evaluation Exclusive of Options*. When an unpriced option will be used, the solicitation must include Provision 2-5, *Evaluation Exclusive of Unpriced Options*. In addition, the contract must include one of the following clauses:
1. Clause 2-17, *Option for Increased Quantity*, must be used when the contract gives the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item.
  2. Clause 2-18, *Option Item*, must be used when the contract identifies the option quantity as a separately priced line item having the same name as a corresponding basic-contract line item.
  3. Clause 2-19, *Option to Extend (Service Contract)*, must be used when it is intended to extend the services to be performed and written notice of intent to extend the contract is not required (see 2.2.8.f.4).
  4. Clause 2-20, *Option to Renew (With Preliminary Notice)*, must be used to provide for continuing performance of the contract beyond its original term and it is necessary to include in the contract a requirement that the Postal Service will give the supplier a preliminary written notice of its intent to extend the contract.
  5. Clause 2-25, *Unpriced Options*, must be used when the contract provides for unpriced options.
  6. Care must be exercised to ensure that the schedule of any contract which contains one of the above option clauses includes the information relating to the option which the clause requires, i.e., notice of intent to renew.
- 2.2.8.g *Exercising Options.* See 6.5.1.f.

## 2.2.9 Multiyear Contracts

- 2.2.9.a *General.* The purchase team should analyze the marketplace and recurring needs to determine whether there are benefits to contracting beyond 1 year. Longer term contracts tend to benefit the Postal Service by developing and sustaining supplier relationships and reducing administrative effort and cost. In addition, savings may be obtained if the supplier can reduce overall prices by spreading startup costs over more than 1 year or making similar commitments with major subcontractors. There is no limit on the term of a multiyear contract, except that it must reasonably reflect foreseeable requirements.
- 2.2.9.b *Solicitations.* When the purchase team determines that multiyear savings are possible and recurring needs are reasonably certain, the solicitation should include both a single and a multiyear quantity to see which price is most advantageous. However, award must be made to the offeror proposing the best value.
- 2.2.9.c *Types.* See 2.4.

## 2.2.10 Value Engineering

- 2.2.10.a *General.* Value engineering is a method of encouraging suppliers to independently develop and propose changes to improve an end item, the way it is produced, or the way a contract is performed. The change must reduce the contract's cost and not impair the essential characteristics or functions of the product or service. Savings are shared by both parties, and the supplier is paid allowable development and implementation costs.
- 2.2.10.b *Definition.* A value-engineering change proposal (VECP) is a proposal that:
1. Requires a change to a current contract;
  2. Results in savings to the contract; and
  3. Does not involve a change in:
    - (a) Deliverable end items only;
    - (b) Test quantities due solely to the results of previous testing under the contract; or
    - (c) Contract type only.
- 2.2.10.c *Sharing Savings.* If the Postal Service accepts a value-engineering change proposal, the supplier shares in the contract savings based on a negotiated agreement contained in Clause 2-22, *Value Engineering Incentive*. The savings are calculated by subtracting from the price of the current contract (1) the estimated cost of performing the contract with the change, (2) the Postal Service costs to develop and implement the proposal, and (3) the supplier's allowable development and implementation costs. "Postal Service costs" include the cost of testing, operations, maintenance, logistics support, and furnished property. They do not include the normal administrative costs of administering the change. The supplier's "development and implementation costs" include the costs of developing, testing, preparing, and submitting the proposal. They include the supplier's cost of making changes to the contract resulting from the Postal Service's acceptance of the proposal. If the current contract included options, option prices are adjusted according to the calculation. Profit is excluded when calculating contract savings.

#### 2.2.10.d *Noncompetitive Purchases*

1. The contracting officer may negotiate a noncompetitive contract or contract modification for an additional quantity incorporating a change proposal when:
  - (a) An otherwise acceptable value-engineering change proposal is received too late during performance to provide a significant benefit under the current contract; or
  - (b) If additional quantities are required that are not provided for under the contract.
2. When a proposer who does not have a current contract submits an unsolicited proposal in the form of a value-engineering change proposal and it meets the requirements of Clause 2-22, the purchase team may decide to have the contracting officer negotiate a noncompetitive contract incorporating the value-engineering change proposal.
3. Sharing contract savings is done in accordance with 2.2.10.c.

#### 2.2.10.e *Evaluation*

1. Generally the purchase team will evaluate a value-engineering change proposal and either accept it or reject it, in whole or in part, within 45 days of its submission to the contracting officer. To expedite the evaluation, suppliers may give oral presentations to the purchase team (or an evaluation team created by the purchase team).
2. If evaluating the proposal will take more than 45 days, the contracting officer must notify the proposer of the expected decision date.
3. If a proposal is rejected, the contracting officer must notify the proposer and explain the rejection.

2.2.10.f *Withdrawal.* The supplier may withdraw all or part of a value-engineering change proposal any time before it is accepted by the Postal Service.

#### 2.2.10.g *Acceptance*

1. Acceptance of all or part of a value-engineering change proposal and determination of the savings requires the agreement of both parties. Acceptance is accomplished by a supplemental agreement to the contract. If agreement on price is reserved for a later supplemental agreement, but agreement cannot be reached, the matter must be treated as a dispute under Clause B-9, *Claims and Disputes*.
2. The supplier must perform according to the existing contract until a value-engineering change proposal is accepted.
3. The contracting officer's decision to accept or reject all or part of a value-engineering change proposal is final and not subject to Clause B-9, or to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

2.2.10.h *Subcontracts.* If the purchase team foresees a potential cost reduction through value engineering under subcontracts, additional paragraph j should be added to Clause 2-22.

- 2.2.10.i *Clause.* If there is a potential for savings through value engineering, Clause 2-22 should be included in firm fixed-price contracts of \$100,000 or more, at any time during the term of the contract. However, the clause may not be used in:
1. Fixed-price incentive contracts (see 2.4.3.b).
  2. Research and development contracts.
  3. Contracts with nonprofit or educational organizations.
  4. Contracts for professional or consultant services (see 4.5.3 and 4.5.4).
  5. Contracts for product or component improvement.
  6. Contracts for commercially available goods and services.

## 2.3 Specifications and Statements of Work

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### 2.3.1 Use

#### 2.3.1.a Specifications

1. Specifications are generally used when purchasing an end item rather than a service. Specifications must state the Postal Service's needs completely, considering the nature of the commodities being purchased.
2. Specifications may be stated in terms of:
  - (a) Function, so that a variety of commodities may be considered;
  - (b) Performance, including the range of acceptable characteristics or the minimum acceptable standards; or
  - (c) Design requirements, providing exact dimensions, materials or characteristics.
3. In order to enhance competition and invite innovation, specifications and statements of work should be written in as non-restrictive a manner as possible.

#### 2.3.1.b Statements of Work

1. Statements of work (SOWs) are generally used when purchasing a service rather than an end product. SOWs may include specifications or product descriptions. SOWs must describe the work as precisely as practicable and in enough detail to allow a best value decision.
2. After award, SOWs are the standard for measuring performance, and are used by both parties to determine rights and obligations under the contract.

#### 2.3.1.c Product Descriptions

1. Whenever standard or modified commercial products will meet Postal Service requirements, product descriptions must be used instead of specifications.

2. Product descriptions should include:
  - (a) A common generic identification of the item.
  - (b) Known acceptable brand-name products, identified by model or catalog number, and the commercial catalogs in which they appear.
  - (c) The name and address of the manufacturer or distributor of each brand-name product referenced.
  - (d) The application or use of the product.
  - (e) A description of any required modification.
3. If at least three acceptable brand names are specified, the solicitation may provide that only those specified will be considered.
4. Except for construction specifications, if fewer than three acceptable brand name products are specified, or if proposals for equivalent products other than those specified will be considered:
  - (a) The product description must include a description of the item's essential characteristics, such as material, size or capacity, the equipment with which the item will be used, and any restrictive operating environment conditions.
  - (b) The brand name in the product description must be followed by the words "or equal."
  - (c) Space must be provided for suppliers to identify the manufacturer's brand names and models or catalog numbers proposed (see A.2.3.b.6).
  - (d) The solicitation must include Provision 2-7, *Brand Name or Equal*.

## 2.3.2 Technical Data Packages

- 2.3.2.a *General.* A Technical Data Package (TDP) is a complete set of documentation which may include specifications, engineering drawings, or associated lists required to build and support an end item. Every TDP is under the control of a design-responsible organization (such as Engineering, Research and Development, or the Mail Equipment Shops) which maintains the integrity of the end-item's design.
- 2.3.2.b *Responsibilities.* When a purchase will be made using a TDP, the purchase team must use the most current version. Any modifications to a TDP before or during solicitation or after award must, before implementation, be coordinated with and approved by the design-responsible organization as well as with the requesting organization.
- 2.3.2.c *Deliverables.* When a TDP will be purchased, the contracting officer must ensure that the design-responsible organization reviews all supplier submittals to ensure that the final product is in accordance with Postal Service standards and the terms and conditions contained in the contract. Once the purchase team determines TDP requirements, they should not be negotiated without the purchase team's concurrence.

### 2.3.3 **Component Parts**

When component parts in a deliverable contract line item are described in the specifications by a brand or manufacturer's name, the contract must include Clause 2-21, *Component Parts*.

### 2.3.4 **Construction Specifications**

The supplier may seek approval to substitute equal products or processes for those specified by brand name (see Clause B-63, *Materials and Workmanship*). Accordingly, the solicitation should identify any products or processes that may not be substituted after award.

## 2.4 **Types of Contracts**

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### 2.4.1 **General**

- 2.4.1.a *Planning.* Selecting the most effective contract type for a purchase is an important element of purchase planning and must be considered together with the issues of price, risk, uncertainty, and responsibility for costs.
- 2.4.1.b *Risk and Responsibility.* The type of contract used should reflect the cost risk and responsibility assumed by the supplier. Full cost responsibility is assumed under a firm fixed-price contract, while there is minimal cost responsibility under a cost-reimbursement contract. The profit or fee arrangement should also reflect the cost responsibility assumed.
- 2.4.1.c *Flexibility.* Any type of contract described in this section may be used, as appropriate to the purchase. The contract types discussed in this section are those used most frequently for Postal Service purchasing. The contracting officer, working with the purchase team, may decide to use a type of contract not described in this section, subject to the approval of the manager of Headquarters Purchasing, Field Customer Support, Major Facilities Purchasing, or National Mail Transportation Purchasing. This decision must be based on the particular requirements of the purchase or the practices of a particular industry, trade, or profession.

### 2.4.2 **Selecting a Contract Type**

- 2.4.2.a *Responsibilities.* The contracting officer, working with the purchase team, is responsible for selecting and negotiating the most advantageous contract type appropriate to the purchase.
- 2.4.2.b *Provision and Clause.* Although contract type may be a matter for negotiation, the solicitation should specify a particular type of contract in order to provide a basis for comparing proposals (see paragraph f of Provision 4-1). If appropriate, the solicitation may allow suppliers to provide alternate proposals containing a different contract type. Clause B-3, *Contract Type*, must be included in all contracts awarded without issuing a written solicitation. A cost plus a percentage-of-cost contract may not be used.

### 2.4.2.c Considerations

1. A firm fixed-price contract makes the supplier fully responsible for cost control and minimizes the need to monitor performance. But if no reasonable basis for firm pricing exists, requiring a firm fixed-price contract may reduce competition and lead to higher prices (suppliers add allowances for contingencies to protect them from risks). Whenever the probable cost of contract performance cannot be realistically estimated, a firm fixed-price contract should not be used.
2. When a firm fixed-price contract cannot be used, costs can still be controlled by using incentives. Efficient performance can be promoted by relating the profit or fee to effective cost management by the supplier.
3. Cost-reimbursement contracts are suitable when uncertainties do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.
4. Factors to be considered in deciding contract type include the:
  - (a) Realism of the cost estimate.
  - (b) Extent of competition.
  - (c) Risks and uncertainties.
  - (d) Complexity of the requirement.
  - (e) Adequacy and firmness of specifications.
  - (f) Likelihood of changes.
  - (g) Past experience (pricing and production).
  - (h) Extent of subcontracting.
  - (i) Adequacy of the supplier's estimating and accounting system.
  - (j) Urgency of the requirement.
  - (k) Volatility of cost factors.

## 2.4.3 Fixed-Price Contracts

### 2.4.3.a Firm Fixed-Price Contracts

1. *Description.* A firm fixed-price contract establishes a price that will not be adjusted based on performance costs. It places full responsibility on the supplier for all costs and the resulting profit and loss, maximizing the incentive to control costs and perform effectively. It is the least burdensome type of contract to administer (if requirements are stable; but if frequent changes are likely, administration will be difficult).
2. *Use.* A firm fixed-price contract is suitable for purchasing commercially available products, or services with reasonably definitive specifications or statements of work, and whenever fair and reasonable prices can be established at the outset, such as when:
  - (a) There is adequate price competition (see 5.1.2.b).
  - (b) Price analysis (see 5.1.2.a) indicates price reasonableness.
  - (c) In noncompetitive situations, cost or pricing data are adequate to permit realistic estimates of the costs of performance.



- (d) The cost impact of performance uncertainties can be estimated closely enough to reach agreement on a reasonable price that represents the risks involved.

#### 2.4.3.b *Fixed-Price Incentive Contract*

1. *Description.* A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final price by applying a formula based on the relationship between the total final negotiated cost and total target cost. The contract specifies a target cost, a target profit, a target price, a price ceiling, and a profit-adjustment formula for each item subject to incentive price revision. The price ceiling is the maximum that may be paid to the supplier, except for adjustments specifically provided for under contract clauses. When performance is completed, the final cost is negotiated and the final price is established by applying the formula. When the final cost is less than the target cost, applying the formula results in a profit greater than the target profit; when the final cost is more than the target cost, applying the formula results in a profit less than the target profit. If the final negotiated cost exceeds the ceiling, the supplier absorbs the difference. Because the profit varies inversely with the cost, this type of contract provides a positive, calculable profit incentive for the supplier to control costs. Billing prices are established as an interim basis for payment. The billing prices may be adjusted if it becomes apparent that the final negotiated cost will be substantially different from the target cost.
2. *Use.* A fixed-price incentive contract is appropriate when the parties can establish an initial target cost, target profit, and profit-adjustment formula that will provide a fair and reasonable incentive, and a ceiling that provides for the supplier to assume an appropriate share of the risk. When the supplier assumes a considerable or major share of cost responsibility under the adjustment formula, the target profit should reflect that responsibility. For the profit adjustment formula, the supplier's share will usually be in the range of 20-40 percent. The price ceiling is usually established by calculating an amount in the range of 15-30 percent of target cost and adding that result to the target cost.
3. *Limitations.* Fixed-price incentive contracts should be used when:
  - (a) The Postal Service wishes to incentivize performance.
  - (b) A firm fixed-price contract is not suitable.
  - (c) There is an adequate basis for establishing reasonable firm targets at the time of initial contract negotiations.
  - (d) The supplier's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision.

#### 2.4.3.c *Fixed-Price Contract with Economic Price Adjustment*

1. *Description.* A fixed-price contract with economic price adjustment provides for up and down revision of the price when material prices or labor rates that are defined in the contract are subject to fluctuation. This type of contract establishes a basis for measuring fluctuations so that price adjustments are limited to contingencies beyond the

supplier's control and reflect actual market fluctuations. Upward adjustments are limited by establishing a reasonable ceiling, and provisions are included for downward adjustments when prices or rates fall below base levels established in the contract. In establishing the base levels, the contracting officer must ensure that the base does not allow for any contingencies that are also included in the adjustment requested by the supplier under the economic price adjustment clause. Contingency allowances for inflation must be eliminated from the base costs when pricing the contract. There are two types of economic price adjustments:

- (a) *Adjustments Based on Actual Costs of Labor or Materials.* These price adjustments are based on actual increases or decreases in the costs of specified labor or materials during performance.
- (b) *Adjustments Based on Cost Indexes of Labor or Materials.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes specifically identified in the contract.

## 2. Use

- (a) *General.* Fixed-price with economic adjustment contracts are appropriate when there is serious doubt about the stability of market or labor conditions during an extended period of performance, and when contingencies that would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately in the contract. Their usefulness is limited by the difficulties of administering them.
- (b) *Adjustments Based on Actual Costs of Labor or Material*
  - (1) A contract may provide for adjustments based on actual costs of labor or material when:
    - (i) The contract is for longer than 6 months;
    - (ii) There is no major element of design, engineering, or developmental work involved;
    - (iii) One or more identifiable labor or material costs are subject to change; and
    - (iv) Adjustments will be limited to contingencies beyond the supplier's control.
  - (2) The schedule must describe, in detail, the types of labor and material subject to adjustment, the labor rates (including fringe benefits) and unit prices of materials that may be adjusted, and the quantities of labor and specified materials allocated to each unit of supplies to be delivered. The ceiling on upward adjustments should not exceed the original unit price by more than 10 percent annually for the total of increases to each unit-price adjusted. The supplier must notify the contracting officer within a stated number of days after a change in rates of pay or unit prices for specified materials and propose an adjustment. The contracting officer will negotiate the price adjustment and its

effective date. In negotiating adjustments under the clause, the contracting officer must consider work in progress and materials-on-hand at the time of changes in labor rates or materials prices, since these may have a significant impact on equitable price adjustments. Negotiated adjustments must not include any indirect costs, except fringe benefits included in the labor rates subject to adjustment.

(c) *Adjustments Based on Cost Indexes of Labor or Material*

- (1) A contract may provide for adjustments based on cost indexes of labor or material when:
  - (i) The contract involves an extended period of performance and significant costs will be incurred beyond the first year;
  - (ii) The amount subject to adjustment is substantial; and
  - (iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Postal Service and the supplier without providing for adjustments.
- (2) The contracting officer must develop a clause tailored to the purchase, with the assistance of counsel.

2.4.3.d *Clauses — Supplies and Services Contracts*

1. Paragraph I of Clause 4-1, *General Terms and Conditions*, discusses standard Postal Service payment terms. When necessary, purchase teams may replace paragraph I with Clause 2-26, *Payment — Fixed-Price*. All fixed-price incentive contracts must also include Clause 2-27, *Incentive Price Revision*, filled in.
2. Fixed-price contracts providing for economic price adjustments based on actual costs of labor or materials (see 2.4.3.c.2(b)) must include Clause 2-28, *Economic Price Adjustment — Labor and Materials*.
3. Fixed-price contracts providing for economic price adjustments based on cost indexes of labor or materials (see 2.4.3.c.2(c)) must include Clause 2-29, *Economic Price Adjustment (Index Method)*, and an adjustment formula.

2.4.4 **Cost-Reimbursement Contracts**

- 2.4.4.a *General*. Cost-reimbursement contracts provide for paying allowable, incurred costs. They establish an estimate of total cost so that funds may be committed and establish a ceiling that the supplier may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are suitable when uncertainties about contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

- 2.4.4.b *Limitations.* A cost-reimbursement contract may be used only when:
1. The supplier's accounting system can determine the costs that apply to the contract; and
  2. Postal Service monitoring during performance will assure that efficient methods and effective cost controls are used.
- 2.4.4.c *Cost Contract.* A cost contract is a cost-reimbursement contract under which the supplier receives no fee. A cost contract may be appropriate for research and development, particularly with nonprofit educational institutions or other nonprofit organizations.
- 2.4.4.d *Cost-Sharing Contract.* A cost-sharing contract is a cost-reimbursement contract under which the supplier receives no fee and is reimbursed only a portion of its allowable costs as stated in the contract. It is suitable when there is a high probability that the supplier will receive substantial commercial benefits as a result of performance.
- 2.4.4.e *Cost Plus Incentive-Fee Contract*
1. *Description.* A cost plus incentive-fee contract is a cost-reimbursement contract that provides for the fee initially negotiated to be adjusted later by a formula based on the relationship of total allowable costs to target cost. This type of contract specifies a target cost, a target fee, minimum and maximum fees, and a fee-adjustment formula. After performance, the fee is determined by the formula. The formula provides, within limits, for increases in the fee above the target when total allowable costs are less than target cost, and decreases in the fee below the target when total allowable costs exceed the target cost. This increase or decrease provides an incentive for the supplier to manage the contract effectively. When total allowable costs are greater than or less than the range of costs in the fee-adjustment formula, the supplier is paid total allowable costs, plus the minimum or maximum fee.
  2. *Use.* A cost plus incentive-fee contract is suitable when a cost-reimbursement contract is appropriate and a target cost and fee-adjustment formula can be negotiated which will motivate the supplier to manage the contract effectively. The fee-adjustment formula should provide an incentive that covers the full range of reasonably foreseeable variations from the target cost. The supplier's share of the difference between target cost and actual cost will usually be in the range of 15-30 percent. If a high maximum fee is negotiated, the contract must provide for a low minimum fee — or even a zero or negative fee. The maximum fee will usually not exceed 10 percent of the contract's target cost, or 15 percent for research and development.
- 2.4.4.f *Cost Plus Fixed-Fee Contract*
1. *Description.* A cost plus fixed-fee contract is a cost-reimbursement contract that provides for paying the supplier a negotiated, fixed fee. The fixed fee does not vary with actual costs, but may be adjusted as a result of changes to the contract. This type of contract type gives the supplier only a minimal incentive to control costs.

2. *Use.* A cost plus fixed-fee contract is suitable when a cost-reimbursement contract is necessary but the uncertainties and risks for the supplier are too great to permit negotiating a reasonable cost plus incentive-fee arrangement.
3. *Completion or Level-of-Effort Form.* There are two forms of cost plus fixed-fee contracts:
  - (a) *Types*
    - (1) *Completion Form.* The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form generally requires the supplier to complete and deliver the end product within the estimated cost, if possible, as a condition for paying the entire fixed fee. If the work cannot be completed within the estimated cost, the Postal Service may require more effort without increasing the fee, but the estimated cost must be increased.
    - (2) *Level-of-Effort Form.* The level-of-effort form describes the scope of work in general terms and requires the supplier to devote a specified level of effort for a stated period. Under this form, if performance is satisfactory, the fixed fee is payable when the period ends and the supplier certifies that the level of effort specified in the contract has been expended. Renewal for further periods of performance requires new cost and fee arrangements, and is treated as a new purchase.
  - (b) *Preference.* Because of the greater obligation assumed by the supplier, the completion form is preferred over the level-of-effort form whenever the work can be defined well enough to permit a reasonable cost estimate within which the supplier can complete the work.

#### 2.4.4.g *Cost Plus Award-Fee Contract*

1. *Description.* A cost plus award-fee contract is a cost-reimbursement contract that provides for a fee consisting of a base amount fixed at the beginning of the contract and an award amount that the supplier may earn in whole or in part during performance. The award amount must be sufficient to motivate excellence in areas such as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee is determined by the Postal Service's evaluation of the supplier's performance according to criteria stated in the contract. This determination is made unilaterally by the Postal Service and is not subject to the Disputes clause.

2. *Use.* The cost plus award-fee contract is particularly suitable for buying services. The likelihood of meeting purchasing objectives and achieving exceptional performance is enhanced under this type of contract. It provides the flexibility to evaluate subjectively, at defined intervals, both actual performance and the conditions under which performance was achieved. The additional administrative effort, contract amount, performance period, and cost required to monitor and evaluate performance must be justified by the expected benefits to warrant using this type of contract.
3. *Performance Evaluation.* Cost plus award-fee contracts provide for evaluation at stated intervals during performance, so that the supplier is periodically informed of the quality of performance and areas for improvement. Evaluation criteria and a rating plan should be prepared for each purchase to motivate the supplier to improve in areas important enough to be rated, but not to the detriment of overall performance. Requirements will vary widely among contracts, so contracting officers must customize the evaluation criteria, rating plan, and even the Award Fee clause, seeking advice from the purchase team and counsel, as needed. The partial payment of the award fee will usually correspond to the evaluation periods to provide incentive. If a high award fee is negotiated, the contract may provide for a low base fee, or even a zero base. The maximum fee, comprising the base fee plus the highest potential award fee, will usually not exceed 10 percent, or 15 percent for research and development.

#### 2.4.4.h *Clauses*

1. All cost-reimbursement contracts must include the following clauses:
  - (a) Clause 2-30, *Allowable Cost and Payment*.
  - (b) Either Clause 2-31, *Limitation of Cost* (if the contract is fully funded), or Clause 2-32, *Limitation of Funds* (if the contract is funded in increments).
2. Cost contracts must include Clause 2-33, *Cost Contract — No Fee*.
3. Cost-sharing contracts must include Clause 2-34, *Cost-Sharing Contract — No Fee*.
4. Cost plus incentive-fee contracts must include Clause 2-35, *Incentive Fee*.
5. Cost plus fixed-fee contracts must include Clause 2-36, *Fixed Fee*.
6. Cost plus award-fee contracts must include Clause 2-37, *Award Fee*.

### 2.4.5 **Time-and-Materials and Labor-Hour Contracts**

#### 2.4.5.a *Time-and-Materials Contracts*

1. *Description.* A time-and-materials contract provides for purchasing supplies or services on the basis of:
  - (a) Direct labor hours at specified, fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit); and

- (b) Material at cost and, when appropriate, material-handling costs as a part of material costs. Material-handling costs may include all indirect costs, including general and administrative expense allocated to direct materials according to the supplier's usual accounting practices. The material-handling costs may only include costs clearly excluded from the labor-hour rate.
  - 2. *Use.* A time-and-materials contract is only used when it is impossible to estimate the extent or duration of the work or anticipate costs with reasonable confidence. Because it does not encourage effective control by the supplier, it may only be used when provision is made for adequate monitoring by postal personnel during performance, to reasonably assure that inefficient or wasteful methods are not being used. Examples of situations where this type of contract might be appropriate are:
    - (a) Repair, maintenance, and overhaul work;
    - (b) Work to be done in emergency situations; and
    - (c) Engineering and design services in connection with the production of supplies.
  - 3. *Limitation.* Time-and-materials contracts may only be used if no other type of contract will do. The contract must establish a ceiling price which the supplier exceeds at its own risk. The contracting officer must document the contract file to show the basis for any change in the ceiling.
  - 4. *Optional Method of Pricing Material.* When the work to be performed requires the supplier to furnish material that is regularly sold to the general public by the supplier in the normal course of business, the contract may provide for charging material on a basis other than at cost if:
    - (a) The total estimated contract price does not exceed \$50,000 or the estimated price of material does not exceed 20 percent of the estimated contract price;
    - (b) The material is identified in the contract;
    - (c) No profit on material is included in the profit in the fixed hourly labor rates; and
    - (d) The contract provides that the price to be paid for the material must be the established catalog or list price in effect when material is furnished, less all applicable discounts, and not exceeding the supplier's sales price to its most favored customer for the same item in like quantity or the current market price, whichever is lower.
- 2.4.5.b *Labor-Hour Contracts.* A labor-hour contract is a variant of the time-and-materials contract, differing only in that materials are not supplied by the supplier. All the requirements of paragraph a above, except those dealing with materials, apply to labor-hour contracts.
- 2.4.5.c *Clause.* Time-and-materials and labor-hour contracts must include Clause 2-38, *Payment (Time-and-Materials and Labor-Hour Contracts)*.

## 2.4.6 Indefinite-Delivery Contracts

### 2.4.6.a General

1. Indefinite-delivery contracts are used when the desired period of performance is known, but the exact time of delivery is unknown at the time of award. They establish the supplies or scope of services that can be ordered, terms and conditions, the maximum liability of the Postal Service, and prices. Orders placed against indefinite-delivery contracts are not subject to the noncompetitive procedures discussed in 2.1.6.
2. Indefinite-delivery contracts may provide for delivery of a definite quantity, an indefinite quantity within a minimum and maximum, or the Postal Service's requirements. During the contract term, delivery orders are issued by purchasing organizations or users.
3. The pricing structure of any normal contract type can be used for orders against indefinite-delivery contracts. Fixed-price orders are preferred unless the orders cannot be accurately priced before issuing each order. In that case, time-and-materials or labor-hour orders are preferred. The pricing mechanism may even be left to the judgment of the contracting officer at the time of issuing each order. The contracting officer, in that case, must ensure that the contract clearly provides for each type of pricing. In addition, if so desired by the purchase team, the contract may provide for alternative pricing for each order (for example, an order may be placed at a fixed price, or at a time and materials rate).

2.4.6.b *Definite-Quantity Contracts.* A definite-quantity contract provides for a definite quantity of specific supplies or services during the contract period, with deliveries to designated locations when ordered.

### 2.4.6.c Indefinite-Quantity Contracts

1. An indefinite-quantity contract provides for an indefinite quantity of specific supplies or services, within a stated minimum and maximum, to be delivered during the contract period to designated locations when ordered. It is used when precise requirements for supplies or services ordered over the term of the contract, above known minimums, cannot be determined. The minimum and maximum are provided to limit the pricing risk to the supplier.
2. The contract must require the Postal Service to order, and the supplier to deliver, a minimum quantity of supplies or services over the term of the contract, and requires the supplier to deliver any additional quantities ordered, not to exceed a maximum amount.
3. The minimum quantity must not exceed known requirements, and the maximum quantity must be realistic. The contract may specify minimum or maximum quantities for individual delivery orders, and a maximum that may be ordered during a specified time.
4. Contract maximums may be exceeded upon the mutual agreement of the Postal Service and the supplier.



#### 2.4.6.d *Requirements Contracts*

1. A requirements contract provides for filling all or specified portions of actual purchase requirements of designated activities for specific supplies and services to be delivered as ordered over the term of the contract. It is used for recurring requirements anticipated during the contract period, where precise quantities cannot be determined. It may also be used to obtain supplies and services in excess of quantities that activities themselves can furnish within their own capabilities. A requirements contract is preferred when the purchase team decides to award a requirements contract to only one source and requirements can be estimated with reasonable accuracy.
2. The solicitation and contract must state an estimated total quantity, and, if feasible, the maximum limit of the supplier's obligation to deliver and the Postal Service's obligation to order. The total-quantity estimate must be as realistic as possible, based on records of previous requirements and current information. The contract may specify minimum or maximum quantities for individual delivery orders, and a maximum that may be ordered during a specified time.
3. When a requirements contract is for repair, modification, or overhaul of Postal Service property, the solicitation must state that failure of the Postal Service to furnish such items in the amounts described as "estimated" or "maximum" will not entitle the supplier to any price adjustment under the Postal Service Property clause.

#### 2.4.6.e *Ordering*

1. The period for placing orders and the activities authorized to place orders must be identified in the contract.
2. Delivery orders or task orders are used to order against an indefinite delivery contract. A delivery order is used principally for supplies and a task order for services.
3. Ordinarily, orders should be placed:
  - (a) In writing;
  - (b) By authorized Postal Service credit card;
  - (c) By written telecommunication;
  - (d) By electronic data interchange (EDI); or
  - (e) Orally.
4. Orders must contain:
  - (a) The date of the order, contract number, and order number.
  - (b) Item number and description, quantity, and unit and total price or a ceiling price limiting the Postal Service's liability if the price cannot be negotiated before issuing an order.
  - (c) Place and date of delivery or performance.
  - (d) Packaging, packing, and shipping instructions, if any.
  - (e) Accounting and fiscal data.

- (f) Any other pertinent information, including a statement of work that describes the services to be performed.

#### 2.4.6.f *Multiple Awards*

1. The contracting officer may consider making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. The decision to make multiple awards and to compete individual orders should not be made if:
  - (a) The supplies or services are unique or highly specialized and only one supplier is capable of performing at the required level of quality.
  - (b) A single award will result in more favorable terms and conditions, including pricing.
  - (c) The cost of administering multiple contracts may outweigh the benefits.
  - (d) Tasks likely to be ordered are so integrated that only a single supplier can reasonably perform the work.
  - (e) The order is a logical follow-on to an order already issued under the contract.
  - (f) It is necessary to place an order to satisfy a minimum guarantee.
  - (g) The contracting officer determines that multiple contract awards or competition for a particular order are not in the Postal Service's best interest.
2. Competitive delivery and task orders should be awarded based on price and past performance on previous orders and, in some cases, an oral presentation covering how the task will be performed and resumes of key personnel. Participation by suppliers in the competition for orders is optional, so contracting officers must ensure that a sufficient number of suppliers can be expected to compete.

2.4.6.g *Provisions.* For contracts where orders will be placed by authorized Postal Service credit card, the solicitation must include Provision 2-6, *Credit Card Order Acceptance Requirement*.

#### 2.4.6.h *Clauses*

1. All delivery order, task order and definite order contracts must include the following clauses:
  - (a) Clause 2-39, *Ordering*.
  - (b) Clause 2-40, *Delivery-Order Limitations*.
2. All definite-quantity contracts must include Clause 2-41, *Definite Quantity*.
3. All indefinite-quantity contracts must include Clause 2-42, *Indefinite-Quantity*.

4. All requirements contracts must include Clause 2-43, *Requirements*. When purchasing requirements in excess of the quantities that the activities can furnish within their own capabilities or only specified portions of requirements (see paragraph d), use the clause with its alternate paragraph c.

## 2.4.7 Ordering Agreements

### 2.4.7.a General

1. An ordering agreement is not itself a contract. It is a written agreement negotiated between a purchasing activity and a supplier that contains terms and conditions applying to future contracts between the parties. The contracts are established when orders are issued and accepted by the parties. Ordering agreements include Basic Pricing Agreements (BPAs) (see 2.4.8). Although there is a price ceiling for individual orders, there is no limit on the aggregate value of orders and no commitment to purchase. This distinguishes ordering agreements from indefinite-delivery contracts.
2. An ordering agreement is useful for expediting contracting for uncertain requirements of supplies or services when specific quantities and prices are not known at the time the agreement is signed, but substantial quantities of the supplies or services are expected to be purchased. Ordering agreements reduce administrative lead time and inventory investment.

### 2.4.7.b Limitations

1. An ordering agreement may not state or imply any obligation or agreement by the Postal Service to place future contracts or orders with the supplier.
2. An ordering agreement may only be changed by modifying the agreement itself and not by individual orders issued against it. Modifying an ordering agreement does not retroactively affect orders previously issued against it.
3. An ordering agreement extending for more than 1 year must be reviewed periodically to determine whether it should be continued.

### 2.4.7.c Content of the Agreement. An ordering agreement must:

1. Describe the supplies and services to be provided.
2. Describe the method for determining prices.
3. Include delivery terms and conditions or specify how they will be determined.
4. List the activities authorized to issue orders.
5. Specify the point at which each order becomes a binding contract (for example, issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days).

6. Provide that failure to reach agreement on the price of any one order issued before a price is established (see 2.4.7.e) is a dispute under Clause B-9, *Claims and Disputes*.
7. Contain the clauses prescribed for the type of contract represented by the orders to be placed. (For clauses prescribed according to contract dollar amount, the aggregate value of orders expected to be placed must be estimated.)

2.4.7.d *Ordering.* A contracting officer representing any activity listed in an ordering agreement may issue orders for supplies or services covered by that agreement. Except for orders under mandatory ordering agreements, competition must be obtained before placing an order, unless precluded by compelling urgency or other good reason in the Postal Service's interest. Competition may be by oral or written solicitation among firms holding ordering agreements for the same supplies or services, or on the open market. If an order is placed without obtaining competition, the file must be documented to show the reason.

2.4.7.e *Pricing.* The contracting officer may not authorize the supplier to begin work on an order under an ordering agreement until prices have been established, unless urgency precludes advance pricing and the order establishes a ceiling price limiting the Postal Service's obligation. Pricing must be accomplished as soon as possible after issuance of an unpriced order.

## 2.4.8 **Basic Pricing Agreements (BPAs)**

2.4.8.a *General.* A basic pricing agreement (BPA) is an ordering agreement which permits individuals designated by name or title to place orders by telephone, over-the-counter or in writing. BPAs permit consolidated invoicing (usually monthly) for all purchases made. Establishing BPAs with suppliers from which frequent, repetitive purchases are made can significantly reduce paperwork and administrative costs. Although there is a ceiling for individual orders (see 2.4.8.d.4), there is no aggregate value of orders under a BPA. When the BPA is limited to specific items on a price list, only those items may be ordered. Suppliers may revise their prices at any time.

2.4.8.b *Use.* BPAs are used when:

1. A wide variety of items in a broad class of supplies (hardware, electrical supplies, etc.) may be available from suppliers but quantities and delivery requirements are not known and may vary considerably. BPAs may also be used for services.
2. The preparation of numerous written orders and processing of invoices can be avoided.
3. There is a need to provide supply sources for offices that do not have purchasing authority.
4. A purchase or series of purchases from a particular supplier may not be made using local buying procedures.

- 2.4.8.c *Sources.* BPAs should be established with suppliers from which numerous individual purchases will likely be made in a given period. For example, if experience shows that a supplier is dependable and consistently lower in price than other suppliers, and if numerous small purchases are made from it, it would be advantageous to establish a BPA with the supplier.
- 2.4.8.d *Restrictions.* The following restrictions apply to BPAs:
1. BPAs may not be made for supplies or services which must be purchased from mandatory sources (see 3.3).
  2. BPAs may not be made for construction on Postal Service premises.
  3. The term of a BPA may not exceed 5 years.
  4. Individual orders may not exceed \$10,000 (except for fuel, where the ordering limit is tank capacity).
- 2.4.8.e *Ordering.* When orders are placed under a BPA established for specific items on a price list, only the items on the list may be ordered.

## 2.4.9 Letter Contracts

- 2.4.9.a *Description.* A letter contract is a written preliminary contractual instrument that authorizes the supplier to begin work immediately, before a definitive contract is negotiated.
- 2.4.9.b *Use*
1. A letter contract is used when:
    - (a) The requirement demands that the supplier be given a binding commitment so that work can begin immediately.
    - (b) Negotiating a definitive contract in time to satisfy the requirement is impossible.
  2. Each letter contract must be as complete and definitive as possible under the circumstances.
  3. Each letter contract must contain a negotiated definitization schedule including:
    - (a) A date for submission of the supplier's price proposal.
    - (b) A date for the start of negotiation.
    - (c) A target date for definitization, which must be the earliest date practicable.
  4. Each letter contract must state the maximum liability of the Postal Service. This is the amount estimated to be needed to cover performance before definitization. It may not exceed 50 percent of the total estimated cost of the contract.
  5. The definitization schedule must provide for definitizing the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work, whichever occurs first. However, the contracting officer may, in extreme cases, authorize an additional period. Because an undefinitized letter contract is, in effect, a cost-reimbursement contract, it is not in the Postal Service's interest to

allow it to continue longer than necessary. Therefore, if after exhausting all reasonable efforts, the contracting officer and the supplier fail to reach an agreement on price or fee, Clause 2-44, *Contract Definitization* (see 2.4.9.d), requires the supplier to proceed with the work and provides that the contracting officer may determine a reasonable price or fee, subject to appeal as provided in Clause B-9, *Claims and Disputes*.

#### 2.4.9.c *Limitations*

1. A letter contract may only be used if no other type of contract is suitable. Its use must be approved by the manager of Materials, Headquarters Purchasing, Field Customer Support, National Mail Transportation Purchasing, or Major Facilities Purchasing.
2. A letter contract may not commit the Postal Service to a definitive contract in excess of the funds available at the time the letter contract is executed.
3. A letter contract may not be modified to add work unless the added work is inseparable from the work being performed under the letter contract.

#### 2.4.9.d *Clauses*

1. A letter contract must include clauses required for the type of definitive contract contemplated, and any additional clauses known to be appropriate.
2. All letter contracts must include the following clauses:
  - (a) Clause 2-45, *Execution and Commencement of Work*.
  - (b) Clause 2-46, *Limitation of Postal Service Liability*. Insert as the maximum liability, the amount necessary to cover the supplier's performance before definitization. The maximum liability may not exceed 50 percent of the estimated cost of the definitive contract unless approved by the manager of Materials, Headquarters Purchasing, Field Customer Support, National Mail Transportation Purchasing, or Major Facilities Purchasing.
  - (c) Clause 2-44, *Contract Definitization*, with the definitization schedule established in accordance with subparagraphs 2.4.9.b.3 and 2.4.9.b.5.
  - (d) Clause 2-47, *Payment of Allowable Costs Before Definitization*, if a cost-reimbursement definitive contract is contemplated.

# 3 Supplier Relations

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# 3 Supplier Relations

## 3.1 Policy

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### 3.1.1 General

It is the policy of the Postal Service to establish strong, mutually beneficial relations with its suppliers in order to meet its business and competitive objectives. Postal Service purchases are intended to foster partnerships with suppliers in which both parties work toward a common goal. The nature of the partnership is determined by the potential impact of the supplier's performance on the Postal Service's competitive and financial position, and therefore some partnerships are closer and more interdependent than others. The type of partnership will also determine other aspects of the relationship, such as communications, purchasing method, performance incentives, and rewards for exceptional quality. All suppliers, however, are valued business partners of the Postal Service, and contracting officers must manage supplier relations to ensure their effectiveness and integrity and ensure that all suppliers are treated fairly.

### 3.1.2 Supply Chain Management

The Postal Service uses the supply chain management business philosophy and associated business practices to further its business and competitive objectives. In general terms, the supply chain is a series of business organizations working together to create and provide value to customers. Supply chain management is the analysis and adjustment of the purchasing process and supply stream as required to meet customer demand and lower overall costs.

## 3.2 Supplier Diversity

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### 3.2.1 Policy

- 3.2.1.a *General.* It is the policy of the Postal Service to establish and maintain a strong, competitive supplier base that reflects the diversity of the American supplier community. The Postal Service focuses on the entire business community for quality supplies and services that meet or exceed operational needs. Small, minority, and woman-owned businesses are therefore an important part of the Postal Service's supplier base.

## 3.2.1.b

3.2.1.b *Supplier Diversity.* Supplier diversity is the proactive business process that seeks to provide suppliers with equal access to purchasing opportunities. It promotes supplier participation reflective of the American supplier community and encourages economic development. Effective supplier diversity ensures that no suppliers are excluded from competition on the basis of race, color, religion, sex, age or national origin.

3.2.1.c *Contracting Officers.* Contracting officers must manage supplier diversity as a strategic business initiative vital to the success of the Postal Service. Contracting officers must ensure that:

1. The supplier base reflects the diversity of the American supplier community, and
2. The Postal Service is taking full advantage of the entrepreneurial spirit, capabilities, competitive pricing, new processes and products, and innovations offered by small, minority, and woman-owned businesses.

3.2.1.d *Definitions*

1. *Small business.* A business, including an affiliate (see 3.7.1.b.6), that is independently owned and operated, is not dominant in producing or performing the supplies or services being purchased, and has no more than 500 employees, unless a different size standard has been established by the Small Business Administration (see 13 CFR 121, particularly for different size standards for airline, railroad, and construction companies). For subcontracts of \$50,000 or less, a subcontractor having no more than 500 employees qualifies as a small business without regard to other factors.
2. *Affiliates.* Businesses connected by the fact that one controls or has the power to control the other, or a third party controls or has the power to control both. Factors such as common ownership, common management, and contractual relationships must be considered. Franchise agreements are not considered evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.
3. *Dominant.* Being a controlling or major influence in a market in which a number of businesses are primarily engaged. Factors such as business volume; number of employees; financial resources; competitiveness; ownership or control of materials, processes, patents, and license agreements; facilities; sales territory; and nature of the business must be considered.
4. *Minority business.* A minority business is a concern that is at least 51 percent owned by, and whose management and daily business operations are controlled by, one or more members of a socially and economically disadvantaged minority group, namely U.S. citizens who are Black Americans, Hispanic Americans, Native Americans, or Asian Americans. (Native Americans are American Indians, Eskimos, Aleuts, and Native Hawaiians. Asian Americans are U.S. citizens whose origins are Japanese, Chinese, Filipino, Vietnamese, Korean, Samoan, Laotian, Kampuchea (Cambodian), Taiwanese, in the U.S. Trust Territories of the Pacific Islands or in the Indian subcontinent.)

5. *Woman-owned business.* A concern at least 51 percent of which is owned by a woman (or women) who is a U.S. citizen, controls the firm by exercising the power to make policy decisions, and operates the business by being actively involved in day-to-day management.
6. *Number of employees.* Average employment (including domestic and foreign affiliates), based on the number of people employed (whether full-time, part-time, or temporary), during each pay period of the preceding 12 months, or, if the business has been in existence less than 12 months, during each pay period of its existence.

### 3.2.2 **Sourcing**

- 3.2.2.a *Definition.* Sourcing is the process of identifying and assessing the qualifications, capabilities, and performance of suppliers. There are two types of sourcing. The first is performed to locate suppliers for a specific purchase. The second, presourcing, is performed to locate suppliers for anticipated purchases. Sourcing should not be confused with prequalification (see 3.5.2), which is a process whereby a supplier's ability to meet specific Postal Service requirements is evaluated.
- 3.2.2.b *Responsibilities*
1. *Purchase Teams.* Purchase teams must ensure that any market research undertaken for a specific purchase provides for fair and equal treatment of all potential suppliers.
  2. *Contracting Officers.* The contracting officer brings to the purchase team knowledge of a diverse supplier base. This knowledge requires continuous, proactive market research by all contracting officers and purchasing organizations to create a strong supplier base that will promote the spirit and intent of this section, chapter, and manual.
- 3.2.2.c *Assistance.* Purchase teams should contact Supplier Development and Diversity (Purchasing and Materials) for sourcing assistance. The Small Business Administration and the Department of Commerce's Minority Business Development Agency and affiliated Regional Minority Purchasing Councils can also help in identifying small, minority, and woman-owned businesses for a specific purchase, and can provide information on their qualifications and capabilities.

### 3.2.3 **Subcontracting with Small, Minority, and Woman-owned Businesses**

- 3.2.3.a *General.* So that the Postal Service may fully realize the benefit of a supplier base that reflects the diversity of the American supplier community, suppliers are encouraged to use small, minority, and woman-owned businesses as subcontractors to the maximum extent consistent with effective contract performance.

- 3.2.3.b *Reports.* Each supplier awarded a contract valued at \$500,000 or more must submit calendar-quarter reports (purchase teams may require more frequent submittals) on its subcontracting activity for that contract. Three types of reporting methods may be used: (1) reports showing direct subcontract awards awarded under the Postal Service contract; (2) reports showing subcontracting activity that is allocable to the Postal Service contract using generally accepted accounting practices; or (3) reports that are a combination of the two. During discussions (see 4.2.5.c), the purchase team and the supplier must negotiate and agree to which type of report will be used.
- 3.2.3.c *Subcontracting Plans.* Plans which specifically address subcontracting with small, minority, and woman-owned businesses are required for all contracts valued at \$1 million or more. Unless formally waived by the contracting officer for urgent and compelling business reasons, or for the reasons addressed in 3.2.3.d.1.(b), suppliers must submit the plans with their proposals, and plans must be agreed to before award of the contract (small businesses are exempt from this requirement). Provision 3-1, *Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements*, which discusses the plan requirement and exempts small businesses from the requirement, is incorporated by reference in Provision 4-1, *Standard Solicitation Provisions*, and must be checked-off by contracting officers for all solicitations for contracts estimated to value \$1 million or more, except when an indefinite-delivery contract or ordering agreement will be used and the purchase team determines that requiring a plan would not be feasible.
- 3.2.3.d *Contract Clauses*
1. *Contracts Valued at \$1 million or More.* Except for the instances listed below, all contracts valued at \$1 million or more must include Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements*. This clause is incorporated by reference in Clause 4-2, *Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, and must be checked-off by contracting officers as appropriate. Clause 3-1 requires that the supplier prepare a contract-specific plan for subcontracting and reporting on such subcontracting activity, and that the plan be agreed to by the Postal Service prior to contract award. The clause is not included under the following circumstances:
    - (a) When the contract is awarded to a small business;
    - (b) When the contract is an indefinite delivery contract or ordering agreement and the purchase team determines that requiring a plan would be impractical or unworkable.
  2. *Contracts Valued at \$500,000 or More.* All contracts expected to be valued at \$500,000 (\$250,000 for design and construction contracts) or more must include Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses*. The clause is incorporated by reference in Clause 4-2, and must be checked-off by contracting officers as appropriate. Clause 3-2 requires that suppliers report their subcontracting activity by calendar-quarter. The report must be one of the types discussed in 3.2.3.b.

3.2.3.e *Purchasing Organization Reports.* Each purchasing organization must collect, compile, and report by calendar quarter on the number of suppliers submitting reports and the number and dollar value of subcontracts and purchase orders placed by Postal Service suppliers with small, minority, and woman-owned businesses. Summary reports must be forwarded to Purchasing and Materials' Supplier Development and Diversity organization.

3.2.4 **Classification Codes**

Purchases made from small, minority, and woman-owned businesses must be coded by socioeconomic classification. The codes shown in [Exhibit 3.2.4](#) are used to identify contracts and orders by socioeconomic classification.

Exhibit 3.2.4

**Socioeconomic Classification Codes**

<b>CODE</b>	<b>CLASSIFICATION</b>
A	Small business
B	Small minority-owned
B1	---Black American
B2	---Hispanic American
B3	---Native American
B4	---Asian American
C	Small woman-owned
E	Small, minority woman-owned
E1	---Black American
E2	---Hispanic American
E3	---Native American
E4	---Asian American
I	Large business
J	Large minority-owned
J1	---Black American
J2	---Hispanic American
J3	---Native American
J4	---Asian American
K	Large, woman-owned
L	Large minority woman owned
L1	---Black American
L2	---Hispanic American
L3	---Native American
L4	---Asian American
S	Nonprofit, Educational, other Gov't & Utilities
T	NIB & NISH
W	Federal Prison Industries - UNICOR
Z	Foreign Supplier

## 3.3 Mandatory Sources

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### 3.3.1 Policy

If the following sources can meet Postal Service requirements, they must be considered before purchasing certain commodities.

### 3.3.2 Existing Assets

Existing assets are supplies, equipment, or services already within the Postal Service or available under a current contract. Before purchasing new supplies or services, purchase teams should always consider:

1. Reutilization of surplus materials, when economically practical;
2. Supplies within existing inventories; and
3. Orders against existing contracts.

### 3.3.3 Workshops for People Who Are Blind or Severely Disabled

3.3.3.a *General.* The Javits-Wagner-O'Day Act (41 U.S.C. 46-48) requires that the Postal Service and other federal agencies purchase certain supplies and services from qualified workshops which employ people who are blind or severely disabled. The Committee for Purchase from People Who Are Blind or Severely Disabled determines which supplies and services must be purchased and their price.

3.3.3.b *Procurement Lists.* Supplies and services provided by people who are blind or severely disabled are listed in the Committee's Procurement List. This is published annually in the *Federal Register*, and additions and deletions are published as they occur. The list is available at the Committee's Web site ([www.jwod.gov](http://www.jwod.gov)) or may be obtained by submitting General Services Administration (GSA) Form 457, *Federal Publications Mailing List Application*, to:

GSA CENTRALIZED MAILING LISTS SERVICE  
PO BOX 6477  
FORT WORTH TX 76115-0077

3.3.3.c *Ordering*

1. *General.* Except as stated in 3.3.3.c.2, supplies and services must be ordered from the central nonprofit agency designated on the Procurement List, or from the workshops concerned.
2. *Exceptions.* Supplies and services contained on the Procurement List may not be purchased from commercial sources unless authorized by the agency or the Committee for Purchase from People Who Are Blind or Severely Disabled. The Committee will grant an exception when the agency cannot meet the requirement within the period specified, and commercial sources can. It may also grant an exception when the quantity involved is insufficient for economic production by the workshop. If a purchase exception is granted because of required

delivery dates, orderers must initiate the purchase within 15 days, unless additional time is allowed by the agency. Orderers must send a copy of the solicitation to the agency.

3. *Compliance with Orders.* If a workshop fails to comply with the terms of an order, and the problem cannot be resolved with the workshop, the order must be canceled. Quality-related problems that cannot be resolved with the workshop must be referred to the agency. When an order is canceled, the agency must be notified and requested to reallocate the order if practicable. If reallocation is not practicable, a purchase exception will be given by the agency.

### 3.3.4 **People Who Are Blind or State Licensing Agencies for the Blind**

People who are blind and licensed under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) or by a state licensing agency must be given priority for the operation of food vending services in Postal Service facilities. See Handbooks AS-707H, *Contracting for Food Services*, and EL-602, *Food Service Operations*.

### 3.3.5 **Defense Energy Support Center**

Under an interagency agreement with the Defense Energy Support Center (DESC), Postal Service facilities whose fuel requirement is 20,000 gallons or more per product at any given location must purchase fuel (gasoline, gasohol, diesel fuel, heating and kerosene) from DESC suppliers. See *Administrative Support Manual (ASM)* 543 and 544.

## 3.4 **Government Sources**

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### 3.4.1 **General**

Various government sources can meet Postal Service requirements. Contracting officers should therefore consider the following sources when the quality, delivery terms and prices offered are competitive with those offered in the commercial marketplace.

### 3.4.2 **Federal Prison Industries, Inc. (UNICOR)**

#### 3.4.2.a *Policy*

1. The Postal Service uses Federal Prison Industries, Inc. (UNICOR) as a source of supply for:
  - (a) Mailbag requirements exceeding the capacity of the Mail Equipment Shops; and
  - (b) May obtain other products and services available from FPI.



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

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

UNICOR CORPORATE DIVISION  
 FEDERAL PRISONS INDUSTRIES INC  
 320 FIRST ST NW  
 WASHINGTON DC 20534-0001

### 3.4.3 **General Services Administration**

- 3.4.3.a *General.* The General Services Administration (GSA) offers a wide variety of potential sources. Among these sources are:

1. *GSA Supply System.* GSA depots stock supplies commonly used by government agencies, as described in the GSA Supply Catalog and the GSA Stores Stock Catalog. These catalogs may be ordered using GSA Form 457, *Publications Mailing List Application*.

2. *Federal Supply Schedules*

(a) *General.* Federal Supply Schedules (FSS) are summaries of ordering contracts negotiated by GSA's Federal Supply Service. They include Single-Award, Multiple-Award and New Item Introductory schedules. GSA's terms and conditions, rather than those used by the Postal Service, apply to orders placed against FSSs.

(b) *Information.* The "FSS Program" section of the GSA Supply Catalog lists the supplies and services available on the Schedules. Copies of the Schedules and GSA's Federal Supply Schedule Program Guide may be accessed at [www.fss.gsa.gov](http://www.fss.gsa.gov), or may be ordered by sending GSA Form 457 to:

GSA CENTRALIZED MAILING LIST SERVICE  
 DENVER FEDERAL CENTER BLDG 41  
 DENVER CO 80225-0001

3. *Information Technology.* Information technology is available under GSA programs and contracts. See 4.5.5.d.2.

### 3.4.4 **Defense Logistics Agency**

Supplies available from the Defense Logistics Agency (DLA) are described in the Federal Supply Catalog for Civil Agencies, published by DLA and available from:

COMMANDER  
 DEFENSE LOGISTICS SERVICE CENTER (DLSC-APPP)  
 BATTLE CREEK MI 49016-3412

### 3.4.5 **Veterans Administration**

The Veterans Administration makes medical supplies and equipment available to designated Postal Service installations. See Handbook AS-701, *Material Management*, for ordering instructions.

### 3.4.6 **Government Printing Office**

Printing may be purchased from the Government Printing Office (GPO). See ASM 370.

## 3.5 **Commercial Suppliers**

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### 3.5.1 **Policy**

Except for those commodities available from the mandatory sources listed in 3.3, it is Postal Service policy to purchase its requirements from commercial suppliers using business practices and terms and conditions customary to the commercial marketplace or from the government sources listed in 3.4.

### 3.5.2 **Prequalification**

3.5.2.a *Policy.* In order to enhance competition and ensure quality performance, it is Postal Service policy to prequalify suppliers. In addition to improving competition and performance, prequalification can also shorten cycle time and strengthen relations between the Postal Service and its suppliers. Contracting officers should consider prequalifying suppliers whenever appropriate.

#### 3.5.2.b *General*

1. Prequalified suppliers are firms or individuals whose record of performance in the marketplace (commercial or governmental or both) has demonstrated their ability to perform to consistently high standards of quality and reliability.
2. Prequalification opportunities must be publicized in accordance with 3.5.2.e and 3.5.3. However, particular purchases or series of purchases competed solely among prequalified suppliers (see 3.5.2.b.3) need not be publicized, although purchase teams may do so if in the business or competitive interests of the Postal Service.
3. Purchase teams may limit competition solely to prequalified suppliers. Such decisions must be based on the business rationale for the particular purchase (or series of purchases) and its relationship to the business and competitive needs of the Postal Service. These decisions are matters of the purchase team's judgment, as are those determining whether to prequalify suppliers and what means to use. In addition, when in the business interests of the Postal Service, purchase teams may also consider adding suppliers to previously established lists when capable suppliers which did not participate in the prequalification

process are identified. Before being placed on the list, such suppliers must be evaluated in the same manner used to establish the original list, but the prequalification process need not be readvertised.

4. When using prequalification, supplier-specific performance evaluation factors (past performance and supplier capability; see 2.1.9), are evaluated in order to decide which suppliers to include on the prequalified list. The supplier should be evaluated in the same manner as for any other purchase (see 2.1.9).

3.5.2.c *Use.* Prequalification may be used in either of two ways: (1) on an ongoing basis for commercially available goods or services purchased routinely; or (2) for an individual purchase or series of purchases.

3.5.2.d *Determining the Prequalification Method*

1. Any number of methods may be used to prequalify suppliers. When deciding on the method to be used (which should take place during the purchase planning phase), purchase teams must consider the particular purchase and the business and competitive needs of the Postal Service, and tailor the prequalification method to these considerations.
2. Determining the method should be based on:
  - (a) The particular purchase (or series of purchases) and its relationship to the business and competitive needs of the Postal Service.
  - (b) The dollar value or sensitivity of the purchase.
  - (c) The complexity of the item being purchased.
  - (d) The delivery schedule.

3.5.2.e *Determining the Prequalified Suppliers*

1. *Publicizing.* In addition to the publicizing requirements discussed in 3.5.3, purchase teams should use their market awareness to ensure that qualified suppliers are made aware of prequalification opportunities. Based on the state of the marketplace, announcements regarding prequalification opportunities should be made through whatever media are deemed most appropriate and effective. In addition, purchase teams must ensure that market research includes specific efforts to identify small, minority, and woman-owned businesses capable of meeting prequalification criteria and that these firms are encouraged to seek inclusion on prequalified lists. This effort must be outlined in any individual purchase plan (see 2.1.5.b) that contemplates the use of prequalified suppliers. Purchase teams must also ensure that suppliers' subcontracting plans are consistent with 3.2 when they will be considered in prequalification criteria.
2. *Time Limits.* The length of time in which the prequalification list will be in effect must be established and provided to suppliers before suppliers are selected for the list. Limits will depend on the particular purchase and the business and competitive needs of the Postal Service (although

lists must be reassessed periodically; see 3.5.2.f.1), but in all cases must be reasonable in relation to standard commercial practices.

### 3. *Selecting Suppliers*

(a) After the evaluation team (see 2.1.8) has reviewed and analyzed the supplier-specific information (see 2.1.9.c), suppliers are placed on the prequalified list. All qualified suppliers need not be placed on the prequalified list if the purchase team determines (1) that a smaller group will provide adequate competition or (2) that some suppliers are considerably more qualified than others, thereby precluding purchase opportunities for the less qualified. During this process, the contracting officer, as business leader of the purchase team, must ensure:

- (1) That all suppliers are treated fairly and objectively.
  - (2) That the inclusion or exclusion of a particular supplier is based on business reasons alone, and that it is judged solely on the predetermined prequalification method.
  - (3) That enough suppliers are placed on the list to ensure adequate competition for subsequent purchases.
  - (4) That any sensitive business information provided by a supplier is sufficiently protected from disclosure.
4. *Notification.* All suppliers who responded to the prequalification announcement must be notified of whether they were included or excluded from the prequalification list. Suppliers who have not been selected for the list must be provided the rationale so that they may better prepare for future prequalification opportunities.

#### 3.5.2.f *Maintaining Prequalified Lists*

1. *Reassessment.* Periodically, purchase teams should reassess the suppliers included on a prequalified list in order to ensure that they remain qualified and reliable. Purchase teams should also consider whether new suppliers should be included on the list. Such opportunities must be publicized in accordance with 3.5.3, and interested suppliers are subjected to the same prequalification methods used to originally establish the list.
2. *Removal.* Purchase teams may decide to remove a supplier from a prequalified list, but only when the action is based on sound business reasons. The supplier must be informed of the removal and provided an explanation for the decision.

3.5.2.g *Requests for Prequalified Lists.* Subject to the restrictions of 1.6.5 and ASM 350, prequalification lists may be provided to parties seeking them, including businesses seeking subcontract opportunities.

3.5.2.h *Competition.* Purchase teams must ensure that purchases are competed among a sufficient number of prequalified suppliers to ensure adequate competition. The teams have broad discretion in determining when competition is adequate, but must make this determination based on the nature of the purchase, the marketplace, and the business and competitive needs of the Postal Service. All relevant purchases need not be competed

among all suppliers included on a prequalified list, but all such suppliers must be treated fairly, and periodically given the opportunity to compete for purchases. Purchase teams must exercise sound business judgment when determining which prequalified suppliers will compete for a particular purchase, and must make a written determination that the suppliers selected to compete provide adequate competition.

### 3.5.3 Publicizing Purchase Opportunities and Contract Awards

#### 3.5.3.a Policy

##### 1. Purchase Opportunities

- (a) All competitive purchase opportunities valued at over \$100,000, including prequalification opportunities, must be publicized unless (1) precluded by emergency, (2) suppliers have been prequalified (see 3.5.2.e.1), (3) an advance notice of services sought was previously published as a part of purchase planning (see 3.5.3.b.3), or (4) the purchase will be of commercially available goods or services, in which case the publicizing threshold is \$1 million.
- (b) At the discretion of the purchase team, noncompetitive purchase opportunities of any value may be publicized when it is determined that such publicizing would improve the effectiveness of market research.

##### 2. Contract Awards

- (a) To promote competition in subcontracting, the Postal Service announces contract awards, competitive or noncompetitive, having significant subcontract opportunities. Such awards must be publicized in the Governmentwide Point of Entry (GPE; see 3.5.3.b.1). Although a matter of judgment, these are normally awards valued over \$500,000 with individual subcontract opportunities over \$50,000. Announcements of contract awards may also be made available for publication to newspapers, trade journals and magazines.
- (b) Other awards may be publicized, when in the judgment of the purchase team, such announcement would benefit future competition.
- (c) All noncompetitive contract awards valued at more than \$1 million must be publicized in the GPE, and other media as appropriate, upon award.

#### 3.5.3.b Methods

1. *Governmentwide Point of Entry.* Except for purchases of mail transportation (see 4.4.4.d), solicitations must be synopsisized in the GPE. The GPE, successor to the *Commerce Business Daily*, is the single point where most government purchasing opportunities and contract awards can be accessed electronically by the public. The GPE is accessed via the Internet at <http://www.fedbizopps.gov>. This

publicizing must occur as early in the purchasing process as possible, but not later than the date of issuing the solicitation.

2. *Other Media.* In addition to the GPE, purchase opportunities may be publicized via other electronic media, or in newspapers or trade journals, depending on three factors: (a) the purchase team's knowledge of the marketplace, (b) the business and competitive needs of the Postal Service, and (c) whether, following contract award, there will be significant subcontracting opportunities. Purchase teams should also consider publicizing in media that target diverse suppliers (see also Handbook P-1, *General Purchasing Concepts and Practices*).
3. *Presolicitation Notices.* Purchase teams wishing to identify suppliers may do so by issuing a presolicitation notice (also called a "sources sought" notice). The notice should (a) describe the upcoming Postal Service requirement and any applicable qualification requirements, (b) announce any planned presolicitation conferences, and (c) specify a date by which the notice must be returned to ensure inclusion on the solicitation mailing list.

### 3.5.4 **Unsolicited Proposals**

- 3.5.4.a *Definition.* Unsolicited proposals are offers to sell to the Postal Service the rights to ideas, concepts, products, processes or technology. They are considered unsolicited because they are not submitted in response to a solicitation or request for proposals.
- 3.5.4.b *Unsolicited Proposal Program.* The Unsolicited Proposal Program (UPP) provides companies and entrepreneurs the opportunity to submit new technologies or ideas to improve postal operations.
- 3.5.4.c *Procedural Information.* Information concerning submittal and review of unsolicited proposals is contained in Publication 131, The Postal Service Unsolicited Proposal Program, available for review at: <http://www.usps.com/business>.
- 3.5.4.d *Acceptance.* If an unsolicited proposal is found acceptable, and a noncompetitive purchase can be justified under one of the scenarios at 2.1.6 (for example, because the supplier is a single source, or because a compelling business interest justifies the use of the noncompetitive process), the contracting officer negotiates a contract with the proposer.

## 3.6 Protests

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### 3.6.1 Applicability

This section applies to all protests against Postal Service contracting procedures and awards, including special categories of contracts described in other chapters of this manual. The General Accounting Office (Comptroller General) does not have jurisdiction to consider protests arising out of Postal Service contracting practices.

### 3.6.2 Definitions

- 3.6.2.a *Interested Party.* An actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
- 3.6.2.b *Protest.* A written objection by any interested party concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract.
- 3.6.2.c *General Counsel.* The Senior Counsel, Contract Protests and Policies, has been designated as the General Counsel's representative to consider and decide protests and to take any other action that this section requires to be done by the General Counsel.
- 3.6.2.d *Days.* Calendar days. However, any time period will run until a day which is not a Saturday, Sunday, or legal holiday.

### 3.6.3 Submission

- 3.6.3.a A protest must be in writing and delivered to the contracting officer or the General Counsel. It must identify the solicitation or contract protested, and, preferably, the name of the contracting officer and the office responsible for it. The protest must set forth a detailed statement of its legal and factual grounds, including copies of relevant documents, all information establishing that the protester is an interested party, and establishing the timeliness of the protest. Mere statement of intent to protest is not a protest.
- 3.6.3.b An initial protest sent both to the contracting officer and to the General Counsel will be considered to have been addressed to the primary addressee. For example, a protest addressed to the contracting officer which indicates that a copy is being furnished to the General Counsel is for consideration by the contracting officer under 3.6.6 below. If the primary addressee cannot be determined, the protest will be considered to be intended for the General Counsel, and will be handled under 3.6.7 below.

### 3.6.4 **Timeliness**

- 3.6.4.a The Postal Service intends to complete its purchasing actions in a timely fashion while ensuring fair treatment to firms and individuals. A protester must submit any protest in a manner that will ensure its timely receipt. Protests received by the contracting officer or the General Counsel after the time limits prescribed by this section 3.6.4 will not be considered.
- 3.6.4.b Protests based upon alleged improprieties in a solicitation that are apparent before the date set for the receipt of initial proposals must be received before the time set for the receipt of proposals.
- 3.6.4.c Protests of alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.
- 3.6.4.d In all cases other than those covered by b and c above, protests by a protester that has received a debriefing shall be received not later than 10 days after the debriefing. In all other cases, the protest shall be received not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. No protest other than one by a protester that has received a timely requested debriefing (see 4.2.9.a) will be considered if received more than 15 days after award of the contract in question.
- 3.6.4.e If the contracting officer finds a protest submitted initially to the contracting officer to be obviously without merit, any subsequent protest to the General Counsel received within 5 days of the protester's actual or constructive knowledge of initial adverse action by the contracting officer will be considered if the initial protest was received in accordance with the time limits in paragraphs b through d above.

### 3.6.5 **Contract Award**

- 3.6.5.a When a timely protest has been received by either the contracting officer or the General Counsel before contract award, award may not be made until the matter has been resolved, unless the VP, P&M, after consulting with counsel, determines that urgent and compelling circumstances which significantly affect interests of the Postal Service will not permit waiting for the decision. When authorized to make an award before a protest is resolved, the contracting officer must, at the time of or before the award, give notification of the award to the protester, any other commenting parties, and, if the protest is before the General Counsel, the General Counsel.
- 3.6.5.b When a protest received after award is eligible for consideration under this section 3.6, the contracting officer must immediately furnish to the contractor a notice of the protest and the basis for it. The contracting officer, with the advice of assigned counsel, must determine whether it would be in the interest of the Postal Service to allow the contractor to proceed, seek a mutual agreement with the contractor to suspend performance on a no-cost basis, issue a unilateral stop-work order, or take other appropriate action.



### 3.6.6 **Protests Received by Contracting Officers**

- 3.6.6.a Contracting officers must consider all timely protests received, except any that are being considered by the General Counsel in accordance with 3.6.3.b. The protester must be notified in writing of the contracting officer's decision.
- 3.6.6.b A contracting officer's decision on a protest must be issued within 10 days after receipt of the protest. If a contracting officer determines that a protest is obviously meritorious, the contracting officer may take such action as is appropriate.
- 3.6.6.c
1. The contracting officer, if unable to conclude that a protest is obviously meritorious, may, within 10 days after its receipt:
    - (a) Refer the protest to the General Counsel for resolution in accordance with 3.6.7 below; or
    - (b) With the concurrence of assigned counsel, determine that the protest is obviously without merit and advise the protester in writing accordingly.
  2. The receipt of any protest is an occasion for the contracting officer to consider seriously the correctness of the purchasing action involved in the protest, with respect not only to the matters raised by the protester, but also with respect to other matters apparent from the contract file. Contracting officers must fully and fairly consider all protests received from the standpoint of the protester as well as from the standpoint of the Postal Service. That a protest may be subject to dismissal or denial on procedural or other grounds which do not involve its merits does not relieve the contracting officer of the responsibility of documenting the bases for purchasing actions, including those that are the subject of the protest.

### 3.6.7 **Protests Received by the General Counsel**

- 3.6.7.a Promptly after receiving a protest, the General Counsel notifies the contracting officer of its receipt and, unless a copy has been furnished, sends the contracting officer a copy of the protest together with any accompanying documents other than those already in the contract file. Additional statements or documents received by the General Counsel in the course of the protest are furnished to the contracting officer unless it appears that the contracting officer previously has been furnished them. The General Counsel's notification may identify issues apparently raised by the protest, matters presented by the protest which particularly require the contracting officer's response, and regulatory provisions or protest decisions possibly relevant to the protest.
- 3.6.7.b Within 7 days after referring a protest to the General Counsel or receipt of notification that a protest has been received by the General Counsel, the contracting officer must:
1. In the case of a protest against the terms of a solicitation, notify the known prospective offerors that a protest has been received and provide them with a copy of it; and,

2. In case of any other protest, notify the offerors that might be affected that the protest has been received and provide them with a copy of it (see also d.1, below).
- 3.6.7.c The notices to the offerors must state that they may, if they wish, participate in the protest, submitting their opinions and relevant information on the protest if, within 5 days of receipt of the notice, they advise the General Counsel (with a copy to the contracting officer) of their intention to do so. Upon advice that an offeror intends to participate in a protest, the contracting officer must provide it with the contracting officer's statement on the protest and the documents necessary to the statement's understanding.
- 3.6.7.d Material submitted by a protester, any other party, or the contracting officer will not be withheld from any other party in the protest except as provided herein:
1. A protester or any other party may redact from the circulation copies of its submissions trade secrets, confidential information, and other information for which a privilege is claimed, provided that the redacted copy is furnished contemporaneously with or no later than 1 day after its unredacted submission. If, because of such a claim or for other reasons, copies of a protester's unredacted submission cannot be furnished to affected offerors, the redacted version may be furnished instead.
  2. The contracting officer shall redact privileged material (including supplier-selection sensitive material and other information the release of which could result in a competitive advantage to a supplier or suppliers) from the copies of the contracting officer's statement and the documents accompanying it furnished to the protester or to other parties (see e and g, below). Redacted and unredacted versions shall be furnished to the General Counsel simultaneously.
  3. The General Counsel may require the contracting officer, a protester, or any other party to justify their redactions. In the case of the contracting officer's submissions, if, in the General Counsel's judgment, the redactions are insufficiently justified, the General Counsel may disallow the redactions and direct the distribution of the documents without the unjustified redactions. When a protester or party is unable adequately to justify challenged redactions, the General Counsel may give the redacted submission appropriately diminished weight.
  4. The General Counsel will review *in camera* all information submitted under a claim of privilege.
- 3.6.7.e Within 30 days of referring a protest to or receiving the initial notification of a protest from the General Counsel, the contracting officer must send the General Counsel a report that includes:
1. The contracting officer's statement of the circumstances relevant to the protest, including specific responses to each allegation in the protest and the contracting officer's findings, determinations, and conclusions; and

2. Copies (unless the General Counsel has specifically requested the originals) of any documents relevant to the protest, including any of the following that may be applicable:
    - (a) The solicitation (including the specification or its relevant parts);
    - (b) The proposal submitted by the protester and the proposal against which the protest is directed;
    - (c) The evaluation of proposals; and
    - (d) Any other documents, statements, or materials necessary to determine whether the protest is valid.
  3. In a case in which the protester has requested specific documents, the contracting officer shall provide to all parties and the General Counsel a list of those documents or portions of documents that have been furnished to the protester or included as information accompanying the contracting officer's statement, and those documents which the contracting officer intends to withhold from the protester and the reason for the proposed withholding.
- 3.6.7.f The contracting officer should seek the assistance of assigned counsel in preparing the statement and report.
- 3.6.7.g Concurrent with furnishing the report to the General Counsel, the contracting officer must furnish a copy of the statement (e.1., above) and copies of any other documentation contained in the report necessary to a full and clear understanding of the issues to the protester and any party who has indicated a desire to comment on the protest. When the protester or the party indicates that it is represented by counsel, a copy of the statement must be provided to that counsel. The contracting officer must include in the material furnished to the General Counsel a statement that this distribution has been made and must identify the parties to which the statement and its related documents have been sent.
- 3.6.7.h The protester or any participant may submit comments on the contracting officer's statement. Such comments will be considered timely if received within 10 days of the commenter's receipt of the statement. Any rebuttal to any such comments a protester, other participant, or the contracting officer may care to make will be considered if received within 10 days after the party's receipt of the comments to which the rebuttal is directed. The failure of a party to comply with these time limits may result in resolution of the protest without consideration of the untimely comments.
- 3.6.7.i When it is necessary to obtain a clear understanding of the protest, the General Counsel may request or permit the submission of additional statements by the parties. The contracting officer and other participating parties shall not submit statements in addition to those allowed by h, above, and j, below, unless they have been specifically requested by the General Counsel or permission has been granted by the General Counsel. Contracting officers must respond to the General Counsel's requests within 10 days and must distribute copies of such responses in the manner indicated in paragraph g above.

- 3.6.7.j The protester, any other party, or the contracting officer may request a conference with the General Counsel in connection with any protest under consideration by the General Counsel. The requests must be received within the time allowed for commenting on the contracting officer's statement. When more than one conference is requested, they will be held separately. The requester of a conference must provide a submission for the record summarizing the substance of its comments in the course of the conference, which must be received within 5 days after the conference.
- 3.6.7.k If the time for acceptance of proposals might expire before a protest will be resolved by the General Counsel, the contracting officer should request an extension of the time for acceptance of proposals from each offeror whose proposal may be eligible for acceptance.
- 3.6.7.l The General Counsel has established a goal of 21 days after receipt of all information submitted by all parties and the conclusion of all conferences for issuing a decision on a protest.
- 3.6.7.m The General Counsel's decision on a protest disposes of the matter. Copies of the General Counsel's decision must be furnished to the contracting officer, the protester, and any other participant in the protest. A file of all protest decisions is maintained in the Postal Service Library, and decisions from 1987 to the present are available on the Internet at <http://www.usps.com/lawdept/protestdecisions/>.
- 3.6.7.n The protester, any participant that submitted comments on the protest, or the contracting officer may request reconsideration of a protest decision. The request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered. A request for reconsideration of a decision must be received by the General Counsel not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier, but in no case more than 20 days after the issuance of the protest decision.
- 3.6.7.o The General Counsel may decline to decide any protest when the matter involved is the subject of litigation in any court of competent jurisdiction or has been decided on the merits in such a court. The foregoing does not apply when the court requests, expects, or otherwise expresses interest in the General Counsel's decision.
- 3.6.7.p Notwithstanding any other provision of this section, when a protest is clearly without legal merit or is not reviewable by the General Counsel under these procedures, the General Counsel may summarily deny or dismiss a protest without a report from the contracting officer. When the propriety of summary denial or dismissal becomes clear only after information is provided by the contracting officer or otherwise obtained by the General Counsel, the protest may be denied or dismissed at that time.

## 3.7 Debarment, Suspension, and Ineligibility

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### 3.7.1 General

Purchasing offices may not solicit proposals from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible suppliers.

#### 3.7.1.a Definitions

1. *General Counsel.* This includes the General Counsel's authorized representative.
2. *Judicial Officer.* This includes the acting Judicial Officer.
3. *Debarment.* An exclusion by the Postal Service from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.
4. *Suspension.* A disqualification by the Postal Service from contracting and subcontracting for a temporary period because a supplier is suspected upon adequate evidence of engaging in criminal, fraudulent, or other seriously improper conduct.
5. *Ineligible.* An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, Executive Orders, or regulations, such as the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive Orders, the Walsh-Healey Public Contracts Act, or the Environmental Protection Acts and Executive Orders, to which the Postal Service is subject or has adopted as a matter of policy.
6. *Affiliates.* Businesses, organizations, or individuals connected by the fact that one controls or has the power to control the other, or a third party controls or has the power to control both. Factors such as common ownership, common management, and contractual relationships must be considered. Franchise agreements are not considered evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

#### 3.7.1.b Lists

1. The VP, P&M, establishes, maintains, and distributes to purchasing offices a consolidated list of suppliers debarred or suspended by the Postal Service.
2. The General Services Administration (GSA) compiles and maintains a consolidated list of all parties debarred, suspended, proposed for debarment or declared ineligible by Federal agencies or the General Accounting Office. GSA revises and distributes the list posted on the Internet daily, and publishes a hardcopy list monthly. The Internet copy is available at <http://epls.arnet.gov>.

3. The VP, P&M, receives, through Purchasing Policies and Programs, copies of debarment notices (see 3.7.1.g) suspension notices (see 3.7.1.k) and Judicial Officer decisions (see Appendix D, section 957.21) and any order removing a debarment or suspension. The VP, P&M, also furnishes GSA notice of any debarment or suspension by the Postal Service and any changes in the status of suppliers, including any of their affiliates, on the Postal Service list.

3.7.1.c *Treatment of Suppliers on Postal Service List*

1. Contracting officers must review the Postal Service and GSA lists before making a contract award.
2. Debarred or suspended suppliers on the Postal Service list are excluded from receiving contracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or (when the contract provides for such consent) consent to subcontracts with such suppliers, unless the VP, P&M, determines in writing that there is a compelling reason for such action in the interest of the Postal Service.
3. The treatment of suppliers listed as having been declared ineligible on the basis of statutory or other regulatory procedures on the GSA list is related to the basis of ineligibility as reflected in codes assigned by GSA to each case. The VP, P&M, maintains a summary table describing the Postal Service treatment associated with each GSA code. (The table is available on the Internet at <http://blue.usps.gov/purchase/root/profbuy.htm>.) Suppliers included on the GSA list which have been assigned codes for which the table describes the treatment as "ineligible" are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the period set forth on the GSA list. Suppliers included on the GSA list assigned codes for which the table provides other guidance (for example, the preparation of a written justification of award) are considered pursuant to that guidance. When so indicated on the table, contracting officers must obtain additional information from the entity responsible for establishing the supplier's ineligibility.
4. To the extent permitted by law, the VP, P&M, after consultation with assigned counsel, may direct a treatment other than described by the table upon a written determination that there is a compelling reason for such action in the interest of the Postal Service.
5. The debarment, suspension, or ineligibility of a supplier does not of itself affect the rights and obligations of the parties to any existing contract. However, except for service changes under mail transportation contracts, the contracting officer may not add new work to the contract by supplemental agreement or by exercise of an option unless the VP, P&M, makes a determination as required under subparagraph c.2 above.

- 3.7.1.d *Causes for Debarment.* The VP, P&M, is authorized, with the concurrence of the General Counsel, to debar a supplier, including any of its affiliates, in accordance with procedures in this part for causes such as the following:
1. Conviction for commission of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.
  2. Conviction under the Federal antitrust statutes arising out of the submission of bids or proposals.
  3. Violations of a Postal Service contract so serious as to justify debarment action, such as:
    - (a) Willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit provided in the contract;
    - (b) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment;
    - (c) Violation of a contractual provision against contingent fees; or
    - (d) Acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.
  4. Any other cause of such serious and compelling nature, affecting responsibility as a supplier, as may be determined by the Postal Service to warrant debarment.
  5. Debarment by another Executive agency or department.
- 3.7.1.e *Conditions for Debarment*
1. The existence of any of the causes in paragraph e above does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the VP and must be made in the best interest of the Postal Service. All mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, and in deciding whether debarment is warranted.
  2. The existence of any of the causes in subparagraph d.1 or d.2 above must be established by criminal conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment must be removed upon the request of the supplier unless other causes for debarment exist.
  3. The existence of any of the causes in subparagraph d.3 or d.4 above must be established by evidence that the Postal Service determines to be clear and convincing.

4. The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when a grave impropriety was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of the firm. Likewise, when a firm is involved in criminal, fraudulent, or seriously improper conduct, any person involved in the commission of the grave impropriety may be debarred.
5. Debarment for the cause set forth in subparagraph d.5 above (debarment by another agency) requires that one of the causes for debarment set forth in subparagraphs d.1 through d.4 above was the basis for debarment by the original debarring agency.

#### 3.7.1.f *Period of Debarment*

1. When statutes, Executive orders, or controlling regulations of other agencies provide a specific period of debarment, they are controlling. In other cases, debarment by the Postal Service must be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment may not exceed 3 years. When debarment for an additional period is deemed necessary, notice of the proposed additional debarment must be furnished to the supplier as in the case of original debarment.
2. Except as precluded by statute, Executive order, or controlling regulations of another agency, debarment may be removed or the period may be reduced by the VP, P&M, upon submission of an application by the debarred supplier. The application must be supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The VP, P&M, may, as a matter of discretion, deny any application for removal of debarment or for reduction of its period or may refer the application to the Judicial Officer for hearing and final Postal Service determination. In any case in which a debarment is removed or the debarment period is reduced, the VP, P&M, must transmit to the Judicial Officer, for filing, a notice and statement of the reasons for the removal of the debarment or the reduction of the period of debarment.

#### 3.7.1.g *Procedural Requirements for Debarment*

1. The VP, P&M, must initiate a debarment proceeding by sending to the supplier a written notice of proposed debarment. The notice must be served by sending it to the last known address of the supplier by certified mail, return receipt requested. A copy of the notice must be furnished to the Office of Inspector General. The notice must state:
  - (a) That debarment is being considered;
  - (b) The reasons for the proposed debarment;
  - (c) The period of debarment and the proposed effective date;



- (d) That the debarment will not become effective until after a hearing, if a hearing is requested within 20 days following the receipt of the notice of the proposed debarment; and
    - (e) That any request for a hearing is to be accompanied by a statement setting forth the grounds upon which the proposed debarment will be contested, and that if no hearing is requested, the action of the VP, P&M, becomes the final Postal Service determination.
  2. A supplier served with a notice of proposed debarment may request a hearing by addressing a request to the Judicial Officer through the VP, P&M. The hearing will be governed by rules of procedure promulgated by the Judicial Officer and set forth in Appendix D. Except as provided in subparagraph g.3 below, the Judicial Officer must hear the matter and determine on the basis of the record whether the proposed debarment action should be sustained. The decision of the Judicial Officer is the final Postal Service decision. The VP, P&M, is represented by the General Counsel.
  3. When the VP, P&M, proposes to debar a supplier already debarred by another government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from the other agency or upon such facts and additional facts. In such cases the facts obtained from the other agency must be considered as established, but the party to be debarred must have an opportunity to present information to the Judicial Officer and to explain why debarment by the Postal Service should not be imposed.
- 3.7.1.h *Causes for Suspension.* The VP, P&M, may, when the interests of the Postal Service require, and with the concurrence of the General Counsel, suspend any supplier, including any of its affiliates:
  1. Upon adequate evidence of indictment or conviction for:
    - (a) Commission of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract;
    - (b) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; and
    - (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility as a supplier.
  2. For other cause of such serious and compelling nature, affecting responsibility as a supplier, as may be determined by the VP, P&M, to warrant suspension. A pending hearing for debarment may be such a cause.

3.7.1.i *Conditions for Suspension*

1. A suspension invoked by another government agency may be the basis for the imposition of a concurrent suspension by the VP, P&M.
2. Any suspended supplier that believes its suspension has not been in accordance with these rules, or with applicable laws and regulations, may appeal to the Judicial Officer for a review of the suspension. No fact alleged in an indictment or established in a judgment of conviction that is the basis for a suspension may be disputed in the suspension review proceeding. The Judicial Officer's ruling must be based on considerations of the entire record, including facts not available to the VP at the time of the initial suspension decision. Nothing in this subparagraph precludes the VP from terminating or modifying a suspension at any time.

3.7.1.j *Period of Suspension.* Except as provided in this paragraph, no suspension may exceed 6 months in duration. A suspension, if not automatically extended during the pendency of a debarment proceeding or prospective action as provided in this paragraph, may be extended for not more than one additional 6-month period upon the VP's written determination of the reason and necessity for the extension. Notice of any extension of suspension must be served upon the supplier in the manner set forth in 3.7.1.k. In no event may a suspension plus its extension exceed 12 months unless a debarment proceeding or a prosecutive action is pending, in which case the initial suspension continues, subject to review in accordance with 3.7.1.i.2 above, until the debarment proceeding or prosecutive action has been completed. The termination of a suspension, however, may not prejudice a debarment proceeding that was pending or that may be brought for the same reasons that led to the suspension. "Prosecutive action" includes criminal prosecutions, civil fraud, and false claims actions, and administrative complaints issued under the Program Fraud Civil Remedies Act, 31 U.S.C. sections 3801-3812.

3.7.1.k *Procedural Requirements for Suspension*

1. The VP, P&M, must cause a notice of the suspension to be served upon the supplier to be suspended. The notice must be sent by certified mail, return receipt requested, within 10 days after its effective date. A copy of the notice must be furnished to the Inspection Service. The notice must state that:
  - (a) The suspension is based:
    - (1) On information that the supplier has committed irregularities of a serious nature in business dealings with the Postal Service; or
    - (2) On irregularities that seriously reflect upon the propriety of further dealings of the supplier with the Postal Service (the irregularities must be described in general terms without disclosing the Postal Service's evidence).
  - (b) The suspension is for a temporary period pending the completion of an investigation and such other proceedings as may follow; and

## 3.7.1.l

- (c) Proposals will not be solicited from the supplier and, if received, will not be considered for award, unless it is determined by the Postal Service to be in its interest to do so.
  - 2. Answers to all inquiries concerning the suspension of any supplier must be coordinated by the VP, P&M, with the General Counsel or must be made by the General Counsel. When a matter has been referred to the Department of Justice, the Postal Service will not furnish in answer to inquiries any more information than is contained in the notice until the Department of Justice has agreed to the furnishing of additional information.
- 3.7.1.l *Restrictions on Suspended Suppliers.* Suspended suppliers are subject during the period of suspension to the restrictions, conditions, and penalties set forth in paragraphs a and d above.
- 3.7.1.m *Rules of Practice.* The Postal Service Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting are set forth in Appendix D.

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# 4 Purchasing

## 4.1 Policy

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Because Postal Service purchasing is focused on furthering strategic objectives in a competitive environment, Postal Service purchasing employs a single, commercial process based on the proven business practices of the private sector. To these are added the responsibilities expected of a public institution, such as (1) ensuring accountability for all actions, and (2) ensuring that all suppliers are treated fairly. This commercial process ensures that purchases are accomplished under the common framework of solicitation, evaluation, discussion, selection and award. Due to the wide variety of goods and services required by the Postal Service, several commodity-specific purchases, including information technology, professional and consultant services, facility design and construction and mail transportation, may require different approaches to the purchasing process and differing solicitation provisions and contract clauses. Section 4.2 describes the commercial process through which these goals are reached, and discusses the basic terms and conditions included in Postal Service solicitation and contracts. Sections 4.3 through 4.6 describe variations to the process for different commodity-specific purchases.

## 4.2 The Purchasing Process

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### 4.2.1 Planning

A certain amount of planning is central to the success of any purchase. See Chapter 2 for information regarding purchase planning, supplier-selection strategies, contract types, etc.

### 4.2.2 Solicitations

- 4.2.2.a *General.* Purchase teams must ensure that the solicitation clearly states the needs of the Postal Service and clearly communicates how proposals will be evaluated. It is particularly important that suppliers are made aware of what the Postal Service deems important to the purchase. If oral presentations (see 4.2.4) will be part of the evaluation, suppliers should be made aware of what will be discussed (including price, if applicable) during the presentations.

- 4.2.2.b *Types.* Solicitations for proposals or quotations may be done in writing or orally.
1. *Written Solicitations.* Because written solicitations provide a clearer understanding of the requirement, they should be used whenever practicable. Purchasing teams are strongly encouraged to consider the use of oral presentations to reduce cycle times and improve understanding of proposals. Form 8203, *Order/Solicitation/Offer/Award*, or equivalent should be used as the request for proposal and subsequent contract.
  2. *Oral Solicitations.* An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would cause a delay detrimental to the Postal Service, or a standing price quotation is being verified. In these cases, Form 8203 is used as a purchase order.
  3. *Standing Price Quotations.* When it is the practice for suppliers to furnish standing price quotations on supplies or services required on a recurring basis, this information may be used instead of issuing a written solicitation for each purchase. In such cases, the contracting officer must ensure that the price information is current and that the Postal Service obtains the benefit of the suppliers' trade discounts.
- 4.2.2.c *Publicizing.* See 3.5.3.
- 4.2.2.d *Draft Solicitations.* In order to further ensure the clarity and completeness of solicitations, purchase teams should consider circulating draft solicitations within the particular supplier community for review and comment. In addition, solicitations for information or planning purposes may be justified; in such cases, the solicitation must contain Provision A-2, *Solicitation for Information or Planning Purposes*. Purchase teams may also consider issuing presolicitation notices (see 3.5.3.b).
- 4.2.2.e *Solicitation Provisions.* Provisions 4-1, *Standard Solicitation Provisions*, 4-2, *Evaluation*, and 4-3, *Representations and Certifications*, form the basic documentation of Postal Service solicitations. With the exception of Provision 4-3, and depending on the particular purchase, these provisions may be modified or added to to protect the interests of all parties and the success of the purchase. These provisions are contained and discussed in Appendix A, *Solicitations*, as are other provisions which, depending on the nature of the purchase and the policies outlined elsewhere in this PM, either may be required in a given solicitation, or added to Provisions 4-1 or 4-2.
- 4.2.2.f *Proposal Preparation Time.* Consistent with the objectives of the purchase (including whether the solicitation will be competed among prequalified suppliers only), solicitations must allow sufficient time for suppliers to prepare and submit proposals.

#### 4.2.2.g *Availability of Solicitations*

1. Enough suppliers must be solicited to ensure adequate competition. In addition, contracting officers should make a reasonable effort to provide copies of solicitations to any supplier requesting one. If the requirement is being competed among prequalified suppliers, suppliers not on the prequalification list may be provided a copy of the solicitation, but they must be explicitly told that the Postal Service plans to award the resulting contract to a supplier on the prequalification list. Requests for copies may be denied once a reasonable number of copies have been distributed to the solicited suppliers and others who have requested them. In their role as business leader of the purchasing process, contracting officers should fully explain to suppliers the unavailability of solicitations.
2. Alternatively, the contracting officer may make available, through the *Governmentwide Point of Entry* (GPE) solicitations publicized through the GPE (see 3.5.3.b), including specifications and other pertinent information determined necessary by the contracting officer. When practicable and cost effective, the contracting officer may make additional solicitation-related information accessible through the GPE.
3. When a solicitation or solicitation package is so voluminous that it is impracticable to reproduce a reasonable number of copies for those requesting them, a limited number of copies should be made available for sale; the cost should include the cost of reproduction and postage.

#### 4.2.2.h *Preproposal Conference*

1. Whenever circumstances suggest that it would add to the success of the purchase, such as when a solicitation contains complicated specifications or statements of work, a preproposal conference may be held to brief suppliers. Notice of the preproposal conference should be contained in the solicitation. If time allows, suppliers should be allowed to submit written questions in advance, so that prepared answers may be distributed at the conference.
2. The entire purchase team should attend the conference. The contracting officer or a designated representative must conduct the conference, with the assistance of the purchase team and assigned counsel, as appropriate.
3. A record of the conference must be furnished to all of the suppliers who received the solicitation. Because the role of that record is to ensure that all prospective suppliers fully understand the Postal Service's intent with respect to the purchase, and not necessarily to provide a verbatim reconstruction of the conference, the record may be edited for clarity and brevity and corrected where necessary.

#### 4.2.2.i *Amendment of Solicitations*

1. Solicitations must be amended when changes such as quantity, specifications, delivery schedule, date of receipt of proposals, or changes to clarify or correct solicitation ambiguities or defects must be made. When solicitations are amended, suppliers must be provided sufficient time to consider the amendment in the preparation or revision of their proposals. When it is necessary to give notification of a change by telephone or some other means, confirmation by written amendment must follow.
2. When deciding which suppliers are affected by a change, contracting officers should consider the stage of the purchase:
  - (a) If proposals are not yet due, the amendment must be sent to all suppliers who received the solicitation; if the solicitation had been previously posted, the amendment must be similarly posted.
  - (b) If the time for receipt of proposals has passed but proposals have not been evaluated, the amendment must be sent to the suppliers who provided proposals.

4.2.2.j *Cancellation of Solicitations.* As the solicitation process is costly both to the Postal Service and suppliers, solicitations should be canceled for only the most compelling reasons and cancellation should be made as early in the process as possible. Written notice of the cancellation must explain the reason for cancellation, and must be sent to all of the suppliers who received the solicitation. If the solicitation is canceled before the date for receipt of proposals, any proposals received must be returned unopened to the suppliers.

#### 4.2.2.k *Disclosure and Use of Information*

1. *Policy*
  - (a) As business leader of the purchase team, the contracting officer is granted broad discretion regarding the release of information during the purchasing process. Generally, it makes good business sense for potential suppliers to be as informed as possible during the process. However, contracting officers must take care that such information is disseminated fairly, and that the integrity of the process is not compromised.
  - (b) If, during the purchasing process, the contracting officer determines that dissemination of information is necessary to enhance competition or otherwise improve the effectiveness of the purchase, the information should be released. Depending on the nature of the information, it may be released as an amendment to the solicitation or as general information given out for the purpose of clarification. Again, the contracting officer must consider the stage of the purchase and the potential for compromising the integrity of the purchasing process.

2. *After Receipt of Proposals*
  - (a) Information concerning the content of proposals or the number or identity of suppliers may not be disclosed outside the Postal Service, except when necessary for proposal evaluation, or to anyone in the Postal Service not having a legitimate interest.
  - (b) During the preaward period, only the contracting officer, the contracting officer's supervisor having contracting authority, the purchase team or the evaluation team (see 4.2.5.b) may transmit technical or other information and conduct discussions with suppliers. Information may not be furnished to any supplier if, alone or together with other information, it may afford that supplier an advantage over other suppliers. However, general information that is not prejudicial to other suppliers or to the integrity of the purchasing process may be furnished upon request.
  - (c) Depending on the nature of the purchase, suppliers may place restrictions on the disclosure and use of data contained in their proposals. When it is anticipated that suppliers will wish to use such restrictions, purchase teams should include Provision A-1, *Restriction on Disclosure and Use of Data*, in the solicitation. The portions of the proposal that are so restricted (except for information obtainable from another source without restriction) must be used only for evaluation and may not be disclosed outside the Postal Service, except when necessary for proposal evaluation, without the permission of the offeror.
3. *Release of Solicitation Mailing Lists.* Solicitation mailing lists may be released when the contracting officer deems a purchase highly competitive and that competition will not be harmed by the release. The contracting officer should also consider the potential for subcontracting opportunities when considering releasing the list.

### 4.2.3 **Receipt of Proposals**

- 4.2.3.a *General.* Proposals must be marked with the date and time of receipt, and kept secure until they are provided to the evaluation team.
- 4.2.3.b *Modification and Withdrawal.* Proposals may be modified or withdrawn by written or electronic notice before the specific contract is awarded.
- 4.2.3.c *Late Proposals and Modifications*
  1. Proposals and modifications of proposals are late if received after the date and time established in the solicitation for receipt of proposals. This does not include the normal revisions of proposals made by a supplier during discussions (see 4.2.5.c).

2. Late proposals and modifications may be considered in accordance with paragraph e of Provision 4-1. It is normally in the interest of the Postal Service to consider a late proposal when doing so would not cause a delay in the evaluation process, or the proposal was late because of mishandling after receipt, or the proposal offers a significant cost, quality, or technical benefit. It is not in the interest of the Postal Service to consider any proposal received so late that its consideration would jeopardize, or give the appearance of jeopardizing, the integrity of the purchasing process.
  3. When a late proposal or modification is not considered, the supplier must be given written notification that its proposal or modification was received late and was not considered.
  4. Each late proposal must be retained in the solicitation file with a statement as to whether it was considered, and the rationale as to why or why not.
- 4.2.3.d *Failure to Acknowledge Amendments.* Generally, it is in the Postal Service's interest that suppliers be as informed as possible. Therefore, if a supplier fails to acknowledge a solicitation amendment, or if a proposal contains a suspected mistake, the contracting officer should question the supplier as to the matter. Suppliers should be granted the opportunity to address amendments or correct mistakes if doing so will enhance competition and not otherwise compromise the integrity of the purchasing process.

#### 4.2.4 **Oral Presentations**

- 4.2.4.a *General.* Oral presentations are a performance evaluation method (see 4.2.5) used to evaluate a supplier's experience, ability, and proposed method to perform the work called for in the solicitation. As a general rule, their use can speed up the evaluation process and provide a better picture of both the supplier's understanding of the solicitation requirements and its proposed approach to meeting the Postal Service's needs. During oral presentations suppliers may address any or all of a solicitation's performance evaluation factors (see 2.1.9).
- 4.2.4.b *Discussions.* Discussions (see 4.2.5.c) are encouraged during oral presentations in order that the supplier gain a better understanding of the Postal Service's expectations and the Postal Service gain a better understanding of the supplier's abilities. The contracting officer, as business leader of the purchase team, must ensure that all suppliers taking part in oral presentations are treated fairly and that any proprietary information presented is protected. Contracting officers must also ensure that any understandings reached as a result of discussions taking place during oral presentations are reflected in the final contract.

## 4.2.5 Performance Evaluation

### 4.2.5.a General

1. *Purpose.* Performance evaluation is a two-step process: (a) evaluation of individual proposals in relation to the solicitation's stated performance evaluation factors; and (b) comparative evaluation of the individual proposals in relation to each other in order to judge each proposal's relative value. Either of these steps may include discussions with suppliers (see 4.2.5.c). Depending on the quality of the proposals received, performance evaluation may be an interactive process through which the Postal Service determines which supplier or suppliers offers the best value, and most merits contract award.
2. *Individual Evaluation.* The first step consists of analyzing an individual proposal's strengths, weaknesses and risks, and documenting conclusions reached regarding the proposal. This narrative should be prepared simultaneously with the scoring and, in addition to documenting the proposal's strengths, weaknesses and risk, must provide the evaluation team's rationale for a particular supplier's score. Proposed prices may also be examined and evaluated in order to gain an understanding of the supplier's approach to the purchase and its grasp of the resources needed for successful performance. The team must arrive at a consensus decision for each proposal and should do so as soon as possible after review and evaluation.
3. *Comparative Evaluation.* The second step of the process requires the comparison of the relative value offered by each proposal in relation to its competitors. This comparison of proposals is extremely important and must describe the differences between proposals and assess the value of the differences or the impact that the differences will have on the Postal Service.

### 4.2.5.b Roles and Responsibilities

1. *Purchase Team.* The purchase team is responsible for the overall direction of the purchase. This includes establishing the purchase plan and the supplier-selection strategy, and determining which supplier or suppliers offer the best value to the Postal Service (however, see 4.2.5.d.1). In all of these functions, the contracting officer heads the team.
2. *Evaluation Team.* The evaluation team is responsible for evaluating and comparing the relative worth or value of competitive proposals in accordance with the supplier-selection strategy developed for the purchase. Selected members of the purchase team (including the contracting officer, and others, if warranted) make up the evaluation team. Evaluation teams judge the relative value of a proposal in relation to the solicitation's performance factors, participate in oral presentations, and rank proposals as to the value they offer the Postal Service. Teams may also be established to evaluate a supplier's price or cost proposal. In these cases, panel members need not be members of the purchase team. Prices or estimated costs must be evaluated in accordance with Chapter 5.

3. *Contracting Officer.* The contracting officer oversees the performance evaluation process. This includes leading discussions with the suppliers (see 4.2.5.c), and making reasoned business decisions to ensure the best interests of the Postal Service, the success of the particular purchase, and the overall fairness and integrity of the purchase.

#### 4.2.5.c *Discussions*

1. *Definition.* Discussions include all communications held with suppliers during the purchasing process; the term “discussions” is used in this PM in its common dictionary sense, and not as defined or circumscribed in previous Postal Service purchasing regulations or similar regulations of other Federal agencies.
2. *Purpose.* Discussions may be held in order to (a) allow for the clarification of matters contained in a proposal that raise questions regarding acceptability or evaluation score; (b) address suspected mistakes or questionable assumptions; and (c) obtain the best value to the Postal Service and establish final contract terms and conditions. Discussions need not be held with individual suppliers when, after evaluation and comparison of their proposals, it becomes apparent that their proposals do not offer the best value to the Postal Service and could not be improved to do so without extensive and substantial revision. The contracting officer is responsible for the conduct of discussions. During the conduct of discussions, contracting officers must ensure that no leveling or technical transfusion occurs.
3. *Use*
  - (a) During the evaluation process, including during oral presentations, discussions may be held with any supplier in order to clear up misunderstandings or uncertainties or to gain a better understanding of the supplier’s responses and intent regarding the solicitation’s provisions including its performance factors, and any aspect of a supplier’s proposal including price, in order to obtain a more informed comparison of the relative value of individual proposals.
  - (b) After proposal comparisons have been made, further discussions may be held to address any outstanding matters. These discussions should be made with a sufficient number of suppliers for the purchase team to be confident that it can reasonably determine which supplier or suppliers offers the best value to the Postal Service. However, the fact that discussions are held with one or more offerors does not require that discussions be held with other offerors if there is no business necessity for additional discussions. Offerors whose offers are not the subject of discussions need not be afforded a specific opportunity to revise their offers.



- (c) Suppliers whose offers are the subject of discussion at any stage must be given sufficient time to revise their proposals in light of those discussions. The time provided must be reasonable in view of the complexity and extent of the issues discussed, but the time provided one supplier need not be the same as that provided another. However, all suppliers must be treated fairly, and all information provided the Postal Service during discussions must be protected.
- (d) The final stage of discussions is reaching agreement on the contract's terms and conditions with the apparently successful supplier. The goal of this stage is to reach the best business arrangement for the Postal Service, and during this stage any remaining issues should be addressed and revised. However, if the extent of these issues may reasonably be viewed as changing the rationale for determining the best value to the Postal Service, the contracting officer must consider reopening discussions with other suppliers. In no event may changes be made to the Postal Service's requirements or the supplier's proposal which, if made before supplier selection, would have affected the basis for that selection.

#### 4.2.5.d *Best Value Determinations*

1. *Responsibility.* After evaluation, comparative analysis and ranking of the proposals (including price proposals) and, if necessary, discussions with suppliers, it must be determined which supplier or suppliers offer the best value to the Postal Service. This determination should be reached through the consensus of the purchase team; if consensus cannot be reached, the contracting officer must make the determination based upon the business and competitive needs of the Postal Service, as expressed in the solicitation.
2. *Process.* At the heart of this decision are (a) the trade-off judgment between price and the value offered in response to the solicitation's performance evaluation factors, (b) the relative value offered by a supplier or suppliers in relation to the competition, and (c) whether a lower cost is worth the lesser technical value (and potentially higher risk), or whether a higher price is worth the increased technical/managerial capabilities (and potentially lower risk). These judgments must be consistent with the relative significance of the identified performance evaluation factors and the relationship of those factors to cost/price factors as established by the solicitation (see 2.1.10).
3. *Documentation.* The purchase team must clearly understand, explain and document the rationale for the best value determination.

#### 4.2.6 **Contract Award**

- 4.2.6.a Contract award is made by execution of a contract by both parties, or by written acceptance of or performance against a purchase order.
- 4.2.6.b If a proposed award requires higher-level review and approval or a delegation of contracting authority, award may not be made until the approval or delegation has been obtained (see 1.4).
- 4.2.6.c When more than one award results from any single solicitation, separate award documents must be executed. When an award is made to a supplier for fewer than all items that may be awarded to that supplier, and additional items are being withheld for subsequent award, the first award to that supplier must state that the Postal Service may make subsequent awards on additional items within the proposal acceptance period, if applicable. When two or more awards are made to a single supplier under a solicitation, the original copy of the proposal must be attached to the retained office copy of the first award, and duplicate copies attached to succeeding awards.

#### 4.2.7 **Contract Clauses**

- 4.2.7.a Clause 4-1, *General Terms and Conditions*, contains the basic terms and conditions for Postal Service contracts. Depending on the particular purchase, these terms and conditions may be modified or added to in order to protect the interests of all parties and ensure the success of the purchase. These general terms and conditions are discussed in Appendix B, Contract Clauses, as are other clauses which, depending on the nature of the purchase, the type of contract, and other policies outlined elsewhere in this PM, may be required in the contract.
- 4.2.7.b Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, incorporates by reference those clauses required to implement selected policies, and laws and Executive Orders applicable to certain Postal Service contracts, such as (1) purchases of supplies subject to the Postal Service's domestic preference policy, (2) services covered under the Service Contract Act, or (3) design and construction contracts covered under the Davis-Bacon Act. Depending on the particular purchase, Clause 4-2 is added to the solicitation and contract, and contracting officers must specify by checking-off which of the additional clauses apply. When used, neither Clause 4-2 nor the additional clauses added by reference may be modified.
- 4.2.7.c Form 8203, *Order/Solicitation/Offer/Award*, or an equivalent may be used as the cover sheet for Postal Service contracts. The form contains buyer, supplier and line-item information.

4.2.7.d *Modifying Clauses.* Subject to the restrictions in 1.3.1.b, 4.2.7.b, and Appendix B, clauses cited in this PM may be modified, added to or replaced by purchase teams when doing so is in the competitive and business interests of the Postal Service. Purchase teams must consult assigned counsel before any clause is modified, added to or replaced, and particular care must be taken when the terms of the given clause will have an impact on business objectives subject to other Postal Service policies (such as Clauses 1-2, *Advance Payments*, and 1-3, *Progress Payments*).

#### 4.2.8 **Notification**

4.2.8.a Within 3 days after award, the contracting officer must send all suppliers that submitted proposals a written notice including:

1. The number of proposals received;
2. The name and address of each supplier receiving an award;
3. The items, quantities, and unit prices of each award, or the total of estimated cost and fee for cost-reimbursement contracts;
4. If award was made without discussions, a statement to that effect; and
5. A statement briefly relating the award to the selection criteria. For example: "The offeror had the highest-rated performance evaluation factors and the second-lowest rated price. The evaluation scheme provided that the performance factors were more important than price in the award decision." (Statements such as "award was made to the offeror proposing the best value in accordance with the solicitation" which do not describe the solicitation's evaluation scheme or how the successful offer most satisfactorily complied with that scheme do not meet this requirement.)

4.2.8.b Contracting officers may not issue notifications that do not disclose the actual basis of award.

4.2.8.c If numerous multiple awards are made, the notice may state where award details may be reviewed.

#### 4.2.9 **Debriefing**

4.2.9.a *Timing.* An offeror may be debriefed upon written request received by the contracting officer within 3 days following the offeror's receipt of notice of award. When practicable, untimely debriefing requests received beyond that time may be honored. To the maximum extent practicable, any debriefing should occur within 5 days after receipt of the written request.

4.2.9.b *Method.* Debriefings may be done in person, in writing, by electronic means or any other method mutually acceptable to the contracting officer and the supplier.

- 4.2.9.c *Purpose.* Debriefings are intended to explain to a supplier how its proposal was evaluated and to help it prepare for future purchase opportunities. Contracting officers should fully explain the rationale for contract award, and, if necessary, use the debriefing as a means of educating suppliers in the way the Postal Service conducts its purchases. Suppliers may be told their relative strengths and weaknesses, and, if proposals were ranked, their ranking. Suppliers may also be told their rating and that of the successful offeror; however, no point-by-point comparisons with other proposals or further breakdown of other evaluated scores may be made.
- 4.2.9.d *Content*
1. Information must not be disclosed to any supplier as to another supplier's:
    - (a) Trade secrets;
    - (b) Restricted data or privileged or confidential manufacturing processes or techniques; or
    - (c) Business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.
  2. The contracting officer or a designated representative must conduct the debriefing, with the assistance and participation of the purchase team and assigned counsel, as appropriate.
  3. The contracting officer must include a summary of the debriefing in the solicitation file.

## 4.3 Design and Construction Purchasing

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### 4.3.1 General

- 4.3.1.a *Policy.* Design and construction purchasing is the purchase of architect/engineer, construction and related services. This section covers the purchase of:
1. Services related to facilities design;
  2. Construction; and
  3. Construction management.
- 4.3.1.b *Real Estate and Related Services.* See 1.1.2 for information regarding the purchase of real estate and related services.

### 4.3.2 Architect-Engineer Services

- 4.3.2.a *Policy.* Postal Service policy is to purchase architect-engineer services from prequalified suppliers based on demonstrated competence and qualification for the type of services required. Fees are negotiated after selection.

- 4.3.2.b *Applicability.* Generally, architect-engineer (A/E) services contracts are awarded following the policies and procedures contained in 4.2. However, when the provisions of this section conflict with any other provision of this manual, the provisions of this section will govern.
- 4.3.2.c *Definitions*
1. A/E services are professional services requiring the performance or approval by a registered or licensed architect or engineer associated with the design or construction of real property, as well as incidental services that members of those professions may logically or justifiably perform in relation to construction, alteration, or repair of buildings, site improvements, roads or other kinds of real property. Such incidental services include master planning, architectural and engineering studies, investigations, surveys, reports, design development, drawings preparation, specification preparation, interior design, space planning, environmental services, and observation and reporting of the work performed during construction, alteration, or repair.
  2. Environmental A/E services are those environmental services which require performance or approval by a registered or licensed architect or engineer. Environmental A/E services should be purchased using the procedures in this section. Other environmental services such as continuous monitoring and/or testing for environmental compliance at postal facilities do not require performance by a registered or licensed architect or engineer. These services should be purchased under the procedures contained in 4.5.
- 4.3.2.d *Selection Procedures*
1. *Publicizing*
    - (a) For each contract for which the fee is expected to exceed \$50,000, a notice of intention to contract for A/E services must be publicized in the Governmentwide Point of Entry (see 3.5.3.b.1). The notice must be prepared and transmitted in accordance with 3.5.3, and must solicit submission of Standards Forms (SF) 254, *Architect/ Engineer and Related Services Questionnaire* and 255, *Architect/Engineer and Related Services Questionnaire for Specific Project*.
    - (b) For each contract for which the fee is not expected to exceed \$50,000, publicizing may be limited to the area in which the project will be performed.
  2. *A/E Selection Team*
    - (a) Contracting officers establish teams to evaluate and select A/E suppliers. Each selection team must be composed of at least two members with one member designated as the chairperson. Team members must be appointed from among professionally qualified Postal Service personnel who collectively have experience in architecture, engineering, construction, and purchasing. In some cases, staff limitations or project-specific considerations may require that individuals working under contract for the Postal

- Service be appointed to the selection team. These individuals may be appointed only on a case-by-case basis subject to approval of the contracting officer. Each project file must contain written certification by each evaluation team member that he or she has no conflict of interest that may impair their objectivity in the selection process (see 1.6.8).
- (b) Less complex, low dollar A/E projects may be awarded directly without the formation of an A/E selection team. For these projects, the contracting officer may appoint an individual from the A/E selection team to recommend three or more qualified suppliers from existing SF 254 and SF 255 information. If the number of known qualified suppliers is insufficient to provide a competitive review, then the project may be publicized within the area in which the project is to be performed.
3. *Postal Service Cost Estimate.* Before discussions of any proposed contract or contract modification is initiated, an independent Postal Service estimate of the cost for the required A/E services must be developed, based on a detailed analysis of the costs expected to be generated by the work. Consideration must be given to the estimated value of the services and to the scope, complexity, and nature of the project. The independent estimate must be revised as required during discussions to reflect changes in or clarification of the scope of the work to be performed. A fee estimate based on the application of percentage factors to cost estimates for the various segments of the project may be developed for comparison purposes, but such an estimate must not be used as a substitute for the independent Postal Service estimate. To the extent necessary, the cost breakdown figures in the Postal Service estimate may be revealed during discussions provided that the overall amount of the Postal Service estimate is not disclosed. Any change in the Postal Service estimate during or after price discussions must be specifically but succinctly explained in the record of price discussions.
  4. *Cost or Pricing Data.* The provisions of Chapter 5 relating to cost analysis, provision of cost or pricing data, and preparation of discussions memoranda apply to purchases of A/E services. Because of the procedures used to purchase A/E services and the lack of price competition, price analysis is normally insufficient.
  5. *Fees for A/E Services.* The contracting officer is responsible for negotiating a fair and reasonable fee for the services to be performed. In determining a fair and reasonable fee, the contracting officer should compare the independent Postal Service estimate with the A/E supplier's proposal. Also, the contracting officer should consider previous prices paid for similar services. Additional guidelines are contained in Handbook P-2.

#### 4.3.2.e *Discussions*

1. Discussions will be conducted initially with the A/E supplier given the highest technical ranking. If a mutually satisfactory contract cannot be achieved with that supplier, discussions must be terminated. Discussions will then be initiated with the supplier next in order of preference. This procedure must be repeated until a mutually satisfactory contract has been negotiated.
2. In lieu of the discussion procedures described above, the contracting officer may, at his or her discretion, compete A/E requirements under the general procedures set out in 4.2. In these instance, award will be made to the A/E supplier offering the best value to the Postal Service.

4.3.2.f *A/E Supplier Performance Evaluation.* The project manager responsible for monitoring the performance of an A/E supplier must complete an objective written evaluation of the supplier's performance, including any environmental elements, using Forms 7477-A, *A/E's Performance Design Phase Evaluation*, and 7477-B, *A/E's Performance Construction Phase Evaluation*. For further guidance see Handbook P-2.

#### 4.3.2.g *Indefinite-Quantity A/E Services Contracts*

1. *Use.* The Postal Service requires that a large number of small repair and alteration, environmental and other projects be performed each year. Indefinite-quantity (IQC) A/E contracts permit a large number of projects to be accomplished at one or more facilities through the issuance of delivery (work) orders against a single contract rather than through individual solicitations. Each indefinite-quantity contract is limited to the geographic area that has been described in the solicitation. Multiple awards may be made if provided for in the solicitation.
2. *Limitations.* Limitations regarding contract term, dollar limitations, and delivery (work) order limits are issued by the VP, P&M, or authorized designee.
3. *Solicitation Preparation.* Guidance for indefinite-quantity A/E services contract preparation is contained in Handbook P-2.
4. *IQC A/E Supplier Performance Evaluation.* See 4.3.2.f.

### 4.3.3 **Construction**

#### 4.3.3.a *Purchasing Construction*

1. *Applicability.* This section applies to the purchase of construction. When the provisions of this section conflict with any other provision of this manual, the provisions of this section will govern.

2. *Definition.* Construction means construction, alteration, repair (including painting and improvements of all types), environmental work (asbestos abatement, UST removal/replacement, etc.), and demolition of buildings, structures, and improvements of all types. The term does not include other investigative work such as engineering, environmental or other studies that is not part of the beginning of the construction process. Normally, construction does not include any construction work pursuant to a lease and performed by the lessor (see Handbook RE-1, *Realty Acquisitions and Management*).
3. *Purchase Method*
  - (a) Generally, construction is purchased in accordance with 4.2. Suppliers should be prequalified (see 3.5.2).
  - (b) Purchase or prequalification opportunities must be publicized in accordance with 3.5.3.
  - (c) Alterations, repairs, and improvements to be accomplished by a lessor must be performed in accordance with this section to the extent practicable, but without reference to any requirement for publicizing or competition, provided the contracting officer determines that the price proposed by the lessor for the work offers the best value to the Postal Service.
  - (d) The bonding requirements of chapter 7 must be met for all construction contracts.
4. *Contract Types*
  - (a) Generally, contracts for construction should be firm-fixed price contracts. Such contracts may be:
    - (1) Lump-sum contracts for the total work or for defined parts of it;
    - (2) Unit-price contracts in which a unit price is paid for a specified quantity of work, such as cubic yards of earth or concrete, or square yards of pavement; or
    - (3) A combination of both.
  - (b) However, any contract type discussed in 2.4 may be used if approved by the contracting officer.
5. *Specifications.* See 2.3.1.a and Handbook P-2 for further guidance.
6. *Presolicitation Notices*
  - (a) At the contracting officer's discretion, a presolicitation notice may be issued for construction projects (see 3.5.3.b). Notices may be distributed to plan hold rooms, companies on solicitation mailing lists maintained by the purchasing office, and any other known interested parties within the Postal Service or members of the public.
  - (b) Any presolicitation notice issued must include a statement of the project's magnitude in terms of physical characteristics and an estimated price range (for example, 30,000 sq. ft. building with an estimate cost range of \$500,000 to \$1,000,000 for the project). However, in no event may the statement disclose the Postal Service estimate.



7. *Preproposal Conferences and Attendees.* See 4.2.2.f and Handbook P-2 for guidance. The design A/E must be available to help interpret plans and specifications.
8. *Inspection of Construction Site and Data.* Provision must be made for offerors to inspect the construction site. Also, offerors must be given the opportunity to examine data available to the Postal Service that may provide information affecting performance of the work, such as boring samples, and original boring logs. This information should be assembled in one place and be made available to all offerors in the same manner. When feasible, a record should be kept of the identity and affiliation of all offerors' representatives inspecting the site or examining the data.
9. *Performance Time*
  - (a) In establishing the time for contract completion, the contracting officer must consider, among other things, the nature and complexity of the project, the construction seasons involved, the availability of equipment, labor and other factors and the increased cost for an aggressive project schedule.
  - (b) In any given contract, separate completion periods may be established for separable items of work. When such periods are shown, requests for time extensions must be evaluated for each item, and all affected completion periods must be modified when appropriate.
10. *Liquidated Damages*
  - (a) See 2.2.6. For additional information on calculating the liquidated damages rate for construction projects see the guidelines in Handbook P-2.
  - (b) When different completion periods for separate parts or stages of the work are specified in the contract, the clause may be revised to provide for liquidated damages for each separate part or stage in which delay will damage the Postal Service.
11. *Base and Alternate Prices*
  - (a) Solicitations permitting alternate proposals must require the base proposal to include all features considered essential to a sound and adequate building design. Any alternates to be included in the specifications should represent significant amounts of work in relation to the base proposal, and they should generally be structured as "add" or "deduct" alternates.
  - (b) When accurate cost estimates are not available, a base proposal may be required for the minimum acceptable project, with "add" alternates for desired materials or equipment.
  - (c) When budget constraints exist, a base proposal may be required for the plans and specifications as stated, with "deduct" alternates for desired materials or equipment to be used to bring proposals back within budget.

- (d) Solicitation documents calling for alternates must clearly state that the Postal Service reserves the right to accept or reject any and all alternate prices, as may be determined by the contracting officer to be in the Postal Service's interests.
12. *Performance of Work by Supplier.* Unless the supplier is required to perform a significant part of the contract work with its own forces, it may be difficult to obtain adequate supplier supervision of the work. To address this problem, each Postal Service construction contract must contain Clause B-42, *Performance of Work by Supplier*, establishing the minimum percentage of the work that the supplier must perform, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work. The percentage may be increased for contracts with unusual requirements (i.e., environmental, mechanical).
13. *Solicitations*
- (a) *General.* See 4.2.2 and Handbook P-2.
  - (b) *Distribution.* Solicitations may be furnished (with plans and specifications) without charge to organizations that maintain plan hold rooms, or other types of organizations, for the benefit of suppliers, subcontractors, and material suppliers. The extent of this distribution (geographical or otherwise) may be determined on a case-by-case basis by the contracting officer.
14. *Release of Plan Holders List.* See 1.6.5 and ASM 35.
15. *Award*
- (a) A notice of intent to make award must be furnished to the successful offeror no later than the time set for acceptance in the solicitation or any extension to which the offeror has agreed. The notice must advise the supplier of any required bonds and the date by which the supplier must execute and return such bonds.
  - (b) When all required bonds have been received, the contracting officer will make award and issue a notice to proceed. The contracting officer may issue the notice to proceed at the time of award or may issue it at the preconstruction conference. The contracting officer then will send a written notice of the award to all offerors who submitted a proposal and any other known interested parties within the Postal Service or members of the public.
16. *Construction Supplier Performance Evaluations.* The project manager responsible for monitoring the performance of a construction supplier must complete Form 5002, *Construction Supplier Performance Evaluation*, of the supplier's performance, including any environmental elements, for each project. For further guidance see Handbook P-2.

#### 4.3.3.b *Indefinite-Quantity Construction Contracts*

1. *Use.* The Postal Service requires a large number of small repair and alteration, environmental and other projects be performed each year. Indefinite-quantity construction contracts permit a large number of projects to be accomplished at one or more facilities through the issuance of delivery (work) orders against a single contract rather than through individual solicitations.
2. *Procedures*
  - (a) A solicitation must be used to request proposals based on a unit price schedule prepared by the Postal Service. Offerors must be required to submit a multiplier that will apply equally to all prices listed in the unit price schedule. The multiplier submitted by the offeror must not be more than two decimal places (e.g., 1.22 or 0.97).
  - (b) Each indefinite-quantity contract is limited to a specific geographic area.
3. *Limitations*
  - (a) Limitations regarding contract term, dollar limitations, and delivery (work) order limits are issued by the VP, P&M, or authorized designee.
  - (b) Delivery (work) orders are limited to the geographic area described in the contract.
  - (c) No new construction or building expansion work may be ordered under an indefinite-quantity construction contract, except for site preparation or foundation work for a pre-engineered building purchased directly from the manufacturer.
  - (d) The contracting officer may request quotations from an indefinite-quantity construction supplier for work items not covered by the unit price schedule and order such items, in addition to ordering covered work. However, not more than 25 percent of the cost of any delivery (work) order may be for such uncovered work.
4. *Solicitation Preparation.* Guidance for indefinite-quantity construction contract preparation is contained in Handbook P-2.
5. *Liquidated Damages.* See 4.3.3.a.10. If Clause 2-10 is not included in the basic IQC contract, a contracting officer may not include liquidated damages in subsequent delivery (work) orders.
6. *IQC Construction Supplier Evaluation.* See 4.3.3.a.16.

#### 4.3.4 **Design-Build Contracting**

- 4.3.4.a *Applicability.* Generally, design-build contracts are awarded following the same policies contained in 4.2. However, because these purchases call for a combination of services, the purchasing process is somewhat unique. When the provisions of this section conflict with any other provision of this manual, this section will govern.

## 4.3.4.b

- 4.3.4.b *Definition.* Under design-build contracting, one entity or supplier performs both architecture-engineering and construction under one single contract providing single-source responsibility for delivering the project design and construction. The design-build entity or supplier can assume several organizational structures. Most common are suppliers possessing both design and construction resources in-house. Others are combinations of a joint venture between designer and supplier, a constructor-led team with the designer in a subcontract role, or a designer-led team with the constructor in a subcontractor role.
- 4.3.4.c *Purchase Method.* The policies contained in 4.2 and the procedures listed in Handbook P-2 regarding publicizing, solicitations, and contracts apply to the purchase of design-build services. The prequalification procedures in 3.5.2 should ordinarily be used in connection with design-build services, regardless of contract type.

4.3.4.d *Contract Types*

1. *Fixed-Price Design-Build Contract.* Fixed-price design-build contracts are suitable for use on small, simple projects with well-defined scopes, for which design has been developed to at least the 30 percent level through Standard Plans or otherwise. The fixed-price is comprised of fixed fees for A/E services (which cover all costs of remaining design work and A/E construction services, plus associated overhead and profit) and a fixed-price to complete all construction work (which covers all construction overhead and profit). The contract is awarded based upon the procedures covering evaluation of technical and management and price proposals (see 4.2).
2. *Cost-Reimbursable Design-Build Contracts*
  - (a) Cost-reimbursable design-build contracts are suitable for use on all major projects for which the scope or complexity dictate the use of design-build construction delivery services. Cost-reimbursable design-build contracts must be based on a Guaranteed Maximum Price (GMP) which must be determined through competition or through discussions. The GMP is comprised of fixed fees for A/E services (which cover all costs of remaining design work and A/E services during construction, plus associated overhead and profit), reimbursable direct construction costs, and a construction services fee (which covers all construction overhead and profit). If the supplier's total fees and actual construction costs together exceed the GMP as adjusted for changes (if any), the adjusted GMP is the amount paid for complete performance; if they do not exceed the adjusted GMP, the Postal Service and the supplier share the savings in accordance with a contractually established ratio.

- (b) Cost-reimbursable design-build contracts with a competitive Guaranteed Maximum Price (GMP) are suitable for use on projects for which design has been developed to at least the 30 percent level and a reliable estimate of the maximum cost to construct the facility can be made. The contract is awarded based upon the procedures covering evaluation of technical and management proposals and price proposals (see 4.2).
  - (c) Cost-reimbursable design-build contracts with a negotiated Guaranteed Maximum Price (GMP) are suitable for use on all major projects when factors such as significant ambiguities concerning the scope of the project, requirements for integration with fixed mechanization, or new types of projects prevent the development of a reliable estimate of the maximum cost to construct the facility. The Postal Service provides the offerors with design which is less than 30 percent developed (typically only 10 percent developed) along with a Construction Cost Limit (CCL). The CCL is the Postal Service budget estimate of the total cost to construct the facility including the offeror's overhead and profit. These contracts are awarded through the following purchase process:
    - (1) Phase I covers the completion of design to the point where a GMP can be reasonably negotiated and is awarded based upon the procedures covering evaluation of technical and management proposals and price proposals.
    - (2) Phase II covers all remaining design and all construction work and is awarded based upon negotiation of a CCL within the GMP.
    - (3) If a CCL cannot be negotiated within the GMP, the Postal Service may require the supplier to redesign within the CCL at no cost to the Postal Service or may withdraw from the project. If the supplier withdraws, the Postal Service keeps the design and uses it to contract with a different supplier using a fixed-price design-build contract or a cost-reimbursable design-build contract with a competitive GMP.
  - 3. Fixed-price contracts with economic price adjustment may be used. See 2.4 and Handbook P-2 for further guidance.
  - 4. Contracts with performance incentives may be used. See 2.4 and Handbook P-2 for further guidance.
- 4.3.4.e *Solicitations for Design-Build Contracts.* Solicitations/contracts for design-build are unique. Guidelines regarding applicable contract clauses and solicitation provisions are provided in Handbook P-2.
- 4.3.4.f *Requirements for Design-Build Proposals.* In addition to the technical proposal, offerors must also furnish Standard Form 254, *Architect-Engineer and Related Services Questionnaire*, and Standard Form 255, *Architect-Engineer and Related Services Questionnaire for Specific Project*. See Handbook P-2 for further guidance.

4.3.4.g *Design-Build Supplier Performance Evaluations.* The project manager responsible for monitoring the performance of a design-build contract must complete an objective written evaluation of the supplier's performance including any environmental elements. See 4.3.4.f.

#### 4.3.5 **Construction Management Support Services**

4.3.5.a *Applicability.* Generally, construction management support services (CMSS) contracts are awarded following the policies and procedures contained in 4.5.3.

4.3.5.b *Definition.* A CMSS supplier monitors the management, coordination, and general direction of the work and progress of a construction supplier. The CMSS supplier maintains a full-time staff at the project site during construction. A CMSS supplier may be retained at any time during the project planning, design, or construction phase. During the construction phase the CMSS supplier must maintain a full-time staff at the project site.

4.3.5.c *Purchase Method.* The general policies set forth in 4.5.3 and other chapters of the PM and the procedures listed in Handbook P-2, regarding publicizing, solicitations, and contracts apply to the procurement of construction management support services.

4.3.5.d *Contract Types.* Contracts for construction management support services may be indefinite-quantity contracts or a single fixed-price contract for a single project.

1. *Indefinite-Quantity Contracts.* In order to facilitate the expeditious assignment of CMSS suppliers to projects where their services are needed, construction management support services contracts are generally awarded as indefinite-quantity contracts requiring the CMSS supplier to provide a range of construction services for multiple construction contracts over a specified period of time and within a specified geographic area.
2. *Indefinite-Quantity Contract Duration and Cost Limits.* Limitations regarding contract term, dollar limitations, and (delivery) work order limits are issued by the VP, P&M, or an authorized designee.

4.3.5.e *CMSS Contract as an Alternative to A/E Contract Options.* The Postal Service may contract with a CMSS supplier rather than exercising an A/E construction-management option to perform field duties during construction. The CMSS supplier may not prepare working drawings, design, or specifications that will be used for construction services.

4.3.5.f *Solicitations for Construction Management Support Services Contracts.* Guidelines regarding applicable contract clauses and solicitation provisions are provided in Handbook P-2 and must be followed.

4.3.5.g *Selection Processes for Construction Management Support Services Contracts.* See Handbook P-2 for guidance on the evaluation and selection process.

4.3.5.h *Evaluation of Price Proposals.* The offeror's price proposal is a multiplier factor that is applied to each work-day category. The multiplier submitted by the offeror must not be more than two decimal places (e.g., 1.22 or 0.97).

- 4.3.5.i *Contract Award.* See Handbook P-2 for guidance on the contract award process.
- 4.3.5.j *Contract Management Support Services Supplier Performance Evaluations.* The project manager responsible for monitoring the performance of a CMSS supplier must complete an objective written evaluation using Form 7477-A, *A/E's Performance Design Phase Evaluation* and 7477-B, *A/E's Performance Construction Phase Evaluation*, of the supplier's performance, including any environmental elements, for each project. For further guidance see Handbook P-2.
- 4.3.5.k *Environmental Engineering Services.* When the Postal Service requires environmental engineering services such as the design and/or monitoring of environmental mitigation, abatement, or clean-up measures, an engineering supplier should be retained using the procedures applicable to procurement of A/E services (see 4.3.2). In those cases where a supplier is hired to both design and perform environmental mitigation, abatement, or clean-up measures, the supplier should be retained using the procedures applicable to purchase of design-build services (see 4.3.4).

## 4.4 Mail Transportation Purchasing

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### 4.4.1 General

- 4.4.1.a *Policy.* Mail transportation purchasing is the purchase of mail transportation and related services. This section addresses the purchase of mail transportation services authorized in Part V of Title 39, U.S. Code, and those authorized under applicable provisions of 49 U.S.C. 41904. It also addresses the purchase of ancillary services directly related to the transportation of mail.
- 4.4.1.b *Purchasing Method.* Generally, and depending on the item being purchased, mail transportation is purchased following the policies and procedures contained in 4.2. In case of any conflict between this section and another part of the PM, this section governs.

### 4.4.2 Administrative Officials

Administrative officials are Postal Service officials designated by a contracting officer to supervise and administer a supplier's performance of mail transportation and related services. Officials so designated do not have the authority to make contract changes as described in 4.4.3.

### 4.4.3 Contracting Officer's Representative

- 4.4.3.a *Designation.* A contracting officer may designate, by name and position title, Postal Service employees to serve as contracting officers' representatives (see 1.4.3 and 6.1.1.b). These individuals are authorized to take actions related to the award and administration of specified contracts. Designations must be in writing and must clearly specify the contracts or types of contracts over which the contracting officer's representative has delegated authority. Designations remain in effect until:
1. Revoked by the contracting officer or the contracting officer's successor; or
  2. Revoked by the departure or reassignment of the individual designated.
- 4.4.3.b *Authority and Limitations*
1. A contracting officer's representative is authorized to:
    - (a) Review and grant contract adjustments when the annual compensation paid under the contract will not increase or decrease by more than ten percent.
    - (b) Discuss, approve, and sign orders and contract modifications changing service schedules, provided that the annual compensation paid under the contract will not increase or decrease by more than ten percent; and
    - (c) Review and sign contract modifications having no effect on cost or price.
  2. A contracting officer's representative may not award, agree to, or sign any contract or, except as authorized in subparagraph 1 above, any contract modification or termination notice. Only contracting officers have such authority.
- 4.4.3.c *Restrictions.* The following restrictions apply to the designation of contracting officers' representatives:
1. They must be employed in the Executive and Administrative Schedule or the Postal Career Executive Service.
  2. They may not redelegate their authority. They may, however, assign the performance of administrative tasks to their subordinates.

### 4.4.4 Mailing Lists

- 4.4.4.a *Establishing Mailing Lists.* It is Postal Service policy to use prequalified suppliers to the greatest extent practicable (see 3.5.2). If suppliers have not been prequalified, the contracting officer, working with the purchase team, must establish a list of potential suppliers for each solicitation, and must maintain lists of potential suppliers for services solicited on a recurring basis. Suppliers wishing to be included on the national mailing list may apply by submitting Form 5436, *Mailing List Application — Mail Transportation Services*, or by letter providing the information required by the purchase team.



- 4.4.4.b *Retention on Lists.* Suppliers must be retained on mailing lists for two years from the date of their application or the date of their most recent response to a solicitation, whichever is later. Those that have been removed from mailing lists may be reinstated by filing a new application.
- 4.4.4.c *Use of Mailing Lists.* The purchase team, using its knowledge of the marketplace and depending on the particular purchase, should solicit enough mailing list suppliers to ensure adequate competition.
- 4.4.4.d *Publicizing.* The contracting officer may have an announcement of the solicitation published in the *Journal of Commerce*. Announcements of solicitations may be made available to newspapers, other news media and trade journals at no cost to the Postal Service. Paid commercial announcements or advertisements may be used when determined by the contracting officer to be in the Postal Service's interest. Unless precluded by urgency, any announcement published must appear at least 30 days before the date for receipt of proposals.

#### 4.4.5 **Contracts**

- 4.4.5.a *Contract Type.* See 2.4.
- 4.4.5.b *Contract Term.* Except for air and terminal-handling contracts, the term of the contract must be one of the following:
1. *Regular Contract.* A fixed-term contract that cannot exceed 4 years unless warranted by special conditions or the use of special equipment. In these cases, the contract may be for a 6-year term.
  2. *Emergency Contract.* A contract entered into for the duration of an emergency under the authority of 39 U.S.C. 5001.
  3. *Temporary Contract.* A short-term contract may not exceed 2 years, and that may be terminated by either party without entitlement or indemnity.
- 4.4.5.c *Use of Contracts*
1. Regular contracts should be used whenever possible.
  2. Temporary contracts may be used only when (a) the need for the service is expected to be 2 years or less, or (b) the need for the service has been established, but the duration, frequency, or volume of mail are not certain. Temporary contracts must be replaced with regular contracts as soon as service requirements are firmly established.
  3. Emergency contracts may be entered into only when an emergency exists, and must terminate when the emergency ceases and the Postal Service is able to obtain service otherwise pursuant to its contracting authority. No emergency contract may remain in effect more than 6 months without the approval of the manager, National Mail Transportation Purchasing. Circumstances under which emergency contracts may be appropriate include the following:
    - (a) A catastrophic event has interrupted normal transportation operations.
    - (b) Strikes or other labor disputes are causing service interruptions.

- (c) A mail transportation supplier has been suspended or removed or a contract has been terminated.
- (d) A sole highway supplier has died or become incompetent and the estate representative will not continue service.
- (e) The generation of mail at unanticipated locations or an unexpected increase in mail volume at regular locations exceeds the mail hauling capacity of the Postal Service or regular suppliers.

4.4.5.d *Modes of Transportation.* Transportation contracts are distinguished by the mode of transportation service provided. A contract for any mode of service may require container and additional services such as stevedoring, terminal handling, and ground drayage between postal facilities and the supplier's facilities. The modes follow:

1. *Air Transportation*

- (a) *Air Taxi.* Air taxi contracts call for the transportation of mail by dedicated aircraft operating between two or more specified points. In most cases, these contracts also call for the exclusive use of the entire aircraft capacity for the transportation of mail. Handbook PO-513, *Mail Transportation Handbook*, and more specifically, Handbook PO-509, *Air Taxi Contract Administration*, provides guidelines and procedures in the purchase and administration of air taxi contracts. If any conflict occurs between the handbooks and the PM, the PM applies.
- (b) *Air Network.* Air transportation network contracts call for the transportation of mail by air carrier, usually by dedicated aircraft between points where hub transfers are used.
- (c) *Air Segment.* Air transportation segment contracts call for the transportation of mail by air carrier between an origin and a destination specified by the Postal Service.
- (d) *Air System*
  - (1) Air system contracts call for the transportation of mail from, to and between any point(s) within the air carrier's existing transportation system or network. The air carrier's existing system may be modified from time to time as determined by the air carrier. An air carrier's transportation system consists primarily of transportation by aircraft, but may include road feeder service (RFS) connections. Such contracts may be awarded either (a) through a competition in which price is a factor in the selection decision; or (b) on the basis of a uniform or common rate set by the Postal Service.
  - (2) If price is a factor in selecting air system suppliers, the purchasing procedures contained in 4.2 must be followed.
  - (3) If set rate contracts are solicited, the purchasing method used must be authorized by the manager, National Mail Transportation Purchasing. The method used may deviate from those in 4.2, so long as those procedures (a) are

reasonably adapted to negotiated, set rate contracting; and (b) are approved in writing, prior to issuance of a solicitation, by the manager, National Mail Transportation Purchasing.

- (e) *International Surface Airlift.* An international surface airlift contract calls for the international transportation of surface mail by United States or foreign air carriers operating from designated departure terminals in the United States, its territories or possessions to designated terminals in foreign countries. It is Postal Service policy to give preference to domestic air carriers. If an award is based on price alone, a foreign proposal adjustment factor of ten percent will be added to the lowest acceptable foreign proposal when it is evaluated against domestic proposals. The manager, National Mail Transportation Purchasing, may specify a more stringent method of evaluating foreign proposals.
- (f) *Surface Airlift.* A surface airlift contract calls for the airlifting of surface mail to its destination.

## 2. *Ground Transportation*

- (a) *Highway.* Highway transportation is the surface transportation of mail by means other than bus, rail or water. Service may be between either two or more designated points (over the road) or within a local metropolitan area (shuttle service). Highway transportation contracts may include requirements for the in-route distribution of mail in specially designed and equipped vehicles, box delivery, collections and other services similar to those provided by rural carriers. Under these contracts, another suitable means of transportation may be authorized when the use of a motor vehicle would prove impracticable.
- (b) *Rail Transportation.* A rail transportation contract calls for the transportation of mail in rail carrier supplied or Postal Service-furnished equipment by freight carriers or their subcontractors. These contracts may incorporate one or many origin/destination segments. Handbook PO-513, *Mail Transportation Handbook*, provides guidelines and procedures in the purchase and administration of rail contracts. If any conflict occurs between the handbook and the PM, the PM applies.
- (c) *Amtrak Transportation.* An Amtrak transportation contract consists of mail movement from various origins to various destinations via Amtrak passenger train network. Mail is transported in either mail handling cars (MHCs), baggage cars or other equipment as specified in the requirements. Handbook PO-513, *Mail Transportation Handbook*, provides guidance and procedures for the purchase and administration of the Amtrak contract. If any conflict occurs between the handbook and the PM, the PM applies.

- (d) *Intermodal Transportation.* Intermodal transportation is the transportation of mail in carrier supplied or Postal Service-furnished equipment by the use of intermodal carriers or subcontractors. These Intermodal carriers include rail carriers, highway suppliers, or third party intermodal companies. Intermodal transportation is the combination of more than one mode of transportation to move mail between origin and destination (for example, the use of highway and rail transportation to complete one movement of mail from origin entry to destination arrival).
  - (e) *Bus.* Bus contracts call for the transportation of mail by passenger common carriers in passenger-carrying or other motor vehicles on the routes on which they are permitted to carry passengers. These contracts may either cover a segment of the particular bus service or may cover the entire bus system or network.
3. *Water Transportation*
- (a) *Domestic Inland Water.* A domestic inland water contract calls for the transportation of mail in vessels between points within the 48 contiguous states or between points within Alaska, Hawaii, or U.S. territories and possessions. Such a contract may include provisions requiring box delivery, collection and other services similar to those furnished by highway suppliers or rural carriers.
  - (b) *Domestic Offshore Water.* Domestic offshore water contracts call for the transportation of mail in vessels between points in the 48 contiguous states and offshore points and points in Alaska, Hawaii, or U.S. territories and possessions.
  - (c) *International Ocean.* An international water contract is a contract with U.S. or foreign-flag carriers for the transportation of mail by vessel from points in the United States or its territories and possessions to points in foreign countries.
4. *Ground Transportation Network.* Ground transportation network contracts call for the transportation of mail by ground truck operations and may include ancillary terminal handling or delivery requirements as determined by the Postal Service.
5. *Terminal Handling.* Terminal handling contracts call for the sorting, dispatching, loading, or unloading of mail into and out of transportation equipment. These services may be performed at the supplier or the Postal Service terminal handling facility and may or may not be ancillary in nature to the line-haul services performed by the same or other suppliers.
6. *Leased Trailer.* Leased trailer contracts call for the lease of trailers for transportation of mail within geographical areas designated by the Postal Service. These contracts may contain provisions for trailer maintenance and repair service and load restraint systems, and other related requirements determined to be in the best interest of the Postal Service.

- 4.4.5.e *Alternatives to Contracts.* The following may be used to obtain mail transportation services:
1. *Domestic Air Transportation Services.* Transportation of mail between points within the state of Alaska performed by scheduled air carriers and paid for at rates of compensation established by the Department of Transportation in its service mail rate orders (30 U.S.C. 5402(f)).
  2. *International Ocean Transportation.* International ocean transportation services may be obtained on a per-pound basis by tender. Mail of all classes and empty mail equipment may be tendered to U.S. and foreign-flag steamship companies for transportation in accordance with the scheduled rates at [Exhibit 4.4.5](#), unless the responsible manager has negotiated other rates. Mail may be tendered at postal facilities for transport by the steamship company to the pier, or at the carrier's facility. The schedule or negotiated rates include any costs incurred for such transport.
  3. *International Air Transportation.* International air transportation services other than those for which the Postal Service has contracting authority under Title 39 U.S.C. 5402(a) and (b) and 49 U.S.C. 41904 must be obtained from carriers with permits and reimbursed pursuant to Department of Transportation service mail rate orders.

#### 4.4.6 **Renewal of Contracts**

- 4.4.6.a *General.* Competitively awarded regular and temporary mail transportation contracts may be renewed by the mutual agreement of the Postal Service and the supplier. Regular or temporary highway and inland water contracts that have been wholly subcontracted less than 6 months before their expiration date (except those subcontracted by an immediate family member of a deceased or incompetent supplier) may not be renewed. Wholly subcontracted contracts that have been in effect for greater than 6 months are eligible for renewal and may be renewed by mutual agreement between the Postal Service and the subcontractor, by which the subcontractor becomes the prime supplier under the renewal contract.
- 4.4.6.b *Characteristics of Renewal Contracts*
1. *Duration.* The renewal term of a temporary contract may not exceed 2 years, and the renewal term of a regular contract may not exceed the greater of 4 years or the original contract term.
  2. *Service.* The service provided at the beginning of the renewal term must be the same as that existing at the end of the previous contract term.
  3. *Contract Rate.* The contract rate at the beginning of the contract renewal term must be the contract rate in existence at the end of the previous contract term.

## Exhibit 4.4.5

**International Ocean Transportation Schedule of Rates**

<b>Distance (Nautical Miles)</b>	<b>Rate (cents/lb)</b>
0-499	16.0
500-999	16.4
1,000-1,499	16.7
1,500-1,999	17.1
2,000-2,499	17.4
2,500-2,999	17.8
3,000-3,499	18.1
3,500-3,999	18.4
4,000-4,499	18.8
4,500-4,999	19.1
5,000-5,499	19.5
5,500-5,999	19.8
6,000-6,499	20.2
6,500-6,999	20.5
7,000-7,499	20.8
7,500-7,999	21.2
8,000-8,499	21.5
8,500-8,999	21.9
9,000-9,499	22.2
9,500-9,999	22.6
10,000-10,499	22.9
10,500-10,999	23.2
11,000-11,499	23.6
11,500-11,999	23.9
12,000-12,499	24.3
12,500-12,999	24.6
13,000-13,499	25.0
13,500-13,999	25.3
14,000-14,499	25.7
14,500-14,999	26.1

#### 4.4.6.c *Renewal Procedures*

1. *Establishing Requirements.* Before entering into discussions for the renewal of a contract, the purchase team must determine the need to be met by the renewal contract and a reasonable rate for the service that will meet that need.
2. *Determining Satisfactory Service.* Contracts should not be renewed with suppliers who are currently providing less than satisfactory service. Faults in service which do not rise to the level of deficiencies and thus would justify termination for default may be sufficient to support a determination not to renew.
3. *Negotiating Service and Price.* Having determined that a contract is appropriate for renewal, the contracting officer with the assistance of the purchase team enters into discussions with the supplier on the terms of the renewal contract. Before agreeing to the final terms, the purchase team must determine that renewal offers the best value and most advantageous alternative to the Postal Service, price and other factors considered. For the purpose of this determination, "other factors" may include the benefits of continuity of service and the potential costs of disruption arising out of resolicitation.
4. *Contract Modifications, Renewal, Resolicitation.* If agreement is reached on the renewal terms, the existing contract is modified to reflect any adjustments in service and rates. If a contract will not be renewed, or terms for renewal cannot be agreed upon in whole or in part, any continuing service requirement may be the subject of a new competitive solicitation.
5. *Documentation.* The determinations made throughout the renewal process must be thoroughly documented in the contract renewal file.

4.4.6.d *Restrictions.* Emergency contracts may not be renewed.

4.4.6.e *Clause.* Clause B-78, *Renewal*, must be included in transportation contracts that may be considered for renewal.

#### 4.4.7 **Extension and Short-Term Renewal of Contracts**

- 4.4.7.a When appropriate, contracting officers may issue modifications extending the term of a contract, as distinct from the renewal of a contract (see 4.4.6).
- 4.4.7.b The contract term may be extended in increments of up to 1 year, provided the extension does not result in a total term of more than 2, 4, or 6 years, whichever is the allowable maximum contract term. The extension must be made with the consent of the supplier by a supplemental agreement (see 6.5.1.c), and the need for the extension must be documented in the contract file.
- 4.4.7.c Pending full renewal in accordance with 4.4.6, an expiring contract that is eligible for renewal may be renewed for short terms of up to 1 year by mutual agreement of the parties. When the full renewal is approved, the short-term renewal may be converted into a full-term renewal to cover the full remaining term of the contract.

## 4.4.8 Contract Changes

### 4.4.8.a General

1. Contracting officers working with their purchase team may take action to discontinue, extend, or curtail contracts; to change and restate service required; and to increase or decrease frequencies.
2. The purchase team must carefully consider the effect of any proposed contract change. No change may be authorized that is contingent on or related to a change in another contract service without the concurrence of the contracting officer responsible for the other service.

### 4.4.8.b Termination for Convenience

1. A contract, or any part of a contract, must be terminated if it becomes unnecessary or if it is to be superseded by some other service. The supplier must be notified in writing of the termination and is entitled to the indemnity provided in the contract. If it is more advantageous to operate than to pay the indemnity, the service should be continued.
2. Discontinuance of service under the contract may, in some instances, be to the advantage of the supplier. In these instances, if the supplier is willing to waive the indemnity, the waiver must be included in a contract modification discontinuing the service. In the case of highway or inland domestic water routes, the waiver must be included in a supplemental agreement signed by the supplier.
3. It is the policy of the Postal Service to furnish suppliers as much advance notice as possible when a contract is to be terminated before the end of its term. Specific requirements for notice may be stated in the contract. A supplier may be notified by letter of intent to discontinue in advance of issuing a formal notice. In the case of highway, inland domestic water routes or air taxi, the termination must be approved by the manager, National Mail Transportation Purchasing, prior to being issued.

### 4.4.8.c Service Changes

1. *Highway or Domestic Inland Water Contracts*
  - (a) *Types*. There are two general types of service changes: minor service changes and major service changes. They are effected by contract modification.
  - (b) *Definitions*
    - (1) *Minor Service Change*
      - (i) A minor service change is any change that results in a change in equipment type or termini; an extension; a curtailment; a change in line of travel; or a permanent increase in the frequency or number of trips which, either individually or in combination with previous changes, does not increase by more than 100 percent the mileage required at the beginning of the contract or renewal term.



- (ii) An insignificant minor service change is one that increases the supplier's rate of pay by no more than \$2,500.
    - (iii) A significant minor service change is one that increases the supplier's rate of pay by more than \$2,500.
  - (2) *Major Service Change*. A major service change is any service change other than a minor service change.
- (c) *Effecting Service Changes*
- (1) *Insignificant Minor Service Change*. Insignificant minor service changes resulting in increased compensation to the supplier may be ordered by the contracting officer as a unilateral contract modification (see 6.5.1.c.2). They do not require the supplier's approval. The contracting officer may authorize an equitable increase in compensation at the existing rate or at such other rates as the contracting officer determines to be fair and reasonable. If the supplier considers the amount of increase inequitable, the contracting officer must attempt to negotiate a mutually agreeable increase and incorporate it by contract modification. If time permits, the contracting officer may discuss the change and increase in compensation with the supplier; if an agreement on compensation is reached, the change may be made by contract modification. If agreement cannot be reached, the contracting officer may issue a unilateral contract modification and determine the amount of increased compensation, subject to Clause B-9, *Claims and Disputes*.
  - (2) *Significant Minor Service Change*. Significant minor service changes are made by contract modification, incorporating a price adjustment, with the agreement of the supplier.
  - (3) *Major Service Change*. Major service changes are discussed with the supplier and effected by contract modification. The contracting officer must obtain the approval of the manager, National Mail Transportation Purchasing, before entering into discussions regarding major service changes. When determining whether or not to recommend or approve the negotiation of a major service change, the purchase team must take into consideration indemnity liability, the supplier's experience in operating a service of the scope required, past performance, rate, and any factors that would indicate the proper course of action to take in the best interests of the Postal Service. When a major service change is not approved by the manager, National Mail Transportation Purchasing, the old service may be terminated and the new service purchased.

2. *Other Surface Contracts and Air Contracts.* Service changes for contracts other than those discussed in 4.4.8.c.1 may be made, consistent with the terms of the contract, provided that these changes do not:
  - (a) Alter the original intent of the contract; or
  - (b) Transform the service into an entirely new service.

#### 4.4.8.d *Exceptional Service*

1. Exceptional service is additional service to perform scheduled or backup route operations (such as extra trips, detour miles, and additional equipment). Exceptional service may be required only when an unanticipated increase in mail volume or other conditions arise that require the performance of additional service or equipment.
2. Whenever feasible, contracting officers should hold discussions with suppliers to establish the rate to be paid for exceptional service before its performance. When discussions in advance would delay the mail or otherwise not be feasible, the contracting officer or a designated representative may order the supplier to perform such service at pro-rata pay.
3. If no rate of pay for exceptional service has been negotiated in advance, the supplier may be paid a lump sum reimbursement for the difference between costs incurred as a direct result of performing exceptional service and pro-rata payment, provided that such costs are adequately supported by evidence satisfactory to the contracting officer. Claims for compensation above pro-rata pay for exceptional service must be filed in writing with the contracting officer, with full supporting documentation, no later than 90 days after the performance of the service.
4. Disputes regarding compensation are handled as provided in Clause B-9, *Claims and Disputes*.

#### 4.4.8.e *Schedule Changes for Highway or Domestic Inland Water Contracts*

1. Improvement of mail service must be the primary consideration in ordering a schedule change. Schedules may not be changed for the convenience of suppliers, subcontractors, or drivers unless the change will in no way be detrimental to the Postal Service. The purchase team must consider the following before making schedule changes:
  - (a) *Financial effect on the supplier.* Reversing a schedule or requiring an excessive layover might cause sufficient increase in cost of operation to provide the basis for a request for pay adjustment.
  - (b) *Hardship on suppliers or customers.* Arbitrary action should be avoided and reasonable effort should be made to work out arrangements satisfactory to suppliers.
  - (c) *Schedule realism.* Schedules may not be set that would require running times in violation of established speed limits.
2. The purchase team must ensure that schedule changes are coordinated with all those responsible for other affected services.

4.4.8.f *Emergency Contracts.* The service and rate of compensation under emergency contracts may not be changed unless specifically authorized in the contract or by the manager, National Mail Transportation Purchasing.

4.4.8.g *Clauses*

1. Clause B-71, *Termination for Convenience (Transportation)*, must be included in all regular and temporary highway and air taxi contracts.
2. Clause B-72, *Termination for Convenience — Emergency Contracts*, must be included in all emergency highway and air taxi contracts.
3. Clause B-67, *Changes (Transportation)*, must be included in all highway transportation regular and temporary contracts.

## 4.4.9 **Subcontracting**

4.4.9.a *Highway or Domestic Inland Water Contracts*

1. A subcontract for the transportation of mail is any agreement, other than an employer-employee agreement, between a party that has contracted with the Postal Service to transport mail and a third party, in which the latter agrees to provide all or part of the contract service. An employer-employee agreement is one under which the employee is subject to the continuing authority of the mail supplier to supervise and direct the manner of work performance of the employee. Such an employer-employee agreement is also characterized by, expressly or implied, the employer's responsibility to pay compensation directly to the employee, to withhold taxes and amounts for social security benefits from the employees' compensation for the work performed under the agreement. An agreement between a supplier and a third party for the latter to provide labor for service other than the transportation of mail is not a subcontract within the meaning of this section. When an owner-operator, who because of illness or temporary equipment failure, is required to obtain labor from another in order to continue performance of the service as required by the contract, the resultant transaction is not a subcontract within the meaning of this section.
2. A supplier may, without approval of the contracting officer, subcontract the whole or part of the contract with one or more owner-operators who provide and drive their own vehicles, provided that the service is for irregular mail movements such as plant loads. All other subcontracts, for either the whole route or any part of it, must be approved by the purchase team.
3. Subcontracting is an exceptional action and may be approved only when the supplier offers good and sufficient reasons. The supplier must request permission to subcontract in writing, giving the purchase team its reasons for subcontracting, the desired effective date, and the identity and qualifications of the proposed subcontractor.
4. Approval by the Postal Service and execution by a supplier of a subcontract does not release the supplier from its contractual obligations, nor from liability for damages.

5. Whenever the purchase team determines that a supplier has breached the contract by subletting the whole or part of the contract contrary to the requirements of this manual, the contracting officer may terminate the contract for default.
6. Subcontractors must meet the same responsibility and qualification requirements as the prime supplier.
7. If the whole contract is subcontracted, the subcontract must be for the full remainder of the contract term. The subcontractor's initial rate of pay will be the same as the supplier's, unless there is a change in operations costs resulting from a service change or from the enactment of a statute or ordinance or the adoption of lawful regulations by any federal, state, or local agency.
8. When a subcontract is terminated, the prime supplier may be required to take charge of the route. A subcontract may be terminated at the subcontractor's request only with the prior approval of the contracting officer. Such approval may be given only for good cause, and must be in writing. Subcontracts are automatically terminated by death of the subcontractor or abandonment of the service by the subcontractor.
9. When a subcontractor fails to meet the terms of a contract, the contracting officer must notify the prime supplier of the subcontractor irregularities. The contracting officer may (a) require removal of the subcontractor for failure to perform, and require the prime supplier to resume route operations, and (b) terminate the prime contract for default.

4.4.9.b *Other Surface Contracts and Air Contracts.* For other surface and air contracts whose terms permit subcontracting, the supplier must give the contracting officer advance notice of its intent to subcontract. The supplier may enter into a subcontract unless notice of disapproval is received from the contracting officer within 30 days of the date the notice was given.

#### 4.4.10 **Release of Supplier**

In the case of highway or domestic inland water contracts, when the purchase team determines that it is in the best interest of the Postal Service, a supplier may be released from a contract if unable to perform adequately due to a disability, or when the supplier's life or the public safety would be endangered by the supplier's continued performance. Whenever practicable, a replacement contract should be awarded before the current supplier is released. The supplier must waive any indemnity as a condition of release. For other than highway or domestic inland water contracts, a supplier may be released only as provided in the terms of the contract.

#### 4.4.11 **Service Deficiencies**

- 4.4.11.a *Damages.* The contracting officer may make deductions from the payment due suppliers for failure to perform contractually required service, and may assess damages for delinquencies with regard to any contractual requirements as provided in the terms of the contract. The contracting officer may also change or remit deductions and damages. Suppliers are also answerable in damages to the Postal Service for the proper care and transportation of the mail. Such damages, as determined by the contracting officer, may be withheld by the Postal Service from compensation otherwise due the supplier. Suppliers are accountable to the Postal Service for loss or damage to the mail or any part thereof due to (1) loss, rifling, damage, wrong delivery, depredation, or other mistreatment of the mail by the supplier or any of the supplier's officers, agents, or employees, or (2) the failure of the supplier or any of the supplier's officers, agents, or employees to exercise due care in the custody, handling, or transportation of the mail.
- 4.4.11.b *Breach Not Warranting Termination.* When a supplier has committed a breach of the contract not sufficiently serious to warrant termination, the supplier may be assessed damages in an amount determined by the contracting officer, in accordance with the terms of the contract.
- 4.4.11.c *Loss or Damage to Mail.* When a supplier, or supplier's agent or employee, permits loss or damage to the mail, the contracting officer may withhold from the supplier's compensation as damages the value of the mail lost or damaged plus administrative costs of handling the irregularity.
- 4.4.11.d *Supplier with Several Contracts.* When a supplier holding several contracts is subject to a fine or assessment for damages on one contract, the contracting officer may withhold compensation due under other contracts held by the supplier until such fines and damages have been recovered.

#### 4.4.12 **Death or Incompetence of Supplier**

- 4.4.12.a *Individual*
1. The procedures below are to be followed upon the death or legally adjudged incompetence of an individual contracting in his or her own name (sole proprietorship), or in the name of a corporation all of whose stock is substantially owned by the individual (closely held corporation) and the supplier is a highway or inland domestic water supplier. These procedures do not apply when the death or incompetence of an owner or officer of a corporation does not significantly impair the corporation's ability to perform the contract service.
  2. The contracting officer must act to maintain continuity of service. If a prime contract is affected, the representative of the estate (administrator, executor, or immediate family member) must be contacted to ascertain whether the estate wishes to continue to perform the service. If a subcontract is affected, the subcontract may be terminated and the prime supplier is responsible for performance of the service.

3. The death of a sole proprietor terminates the contract, and the estate has no obligation to continue to provide the service.
4. The representative of the estate may operate the route with the consent of the contracting officer. If there is reason to deny consent, the contracting officer must promptly submit a full written report to the manager, National Mail Transportation Purchasing, for determination. The contracting officer must document the file with evidence of the representative's authority to represent and assume control of the supplier's business.
5. When an individual regains competence during the performance of the contract by a representative, the individual may apply to the contracting office for reinstatement as supplier. Any such application must be approved by the manager, National Mail Transportation Purchasing, before reinstatement.

4.4.12.b *Partnership.* When the supplier is a partnership, and the death or incompetence of a member of the partnership dissolves the partnership, the surviving partner or partners may continue to operate the route. At the request of the surviving partner or partners, the contracting officer will order a simple name change to recognize the new contracting entity.

#### 4.4.12.c *Estate Representatives*

1. When the representative of an estate assumes a route, the contract rate remains the same. Pending pay adjustment requests are processed under instructions in effect at the time of adjustment. The operator of the route is entitled to all benefits of the adjustment.
2. The representative of an estate may subcontract all or part of the route in accordance with 4.4.9.
3. If a contract expires while being performed by the representative of an estate, the contract cannot be renewed, unless the representative is the surviving spouse or child of the deceased, in which case the contract may be renewed in that individual's name.
4. If the representative of an estate does not want to continue the service, or if consent is denied for the representative to continue the service, the contracting officer should purchase emergency service and issue a solicitation for a new permanent service contract.
5. Procedures for processing payments to deceased or incompetent suppliers are described in Handbook PO-513.

### 4.4.13 **Eligibility Requirements**

4.4.13.a *Eligibility Requirements for Suppliers.* Any individual 21 years of age or older, any partnership in which at least one partner is 21 years of age or older, and any corporation in which at least one of the officers is 21 years of age or older may hold mail transportation contracts. See 1.6.4 for restrictions concerning contracts with Postal Service employees and business organizations substantially owned or controlled by Postal Service employees or their immediate families. Solicitations may establish other eligibility requirements as needed.

#### 4.4.13.b *Service Employees*

1. The following persons are ineligible to perform services under a contract:
  - (a) Persons on parole or under suspended sentence for commission of a felony.
  - (b) Persons with known criminal records which involve convictions for offenses involving moral turpitude or dishonesty.
  - (c) Persons who associate with convicted felons.
  - (d) Persons known to engage in the illegal use, possession, sale, or transfer of narcotics or other drugs.
  - (e) Persons who knowingly submit false data or conceal data for the purpose of gaining employment.
  - (f) Persons whose traffic records indicate that their driving motor vehicles would be hazardous (applies only to drivers and assistants).
  - (g) Pilots with unsatisfactory aircraft operations safety performance records.
  - (h) Persons who through their abusive or disruptive behavior would pose a danger to fellow workers.
2. Supplier employees engaged as drivers of vehicles with a GVW of 10,001 lbs. or more must be at least 21 years old. All other drivers must be at least 18 years old.

#### 4.4.13.c *Screening*

1. *ID Cards.* No supplier, subcontractor, or employee of a supplier or subcontractor may be allowed access to mail matter or postal operational areas unless he or she displays a valid identification card issued by the Postal Service.
2. *Screening.* Except for those categories of persons identified in paragraph d below, the Postal Service will not issue the identification cards described above to individuals until they have been screened to determine their suitability for that access. Forms and procedures for screening are as set forth in Handbook PO-508 and in any applicable Management Instruction.

#### 4.4.13.d *Exceptions*

1. Persons employed by suppliers whose own security screening procedures have been approved by the contracting officer and reviewed by the Inspector-in-Charge.
2. Persons who are civil service personnel otherwise subject to investigation under Executive Order 10450.
3. Persons previously screened under another contract with a break in service of less than 1 year.
4. Persons hired for service in an emergency of not more than 15 days. (This does not exempt regular relief or substitute employees or those repeatedly hired on an emergency basis.)

5. Persons employed to transport plant-load mail, but only if such mail is not generated with regularly recurring frequency.

4.4.13.e *Notification of Supplier.* The contracting officer will notify the supplier of the grounds on which any person has been denied access to the mails under the procedure set out herein. Any decision as to whether a supplier, subcontractor, or contract or subcontract employee is to be denied access to the mail or precluded from operating a vehicle transporting mail must be made by the contracting officer in accordance with the eligibility requirements of 4.4.13.a and 4.4.13.b.

4.4.13.f *Disclosure of Information.* All information obtained or developed in the screening program must be restricted from disclosure outside the Postal Service to anyone other than the supplier, subcontractor, or contract or subcontract employee concerned.

#### 4.4.14 **Contract Administration**

4.4.14.a *General.* The purchase team is responsible for monitoring contract performance in a manner appropriate to ensure that the supplier provides all services and equipment required under the terms of the contract (see 6.1.1).

4.4.14.b *Unsatisfactory Service.* The purchase team under the direction of the contracting officer must take necessary action to correct any problem caused by unsatisfactory supplier performance. If the remedies and damages provided in 4.4.11 are insufficient, termination for default should be considered.

4.4.14.c *Major Irregularity.* A major irregularity is an action or service deficiency requiring summary suspension or removal of the supplier in the public interest (such as subcontracting without approval, or theft, deliberate loss, damage, or abandonment of the mail or contract operation). When a major irregularity occurs, the contracting officer may take immediate suspension or removal action, without prior notice to the supplier. Suspension may be with or without pay, as provided in the contract.

## 4.5 **Special Categories of Purchases**

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### 4.5.1 **General**

Certain Postal Service purchases must by nature receive distinctive treatment, and therefore are purchased under policies and procedures distinct from those contained in the PM. This section identifies those types of purchases, and addresses some of them in detail, providing policies and procedures supplementing those contained in other chapters and sections of the PM. In turn, the policies and procedures contained in this section may be supplemented by other such issuances as discussed in 4.5.2.



## 4.5.2 Supplemental Policies and Procedures

Under delegations issued by the VP, P&M, these policies and procedures are originated and developed by individuals within the organizations housing the distinct requirement. [Exhibit 4.5.2, Supplemental Policy and Procedural Authority](#), shows, by requirement category, the Postal Service policy-originating officials delegated this authority, subject to the review and approval of the approving official identified in the exhibit.

Exhibit 4.5.2

### Supplemental Policy and Procedural Authority

Requirement Category	Policy-Originating Organization	Approving Official
Accounting and Financial Audit Services	Finance	VP Purchasing & Materials
Advertising	Chief Marketing Officer	VP Purchasing & Materials
Appraisal Services	Facilities	VP Facilities
Arbitration Services	Labor Relations	VP Purchasing & Materials
Architect-Engineer Services	Purchasing & Materials	VP Purchasing & Materials
Banking Services	Finance	VP Finance
Brokerage Services	Facilities	VP Facilities
Construction	Purchasing & Materials	VP Purchasing & Materials
Fiscal Services	Finance	VP Purchasing & Materials
Fuel	Purchasing & Materials	VP Purchasing & Materials
Information Services	Information Technology	VP Purchasing & Materials
International Postal Agreements	International Business	VP Purchasing & Materials
Law Enforcement (Inspection Service)	Chief Inspector	VP Purchasing & Materials
Leasing	Facilities	VP Facilities
Legal Services	General Counsel	VP Purchasing & Materials
Licensing of Non-Postal-Owned Rights for Postal Use	Purchasing & Materials	VP Purchasing & Materials
Licensing of Postal Rights	Chief Marketing Officer	VP Purchasing & Materials
Literary and Artistic Works	Public Affairs & Communications	VP Purchasing & Materials
Mail Transportation Services	Purchasing & Materials	VP Purchasing & Materials
Medical Services	Employee Relations	VP Purchasing & Materials
Postal Rate Commission Purchases	Postal Rate Commission	Postal Rate Commission
Printing	Purchasing & Materials	VP Purchasing & Materials
Real Estate and Related Services	Facilities	VP Facilities
Research & Development	Engineering	VP Purchasing & Materials
Revenue-Producing Contracts	Purchasing & Materials	VP Purchasing & Materials
Stamp Design	Government Relations & Public Policy	VP Purchasing & Materials
Structured Contracts	Purchasing & Materials	VP Purchasing & Materials
Surveying Services	Facilities	VP Facilities
Title Abstracting Services	Facilities	VP Facilities
Title Insurance Purchases	Facilities	VP Facilities
Uniforms	Labor Relations	VP Purchasing & Materials

### 4.5.3 Professional/Technical and Consultant Services

- 4.5.3.a *Policy.* It is the policy of the Postal Service to contract for professional/technical and consultant services when doing so makes good business sense in light of available personnel resources. For example, short-term expertise may be necessary to assist in the development of new customer service programs or to manage spikes in operational workload. In other cases, long-term contracts for these services may prove more fiscally and technically beneficial than the use of career employees. When contemplating contracting for these services, and for personal services (see 4.5.4), purchase teams must consider the financial commitment and potential return on investment. For certain requirements, such as those affecting craft positions and duties, additional reviews and approvals are required; these include meeting legal and labor agreement obligations set forth in Federal regulations and labor agreements. In these cases, purchase teams must consult with Strategic Initiatives at Headquarters. In addition, reviews and approvals are required for contracts with former Postal Service officers, executives, and employees, regardless of whether these individuals are contracted with directly or are employed or proposed to be employed by a supplier (see 1.6.14)
- 4.5.3.b *Conflicts of Interest.* When purchasing professional/technical or consultant services, purchase teams must pay particular attention to the potential for organizational conflicts of interest, and consider using Clause 1-7, *Organizational Conflict of Interest*, or a similar clause in the contract (see 1.6.8).
- 4.5.3.c *Professional and Technical Services*
1. *Definitions.* Generally, professional services are those performed by individuals or firms of recognized status, such as accounting, engineering, law and the sciences. Technical services are provided by individuals or firms who are expert in a given field, such as information technology, training, writing and editing, purchasing, marketing and demographics, and other such areas. These services may be used to: (a) provide needed expertise on an individual or group basis; (b) to supplement the career workforce as required by workload; and (c) to provide turn-key services in support of postal operations.
  2. *Licenses.* When prequalifying or purchasing professional services for which individuals are normally required to be licensed (such as medical, legal, accounting, and architecture), licenses must be required as a prerequisite to prequalification or contract award. Acceptable licenses may be limited to those issued by a particular state or entity, but only when local expertise is necessary to successful performance.
  3. *Required Clauses.* All contracts for professional/technical services must include the following clauses:
    - (a) Clause 4-4, *Nondisclosure (Professional Services)*. The clause may be modified with the approval of the policy-originating official designated in [Exhibit 4.5.2](#) and assigned counsel.

- (b) Clause 4-5, *Inspection of Professional Services*. The clause provides for inspection of the supplier's work product and acceptance of only those products that meet reasonable professional standards. The clause is to be used in lieu of, not in addition to, the standard inspection clauses prescribed in 2.2.
  - (c) Clause 4-7, *Records Ownership*. The clause gives the Postal Service ownership of contract files, including copies of all supplier work papers. While this clause is mandatory for professional service contracts, purchase teams have to decide whether to include it or not in technical services contracts, depending on the nature of the service.
4. *Other Clauses*. Depending on the particular purchase, the following clauses should be included in contracts for professional/technical services:
- (a) Clause 4-6, *Invoices (Professional Services)*. This clause is included in all non-fixed-price contracts for professional/technical services. The clause requires presentation of invoices showing who performed the services, the hours and partial hours of service provided each day, and the services provided each hour or partial hour. Suppliers may be allowed to set minimum charges for partial hours or days.
  - (b) Clause 4-8, *Key Personnel*. This clause requires use of the key personnel identified in the supplier's proposal, unless the contracting officer approves substitution, and provides for contract termination for failure to comply
  - (c) Clause 1-1, *Privacy Protection*, must be included as applicable. See 1.6.6.

#### 4.5.3.d *Consultant Services*

1. *Definition*. Consultant services are services provided by expert individuals or firms possessing exceptional qualifications in a particular technical or professional field. They are used to enhance the understanding of complex issues and to provide new insights into alternate solutions to, or make recommendations on, business or decision-making functions of a postal organization. Consultants neither involve themselves in the day-to-day operations of Postal Service organizations except for study purposes, nor work under the immediate direction and control of Postal Service employees. Usually, consultant service suppliers provide reports or analyses as the deliverable upon completion of their contractual duties.
2. *Use*. Consultant services are used to enhance the understanding of complex issues and to provide new insights into alternate solutions to, or recommendations on, business or decision-making functions of a postal organization.

#### 4.5.4 Personal Services Contracts

- 4.5.4.a *Definition.* A personal services contract is a contract with an individual under the terms of which the individual will: (1) work under the direct supervision of postal personnel; (2) work on postal premises and use postal equipment; and (3) perform duties similar in nature to those of postal employees. A personal services contract may create the appearance of an employee-employer relationship, and may result in additional costs, such as tax withholding. For this reason, purchase teams should strive to use contracting vehicles other than personal services contracts, but, when deemed appropriate, they may be used, subject to the reviews and approvals described in 1.6.14.
- 4.5.4.b *Use.* Personal services contracts may be awarded for professional/technical services but may not be awarded for consultant services.
- 4.5.4.c *Contracts.* All personal services contracts should be written to ensure that the Postal Service does not incur unnecessary costs or liabilities. Purchase teams should work with assigned counsel to ensure that the interests of the Postal Service are protected in areas such as taxes, unemployment liability, etc.

#### 4.5.5 Information Technology

- 4.5.5.a *Definitions*
1. *Computer.* Defined in 8.3.1.
  2. *Computer software.* Defined in 8.3.1.
  3. *Hardware.* Computers and peripheral machines.
  4. *Information technology (IT).* Encompasses all types and categories of computer, networking, and telecommunications systems (where voice and/or data may be transmitted by cable, telephone or wireless), and all associated hardware, firmware, software and services. This includes emerging technologies that collect and transmit information such as wireless handheld data collection devices, information kiosks, electronic commerce services, distance learning systems, World Wide Web sites, multimedia, and office equipment such as fax machines and copiers. IT also includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. IT does not include any equipment that contains embedded technology that is used as an integral part of the product but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation is not IT.
  5. *System life cost.* All costs associated with acquiring, operating, and maintaining an information system, including conversion, environmental (such as heating, ventilation, air conditioning), training, and support service costs from the date the system is acquired until it is no longer needed for Postal Service use.

6. Information Systems security. Encompasses a composite of factors necessary to protect information technology systems and the information they process to prevent exploitation through interception, unauthorized electronic access, or related technical intelligence threats, and to ensure authenticity. This protection results from the application of security measures that may include cryptosecurity, transmission security, emission security, and computer security to systems that generate, store, process, transfer, or communicate information of use to unauthorized parties. It also includes protection of sensitive material.
7. Undue burden. A significant difficulty or expense.

#### 4.5.5.b *Policy*

1. *General.* Even small-dollar information technology purchases may involve questions of system compatibility, expansion potential, and other complex issues. Information Systems researches, tests, and evaluates information systems and components to ensure quality and intersystem communication capability. Therefore, it is the policy of the Postal Service to acquire information technology in accordance with the technical standards established by Information Systems and concurred in by the VP, P&M.
2. *Accessibility*
  - (a) *General.* Section 508 of the Rehabilitation Act Amendments of 1998 requires the Postal Service to ensure that information technology (IT) purchased by the Postal Service allows employees with disabilities and individuals with disabilities who are members of the public to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities, unless doing so would impose an undue burden (see below).
3. *Applicability.*
  - (a) *General.* Unless an exception applies, purchases of IT must meet the applicable accessibility standards at 36 CFR part 1194. Exception determinations are required prior to contract award, except for indefinite delivery contracts and the other circumstances discussed in 4.5.5.b.3(c).
  - (b) *Indefinite Delivery Contracts.* Exception determinations are not required prior to award of indefinite delivery contracts, except for requirements that are to be satisfied by initial award. Contracting officers who award indefinite delivery contracts must indicate to requiring and ordering activities which IT the supplier indicates as compliant and where full details of compliance can be found (e.g., the supplier's or other exact Web site location). Before task or delivery orders are issued, requiring and ordering activities must ensure IT meets the applicable accessibility standards at 39 CFR part 1194, unless an exception applies. Accordingly, indefinite delivery contracts may include noncompliant IT items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

- (c) *Nonapplication.* The accessibility standards at 36 CFR part 1194 do not apply to:
    - (1) Taking delivery for items ordered prior to June 21, 2001;
    - (2) Within-scope modifications of contracts awarded before June 21, 2001;
    - (3) Exercising unilateral options for contracts awarded before June 21, 2001; or
    - (4) Multiyear contracts awarded before June 21, 2001.
  - (d) *Exceptions*
    - (1) *General.* The requirements of Section 508 of the Rehabilitation Act as amended do not apply to IT that:
      - (i) Is acquired by a supplier incidental to a contract.
      - (ii) Is located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.
      - (iii) Is being acquired as IT that is available in the commercial marketplace, and the IT meets all the accessibility standards that can be met within time to meet the Postal Service's delivery requirements.
      - (iv) Would impose an undue burden on the Postal Service.
  - (e) *Basis.* In determining whether compliance with all or part of the accessibility standards in 36 CFR part 1194 would be an undue burden, the Postal Service must consider the difficulty or expense of compliance.
4. *Documentation*
- (a) *Undue Burden.* The requiring or ordering activity must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.
  - (b) *Commercial Items.* When acquiring commercial items, the requiring or ordering activity must document in writing, for provision to the contracting officer for inclusion in the contract file, the extent to which commercial items fail to meet specific accessibility standards and a description of the market research performed to establish the extent of the commercial IT's noncompliance.
5. *Information Systems Guidance*
- (a) *Technical Standards.* Information Systems periodically issues standards, policies, and general guidance by means of management instructions, handbooks, and technical bulletins, in order to supplement guidance in terms of updated standards and policy interpretations. The core technical standards which guide information technology purchases are contained in Handbook AS-820, *Postal Computing Environment*. To ensure compliance with these standards, Provision 4-7, *Postal Computing Environment*, must be included in all information technology solicitations and resultant contracts.

(b) *Technical Appraisals.* Information Systems conducts market research and technical appraisals of the information technology marketplace and potential suppliers. Information Systems conducts technical appraisals of potential suppliers at various points during the purchasing process, particularly during the presolicitation phase. The objective is to proactively ensure seamless integration into the Postal Service's computing environment. Companies interested in having their products or services appraised by Information Systems must submit a request to that organization. Additionally, contracting officers should encourage requirements organizations to seek a similar review by Information Systems of their current and future requirements. Lastly, prequalification of suppliers should be considered for all information technology purchases (see 3.5.2).

6. *Security Considerations*

(a) *Systems and Software Security.* Handbook AS 805, *Information Security*, delineates the types of systems security relevant to purchases of information technology. Contracting officers should pay particular attention to this matter during the purchasing planning phase, and should coordinate their efforts in this area with the requirements organization.

(b) *Contractor Personnel Security.* Many technical support services contracts require contractor personnel to work on Postal Service premises or to access Postal Service networks or databases containing highly sensitive corporate information. Therefore, contracting officers must ensure that contractor personnel are screened as discussed in *Administrative Support Manual (ASM) 272.3*. See 1.6.11 for further information regarding security clearances.

4.5.5.c *Technological Substitutions and Enhancements*

1. *General.* Due to the rapid changes in technology, it may be advisable to provide for such changes in Postal Service contracts (a) to conform to commercial market conditions so suppliers are not forced to maintain continued production of obsolete goods, and (b) to enable internal customers the flexibility to upgrade their respective infrastructures along the lines of currently available technology.

2. *Substitution of Information Technology Equipment.* When it is likely that market forces will change so rapidly that a supplier may be forced to maintain production lines of outdated technology in order to meet the requirements of a Postal Service contract, information technology contracts should include Clause 4-16, *Substitution of Information Technology Equipment*, to ensure that the supplier has the opportunity to focus its production capabilities on the latest product offerings; simultaneously the Postal Service benefits by receiving the latest equivalent products from the supplier at no additional cost.

3. *Technology Enhancement*. Contracts should include Clause 4-17, *Technology Enhancement*, when requirements organizations wish to have the latest technology available. This clause requires suppliers to propose state-of-the-art products regardless of whether or not current offerings are in production. The proposed offerings may or may not be equivalent in price to the offerings under contract, but the capabilities (such as performance capacity) must meet or exceed contract requirements. In these cases, the contracting officer, representing the purchase team, conducts a cost/capability analysis to ensure that price per unit of capability is consistent with the original contract's prices. If the offerings far exceed the Postal Service's needs, the Postal Service may decline to accept the proposal.

#### 4.5.5.d Sources

1. *Postal Service Sources*. See 3.3.2.
2. *General Services Administration (GSA) Sources*
  - (a) GSA provides multiple-award schedule contracts (MASCs) through the Information Technology Schedule 70. This schedule covers purchase, leasing, maintenance, repair services, and repair/spare parts for commercially available information technology, and also covers software and related training, electronic commerce and information technology-related professional services. These schedule contracts do not contain maximum order limitations and are available at [www.fss.gsa.gov/pub/schedules](http://www.fss.gsa.gov/pub/schedules), or from:  
GSA/FSS  
INFORMATION TECHNOLOGY ACQUISITION CENTER  
WASHINGTON DC 20406-0001
  - (b) In addition to MASCs, GSA maintains national requirements contracts and area contracts. Current schedules for teleprocessing services may be obtained from:  
GSA TELECOMMUNICATIONS PROCUREMENT  
DIVISION (KET)  
18TH AND F STREETS NW  
WASHINGTON DC 20405-0001
3. *Commercial Sources*. Commercially available information technology may be purchased, if it meets the requirements of Handbook AS-820.

#### 4.5.5.e Solicitation Provisions

1. Provision 4-4, *Demonstrability*, must be included in solicitations for commercial hardware or software when a system test using Postal Service test data is required.
2. Provision 4-5, *Functional Demonstration*, must be included in solicitations for commercial hardware or software when a functional demonstration of one or more products is required.



3. Provision 4-6, *System Integrity*, must be included in contracts for third-party software installed on all computer systems in the possession of the Postal Service, with the exception of personal computers.
4. Provision 4-7, *Postal Computing Environment*, must be included in solicitations for commercial hardware or software so as to ensure that standard solutions emerge from the solicitation to the greatest degree possible. This provision also requires the identification of nonstandard solutions by prospective offerors to the contracting officer.

#### 4.5.5.f Clauses

1. Clause 4-9, *Inspection and Acceptance — Systems*, must be included in contracts for computers with a unit price greater than \$50,000. This clause is to be used in lieu of, not in addition to, the inspection clauses prescribed in 2.2. If a computer contract covers other supplies or services also, one of the standard inspection clauses prescribed in 2.2 must be included for the other supplies or services.
2. Clause 4-10, *Liquidated Damages — Industrial Supply or Service Items Not Ready for Use*, filled in appropriately, must be included in systems contracts when the use of this clause is justified as prescribed by 2.2.
3. Clause 4-11, *Use of Hardware or Software Monitors*, must be included in contracts whenever monitors will be attached to a computer system.
4. Clause 4-12, *Site Preparation*, must be included in contracts whenever the Postal Service must specially prepare a site for installation of an information system.
5. Clause 4-13, *Software License Warranty and Indemnification*, must be included in contracts whenever software is procured by license from the contractor.
6. Clause 4-14, *Software Development Warranty*, must be included in contracts for customized software.
7. Clause 4-15, *Warranty Exclusion and Limitation of Damages*, must be included in all contracts for information systems.
8. Clause 4-16, *Substitution of Information Technology Equipment*, must be included in solicitations and contracts for information technology in which the supplier will be afforded the opportunity to replace the product line(s) being purchased with equivalent items that are newer technology provided the pricing is equal to or less than the items being replaced.
9. Clause 4-17, *Technology Enhancement*, must be included in all solicitations and contracts which require the supplier to propose newer, more effective and more economical products on a continuous basis that the Postal Service may incorporate to keep pace with changing technological environments.
10. Clause 4-18, *Information Technology Accessibility Standards*, must be included in all information technology contracts (see 4.5.5.b.2).
11. Clause 1-1, *Privacy Protection*, must be included as applicable. See 1.6.6.

## 4.5.6 Research and Development

### 4.5.6.a Definitions

1. *Applied research.* A study concentrated on limited areas and directed toward specific practical ends.
2. *Basic research.* A systematic, intensive study directed toward fuller scientific knowledge or understanding and prompted primarily by the desire to pursue knowledge for its own sake rather than for any immediate practical application.
3. *Research announcement.* A general announcement of the Postal Service's research interests, including criteria for selecting proposals and soliciting participation of all offerors capable of satisfying the Postal Service's needs.
4. *Development.* Reduction to a useful form — such as a material, device, system, or method — of the findings and understandings derived from research. It includes the design and testing of prototypes and new processes to achieve specific functional requirements and characteristics.
5. *Educational institution.* Any corporation, foundation, trust, or state or local government entity operated primarily as an institution of higher learning that offers a course of general studies leading to the granting of academic degrees.
6. *Engineering.* The effort to refine the materials, devices, systems, methods, prototypes, and processes derived from research and development in order to apply them to specific uses and technologies.
7. *Nonprofit organization.* Any corporation, foundation, trust, or other entity that is operated for scientific, educational, or medical purposes and is not organized for profit. No private shareholder or individual may profit from such a corporation's net earnings.

### 4.5.6.b General Policy

1. It is the policy of the Postal Service to encourage firms and entrepreneurs in solving technological problems and advancing postal technology.
2. When in the interest of the Postal Service, appropriate incentives may be provided to the industrial community to develop new products or equipment through its own resources.
3. The use of educational institutions and nonprofit organizations as contractors is encouraged, when appropriate, to further scientific and technological advancements that will modernize and streamline postal operations. University research organizations should be considered a primary source for basic research; they should also be solicited, whenever feasible, for applied research requirements.

4. Contracts for research, engineering, and development may be entered into with individuals under the same general terms and conditions governing contracting with business organizations. When contracting with individuals, prices or pay rates must be determined on a case-by-case basis, taking into account the importance of the contract, the individual's status and professional reputation, and the prices or rate paid previously for similar work. Postal Service or federal pay rates are not an appropriate guide.

#### 4.5.6.c *Prequalification*

1. Due to the highly specialized nature of research and development, potential suppliers should always be prequalified before issuing solicitations (see 3.5.2).
2. In addition to past performance, the following evaluation factors should be used when evaluating proposals:
  - (a) Understanding of the statement of work, as shown by the scientific, technical, or analytical approach proposed;
  - (b) Competence and experience of proposed professional personnel;
  - (c) Innovative ideas pertinent to the requirement;
  - (d) Availability and planned use of facilities;
  - (e) Willingness to devote resources to the proposed work; and
  - (f) Proposed management and organizational structure.

#### 4.5.6.d *Solicitations*

1. *Types.* When the solicitation format prescribed in Appendix A is not suitable and use of a short form research contract (see 4.5.6.e) is not authorized, the contracting officer may use individually addressed letters, circulars, or notices, provided that they contain the terms, conditions, and other provisions required by this *Purchasing Manual*.
2. *Research Announcements*
  - (a) The Postal Service uses research announcements with peer or scientific review for the purchase of basic and applied R&D. Research announcements may be used to fulfill requirements for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding, as well as R&D focused on a specific system or hardware solution.
  - (b) Contracting officers may use the research announcement technique (see 4.5.6.e.2) when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated. In addition to the standard information required in a solicitation, the research announcement, together with any supporting documents, must describe the Postal Service's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of requirements. Notice of availability of the research announcement may be made in scientific, technical, or engineering periodicals.

4.5.6.e *Contract Type*

1. *Indefinite Delivery Contracts.* Generally, indefinite delivery contracts should be used for R&D services (see 2.4.6).
2. *Short Form Research Contracts (SFRCs)*
  - (a) *Use.* The following procedures should be used for procurement of basic or applied research when a research announcement is used to publicize the R&D requirement, or a noncompetitive contract will be awarded.
  - (b) *Solicitation*
    - (1) The contracting officer must solicit sources in accordance with 4.5.6.d, using a short form research contract format, which states a research problem and requires offerors to propose a statement of the work to be done.
    - (2) The solicitation must require that the statement of work include a breakdown showing the amount of effort to be devoted to the contract by each principal investigator and any associate.
    - (3) The solicitation must require that proposals describe any property to be furnished by the Postal Service or acquired by the contractor for performance of the work. Offerors must state the estimated or known cost of each item; items costing less than \$1,000 may be grouped by category. When facilities are to be acquired using contract funds, offerors must explain why that is necessary. All descriptions must be sufficiently detailed to enable the contracting officer to determine whether the property should be furnished by the Postal Service or whether the contractor should be authorized to acquire it.
    - (4) The solicitation must include the applicable solicitation provisions (see Appendix A).
3. *Contract Award*
  - (a) When a proposal is acceptable, either as submitted initially or as revised in writing by the offeror, a contract may be awarded by written acceptance of the proposal.
  - (b) When acceptance of an entire proposal is not advantageous to the Postal Service, the contracting officer may accept parts of the proposal either by attachment or incorporation by reference.
  - (c) Options to extend the research effort beyond the initially proposed program may be included in the contract. The cost and period of performance for such options must be separately identified.
  - (d) If incrementally funded, the contract must specify the total estimated cost for the full term of the research program, both funded and unfunded, and the amount of funds currently obligated. Clause 2-32, *Limitation of Funds*, must be included in the contract.

- (e) SFRCs awarded to institutions and organizations authorized to receive advance payments (see Management Instruction FM-610-96-1, *Advance Payments*) must be clearly marked “Advance Payment Authorized.”

4.5.6.f *Limitations on Subcontracting.* R&D contractors are selected for their scientific and technological expertise. Therefore, they may not subcontract work without the prior written consent of the contracting officer. In negotiating the contract, the contracting officer must ascertain any plans to subcontract any portion of the work.

4.5.6.g *Educational Institutions and Nonprofit Organizations*

In addition to the cost principles in 5.2.9 and 5.2.10, R&D contracts with educational institutions and nonprofit organizations are subject, as a matter of Postal Service policy, to the requirements of OMB Circular No. A-110, *Administrative Requirements*.

4.5.6.h *Organizational Conflict of Interest*

Organizational conflicts of interest (see 1.6.8) can occur when applied research follows basic research, when development follows applied research, when production follows R&D, or when a study is followed by another study of similar scope or emphasis. Contracting officers must take care to prevent actual or apparent organizational conflicts of interest in these situations. If it appears that an organizational conflict of interest might arise, the contracting officer must include Clause 1-7, *Organizational Conflict of Interest*, in the solicitation and include it or a negotiated alternative in the resulting contract.

## 4.5.7 **Utility Services**

4.5.7.a *Definitions*

1. *Utility services.* Refers primarily to electricity, gas, water, steam, sewerage, and regulated telecommunications services available to the general public and performed by governmental agencies or by private companies ordinarily subject to regulation. Other services, such as trash removal, may also be considered utility services when performed by governmental agencies or by private companies subject to regulation.
2. *Connection charge.* A payment for facilities that are needed in order to make connection with a point of supply and that are installed and owned by the utility supplier.
3. *Termination liability.* An obligation to pay a portion of the cost of connecting facilities with a point of supply installed and owned by the utility supplier, if the Postal Service terminates the contract before its term expires. The initial amount of the obligation is not more than the agreed cost of connecting the facility, less net salvage when material costs are included. This amount decreases under an amortization formula stated in the contract, until it ultimately reaches zero.

4.5.7.b *Policy*

1. *Orders Under GSA Contracts.* Utility services should be obtained under available GSA areawide contracts, unless they can be obtained more efficiently or at a lower cost under Postal Service contract.
2. *Postal Service Contracts*
  - (a) *Forms*
    - (1) The terms and conditions under which utility suppliers will agree to furnish services vary from area to area. Flexibility in the use of contract forms and provisions is therefore necessary.
    - (2) If a utility supplier refuses to execute a formal contract with the Postal Service, the contracting officer may purchase the utility services in accordance with (c) below, provided that:
      - (i) A definite refusal is received in writing from a corporate officer of the supplier; and
      - (ii) The manager, Policies, Planning, and Diversity, is given notice and documentation of the refusal, including the record of discussions.
    - (3) When a utility supplier refuses to execute a contract, the services may be obtained by purchase order or by use of the utility supplier's commercial forms and clauses. When the utility supplier's commercial forms and clauses are used, the contracting officer must delete any language contrary to federal law and Postal Service regulation.
  - (b) *Clauses.* The clauses prescribed in this manual must be included in all Postal Service utility contracts, unless the utility supplier objects to their inclusion and the procedures outlined in 4.5.7.b.2(a) above are followed.
  - (c) *Applicable Rules and Procedures.* When a federal, state, or local governmental agency has issued regulations or established procedures affecting cost allowability, pricing, rates, and other matters, it is Postal Service policy, as a matter of comity rather than law, to comply with those regulations or procedures, subject to judicial appeal. When no regulations or procedures of a regulatory agency are applicable, Postal Service rules and the general practices of the utilities industry must be followed.
  - (d) *Taxes*
    - (1) Utility contracts do not contain any of the tax clauses prescribed in 7.3.4, and utility invoices often identify taxes as separate line items. Postal Service exemption from such taxes, if any, must be determined on a case-by-case basis.
    - (2) Questions on tax charges must be referred to assigned counsel.
    - (3) Charges indicated as taxes on utility bills must be paid until assigned counsel advises that payment is not necessary. Refunds may be claimed for amounts improperly paid.

- (e) *Connection Charges*
  - (1) A connection charge may be paid only when reasonable attempts to negotiate the contract without the charge have failed.
  - (2) When some obligation is necessary to secure the required facilities, a termination liability is ordinarily to be preferred over a connection charge.
  - (3) When the supplier's rules and procedures require payment of an unrefundable fee for connection, in addition to or in lieu of a connection charge, the contracting officer may pay the fee.
- (f) *Applicability of Construction Standards.* Ordinarily, the work performed by a utility in installing connecting facilities is not considered construction work for purposes of the policies in 9.4. However, such work may be considered construction if the contract also calls for other construction work, such as installation of utility distribution lines and equipment within a facility. When such additional work is required, a construction contract (see 4.4) should be used.

## 4.5.8 **Structured Contracts and Controlled Contracts**

### 4.5.8.a *Definitions and Examples*

1. *Structured contract and structured contracting.* A contract and its associated solicitation, award, and administration process using special procedures, solicitation provisions, and clauses, under the authority of 4.5.8.b.
2. *Controlled contract and controlled contracting.* A contract and its associated solicitation, award, and administration process for which authority is restricted and special procedures, forms, solicitation provisions, and clauses are used, under the authority of 4.5.8.b. Controlled contracts are used in such areas as law enforcement, international postal agreements, and revenue production.

### 4.5.8.b *Policies and Procedures*

1. Policy-originating officials may, with the approval of the manager, Purchasing Policies and Programs, establish structured contract policies and procedures for any category of contracts under their authority as described in [Exhibit 4.5.2](#).
2. The manager, Purchasing Policies and Programs, may designate any category of contract as controlled.

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# 5 Contract Pricing

## 5.1 Price Evaluation

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### 5.1.1 General

5.1.1.a *Use.* This section describes policies and procedures for evaluating initial contract and subcontract prices, and for pricing contract modifications.

#### 5.1.1.b *Responsibilities*

1. The purchase team must ensure that contract prices are fair and reasonable by:
  - (a) Evaluating proposed prices using the methods of price analysis or cost analysis as described in this section;
  - (b) Pricing each contract separately and independently, and not considering proposed price reductions, profits, or losses under other contracts; and
  - (c) Excluding amounts for specified contingencies in contracts if they provide for price adjustments based on the contingency.
2. The contracting officer represents the purchase team in dealings with suppliers and offerors and serves as the pricing expert on the purchase team. Consequently, the contracting officer has the ultimate authority for pricing decisions. Depending on the complexity and dollar value of the purchase, however, the purchase team should also seek pricing advice and assistance from specialists in contracting, finance, law, contract auditing, quality assurance, engineering, traffic management, and contract pricing. If specialized assistance is not available, contact the Inspection Service or the Office of Inspector General, as appropriate. The purchase team should have the appropriate specialists attend negotiations when matters of significance involving complex problems will be addressed.

### 5.1.2 Analyzing Proposals

#### 5.1.2.a *Price Analysis*

1. Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and profit. It is the preferred method of proposal analysis.

## 5.1.2.b

2. Price is cost plus any fee or profit applicable to the type of contract.
3. Price analysis must always be performed, and should be relied on entirely in all but a few situations.
4. One or more of the following pricing techniques may be used:
  - (a) Comparing proposed prices received in response to a solicitation.
  - (b) Comparing previously proposed prices and contract prices with current proposed prices for the same or similar items in comparable quantities.
  - (c) Applying rough yardsticks (such as dollars per pound or per horsepower) to highlight significant inconsistencies that warrant additional price analysis.
  - (d) Comparing proposed prices with prices in published catalogs or lists, market prices, indexes, and discount or rebate arrangements.
  - (e) Comparing proposed prices with independent Postal Service cost estimates (see 2.1.3.b).
  - (f) Ascertaining that the price is set by law or regulation.
  - (g) Comparing proposed prices with prices for the same or similar items obtained through market research.
5. Whenever adequate price competition has been obtained, comparing proposed prices with Postal Service estimates will ordinarily suffice to meet price-analysis requirements.

5.1.2.b *Adequate Price Competition*

1. Price competition exists if two or more independent and capable suppliers submit priced proposals meeting the solicitation's requirements.
2. If price competition exists, it is presumed adequate, unless:
  - (a) The low offeror has such a decided market advantage that it is practically immune from competition; or
  - (b) The purchase team determines that the lowest price is not fair and reasonable.

5.1.2.c *Cost Analysis*

1. Cost analysis is the process of examining the separate elements of cost and profit in an offeror's or supplier's cost or pricing data, to form an opinion about the degree to which they represent what the contract should cost.
2. Cost analysis is normally done only when there is not adequate price competition and no method of price analysis will ensure that prices are fair and reasonable. It should be limited to cost elements needing close analysis to protect the Postal Service's interest. When a limited number of cost elements will provide a reasonable analysis, the contracting officer should obtain only the data needed to support such an analysis.

3. Cost analysis involves, as appropriate:
  - (a) Verifying cost or pricing data and evaluating cost elements, including:
    - (1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;
    - (2) Projecting the offeror's cost trends, on the basis of current and historical cost or pricing data;
    - (3) A technical analysis of the estimated labor, material, tooling, and facilities required and the reasonableness of scrap and spoilage factors; and
    - (4) Applying audited or negotiated indirect-cost rates and labor rates.
  - (b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the purchase team must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the purchase team should make a trend analysis of basic labor and materials even in periods of relative price stability.
  - (c) Comparing costs proposed by the offeror for individual cost elements with:
    - (1) Actual costs previously incurred by the same offeror;
    - (2) Previous cost estimates from the offeror or from other offerors for the same or similar items; and
    - (3) Independent Postal Service cost estimates.
  - (d) Analyzing supplier make-or-buy decisions in evaluating subcontract costs.
  - (e) Verifying that the offeror's cost submissions are in accordance with the cost principles in 5.2.
  - (f) Reviewing submissions to ensure that data needed to make the supplier's proposal accurate, complete, and current has not been submitted or identified in writing. If there is such data, the contracting officer must attempt to obtain it. If it cannot be obtained, satisfactory allowance for the incomplete data must be negotiated.

5.1.2.d *Technical Analysis.* Technical analysis is the process of examining proposals to determine the need for and reasonableness of resources proposed under a contract. Technical analysis should be performed by engineering, management, or specialists as necessary to assist in price analysis or cost analysis. Technical analysis of proposals may range from evaluating technical proposals according to evaluation factors in a solicitation, to extensive analysis of materials, labor hours and labor mix, special tooling and facilities, and other cost factors.

#### 5.1.2.e *Cost or Pricing Data*

1. Cost or pricing data includes more than historical accounting data. It includes all the facts affecting cost estimates and costs incurred that can be expected to significantly affect price negotiations. Cost or pricing data may also include:
  - (a) Supplier quotations;
  - (b) Nonrecurring costs;
  - (c) Information on changes in production methods and in production or purchasing volume;
  - (d) Data supporting business projections, objectives, and related operating costs;
  - (e) Unit-cost trends such as those associated with labor efficiency;
  - (f) Make-or-buy decisions;
  - (g) Resource estimates to meet business goals;
  - (h) Information on management decisions that could have a significant bearing on costs; and
  - (i) Historical costs for the same or similar items.
2. Cost or pricing data must be obtained before awarding a noncompetitive contract or modification whenever price analysis is insufficient to determine reasonableness of price. Only the data needed to make the determination should be obtained. Before agreeing on price, the contracting officer must have the supplier update the data to the latest dates for which data is reasonably available.
3. The contracting officer must have offerors or suppliers obtain cost or pricing data for proposed subcontracts or subcontract modifications when needed to determine the reasonableness of a proposed contract or subcontract price (including negotiated final pricing actions such as termination settlements and total final price agreements for fixed-price incentive contracts). The offeror or supplier is responsible for doing the price or cost analysis for subcontracts, and including the results as part of its cost or pricing data. In unusual circumstances, to ensure that analysis is adequate, the contracting officer may require the offeror or supplier to submit the subcontract data along with its own data. This does not reduce the offeror's or supplier's responsibility to do the subcontract cost or price analysis and negotiate fair and reasonable subcontract prices.
4. If cost or pricing data is needed and the offeror or supplier refuses to provide the necessary data in spite of a repeated request, the contracting officer must withhold award or modification and refer the matter to the next higher level of contracting authority. The ultimate disposition must be documented.

#### 5.1.2.f *Profit*

1. Do not use predetermined percentages or limitations on profit.
2. Do not analyze profit when there is adequate price competition, or where price analysis will ensure that prices are fair and reasonable.

3. When cost analysis is required for price negotiations, profit must be analyzed. Profit should be analyzed with the objective of rewarding suppliers for financial and other risks they assume; resources they use; and the organizational, performance, and management capabilities they employ. The complexity of materials required, the extent of subcontracting, the ratio of indirect costs to direct costs, and the contribution of capital investments to contract performance should also be considered.
4. If pricing is for a change or modification that requires essentially the same type and mix of work as the basic contract, and the dollar value is relatively small compared to the total contract amount, the profit or fee may be based on the basic contract's rate.

5.1.2.g *Defective Cost or Pricing Data*

1. If, before agreeing on price, the purchase team learns that any cost or pricing data is inaccurate, incomplete, or not current, the contracting officer must immediately notify the offeror or supplier, regardless of whether the defective data increases or decreases the contract price. The contracting officer must then negotiate using any new data submitted or making allowance for the incorrect data, documenting the file accordingly.
2. If, after award, cost or pricing data is found to be inaccurate, incomplete, or not current as of the date of final agreement on price, the Postal Service is entitled to a price adjustment, including profit or fee, for any significant amount by which the price increased due to defective data. This is ensured by the clauses in 5.1.2.h. To arrive at a price adjustment, the purchase team must consider:
  - (a) When the cost or pricing data became reasonably available to the supplier;
  - (b) The extent to which the Postal Service relied on defective data; and
  - (c) Any understated cost or pricing data submitted to support price negotiations, up to the amount of the Postal Service's claim against the initial pricing of the same contract or change order (however, it need not be in the same cost categories such as materials, direct labor, or indirect costs).
3. If, after award, the purchase team learns or suspects that the data furnished was not accurate, complete, or current, the contracting officer must have an audit conducted and immediately contact the Office of Inspector General. The purchase team may not reprice the contract solely because profit was greater than forecast or because a specified contingency failed to materialize.
4. Whenever a postaward audit indicates defective pricing, the purchase team must determine if the data submitted was defective and the purchase team relied on it. Before making such a determination, the contracting officer should give the supplier an opportunity to support the accuracy, completeness, and currency of data in question. The contracting officer must prepare a memorandum indicating the

purchase team's determination concerning whether the submitted data was accurate, complete, and current as of the date of final agreement on price, if the purchase team relied on the data, and the results of any contractual action taken. The contracting officer must send one copy of the memorandum to the Office of Inspector General, one copy to the auditor if the audit was not performed by the Office of Inspector General, and one copy to the supplier.

5. If both a supplier and subcontractor submitted cost or pricing data, the Postal Service has the right, under the clauses in 5.1.2.h, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether the data supported subcontract cost estimates or supported firm agreements between subcontractor and supplier.
6. If an audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from within the Postal Service. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the supplier or appropriate subcontractor upon request. If releasing the information would compromise Postal Service security or disclose trade secrets or confidential business information, the contracting officer may release it only under conditions that will protect it from improper disclosure. The information made available must be limited to information used as the basis for reducing the price of the prime contract. To provide an opportunity for the supplier to take corrective action, the contracting officer should give the supplier reasonable advance notice before deciding to reduce the price of the prime contract.
  - (a) When a supplier uses defective subcontract data in arriving at the price but later awards the subcontract to a lower-priced subcontractor (or does not subcontract for the work), any adjustment to the price of the prime contract due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract and either the actual subcontract price or the actual cost to the supplier, if not subcontracted, providing the data on which the actual subcontract price is based is not itself defective.
  - (b) Under cost-reimbursement contracts and fixed-price incentive contracts, the basis for not allowing or recognizing costs under the clauses in 5.1.2.h will be that payments to subcontractors are higher than they would have been if the subcontractor data had not been defective.

5.1.2.h *Clauses.* Whenever cost or pricing data may be required in negotiating a contract, or the subsequent modification of a contract, the contract must include:

1. Clause 5-1, *Price Reduction for Defective Cost or Pricing Data.*
2. Clause 5-2, *Subcontractor Cost or Pricing Data.*

## 5.2 Cost Principles

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### 5.2.1 General

#### 5.2.1.a Use

1. This section contains principles for determining and negotiating the costs that will be allowed under Postal Service contracts.
2. These principles apply to:
  - (a) Determining costs that will be allowed under cost-reimbursement contracts and subcontracts;
  - (b) Determining or negotiating cost or price when required by a contract clause; and
  - (c) Pricing contracts and subcontracts, and their modifications, when cost analysis is done (see 5.1.2.c).

5.2.1.b *Other Standards.* The standards and regulations of the Cost Accounting Standards Board (4 CFR 331, et seq.) do not apply to the Postal Service.

### 5.2.2 Contract Costs

5.2.2.a *Total Cost.* The total cost of a contract is the sum of allowable direct and indirect costs allocated to the contract that will be (or have been) incurred, less any allowable credits. Any generally accepted method of determining or estimating costs may be used if it is equitable and applied consistently.

5.2.2.b *Direct Costs.* Any cost that can be specifically identified with contract work is a direct cost of the contract. Direct costs are identified specifically with a contract. Costs are direct, then, if they are segregated from other supplier costs and recorded in accounts that identify them with the contract.

5.2.2.c *Indirect Costs.* Indirect costs are those necessary for the supplier to operate as a business, but that cannot be readily segregated as direct costs. Indirect costs may be allowable even if a direct or indirect relationship to the contract cannot be shown.

5.2.2.d *Credits.* A credit is the portion of income, rebate, allowance, or other credit relating to an allowable cost received by or accruing to the supplier.

### 5.2.3 Allowed Costs

5.2.3.a *Determining Allowability.* To be allowed, costs must be:

1. Reasonable;
2. Allocable to the contract;
3. Consistent with generally accepted accounting principles;
4. Appropriate to the specific purchase;
5. Consistent with the requirements and terms and conditions of the contract; and
6. Not unallowable (see 5.2.5).



- 5.2.3.b *Reasonableness.* A cost is reasonable if it is a type of cost and amount that does not exceed what a prudent person would incur conducting competitive business. In determining the reasonableness of a specific cost, consider:
1. Whether it is a type of cost generally recognized as ordinary and necessary for conducting business or performing the contract;
  2. Restraints imposed by generally accepted business practices, arm's-length bargaining, and federal and state laws and regulations;
  3. What a prudent business person, considering his or her responsibilities to owners, employees, customers, the Postal Service, and the public at large, would do under the circumstances; and
  4. Any deviations from the supplier's established business practices that may unjustifiably increase costs.
- 5.2.3.c *Allocability.* A cost is allocable to a contract if it:
1. Is incurred specifically for the contract;
  2. Benefits both the contract and other work, and can be distributed among them in reasonable proportion to the benefits received; or
  3. Is necessary to the overall operation of the business, although a direct relationship to the contract cannot be shown.

#### 5.2.4 **Advance Agreement on Costs**

5.2.4.a *General.* Because the reasonableness or allocability of costs may be hard to determine in some cases, the contracting officer and the supplier should agree in advance on how special or unusual costs will be treated under a contract.

#### 5.2.4.b *Applicability*

1. Examples of costs for which advance agreements may be particularly important are:
  - (a) Compensation for personal services including, but not limited to, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials;
  - (b) Use charges for fully depreciated assets;
  - (c) Deferred maintenance costs;
  - (d) Independent research and development costs;
  - (e) Royalties and other costs for use of patents;
  - (f) Selling and distribution costs;
  - (g) Travel and relocation costs;
  - (h) Cost of idle facilities and idle capacity;
  - (i) Costs of automatic data processing equipment;
  - (j) Severance pay to employees on support-services contracts;
  - (k) Plant reconversion;
  - (l) Professional services (for example, legal, accounting, and engineering);

- (m) General administrative costs (such as corporate, division, or branch allocations attributable to general management, supervision, and conduct of the supplier's business as a whole, particularly in construction, job-site, architect-engineer, and facilities contracts);
  - (n) Plant and equipment costs; and
  - (o) Costs of public relations and advertising.
2. Advance agreements may be negotiated with a particular supplier for a single contract, a group of contracts, or all the contracts of one or more purchasing activities.
  3. Advance agreements may be negotiated either before or during a contract but should be negotiated before the costs are incurred. Advance agreements must be in writing, signed by both parties, and incorporated into any current and future contracts to which they apply. An advance agreement must contain a statement of its applicability and duration.
  4. Advance agreements may not provide for treating costs inconsistent with this chapter.
  5. The absence of an advance agreement on any cost will not, in itself, affect the reasonableness or allocability of the cost.

## 5.2.5 Unallowable Costs

5.2.5.a *Categories of Unallowable Costs.* The following categories of costs are not allowable:

1. Public relations and advertising costs, except for costs of:
  - (a) Responding to inquiries concerning company policies and activities;
  - (b) Essential communication with the public, press, stockholders, creditors, and customers, including communications on matters of public concern;
  - (c) Participating in community-service activities, such as blood-bank drives, charity drives, and disaster assistance (but not contributions to civil defense funds and projects);
  - (d) Recruiting personnel needed to work under the contract;
  - (e) Acquiring scarce items for contract performance; and
  - (f) Disposing of scrap or surplus materials acquired for contract performance.
2. Bad debts, including actual or estimated losses arising from uncollectable accounts receivable from customers and other claims, and any costs directly associated with bad debts such as collection and legal costs.
3. Contributions or donations, including cash, property, and services, except as provided in a.1(c).
4. Dividends or payments and distribution of profits.

5. Entertainment costs, including amusement, diversion, social activities, and costs directly associated with entertainment such as tickets to shows or sporting events, meals, lodging, rentals, transportation, and gratuities. Entertainment costs include membership in social, dining, or country clubs or other organizations having the same purpose, regardless of whether the cost is reported as taxable income to the employees.
6. Fines and penalties resulting from violations of federal, state, local, or foreign laws and regulations, except when incurred as a result of complying with specific terms and conditions of the contract or written instructions from the contracting officer.
7. Life insurance on the lives of officers, partners, or proprietors, unless the insurance represents additional compensation.
8. Interest on loans (however represented), bond discounts, costs of financing and refinancing capital, and the costs of preparing and issuing prospectuses and stock rights.
9. Lobbying:
  - (a) Including:
    - (1) Attempts to influence the outcome of any federal, state, or local election, referendum, initiative, or similar procedure through contributions, endorsements, publicity, or similar activities.
    - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections.
    - (3) Any attempt to influence the introduction of federal or state legislation, or the enactment or modification of any pending federal or state legislation through communication with any member or employee of Congress or a state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto legislation.
    - (4) Any attempt to influence the introduction of federal or state legislation, or the enactment or modification of pending federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public to contribute to or participate in any mass demonstration, march, rally, fund-raising drive, lobbying campaign, or letter-writing or telephone campaign.
    - (5) Legislation-liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when the activities are in support of, or in knowing preparation for, an effort to engage in unallowable activities.

- (b) But not including:
  - (1) Providing a technical and factual presentation of information on a topic directly related to performing the contract in a hearing testimony, statement, or letter to Congress or a state legislature, or subdivision, member, or staff member of either, in response to a documented request (including a *Congressional Record* notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member. Costs for transportation, lodging or meals associated with this exception are not allowed unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing in response to a written request made by the chair or ranking minority member of the committee or subcommittee conducting the hearing.
  - (2) Any lobbying to influence state or federal legislation in order to directly reduce contract cost, or to impair the supplier's obligation to perform the contract.
  - (3) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- 10. Losses on other contracts (including the supplier's contribution under cost-sharing contracts).
- 11. Taxes:
  - (a) Federal income and excess-profits taxes.
  - (b) Taxes in connection with financing, refinancing, refunding operations, or reorganizations.
  - (c) Taxes from which exemptions are available to the supplier directly, or available to the supplier based on a Postal Service exemption, except when the purchase team determines that the administrative burden of obtaining the exemption outweighs the benefits to the Postal Service. The term "exemption" means freedom from taxation in whole or in part, and includes a tax abatement or reduction resulting from the method of assessment, calculation, or other reason.
  - (d) Special assessments on land that represent capital improvements.
  - (e) Taxes (including excise taxes) on real or personal property, or on the value, use, possession or sale of property, used solely in connection with work on contracts that are not with the Postal Service or the government.
  - (f) Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans under section 4971 or 4975 of the Internal Revenue Code of 1954, as amended.

- (g) Income tax accruals designed to account for the tax effect of differences between taxable income and pretax income as reflected by the supplier's accounting and financial statements.
  - 12. Costs incurred in defending against any combination of the actions below when brought by the government against a supplier, its agents or employees, when the charges involve fraud or similar criminal offenses (including filing of a false certification) on the part of the supplier, its agents or employees, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the supplier, its agents or employees, or a decision to debar or suspend, or are resolved by consent or compromise (when charges of fraud are resolved by consent or compromise, the parties may agree on the extent of allowability of defense costs as a part of the resolution). The actions include:
    - (a) Criminal or civil investigation, grand jury proceedings, or prosecution;
    - (b) Civil litigation; or
    - (c) Administrative proceedings such as suspension or debarment.
  - 13. Costs incurred against Postal Service claims or appeals or the prosecution of claims or appeals against the Postal Service.
- 5.2.5.b *Excluding Unallowable Costs.* Costs that are expressly or mutually agreed to be unallowable, including directly associated costs, must be excluded from any contract billing, claim, or proposal. A directly associated cost is a cost generated solely as a result of another cost, which would not have been incurred if the other cost had not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

## 5.2.6 Termination Costs

- 5.2.6.a *General.* Terminating a contract generally causes costs or the need for special treatment of costs that would not have arisen if the contract had not been terminated. This part describes cost principles that apply to terminations. They should be used in conjunction with the other cost principles in this section.
- 5.2.6.b *Common Items.* The cost of items that can reasonably be used in the other work by the supplier are not allowable unless the supplier submits evidence that the items could not be otherwise used without sustaining a loss. The purchase team should consider the supplier's plans and orders for current and planned work when determining if items can reasonably be used on other work.
- 5.2.6.c *Costs Continuing After Termination.* Costs that cannot be discontinued immediately after termination are generally allowed. However, any costs continuing after termination because of the negligent or willful failure of the supplier to discontinue them are not allowable.

- 5.2.6.d *Startup Costs.* Reasonable startup and preparatory costs are generally allowed. When included in the settlement proposal as a direct charge, they must not also be included in overhead. Startup costs for one contract must not be allocated to others.
- 5.2.6.e *Loss of Useful Value.* The loss of the useful value of special tooling, machinery and equipment is generally allowed, provided:
1. The special tooling, machinery and equipment cannot reasonably be used in the supplier's other work;
  2. The Postal Service's interest is protected by transferring title or other means the purchase team decides is appropriate; and
  3. The loss of useful value under any one terminated contract must be proportionate to the terminated portion of the contract and other Postal Service contracts for which the special tooling, machinery, and equipment were acquired.
- 5.2.6.f *Rent Under Unexpired Leases.* Rental costs under unexpired leases, less the residual value of the leases, are generally allowed when shown to have been reasonably necessary for the performance of the terminated contract, if:
1. The amount of rent claimed does not exceed the reasonable-use value of the property leased for the period of the contract and any further period that may be reasonable; and
  2. The supplier makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.
- 5.2.6.g *Alterations of Leased Property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations are necessary to perform the contract.
- 5.2.6.h *Settlement Expenses*
1. Settlement expenses, including the following, are generally allowable:
    - (a) Accounting, legal, clerical, and similar costs reasonably necessary for:
      - (1) Preparing and presenting settlement claims to the contracting officer, including supporting data; and
      - (2) Terminating and settling subcontracts.
    - (b) Reasonable costs of storing, transporting, protecting, and disposing of property acquired or produced for the contract.
    - (c) Indirect costs related to salary and wages incurred as settlement expenses under (a) and (b). Normally, these costs must be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.
  2. If settlement expenses are significant, an account or work order must be established to identify and accumulate them separately.

5.2.6.i *Subcontractors' Claims.* Subcontractors' claims, including the allocable portion of claims common to both the contract and other work of the supplier, are generally allowable. A share of the supplier's indirect expenses may be allocated to settlements with subcontractors, provided that the amount is reasonably proportionate to the relative benefits received. If a share of indirect expenses is allocated, it must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

## 5.2.7 **Construction and Architect-Engineer Contracts**

### 5.2.7.a *General*

1. The cost principles of this section apply to contracts for construction (including alteration or repair) of buildings and to architect-engineer contracts, except as provided below.
2. Advance agreements (see 5.2.4) are particularly important in construction and architect-engineer contracts because of the widely varying factors encountered, such as the nature, size, duration, and location of construction projects. Advance agreements must be considered for costs such as home office overhead, partners' compensation, consultants, and equipment use.

### 5.2.7.b *Allowable Costs for Construction Equipment.* Allowable ownership and operating costs of construction equipment must be determined as follows:

1. Actual cost data must be used when ownership and operating costs of construction equipment can be determined from the supplier's accounting records. When they cannot, the contract may specify using a published schedule of predetermined rates to determine costs.
2. Predetermined schedules of equipment use-rates provide average ownership and operating rates for construction equipment. The allowance for ownership costs should include the cost of depreciation and may include facility costs and capital cost of money. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not included in schedules, and separate consideration may be necessary.
3. When a schedule of predetermined use-rates is used to determine direct costs, all costs of equipment in the schedule must be eliminated from other direct and indirect costs. If the supplier's accounting system provides allocations for site or home office overhead, all costs included in the equipment allowances may need to be included in any cost base before computing the supplier's overhead rate. When work is suspended under a contract clause, the allowance for equipment ownership may not exceed the amount for standby cost determined by the schedule or contract provision.

- 5.2.7.c *Renting Construction Equipment.* Reasonable costs of renting construction equipment are allowed as follows:
1. Minor repair and maintenance costs incidental to operating rented equipment that are not included in the rental rate are allowed.
  2. Costs incidental to major repair and overhaul of rental equipment are not allowed.
  3. Charges for construction equipment rented from any division, subsidiary, or organization under common control are allowed if it is the supplier's established practice, and if no part of the cost duplicates any other allowed cost.
- 5.2.7.d *Costs at the Job Site.* Costs incurred at the job site incidental to performing the work, such as the cost of supervision, timekeeping and clerical work, engineering, utilities, supplies, material handling, and restoration and cleanup are allowed as direct or indirect costs, provided the accounting practice used is the supplier's established practice for all work.
- 5.2.7.e *Temporary Use of Land and Structures.* Rental and other costs, less any applicable credits, for the temporary use of land or structures are allowed. Costs of constructing temporary structures, less any applicable credits, are also allowed.

## 5.2.8 Facilities Contracts

- 5.2.8.a *General.* The cost principles of this section apply to contracts under which Postal Service facilities are provided to a supplier or subcontractor for use in performing one or more related contracts for supplies or services, except as provided below.
- 5.2.8.b *Advance Agreements.* Advance agreements (see 5.2.4) should be made for indirect costs that will be applied to the facilities purchase. To reach an equitable agreement, the supplier's usual method of allocating indirect cost may be modified and adjustments may be made to the indirect costs and the way they are distributed.
- 5.2.8.c *Overhead.* Indirect manufacturing and plant overhead costs primarily incurred or generated by direct labor or maintenance labor operations may not be allocated to the purchase of existing facilities.
- 5.2.8.d *Maintenance.* Contracts providing for installing new facilities or renovating existing facilities might involve the use of the supplier's plant-maintenance labor, as distinguished from direct labor engaged in producing the company's normal products. In such cases, only the indirect costs associated with the classes of labor needed to perform the facilities work may be allocated. A facilities contract involving only plant-maintenance labor would not have costs allocated for supervising production workers, depreciation, maintenance of production equipment, or the storage of raw materials and finished goods.



- 5.2.8.e *Other Indirect Costs.* When a facilities contract calls for construction, production, or rebuilding of equipment or other items involved in the regular course of the supplier's business using the supplier's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.
- 5.2.8.f *Prices.* If items that are the supplier's usual commercial products (or minor modifications of them) are acquired under the facilities contract, the Postal Service must not pay more for them than the supplier's most-favored-customer price or the price of other suppliers for like quantities of the same or similar items, whichever is lower.

## 5.2.9 Educational Institutions

In determining contract costs for research and development, training, and other work performed by educational institutions, use Office of Management and Budget (OMB) Circular No. A-21, *Cost Principles for Educational Institutions*, in effect on the date of the contract.

## 5.2.10 Nonprofit Organizations

- 5.2.10.a *General.* A nonprofit organization is a business:
1. Exempt from federal income tax under section 502 of the Internal Revenue Code;
  2. Organized and operated exclusively for charitable, scientific, or educational purposes;
  3. No part of whose net earnings go to a private shareholder or individual; and
  4. That does not attempt or carry on propaganda, as a substantial part of its activities, to influence legislation or participate in any political campaign on behalf of any candidate for public office.
- 5.2.10.b *Principles.* In determining allowable costs under contracts performed by nonprofit organizations, use Office of Management and Budget (OMB) Circular No. A-122, *Cost Principles for Nonprofit Organizations*, in effect on the date of the contract.

## 5.2.11 State, Local, and Indian Tribal Governments

In determining allowable costs under contracts with state, local, and federally recognized Indian tribal governments, use Office of Management and Budget (OMB) Circular No. A-87, *Cost Principles for State and Local Governments*, in effect on the date of the contract.

## 5.2.12 Indirect Cost Rates

### 5.2.12.a General

1. This part describes procedures for establishing billing rates and final indirect cost rates to:
  - (a) Reimburse indirect costs under cost-reimbursement contracts;
  - (b) Determine progress payments under fixed-price contracts; and
  - (c) Negotiate the final price of fixed-price incentive contracts.
2. An indirect cost rate is the ratio of indirect costs to direct labor, manufacturing, or other cost basis over the same period expressed as a percentage or dollar factor.
3. Billing rates are temporary indirect-cost rates established for reimbursement.

### 5.2.12.b Billing Rates

1. A billing rate may be adjusted pending establishment of final indirect cost rates.
  - (a) The final indirect cost rate is a rate the supplier and Postal Service agree will not change. It is usually established after the close of the supplier's fiscal year (unless a different period is agreed to). For cost-reimbursement contracts with educational institutions for research and development, the rate may be predetermined by establishing it for a future period on the basis of cost experience with similar contracts and supporting data.
  - (b) A billing rate is established based on a recent review, audit, previous experience, or similar data. It should be as close as possible to the final indirect cost rate, adjusted for unallowable costs. When the dollar value of a contract using a billing rate does not warrant a detailed billing-rate proposal, the rate may be set by adjusting the previous year's indirect costs to eliminate unallowable and nonrecurring costs and reflect new or changed conditions.
2. After billing rates are set, they may be revised prospectively or retroactively by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
3. The elements of indirect cost and the bases used to calculate billing rates determine the distribution of indirect costs and the bases of distribution in the final settlement.

### 5.2.12.c Determination Procedure

1. Under Clause 2-30, *Allowable Cost and Payment*, suppliers must submit a final indirect-cost rate proposal to the contracting officer or contracting officer's representative reflecting actual costs during the period, together with cost or pricing data.
2. The contracting officer or the contracting officer's representative will negotiate an indirect cost rate agreement after analyzing the proposal and prepare a negotiation memorandum describing the basis for the agreement.

3. The indirect cost rate agreement, when signed by the supplier and contracting officer, is considered incorporated into the contract.

5.2.12.d *Educational Institutions*

1. Under cost-reimbursement contracts with educational institutions, the Postal Service uses indirect cost rates established in Office of Management and Budget (OMB) Circular No. A-88, *Indirect Cost Rates, Audit, and Audit Follow Up at Educational Institutions*. The circular assigns each educational institution to a single government agency for the negotiation of indirect cost rates. The agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices, available from:  
ATTENTION OTD  
DEFENSE CONTRACT AUDIT AGENCY  
CAMERON STATION  
ALEXANDRIA VA 22314-6178
2. Payment for reimbursable indirect costs may be made on the basis of predetermined, final indirect cost rates if they have been established by the agency. If predetermined rates are used, the rates and bases must be included in the contract's schedule, and the contract must include Clause 5-3, *Predetermined Indirect Cost Rates*.

5.2.12.e *Nonprofit Organizations*. See 5.2.10.

5.2.12.f *State, Local, and Indian Tribal Governments*. See 5.2.11.

5.2.12.g *Cost-Sharing Rates*. Cost-sharing contracts (see 2.4.4.d) may call for the supplier to share contract costs by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect-cost rate ceiling may be incorporated into the contract.

5.2.12.h *Ceilings on Indirect Cost Rates*

1. In some cases, it may be prudent to provide a final indirect cost rate ceiling in a contract, as when the supplier:
  - (a) Is a new company and there is no past or recent record of incurred indirect costs;
  - (b) Has a recent record of rapidly increasing indirect costs due to a declining volume of sales without a similar decline in indirect costs; and
  - (c) Seeks to enhance its competitive position by basing its proposal on indirect costs rates lower than those that may be reasonably expected to occur, causing a cost overrun.
2. In such cases, a ceiling covering the final indirect cost rates may be negotiated and specified in the contract.
3. When a ceiling is used, the contract must also provide that:
  - (a) The Postal Service will not be obligated to pay any additional amount if the final indirect cost rates exceed the ceiling; and
  - (b) If the final indirect cost rates are less than the ceiling, the negotiated rates will be reduced to the lower rates.

# 6 Contract Administration

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# 6 Contract Administration

## 6.1 General

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### 6.1.1 Responsibilities

- 6.1.1.a *Contracting Officers and Purchase Teams.* The make-up of a purchase team may change as the contracting process moves into the administration phase, but the contracting officer remains the business leader of the purchase team throughout the life of the contract and continues to represent the purchase team in all dealings with the supplier. Beyond contract close out, other members of the purchase team may continue in their roles as part of a more comprehensive life-cycle management team of which the purchase team was a part.
- 6.1.1.b *Contracting Officer's Representatives*
1. The contracting officer may appoint in writing one or more representatives (a contracting officer's representative or COR) to perform any administrative function that does not involve a change in the scope of work, specifications, or cost or duration of contract performance. The appointment letter must detail the COR's responsibilities and recordkeeping duties, and require that the COR read and abide by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635. See also Management Instruction PM-610-2001-1, *Contracting Officer's Representative Program*.
  2. Representatives of the contracting officer may not appoint other representatives without prior written approval of the contracting officer.
  3. Representatives of the contracting officer may not perform any function or exercise any authority not specifically delegated by the contracting officer.
  4. The contracting officer must notify the supplier in writing of the appointment of any representative or representatives, specifying the authority delegated and cautioning the supplier to notify the contracting officer any time the supplier believes the representative is exceeding the authority granted by the delegation.
  5. All contracts requiring a contracting officer's representative must include Clause 6-1, *Contracting Officer's Representative*.

#### 6.1.1.c *Relationship Between the Postal Service and Supplier Representatives*

1. The objective of any purchasing action is to meet contract objectives, not control the supplier's business. Postal Service personnel involved in contract administration should direct their efforts to that objective (such as quality assurance, cost monitoring, and other activities intended to ensure compliance with contract terms). Except when required by the terms of the contract, they may not direct the supplier's management activities or intervene to supervise, train, or discipline supplier personnel.
2. Disputes with suppliers are an obstacle to performance. Purchase teams in general and contracting officers in particular should seek to resolve contract disputes in a businesslike manner that promotes efficiency and cost-effectiveness while protecting the Postal Service's interests.

### 6.1.2 **Contract Administration Functions**

6.1.2.a *Contracting Officer Responsibilities.* The contracting officer, as the business leader of and representing the purchase team, is responsible for:

1. Ensuring timely contract performance in accordance with the contract specifications and clauses, with due regard to the need for quality and the legal rights of the parties;
2. Ensuring that the supplier is compensated promptly in the proper amount consistent with protecting the Postal Service's interests;
3. Making changes, carrying out terminations, and taking other necessary actions outside the normal course of contract performance;
4. Making decisions and determinations that affect contract performance fairly, impartially, and in accordance with Postal Service policy and applicable law; and
5. Maintaining complete documentation on performance or nonperformance to protect the Postal Service's rights and to provide a basis for past performance assessments for use in future purchases; and
6. Managing supplier relations and fairly and constructively resolving disputes.

6.1.2.b *Other Responsibilities.* The specific functions required to be performed under any contract are determined by the contract's terms and conditions, clauses and the particular contract situation, as well as the policies in this PM. The purchase team and each contracting officer's representative should carefully review the contract together immediately after award to determine the functions to be performed and the people responsible for performance.

## 6.2 Contract Performance

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### 6.2.1 Postaward Orientation

- 6.2.1.a *Policy.* It is Postal Service policy that effective relationships between the Postal Service and its suppliers are central to the success of any purchase. The relationship should be a partnership, with each party working together to achieve a mutual goal. A key element in establishing the relationship is postaward orientation. This orientation brings all parties together and provides for a clear, mutual understanding of the purchase requirements and objectives. It also provides a means whereby each party may identify and resolve potential problems at the beginning, rather than later in the process when misunderstandings can have a greater impact on successful performance. Therefore, the contracting officer and the purchase team should hold postaward orientations whenever feasible.
- 6.2.1.b *Use.* In deciding whether to hold a postaward orientation, the purchase team should consider:
1. The nature and extent of any preaward survey or other discussions with the supplier;
  2. The contract type, value, and complexity;
  3. The purchasing history of the supplies or services;
  4. Requirements for spare parts and related equipment;
  5. Urgency of the delivery schedule and relationship of the supplies or services to critical programs;
  6. Length of the planned production cycle;
  7. Extent of subcontracting;
  8. Supplier's past performance and experience with the supplies or services;
  9. Safety precautions required for hazardous materials or operations; and
  10. Financing arrangements, such as progress payments.
- 6.2.1.c *Scheduling.* Postaward orientations should be held promptly after award. The purchase team must prepare an agenda, and afterwards summarize the topics actually covered in a memorandum. Whenever possible, all representatives (for example, inspectors) must attend any orientation session.
- 6.2.1.d *Changes to the Contract.* A postaward orientation may not be used to change the contract. Any change resulting from a postaward orientation must be made by contract modification.

### 6.2.2 Record Keeping

- 6.2.2.a *Policy.* Contract performance records are kept in the purchasing organization. Maintaining complete records on performance is essential for (1) proper contract administration; and (2) creating and maintaining records of past performance. All actions taken must be documented.

- 6.2.2.b *Organization.* Records must be maintained in an official contract file.
- 6.2.2.c *Records in the Possession of Other Postal Employees.* Records relating to contract performance may be kept by offices outside the purchasing organization (for example, records on repair and maintenance of equipment under warranty). The contracting officer should alert each such office of the significance of the records to contract administration and request they retain or transfer any records necessary to comply with a and b above.

### 6.2.3 **Contract Monitoring**

- 6.2.3.a *Personnel*
1. In addition to appointing representatives (see 6.1.1.b) to monitor contract performance, the contracting officer may name one or more representatives with authority to coordinate the activities of other representatives, such as inspectors or reviewers.
  2. The contracting officer may authorize one or more representatives to provide technical direction, but the authorization must specifically alert them to the prohibition on ordering changes in the work affecting schedule, price, or quality.
  3. Personnel from federal government agencies may be delegated audit, inspection, and testing responsibilities.
- 6.2.3.b *Using Suppliers to Monitor Performance*
1. *Facilities Contracts.* For contracts covered in 4.3, contracting officers may contract with architects, engineers, construction or real estate management professionals to perform any contract administration task that could be delegated to a Postal Service contracting officer's representative.
  2. *Other Contracts.* Contracting officers may contract with third parties to perform only those contract administration responsibilities related to testing for conformance, acceptance, reviewing supplier submittals, shop drawings, and requests for design approval.
- 6.2.3.c *Review of Supplier Submittals*
1. Reviewing supplier submittals such as material lists, shop drawings, catalog cuts, or samples is an important method of enforcing contract requirements, and contract terms requiring submission and approval should be strictly enforced. The purchase team must ensure that supplier submittals are disapproved only for failure to meet a material requirement of the contract. If a supplier submittal indicates that the specifications are inadequate, the contracting officer should use the applicable changes clause to achieve necessary quality. For submittals affecting purchases for Technical Data Packages (TDPs), see 2.3.2.
  2. Contracting officers and their representatives must approve, conditionally approve, or disapprove supplier submittals promptly within any time limits set in the contract. Disapprovals and conditional approvals must clearly indicate what the supplier must do to comply with contract requirements.

## 6.2.4 Delivery

- 6.2.4.a *Transportation.* The purchase team must ensure that supplies purchased by the Postal Service are transported according to:
1. The solicitation provisions prescribed in Appendix A;
  2. Chapters 2 and 3 of Handbook AS-701, *Materiel Management*; and
  3. All policies, procedures, and technical guidance issued by the manager, Materials Distribution.
- 6.2.4.b *Variation in Quantity.* Suppliers are responsible for delivering the quantity specified in the contract within the tolerances allowed (see Clause B-4, *Variation in Quantity*). Excess quantities totaling no more than \$100 in value may be kept without compensating the supplier. Excess quantities worth more than \$100 may be returned at the supplier's expense, or kept and paid for at the contract price.

## 6.2.5 Right to Adequate Assurance of Performance

- 6.2.5.a *General.* A contract obligates each party not to impair the other's expectation of receiving the performance due under the contract. When performance concerns arise, the contracting officer may, in writing, demand adequate assurance of due performance. The concerns need not arise from or be directly related to the contract.
- 6.2.5.b *Failure to Provide Adequate Assurance.* The contracting officer may treat the contract as defaulted if the purchase team's concerns are not resolved within 30 days of the demand for adequate assurance. Failure to provide adequate assurance is a breach of contract by repudiation. The supplier may retract the repudiation under 2 below unless the contracting officer has already acted on the default.
1. *Postal Service Rights.* If the supplier repudiates the contract, the contracting officer may:
    - (a) Await performance for a reasonable time; or
    - (b) Resort to any remedy provided in this manual or the contract, even though the supplier has been notified that the Postal Service will await performance and the contracting officer has urged retraction; and
    - (c) In either case, suspend the Postal Service's own performance or proceed in accordance with the provisions of the contract's *Default* clause.
  2. *Supplier's Retraction of Repudiation*
    - (a) The supplier can retract a repudiation up until the next performance is due, unless the Postal Service has, since the repudiation, changed its position or otherwise indicated that the repudiation is final.
    - (b) Retraction may be by any method that clearly indicates the supplier intends to perform, but must include any assurance demanded by the contracting officer.

- (c) Retraction reinstates the supplier's rights under the contract if the failure to provide assurance is excusable and consideration is made to the Postal Service for any delay caused by the repudiation.

## 6.2.6 **Bankruptcy**

- 6.2.6.a *General.* When a supplier declares bankruptcy, the right of the Postal Service to take unilateral action is limited. Contracting officers should monitor the supplier's financial strength to anticipate problems which could arise and act promptly to protect Postal Service interests when notified of a supplier's bankruptcy.
- 6.2.6.b *Procedures.* When notified that a supplier is in bankruptcy proceedings, the contracting officer must:
  1. Consult with assigned counsel before taking any action regarding the supplier's bankruptcy proceedings.
  2. Determine the amount of any claims that the Postal Service may have against the supplier on any contracts which have not been closed out.
  3. Take actions necessary to protect the Postal Service's financial interests and safeguard Postal Service property.

## 6.3 **Quality Assurance**

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### 6.3.1 **Inspection and Testing**

- 6.3.1.a *General*
  1. Quality assurance requirements, including inspection and testing, acceptance, and first article approval, are treated in 2.2.1 through 2.2.3. This section focuses on administering those requirements during contract performance.
  2. Unless there are special requirements (see 2.2.1.d), the Postal Service inspects commercially available items at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.
- 6.3.1.b *Nonconforming Supplies or Services*
  1. *General*
    - (a) Purchase teams may reject supplies or services not conforming to contract requirements.
    - (b) The repeated delivery of nonconforming property or services must not be allowed. In such cases, purchase teams should take appropriate action, such as rejecting delivery and having the purchasing organization document the rejection in the supplier's performance record.

2. *Correction or Replacement*
  - (a) Suppliers must be given an opportunity to correct or replace nonconforming supplies or services when it can be accomplished within the delivery schedule.
  - (b) Correction or replacement must be at no additional cost to the Postal Service.
  - (c) The Postal Service reserves the right to charge the supplier the cost of reinspection and retesting needed because of a previous rejection.
3. *Rejection*
  - (a) *Determination.* When correction within the delivery schedule is not possible, the purchase team must ordinarily reject supplies or services where nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability of parts or assemblies, weight, appearance, or any other basic objective of the contract (but see 6.3.1.b.4).
  - (b) *Notice.* Suppliers must be given a notice of rejection promptly, including the reasons for rejection. If prompt notice is not given, acceptance may be implied as a matter of law. Notice must be in writing when:
    - (1) The supplier persists in offering nonconforming supplies or services for acceptance; or
    - (2) Delivery or performance was late without an excusable cause.
4. *Substitute Performance*
  - (a) When replacement or correction is not possible within the performance period, and the purchase team has rejected performance, the contracting officer may provide the supplier an opportunity to provide acceptable substitute performance if the purchase team decides:
    - (1) Performance is still desired, and
    - (2) Substitute performance will best mitigate the damage suffered by the Postal Service.
  - (b) When substitute performance is accepted, the contracting officer must modify the contract to provide for appropriate consideration.
5. *Accepting Defective Performance*
  - (a) *Minor Defects.* The purchase team may waive minor nonconformities.
  - (b) *Other Defects.* The purchase team may not accept supplies or services where nonconformance adversely affects a basic contract objective unless acceptance is clearly in the Postal Service's interest. The purchase team's decision to accept the supplies or services must be put in writing by the contracting officer and be based on:

- (1) Information on the nature and extent of the nonconformance;
  - (2) Advice of technical specialists that the material is safe to use and will perform its intended purpose;
  - (3) The supplier's request for acceptance of the supplies or service;
  - (4) A recommendation for acceptance by the intended user, with supporting rationale; and
  - (5) Appropriate monetary or other consideration.
- (c) *Consideration for Acceptance of Defective Performance*
- (1) When nonconforming supplies or services are accepted under 6.3.1.b.5(a), the contracting officer need not modify the contract to provide for appropriate consideration, unless:
    - (i) It appears that the savings to the supplier in fabricating the nonconforming supplies or performing the nonconforming services exceed the cost to the Postal Service of processing and enforcing a modification.
    - (ii) The Postal Service's interests otherwise require a contract modification.
  - (2) When nonconforming supplies or services are accepted under (b) above, the contracting officer must modify the contract to provide for consideration.

## 6.3.2 Acceptance

### 6.3.2.a General

1. Acceptance constitutes acknowledgment that supplies or services conform with quality, quantity, and packaging requirements set forth in the contract.
2. Acceptance may take place before delivery, at delivery, or after delivery, depending on the contract's provisions.

6.3.2.b *Responsibility.* Acceptance is the responsibility of the contracting officer or his or her representative. When this responsibility is assigned to a contracting officer's representative or other party, acceptance by that person is binding on the Postal Service.

6.3.2.c *Place of Acceptance.* Usually, contracts must specify the place of acceptance. Contracts providing for Postal Service inspection at source ordinarily provide for acceptance at source; those providing for inspection at destination ordinarily provide for acceptance at destination. Supplies accepted at a place other than destination may not be reinspected for acceptance at destination, but should be examined for quantity, damage in transit, and possible substitution or fraud.



6.3.2.d *Supplier Certification.* When purchasing commercial items, acceptance based on supplier certification may be in the Postal Service's interest when:

1. Only small losses will be incurred by a defect; or
2. The supplier's reputation or past performance suggests that the supplies or services will be acceptable, and defective work will be replaced, corrected, or repaired without contest.

6.3.2.e *Revocation of Acceptance in Whole or in Part*

1. If the value of performance has been substantially impaired, the purchase team represented by the contracting officer may revoke acceptance of nonconforming performance if acceptance has:
  - (a) Resulted from the reasonable assumption that the nonconformance would be cured and it is not cured; or
  - (b) Taken place because the nonconformance has not been discovered before acceptance, as a result of the difficulty of discovery, or because of the supplier's assurances.
2. Revocation of acceptance must occur within a reasonable time after the purchase team discovers or should have discovered the grounds for it and before any substantial change not caused by their own defects takes place in the condition of supplies. Revocation is not effective until the contracting officer notifies the supplier.
3. The Postal Service has the same rights and duties upon revocation as upon rejection.

6.3.2.f *Transfer of Title and Risk of Loss*

1. Title to supplies passes to the Postal Service upon formal acceptance, regardless of when or where the Postal Service takes physical possession, unless the contract specifically provides for earlier transfer of title.
2. Unless the contract specifically provides otherwise, risk of loss or damage remains with the supplier until:
  - (a) Delivery of the supplies to a carrier if transportation is f.o.b. origin; or
  - (b) Acceptance by the Postal Service or delivery to the Postal Service at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
3. The provisions of 6.3.2.f.2 do not apply to supplies that are rejected. The risk of loss of or damage to rejected supplies remains with the supplier until cure or acceptance. After cure or acceptance, 6.3.2.f.2 applies.

### 6.3.3 **Receiving Reports**

6.3.3.a *General*

1. Completed receiving reports should be submitted to the Accounting Service Center (ASC) within 5 days of receiving supplies or services.

2. If receiving activities' reports are regularly received at the ASC more than 10 days after receiving supplies or services, this will be reported by the ASC to the appropriate purchasing organization for remedial action.

#### 6.3.3.b *Responsibility*

1. The contracting officer must ensure that receiving activities get proper notification of contract awards, including the receiving reports generated by the contract writing system, with instructions for prompt completion and submission.
2. The contracting officer must provide the proper shipping and payment information to the supplier.
3. Day-to-day responsibility for monitoring the completion and submission of receiving reports may be delegated to purchasing personnel or, as necessary, to managers within the receiving installation.
4. Each installation head must:
  - (a) Designate in writing an individual (or individuals) responsible for receiving and accepting all delivered supplies and services.
  - (b) Provide the appropriate purchasing organizations with a copy of the designation.
  - (c) See that procedures are established to ensure that the individual responsible for receiving and accepting supplies is notified when a shipment arrives.
5. When partial shipments are certified for payment, a copy of the certified receiving report must be kept for use in receiving the balance of the shipment.

## 6.4 Payments and Financing

### 6.4.1 **General**

- 6.4.1.a *Disputes.* Contracting officers and financial personnel must ensure that payments legitimately due are made promptly. If a dispute arises regarding the supplier's entitlement to payment, the contracting officer must pay the supplier any amount not in dispute, except for withholding as allowed under 6.4.4.f.
- 6.4.1.b *Partial Payments.* The contracting officer should generally approve requests for partial payment upon delivery of supplies or services that partially fill contract requirements. When the contract does not provide unit prices, the contracting officer may determine an appropriate formula for payment.
- 6.4.1.c *Cost Reimbursement.* Requests for payment under contracts that are not fixed-price must be reviewed by the contracting officer, with the assistance of technical specialists, to determine whether they comply with the requirements for allowability, allocability, and reasonableness (see 5.2.3).

## 6.4.2 Invoices

6.4.2.a *General.* Payment will be made only after receiving an invoice (see paragraph g of Clause 4-1, *General Terms and Conditions*, or Clause B-20, *Invoices*, which may be used as a substitute for paragraph g of Clause 4-1), except for:

1. Regularly scheduled payment under real estate leases and contracts for cleaning services, vehicle hire, and contract postal units;
2. Payments under mail transportation contracts;
3. Over-the-counter transactions for commercial items; or
4. Advance payments, when authorized.

6.4.2.b *Submitting Invoices.* Invoices must be sent to the office specified in the contract or order, with a copy to the contracting officer if necessary. Invoices sent to any other person or office are not considered properly submitted. Invoices submitted before performance or delivery violate the certification provision of the Invoices clause. Invoices may be submitted electronically.

## 6.4.3 Payment

6.4.3.a *Methods.* Payments may be made by check or electronic funds transfer, as requested by the supplier and approved by the contracting officer.

6.4.3.b *Time of Payment.* Payment must be made as close as possible to, but not later than, the 30th day after receiving an invoice or acceptance, whichever occurs later, except:

1. In those limited circumstances when a specified payment date is provided for in the contract, payment will be made as close as possible to, but not later than, that date.
2. When a time discount is taken, payment must be made as close as possible to, but not later than, the discount date. Discounts must be taken from the date on which the invoice is received by the office specified in the contract, or the date on which supplies or services are delivered or performed, whichever is later, to the discount date. Discounts should be taken whenever economically justified, but only after acceptance.

6.4.3.c *Interest Payments*

1. Interest will be paid automatically, whether or not a supplier has requested it, when all of the following conditions have been met:
  - (a) Acceptance has occurred and there is no disagreement over quantity, quality, or other contract provisions;
  - (b) A proper invoice has been received, except when no invoice is required for payment (see 6.4.2.a) or the contracting officer fails to give notice within 7 days after receipt of an improper invoice.

2. When a prompt payment discount is taken after the discount period has expired, the Postal Service has 10 days after expiration of the discount period to correct the underpayment. Failure to do so will result in the automatic payment of interest, whether or not the supplier has requested payment.

#### 6.4.3.d *Calculating Interest*

1. Except when interest is required by a government authority (e.g., tariffs), it will be calculated using the rate set by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect on the day after the due date. The rate will be published semiannually in the *Postal Bulletin*, in January and July. The rate will remain fixed during the period for which interest is calculated. Interest will accrue daily on the invoice amount approved by the Postal Service. It will be compounded in 30-day increments, starting with and including the first day after the due date through the payment date. Interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest if not paid in the succeeding 30-day period.
2. For the sole purpose of computing interest under this policy, acceptance will have occurred on the 7th day after the supplier has delivered the supplies or services under the contract, unless there is a disagreement over quantity, quality, or supplier compliance. If actual acceptance occurs within 7 days of delivery, interest will be calculated based on the actual date of acceptance. When necessary to inspect and test the supplies or evaluate services, the contracting officer may specify a longer period for constructive acceptance in the solicitation and contract. The justification for extending the period beyond 7 days must be documented in the contract file.
3. If the office specified in the contract for receiving invoices fails to date stamp the invoice, the invoice due date will be the 30th day after the date of the invoice, provided that a proper invoice was received and there is no disagreement over the quantity, quality, or supplier compliance with the contract.
4. The interest amount, interest rate, and the period for which the interest was computed, will be stated separately on the check or accompanying remittance advice. If requested by the supplier, adjustments must be made for errors in calculating interest.
5. For contracts awarded on or after October 1, 1989, a penalty amount (calculated according to Office of Management and Budget regulations) will be paid, in addition to the interest, if the supplier:
  - (a) Is owed interest;
  - (b) Is not paid the interest within 10 days after the date the invoice amount is paid; and
  - (c) Makes a written demand that the Postal Service pay such a penalty not later than 40 days after the date the invoice amount is paid.

6. When a prompt payment discount is taken after the discount period has expired, interest must be calculated on the amount of discount taken improperly. The interest must be calculated for the period beginning with the first day after the end of the discount period through the date when the supplier is paid.
  7. If the office specified in the contract for receiving invoices fails to notify the supplier of a defective invoice within 7 days after its receipt, the due date on the corrected invoice must be adjusted. The number of days taken beyond the 7-day period must be subtracted from payment due date. Any interest owed the supplier must be based on this adjusted due date.
- 6.4.3.e *Alternate Provisions.* The provisions on time of payment may be changed by agreement of the parties, but no interest may be paid by the Postal Service except as provided in 6.4.3.c.
- 6.4.3.f *Final Payment.* Final payment under any contract involving progress payments, retainage, payment or performance guarantees, or construction may not be made until the contracting officer receives a release from the supplier.

#### 6.4.4 **Withholding Payments**

- 6.4.4.a *General.* The contracting officer may refuse to pay a supplier or may withhold payments, in whole or in part, when:
1. The contract provides for withholding (for instance, when retainage is authorized to withhold money to ensure debts are paid);
  2. Elements of the amount invoiced by the supplier are not allowable (see 5.2.3);
  3. The supplier has been overpaid or otherwise owes the Postal Service money as a result of the supplier's actions or inactions under the contract;
  4. The supplier owes the Postal Service money for reasons unrelated to the contract; or
  5. As a result of judicial action or law, parties other than the supplier have made claims against the Postal Service, or have not waived rights that may be exercised against the Postal Service.
- 6.4.4.b *Actions by the Contracting Officer*
1. Nonpayment may be damaging to a supplier's business and may jeopardize performance. Therefore, the contracting officer must carefully consider the reasons for withholding or refusing payment, and must process disputes regarding payment quickly.
  2. The contracting officer must notify the supplier of any intended withholding and must provide the supplier an opportunity to object. If time permits, the notice should be in writing.

**6.4.4.c Disallowing Costs**

1. At any time during the performance of a contract that is not fixed price, the contracting officer may issue the supplier a written notice of intent to disallow specified incurred or planned costs (see Clause B-17, *Disallowance of Costs*). However, before issuing the notice, the contracting officer should make a reasonable effort to reach a satisfactory settlement.
2. If the supplier disagrees with the deduction from current payments, the supplier may:
  - (a) Request in writing that the contracting officer consider whether the unreimbursed costs should be paid and discuss the matter with the supplier;
  - (b) File a claim under Clause B-9, *Claims and Disputes*, which the contracting officer must process according to the procedures in 6.8; or
  - (c) Do both of the above.
3. Supplier discounts, rebates, and refunds offered voluntarily or provided for by contract clauses are not subject to this part and may be taken by adjustments to invoices or other procedures acceptable to the information service center.

**6.4.4.d Setoffs and Recoupments**

1. At any time during performance of a contract, the contracting officer may issue the supplier a written notice of intent to set off or recoup amounts due the Postal Service from payments otherwise due the supplier. However, before issuing the notice, the contracting officer should make a reasonable effort to reach a satisfactory settlement through negotiation.
2. If no settlement is reached, the contracting officer may withhold the amounts due the Postal Service by setoff or recoupment. A “setoff” is a deduction from payments due to the supplier under one contract for amounts due the Postal Service under one or more other contracts. “Recoupment” is a deduction of amounts due the Postal Service (for example, for damages for delay or defective performance, warranty costs, or repair costs) from the payment due the supplier under a single contract.
3. If the supplier disagrees with the intended setoff or recoupment, the provisions of 6.4.4.c.2 apply.
4. When contract payments have been assigned (see 6.4.7), the contracting officer must have the concurrence of counsel to use setoffs or recoupments.

**6.4.4.e Third-Party Claims.** The Postal Service may be subject to claims by third parties for money due a supplier. When a claim is filed with the contracting officer, counsel must be notified immediately. Counsel will provide instructions for handling the claim, disposing of the fund, and notifying the supplier.

6.4.4.f *Withholding Payment Under Contract Clauses.* Some contract clauses, such as Clause 2-10, *Liquidated Damages*, and Clause 2-8, *Warranty*, provide for withholding payment in certain circumstances. In addition, some contract clauses provide for withholding a percentage or portion of payments to induce continued acceptable performance. The contracting officer must strictly enforce such clauses and keep a complete record of the amounts withheld under any clause, the basis for withholding them, and the disposition of funds withheld.

## 6.4.5 **Progress Payments**

6.4.5.a *General.* The Postal Service only makes progress payments, when provided for by the contract, in return for demonstrated progress toward completion of performance.

### 6.4.5.b *Computing Progress Payments*

1. Progress payments, for nonconstruction contracts, must be based on costs incurred in performance. However, as provided in Clause 1-3, *Progress Payments*, the contracting officer may reduce or suspend payments where incurred costs vary substantially from actual progress under the contract. In such cases, the contracting officer should obtain the advice of technical personnel and counsel before computing the amount justified.
2. Progress payments for construction contracts are made according to Clause B-48, *Payment (Construction)*.

6.4.5.c *Supervision.* The extent to which progress payments need to be supervised depends on the supplier's accounting system and controls and the supplier's experience, performance record, reliability, management, and financial strength.

### 6.4.5.d *Administration*

1. The contracting officer must obtain monthly progress reports from the supplier, showing progress on the work in relation to progress payments made.
2. The contracting officer may, in approving progress payment requests, rely on the supplier's accounting system and certification without prepayment reviews. However, post-payment reviews (including audits, when necessary) must be made periodically, or when necessary to determine the validity of progress payments already made or expected to be made.
3. Clause 1-3, *Progress Payments*, gives the Postal Service the right to reduce or suspend progress payments, or to increase the liquidation rate, under specified conditions. The contracting officer may take such actions only in accordance with the contract terms and only after:
  - (a) Notifying the supplier and providing an opportunity for discussion;
  - (b) Evaluating the effect of the action on the supplier's operations, on the basis of the supplier's financial condition, projected cash requirements, and existing or available credit arrangements; and

- (c) Considering what is equitable in the particular situation.
- 4. The contracting officer may take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance. The contracting officer must always:
  - (a) Act fairly and reasonably;
  - (b) Base decisions on substantial evidence; and
  - (c) Document the contract file.
- 5. Progress payments are recouped by deducting liquidations from payments that would otherwise be due the supplier for completed performance. Usually, the liquidation rate is the same as the progress payment rate; and at the beginning of a contract, only this method may be used. Any liquidation method other than the usual method must be approved by the manager of Materials, Headquarters Purchasing, Field Customer Support, National Mail Transportation Purchasing, or Major Facilities Purchasing.

#### 6.4.6 **Limitation of Cost or Funds**

##### 6.4.6.a *Administration*

- 1. When a contract contains Clause 2-31, *Limitation of Cost*, or Clause 2-32, *Limitation of Funds*, and the supplier has notified the contracting officer that incurred costs are approaching the estimated cost of the contract or the funding limit, the purchase team must promptly obtain funding and information regarding the contract's continuation. The contracting officer must notify the supplier in writing that:
  - (a) Additional funds have been allotted, or the estimated cost has been increased, in a specified amount;
  - (b) The contract is not being funded further, and the supplier should submit a proposal for a fee adjustment, if any, based on the percentage of work completed in relation to the total work called for under the contract; or
  - (c) The contract is to be terminated.
- 2. The supplier is entitled by the contract terms to stop work when the funding or cost limit is reached, and any work beyond the funding or cost limit is at the supplier's risk.

6.4.6.b *Effect of a Modification.* The contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a supplier is not obligated to incur costs above the estimated cost in the contract, the contracting officer must ensure that funds are available for directed actions. The contracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.



### 6.4.7 **Assignment of Claims**

- 6.4.7.a *Policy.* A supplier may assign money that will be due under a Postal Service contract to a single bank or other financial institution, with the approval of the contracting officer (see paragraph b of Clause 4-1). Any other attempted assignment may be treated as a breach of contract.
- 6.4.7.b *Approval.* Contracting officers may approve any authorized assignment that does not jeopardize contract performance. See also the discussion of novation agreements in 6.5.4.
- 6.4.7.c *Assignments by Law.* This part does not pertain to assignments ordered by a court or law. Contracting officers should consult with counsel in such cases.

## 6.5 **Contract Modifications**

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### 6.5.1 **General**

#### 6.5.1.a *Effective Dates*

1. The effective date of an administrative change, change order, or other unilateral modification issued by the Postal Service is any effective date established in the contract or, if none, the date of the modification.
2. The effective date of a bilateral modification (such as a supplemental agreement; see 6.5.1.c.1) is any effective date established in the contract or, if none, the date agreement is reached (usually the date signed by the last agreeing party).
3. Modifications issued in connection with previous directions or agreements, such as settlements of the cost of changes, confirmations of terminations, or conversions of terminations for default to terminations for convenience, ordinarily take the effective date of the underlying action.
4. For modifications converting a termination for default to a termination for convenience, the effective date will be the same as the effective date of the termination for default.

#### 6.5.1.b *Policy*

1. Except for certain mail transportation contracts (see 4.4.3), only contracting officers are authorized to sign contract modifications for the Postal Service. Other Postal Service personnel may not:
  - (a) Act in a manner that causes the supplier to believe they have authority to bind the Postal Service; or
  - (b) Direct or encourage the supplier to perform work that should be covered under a contract modification.

2. Contract modifications, including changes that can be issued unilaterally, must be priced before they are signed if it can be done without adversely affecting the interest of the Postal Service. If a significant cost increase could result from a contract modification and time does not permit negotiating a price, at least a maximum price must be negotiated whenever practicable. See 2.3.2 for modifications affecting Technical Data Packages.

6.5.1.c *Types of Modifications.* There are two types of contract modifications:

1. Bilateral modifications (supplemental agreements) that are signed by both the supplier and the contracting officer. Examples of bilateral modifications are modifications to:
  - (a) Make equitable adjustments under paragraph c of Clause 4-1; Clause B-37, *Changes (Construction)*; or other clauses providing for equitable adjustment; or
  - (b) Reflect other agreements of the parties modifying contract terms.
2. Unilateral modifications are signed only by the contracting officer in accordance with a contract clause. Examples of unilateral modifications would be modifications to:
  - (a) Make administrative changes (unilateral changes, in writing, that do not affect the substantive rights of the parties, such as a change in the paying office);
  - (b) Issue change orders;
  - (c) Make changes authorized by specific clauses or contract provisions (such as exercising an option or suspending work); and
  - (d) Issue termination notices.

6.5.1.d *Notification of Contract Changes.* Under paragraph c of Clause 4-1, or Clause B-37, when a supplier considers that any written or oral order (including a direction, an interpretation, an instruction, or a determination) from the contracting officer causes a change in the contract, the supplier must notify the contracting officer in writing that the supplier regards the order as a change order. The contracting officer must then evaluate the order, notify the purchase team of the findings, and:

1. Confirm that it is a change, direct further performance, and plan for its funding;
2. Countermand the alleged change; or
3. Notify the supplier that no change is considered to have been ordered.

6.5.1.e *Availability of Funds*

1. The contracting officer may not execute a contract modification that causes or will cause an increase in funds without having first met with the purchase team and obtained a certification of funds availability, except for modifications to contracts that:
  - (a) Are conditioned on availability of funds; or
  - (b) Contain a limitation of cost or funds clause.

2. The certification of funds availability should be based on the negotiated price. Modifications signed before there is price agreement may be based on the best available estimate.

#### 6.5.1.f *Exercise of Options*

1. Before exercising an option, the purchase team must determine that:
  - (a) Funds are available;
  - (b) The Postal Service still needs the supplies or services covered by the option; and
  - (c) Exercising the option is the most advantageous alternative, price and other factors considered ("other factors" includes any need for continuity of operations and the cost of disrupting operations).
2. The contracting officer must determine that the option price is the most advantageous to the Postal Service, based on one of the following:
  - (a) Market research clearly indicates that a better price than that offered by the option cannot be obtained;
  - (b) The time between the award of the contract containing the option and the exercise of the option is so short that the option price is probably the lowest obtainable, considering such factors as market stability and usual duration of supply or service contracts; or
  - (c) A new solicitation fails to produce a better price than that offered by the option. (This method of testing the market should be used only if neither of the other methods is satisfactory.)
3. If the contract provides for economic price adjustment, the effect of such adjustment on prices under the option must be ascertained in determining whether to exercise the option.
4. When an option is to be exercised, the contracting officer must, in writing:
  - (a) Determine that the option may properly be exercised under 6.5.1.f.1 above;
  - (b) Notify the supplier within the time specified in the contract that the option is being exercised; and
  - (c) Modify the contract as needed, citing the option clause as authority.

#### 6.5.1.g *Correcting Mistakes*

1. A contract may be modified to correct or mitigate the effect of a mistake. Examples are:
  - (a) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.
  - (b) A supplier's mistake so obvious that it was or should have been apparent to the contracting officer.

- (c) A mutual mistake concerning a material fact (particularly, mistakes concerning the promises the parties made to one another under the contract).
- 2. A claim of mistake that is asserted after award, and a decision to deny a claim of mistake asserted after award, in whole or in part, is handled under the procedures of Clause B-9, *Claims and Disputes* (see 6.8.3).

## 6.5.2 Change Orders

### 6.5.2.a General

- 1. Paragraph c of Clause 4-1, and Clause B-37, allow the contracting officer to make unilateral changes, as specified in the clause, within the general scope of the contract. These changes are accomplished by issuing written change orders.
- 2. The supplier must continue performing under the contract as changed, except under contracts that are not fixed-price or incrementally funded where the supplier is not obligated to continue or incur costs beyond the limits established in Clause 2-31, *Limitation of Cost*, or Clause 2-32, *Limitation of Funds*.

6.5.2.b *Accounting.* The Postal Service uses the procedures in Chapter 5 when analyzing the price or cost of changed work.

### 6.5.2.c Administration

- 1. When change orders are not priced before performance, they usually require two documents: the change order and a supplemental agreement reflecting an equitable adjustment for the change order. If an equitable adjustment in the contract price or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued. If the change order has no effect on price or delivery, no equitable adjustment or supplemental agreement is needed. Administrative changes and changes issued under a clause giving the Postal Service a unilateral right to make a change (such as an option clause) require only one document.
- 2. Contracting officers must promptly negotiate equitable adjustments resulting from change orders, and must follow up when claims for equitable adjustment are not received within 30 days after the order.
- 3. Before negotiating an equitable adjustment, the contracting officer must ensure that price and cost analyses, as appropriate, are made and must consider the supplier's segregable costs of the change, if available. If additional funds are required as a result of the change, the funds must be available before the supplemental agreement is signed.
- 4. To avoid controversies that may result from a supplemental agreement making an equitable adjustment, the contracting officer should:
  - (a) Ensure that all elements of the equitable adjustment have been presented and resolved; and
  - (b) Include a release of claims in the supplemental agreement.

### 6.5.3 **Equitable Adjustments for Delays**

6.5.3.a *General.* In determining the consequences of events that delay performance, the United States Court of Federal Claims and the Postal Service Board of Contract Appeals have applied general risk-allocation principles. These have been supplemented by standard contract clauses under which the time and cost effect of delays are dealt with separately. Clause B-19, *Excusable Delays*, deals with the types of events that protect the supplier from sanctions for late performance. Other clauses, such as Clause B-16, *Suspensions and Delays*, cover the recovery of costs associated with delays. The supplier bears the risk of schedule and cost effects for delays it causes or for delays within its control. Generally, the supplier is excused from nonperformance due to delays caused by factors for which neither the supplier nor the Postal Service is responsible. However, the supplier must bear the cost impact of such delays. The Postal Service is responsible for the schedule and cost effects of delays it causes, delays that are under its control, or delays for which it has agreed to compensate the supplier. Clause B-15, *Notice of Delay*, requires the supplier to notify the contracting officer of problems that might delay performance. Paragraph s of Clause 4-1 incorporates by reference each of these clauses.

#### 6.5.3.b *Excusable Delays*

1. A supplier may be granted an extension of the delivery or performance schedule for an excusable delay.
2. A supplier's failure to perform may be considered an excusable delay when it arises out of either:
  - (a) Causes beyond the control and without the negligence of the supplier — including acts of God or the public enemy; acts of the government in its sovereign capacity or the Postal Service in its contractual capacity; and fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or
  - (b) A subcontractor default due to causes beyond the control and without the fault or negligence of both the supplier and the subcontractor, unless the supplies or services were obtainable from another source in time to permit the supplier to meet the delivery schedule.

#### 6.5.3.c *Compensable Delays*

1. A supplier may be granted an extension of the contract delivery or performance schedule, a price adjustment, or both, as the purchase team, represented by the contracting officer, deems appropriate, when an unreasonable delay in performance is caused by the Postal Service or is under its control, or when it has agreed to pay the supplier for the delay. Situations that may entitle the supplier to an equitable adjustment (schedule, cost, or both) include:
  - (a) Delay in issuing the notice to proceed;
  - (b) Delay in availability of the site;

- (c) Differing site conditions;
  - (d) Actual or constructive changes or delays;
  - (e) Delay in providing funding;
  - (f) Delay in inspections;
  - (g) Delay in issuing changes;
  - (h) Delay in providing Postal Service-furnished equipment; and
  - (i) Failure to perform by other Postal Service suppliers.
2. The supplier has the burden of proof in establishing the basis for the equitable adjustment required to overcome the delay.

6.5.3.d *Concurrent Causes.* When a delay is attributable to both the Postal Service and the supplier, a contract delivery or performance schedule adjustment should not normally be granted for a period of delay caused at least in part by actions or failures on the part of the supplier. (But damages may not be assessed against the supplier in these situations.)

6.5.3.e *Acceleration*

1. The Postal Service has the right to require accelerated performance under paragraph c of Clause 4-1. This right should be exercised only when required to maintain the operational capability of the Postal Service.
2. Contracting officers must document the specific facts that require acceleration of performance and the estimated impact on contract price. Whenever possible, the contracting officer must negotiate acceleration actions in advance.
3. Contracting officers should be alert to constructive acceleration situations. Constructive acceleration occurs when the Postal Service does not agree to a delivery or performance schedule extension to which the supplier is entitled (or is later determined to be entitled), causing the supplier to accelerate performance. Constructive acceleration may result in a claim for a price increase.

## 6.5.4 **Novation and Change-of-Name Agreements**

6.5.4.a *Definitions*

1. *Change-of-name agreements.* Agreements signed by the supplier and the Postal Service that recognize a legal change of the supplier's name without otherwise altering the original contract.
2. *Novation agreements.* Agreements signed by the supplier (the transferor), the successor in interest (transferee), and the Postal Service, by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Postal Service recognizes the transfer of the contract and related assets.

6.5.4.b *Responsibility*

1. The contracting officer is responsible for:
  - (a) Determining, in consultation with counsel, whether to permit contract novation; and
  - (b) Processing and signing novation and change-of-name agreements.
2. When multiple contracts of one supplier or transfers from several transferors to one transferee are involved, the contracting officer responsible for the largest unsettled (unbilled plus billed-but-unpaid) contract dollar balance is responsible for executing the novation or change-of-name agreement.

6.5.4.c *Novation Policy*

1. The Postal Service generally prohibits contract novation (see paragraph b of Clause 4-1, and Clause B-8, *Assignment of Claims*). However, the Postal Service may recognize a third party as the successor in interest when that party's interest arises out of the transfer of:
  - (a) All the supplier's assets; or
  - (b) The entire portion of the assets involved in performing the contract.
2. Situations in which novation may be permitted include but are not limited to:
  - (a) Sale of the supplier's assets with a provision for assuming liabilities;
  - (b) Transfer of assets as part of a merger or corporate consolidation; and
  - (c) Incorporation of a proprietorship or partnership, or formation of a partnership.
3. Before concurring in a contract novation, the contracting officer must determine the capability (see 2.1.9.c) of the successor in interest.
4. When it is not in the Postal Service's interest to concur in a contract novation, the original supplier remains responsible for performance, and the contract may be terminated for default for failure to perform.

6.5.4.d *Change of Name.* A change-of-name agreement is appropriate when only a change of the supplier's name is involved, and the rights and obligations of the parties remain unaffected. The agreement must be signed by the contracting officer and the supplier modifying all existing contracts between the parties to reflect the name change.

## 6.6 Postal Service Property

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### 6.6.1 Supplier's Property Control Systems

- 6.6.1.a *Review.* The contracting officer or the representative assigned to act as property administrator should review the supplier's property control systems to ensure compliance with the contract's property clauses.
- 6.6.1.b *Noncompliance.* The property administrator should notify the supplier in writing when its property control system does not comply with the contract requirements, requesting prompt correction of deficiencies. If the supplier does not correct the deficiencies within a reasonable period, the property administrator should request action by the contracting officer. The contracting officer may:
1. Notify the supplier in writing of any required corrections and establish a schedule for completion;
  2. Caution the supplier that failure to take the required corrective action within the time specified will result in withholding or withdrawing system approval; and
  3. Advise the supplier that its liability for loss of or damage to Postal Service property may increase if approval is withheld or withdrawn.

### 6.6.2 Records

- 6.6.2.a *Record Keeping.* Supplier records of Postal Service property, established and maintained under the terms of the contract, are the Postal Service's official records. Duplicate official records should be furnished to or maintained by Postal Service personnel, except as provided in 6.6.2.b.2.
- 6.6.2.b *Maintenance by the Postal Service.* Contracts may provide for the official records to be maintained by the Postal Service when Postal Service property is furnished:
1. For repair or servicing and return to the shipping organization;
  2. For use at a Postal Service installation;
  3. Under a local support service contract;
  4. Under a contract with a short performance period or involving Postal Service property with an acquisition cost of \$50,000 or less; or
  5. When otherwise determined by the contracting officer to be in the Postal Service's interest.



## 6.7 Subcontracting Policies and Procedures

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### 6.7.1 General

#### 6.7.1.a Requirements

1. When a contract contains Clause B-18, *Subcontracts*, the supplier must notify the contracting officer in advance of its intent to subcontract. The supplier may enter into a subcontract unless notice of disapproval is received from the contracting officer within 15 days from the date the contracting officer was notified.
2. The purchase team, represented by the contracting officer, must:
  - (a) Promptly evaluate supplier notices of intent to subcontract;
  - (b) Obtain assistance in this evaluation, as necessary, from subcontracting, audit, pricing, technical, or other specialists; and
  - (c) Have the contracting officer notify the supplier in writing if the subcontract is disapproved.

#### 6.7.1.b Considerations

1. The purchase team must review the notice of intent to subcontract and any supporting data and should consider the following:
  - (a) Is the subcontractor to acquire special test equipment or facilities that are available from Postal Service sources?
  - (b) Is the selection of the particular supplies, equipment, or services technically justified?
  - (c) Was adequate price competition obtained or its absence justified?
  - (d) Did the supplier adequately assess its subcontractor's alternate proposals?
  - (e) Does the supplier have a sound basis for selecting and determining the capability of the subcontractor?
  - (f) Has the supplier performed adequate price or cost analysis?
  - (g) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
  - (h) Will subcontractors be working in Postal Service-furnished facilities?
  - (i) Has the supplier adequately and reasonably translated prime contract technical requirements into subcontract requirements?
  - (j) Is the proposed subcontractor on the Postal Service's consolidated list of debarred, suspended, and ineligible suppliers?
2. Particularly careful and thorough consideration is necessary when:
  - (a) The prime supplier's purchasing system or performance is inadequate;

- (b) Close working relationships or ownership affiliation between the prime and subcontractor may preclude free competition or result in higher prices;
- (c) Noncompetitive subcontracts are proposed at prices that appear unreasonable, or higher than those offered the Postal Service in comparable circumstances; or
- (d) Subcontracts are proposed that are not fixed-price.

### 6.7.2 Limitations

- 6.7.2.a *Lack of Disapproval.* Lack of disapproval of a subcontract does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs.
- 6.7.2.b *Disapproval to Avoid Disputes.* Subcontracts should not be disapproved merely because they give the subcontractor the right to appeal a dispute to the Board of Contract Appeals in the name of the prime supplier.

## 6.8 Claims and Disputes

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### 6.8.1 General

- 6.8.1.a *Contract Disputes Act.* This section and Clause B-9, *Claims and Disputes* (which is incorporated by reference in paragraph s of Clause 4-1), implement the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), which includes the Postal Service among the executive agencies subject to it.
- 6.8.1.b *Policy.* It is Postal Service policy to resolve contractual issues by mutual agreement at the level of the contracting officer. In addition, the Postal Service supports and encourages the use of alternative dispute resolution (ADR) as an effective way to understand, address and resolve conflicts with suppliers. The contracting officer, working with the purchase team, should consider an ADR method to resolve a dispute, if agreed to by the supplier. ADR methods may include informal negotiation, mediation by a neutral third party, facilitation by an ombudsman, or other approved methods. These efforts to resolve differences should be made before the issuance of a final decision on a claim. Even when the supplier does not agree to use ADR, the contracting officer, working with the purchase team, should consider holding informal discussions between the parties in order to resolve the conflict before the issuance of a final decision.

## 6.8.2 Claim Initiation

- 6.8.2.a *Receipt.* Supplier claims must be submitted in writing to the contracting officer for final decision. The contracting officer must document the contract file with evidence of the date of receipt of any submission that the contracting officer determines is a claim. Supplier claims must be submitted within 6 years after accrual of a claim unless the parties agreed to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995.
- 6.8.2.b *Decision.* The contracting officer must issue a written decision on any Postal Service claim against a supplier, within 6 years after accrual of a claim unless the parties agreed to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995, or to a Postal Service claim based on a supplier claim involving fraud.
- 6.8.2.c *Certified Claims.* Each supplier claim exceeding \$100,000 must be accompanied by the certification required in Clause B-9, *Claims and Disputes*. That certification must also be provided for any claim, regardless of dollar amount, before ADR is used.
- 6.8.2.d *Misrepresentation or Fraud.* When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence that the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny the claim and refer the matter to the Office of Inspector General.

## 6.8.3 Decision and Appeal

- 6.8.3.a *Contracting Officer's Authority.* Contracting officers are authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:
1. Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a federal agency administers; or
  2. Claims involving fraud.
- 6.8.3.b *Contracting Officer's Decision.* When a claim by or against a supplier cannot be resolved by agreement, and a decision under Clause B-9, *Claims and Disputes*, is necessary, the contracting officer, working with the purchase team, may use an approved ADR method to assist in resolving the claim. If the purchase team determines that ADR is not appropriate, or if the supplier refuses to participate, the contracting officer must review the facts pertinent to the claim, obtain assistance from assigned counsel and other advisors, and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract provisions, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's decision with supporting rationale.
- 6.8.3.c *Insufficient Information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer must promptly request the required information. Further failure to provide the requested information is an adequate reason to deny the claim.

- 6.8.3.d *Furnishing Decisions.* The contracting officer must furnish a copy of the decision to the supplier by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- 6.8.3.e *Decisions on Claims for \$100,000 or Less.* If the supplier has asked for a decision within 60 days, the contracting officer must issue a final decision on a claim of \$100,000 or less within 60 calendar days of its receipt. The supplier may consider the contracting officer's failure to issue a decision within the applicable time period as a denial of its claim, and may file a suit or appeal on the claim.
- 6.8.3.f *Decisions on Certified Claims.* For certified claims over \$100,000, contracting officers must either issue a final decision within 60 calendar days of their receipt or notify the supplier within the 60-day period of the time when a decision will be issued. The time period established must be reasonable, taking into account the size and complexity of the claim, the adequacy of the supplier's supporting data, and any other relevant factors.
- 6.8.3.g *Wording of Decisions.* The contracting officer's final decision must contain the following paragraph:
- "This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled Claims and Disputes. You may appeal this decision to the Postal Service Board of Contract Appeals by mailing or otherwise furnishing written notice (preferably in triplicate) to the contracting officer within 90 days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within 12 months from the date you receive this decision."
- 6.8.3.h *Additional Wording for Decisions of \$50,000 or Less.* When the claim or claims denied total \$50,000 or less, the contracting officer must add the following to the paragraph in g:
- "In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's Small Claims (expedited) procedure, which provides for a decision within approximately 120 days, or an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter."
- 6.8.3.i *Additional Wording for Decisions Over \$50,000 Up to \$100,000.* When the claim or claims denied total \$100,000 or less, but more than \$50,000, the contracting officer must add the following to the paragraph in g:
- "In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter."

#### 6.8.3.j *Appeals*

1. Contracting officers must have sufficient information available at the time a final decision is issued on a claim so as not to delay the resolution of appeals within the period set for an expedited or accelerated disposition. Once an appeal is docketed and expedited or accelerated disposition is elected, contracting officers must devote sufficient resources to the appeal to ensure that the schedule for resolution is met.
2. Purchasing offices may seek to settle the controversy after an appeal has been filed. However, processing of the appeal must not be suspended during the efforts to settle the controversy, unless the Board of Contract Appeals directs a suspension.

6.8.3.k *Payment.* Any amount determined in a final decision to be payable, less any portion previously paid, usually should be promptly paid to the supplier without prejudice to either party in the event of appeal or action on the claim. In the absence of appeal by the Postal Service, a board or court decision favorable in whole or in part to the supplier must be implemented promptly by payment by the appropriate information service center. In cases when only the question of entitlement has been decided and the matter of amount has been remanded to the parties for negotiation, a final decision of the contracting officer must be issued if agreement is not reached promptly.

6.8.3.l *Interest.* Interest on the amount found due on the supplier's claim must be paid from the date the contracting officer received the claim (properly certified, if required, in accordance with Clause B-9, *Claims and Disputes*), or from the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest will be paid at the rate established by the Secretary of the Treasury for each 6-month period in which the claim is pending. Information on the rate at which interest is payable is announced periodically in the *Postal Bulletin*.

6.8.3.m *Review of Adverse Actions.* The Postal Service will seek review of an adverse decision of the Board of Contract Appeals in the Court of Appeals for the Federal Circuit, if the Vice President (VP), Purchasing and Materials (P&M), with the concurrence of the General Counsel or the General Counsel's designee, decides to pursue an appeal.

## 6.9 Contract Termination

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### 6.9.1 **General**

#### 6.9.1.a *Applicability*

1. This section applies to contracts that contain clauses permitting termination for the convenience of the Postal Service or for supplier default, and to those contracts with clauses that provide for termination on notice. It establishes uniform policies for the complete or partial termination of such contracts.

2. The provisions of this section must be used by the contracting officer as a guide in evaluating settlement of a subcontract terminated for the convenience of a supplier whenever the settlement could be the basis of a claim for reimbursement.
  3. The contracting officer may follow the provisions of this section in determining any equitable adjustment resulting from a modification to a fixed-price contract under the Changes clause.
- 6.9.1.b *Review and Approval.* No contract priced at or with a potential termination liability exceeding \$1 million may be terminated for convenience or default unless the VP, P&M, has approved termination. In addition, no contract, regardless of price, which is considered sensitive or highly visible may be terminated for convenience or default unless the VP, P&M, has approved termination.
- 6.9.1.c *General Principles*
1. Contracts may be terminated, whether for default, convenience, or upon notice, only when it is in the interest of the Postal Service.
  2. The contracting officer may terminate a contract on notice or use a no-cost settlement agreement instead of other forms of termination when:
    - (a) The supplier will accept a no-cost settlement or the contract allows termination on notice;
    - (b) Postal Service property was not furnished or will be returned; and
    - (c) All outstanding payments, claims, and supplier obligations are or will be resolved.
- 6.9.1.d *Termination Notice*
1. *General*
    - (a) The contracting officer may terminate contracts only by written notice to the supplier. (In terminating a fixed-price contract for default for a cause other than failure to make timely delivery, the termination notice discussed here must be preceded by the notice or notices discussed in 6.9.3.b.5 and 6.9.3.b.6.)
    - (b) Notice must be by:
      - (1) Certified mail, return receipt requested;
      - (2) Telegraphic notice; or
      - (3) Hand delivery with written acknowledgment by the supplier.
    - (c) The notice must state:
      - (1) The type of termination and the contract clause authorizing the termination;
      - (2) The date the supplier is required to stop performance;
      - (3) The extent of the termination and, if a partial termination, the portion of the contract to be continued; and
      - (4) Any special instructions.

2. *Distribution.* When the termination notice is sent to the supplier, the contracting officer must simultaneously send a copy to the information service center and to any known assignee, guarantor, or surety of the supplier.
3. *Amendment.* The contracting officer may amend a termination notice to:
  - (a) Correct nonsubstantive mistakes in the notice;
  - (b) Add supplemental data or instructions;
  - (c) Rescind the notice if the work terminated has been completed or shipped before the supplier receives the notice; and
  - (d) Reinstate the terminated portion of a contract.
4. *Reinstatement.* The contracting officer may, with the consent of the supplier, reinstate the terminated portion of a contract in whole or in part by amending the notice of termination when:
  - (a) Circumstances clearly indicate a requirement for the terminated portion; or
  - (b) Reinstatement is otherwise advantageous to the Postal Service.

## 6.9.2 Termination for Convenience

### 6.9.2.a General

1. *Applicability.* The provisions of 6.9.2 apply to all fixed-price contracts. Paragraph I of Clause 4-1 addresses termination for convenience. When a non-fixed price contract will be used, it must contain Clause B-12, *Termination for Convenience or Default*, in place of paragraph I.
2. *Type of Settlement*
  - (a) The contracting officer may settle contracts terminated for convenience by:
    - (1) Negotiated agreement;
    - (2) Contracting officer determination;
    - (3) Costing out under vouchers, if the contract is a cost-reimbursement contract; or
    - (4) A combination of these methods.
  - (b) When possible, the contracting officer should negotiate a fair and prompt settlement with the supplier.

### 6.9.2.b *Supplier's Duties.* After receiving a termination notice and unless directed otherwise by the contracting officer, the supplier must comply with the contract clause and the termination notice, which generally require that the supplier:

1. Stop work immediately on the terminated portion of the contract and stop placing subcontracts under that portion;
2. Terminate all subcontracts related to the terminated portion of the contract;
3. Immediately advise the contracting officer of any special circumstances precluding stoppage of work;

4. Perform the continued portion of the contract and promptly submit any request for an equitable adjustment of price with respect to the continued portion, supported by evidence of any increase in the cost;
5. Take necessary action to protect and preserve property in which the Postal Service has or may acquire an interest, and deliver the property to the Postal Service or otherwise dispose of it as directed by the contracting officer;
6. Promptly notify the contracting officer in writing of any legal proceedings growing out of a subcontract or other commitment related to the terminated portion of the contract;
7. Settle outstanding liabilities and claims arising out of subcontract terminations, with prior approval or ratification as required by the contracting officer;
8. Promptly submit a settlement proposal, supported by appropriate schedules; and
9. Dispose of any termination inventory, as directed by the contracting officer.

6.9.2.c *Settlement of Subcontractor Claims*

1. *Subcontractor Rights.* A subcontractor has no contractual rights against the Postal Service but may have rights against the Postal Service supplier or the immediate subcontractor with which it has contracted. Upon termination of a Postal Service contract, or a change that necessitates subcontract termination, the supplier and each subcontractor are responsible for prompt settlement of the termination claims of their immediate subcontractors.
2. *Prime Supplier's Rights and Obligations*
  - (a) The termination clauses provide that, upon termination, the supplier must, unless directed otherwise by the contracting officer, terminate all subcontracts to the extent that they relate to performance of the work terminated.
  - (b) The reasonableness of the supplier's settlement with a subcontractor should be measured by the aggregate amount that would be due under an equivalent Postal Service termination clause. The contracting officer may allow reimbursement in excess of that amount only in unusual cases, and then only when satisfied that the subcontract terms were negotiated in good faith and did not unreasonably increase the subcontractor's rights.
3. *Delay in Settling Subcontractor Claims.* When a supplier's inability to reach settlement with a subcontractor delays the settlement of the Postal Service contract, the contracting officer may settle with the supplier for all amounts except the subcontractor's settlement proposal, and reserve Postal Service and supplier rights as to the proposal.



4. *Assistance in Subcontract Settlements.* In unusual cases, the contracting officer may determine that it is in the interest of the Postal Service to offer to assist the supplier in settling a particular subcontract. The Postal Service, the supplier, and the subcontractor may then enter into an agreement covering settlement of the subcontract. In these cases, the subcontractor must be paid through the supplier as part of the overall settlement.
5. *Direct Settlement by the Postal Service.* The Termination for Convenience clause gives the Postal Service the right, but not the obligation, to settle and pay any claims arising out of subcontract terminations. Direct settlements with subcontractors are not encouraged, because the Postal Service supplier is obligated to settle and pay a subcontractor's termination claims. However, when the contracting officer determines that it is in the interest of the Postal Service to settle a subcontractor's claim directly, the contracting officer may, after consultation with assigned counsel and after notifying the supplier, direct the assignment of all supplier rights to the Postal Service, and settle the subcontractor's claim using the procedures for settling Postal Service contracts. An example in which the interest of the Postal Service would be served is when a subcontractor is the sole source of a product and it appears that a delay by the supplier in settling the subcontractor's claim will jeopardize the subcontractor's financial position.

### 6.9.3 Termination for Default

#### 6.9.3.a General

1. Paragraph m of Clause 4-1 addresses terminations for default. Termination for default is the exercise of the Postal Service's right to completely or partially terminate a contract by reason of the supplier's actual or anticipated failure to perform. When the contracting officer has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.
2. If the supplier can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, the Default Termination clause provides that a termination for default will be deemed a termination for the convenience of the Postal Service, and the rights and obligations of the parties will be governed accordingly.
3. When a contract provides for liquidated damages, the contracting officer must mitigate damages when grounds for termination for default exist by having the supplier perform or terminating the contract for default. Liquidated damages, once incurred, may be remitted in whole or in part as may be just and equitable, upon the recommendation of the VP, P&M, and after consultation with assigned counsel.

4. When the contracting officer determines in writing that the supplies or services are still required and that reinstatement is advantageous to the Postal Service, the contracting officer may reinstate the terminated portion of a contract, but only with the supplier's written consent.
5. For termination for default of orders placed under Federal Supply Schedule (FSS) contracts, consult the General Services Administration.

6.9.3.b *Fixed-Price Contracts*

1. *Postal Service Rights and Obligations*

- (a) Under the *Termination for Default* clause, the Postal Service has the right, subject to the notification requirements of the clause, to terminate all or any part of a contract without regard to severability of contract obligations when the supplier:
  - (1) Fails to complete any material requirement of the contract within the time specified in the contract (including any extensions);
  - (2) Fails to make progress to a degree that it endangers performance of the contract;
  - (3) Fails to perform any other contract provision; or
  - (4) Fails to give adequate assurances as required by 6.2.5.
- (b) The Postal Service is not liable for the supplier's costs on undelivered work and is entitled to repayment of any progress payments for undelivered work.
- (c) The contracting officer may have the supplier transfer title and deliver the completed supplies and manufacturing materials to the Postal Service. The completed supplies and manufacturing materials may be acquired for use in continuing the terminated contract work or use under another contract.
- (d) Subject to the provisions of (e)(4), the Postal Service must pay the supplier the contract price for any supplies completed and delivered, and the amount agreed upon by the contracting officer and the supplier for any manufacturing materials acquired by the Postal Service.
- (e) The Postal Service must be protected from failure to make provision for the Postal Service's potential liability to laborers and material suppliers for lien rights. The contracting officer must take one or more of the following measures before making the payment referred to in (d):
  - (1) Ascertain whether any payment bonds furnished by the supplier are adequate to satisfy all claims, or whether it is feasible to obtain similar bonds to cover outstanding liens.
  - (2) Require the supplier to furnish statements from laborers and material suppliers disclaiming any lien rights they may have in the supplies and materials.

- (3) Obtain agreement between the Postal Service, the supplier, and any claimants to release the Postal Service from any potential liability to the supplier or claimants.
  - (4) Withhold from the amount otherwise due for the supplies or materials an amount the contracting officer determines necessary to protect the Postal Service's interest, in accordance with 6.4.4.
  - (5) Take any other action that is appropriate in view of the supplier's degree of solvency and other circumstances.
  - (f) The supplier is liable to the Postal Service for any excess costs the Postal Service incurs in acquiring supplies and services similar to those terminated for default, and any other damages, whether or not repurchase is made.
2. *Determination of Appropriateness.* When a default termination is being considered, the contracting officer should ensure that termination for default, rather than convenience, is appropriate. The contracting officer should consult with the purchase team, other purchasing personnel, technical specialists, and counsel, and consider:
- (a) The provisions of the contract, and applicable laws and regulations.
  - (b) The specific failure of the supplier and, unless time does not permit, the excuses for failure.
  - (c) The availability of the supplies or services from other sources.
  - (d) The urgency of the need for the supplies or services, and whether or not they can be obtained sooner from sources other than the delinquent supplier.
  - (e) The degree to which the supplier is essential to the Postal Service, and the effect of a termination for default on the supplier's capability as a supplier under other contracts.
  - (f) The effect of a termination for default on the ability of the supplier to liquidate progress payments.
  - (g) Any other pertinent facts and circumstances.
3. *Surety Notification and Arrangements*
- (a) When a termination for default appears imminent, the contracting officer must send a written notification of that fact (not an actual notice of default) to any surety, at both its main and local offices.
  - (b) If requested by the surety, and agreed to by the supplier and any assignees, arrangements may be made to have future checks mailed to the supplier in care of the surety. In this case, the supplier must forward a written request to the designated disbursing officer, specifically directing a change in address for mailing of checks.

4. *Initiating Termination — Failure to Make Timely Delivery*
  - (a) When a supplier fails to make timely delivery, the contracting officer has a reasonable time after the delivery date to determine whether the contract should be terminated for default. When the supplier is continuing performance of the contract, a reasonable time for the contracting officer to make a decision is 30 working days. Delay beyond that period may result in a waiver of the right of the Postal Service to terminate for default.
  - (b) When the contracting officer determines that termination for default is proper, the contracting officer should issue a termination notice at once, following the procedures in 6.9.3.b.7. No demand for adequate assurances should be issued. However, the contracting officer may allow the supplier to assert any alleged excusable delay.
  - (c) If a contracting officer's delay in issuing a notice of termination for default results in a waiver of that right, a new delivery date must be established by bilateral or unilateral modification of the contract. The new delivery date must be reasonable considering all the circumstances of contract performance. When the new date is established, the right to terminate for default is reinstated.
5. *Notice of Impending Termination — Causes Other Than Failure to Make Timely Delivery.* When the contracting officer makes a preliminary determination that termination for default is appropriate in cases other than failure to make timely delivery, the contracting officer should, if practicable, notify the supplier in writing of the possibility of termination. This notice may:
  - (a) Call the supplier's attention to its liabilities in the event that the contract is terminated for default;
  - (b) Request that the supplier show cause why the contract should not be terminated for default;
  - (c) State that failure of the supplier to explain why the contract should not be terminated may be taken as an admission that no valid explanation exists;
  - (d) When appropriate, invite the supplier to discuss the matter at a conference.
6. *Demand for Adequate Assurance — Causes Other Than Failure to Make Timely Delivery*
  - (a) A written notice must be issued when the contracting officer determines that the supplier is failing to make satisfactory progress to a degree it endangers contract performance, or determines that some other failure, under the contract or otherwise (other than failure to make timely delivery), is cause for concern. However, no demand is required when there is anticipatory repudiation of the contract, that is, when the supplier positively states, by work or action, that it will not or cannot perform its contractual obligations (see 6.2.6).

- (b) The demand must specify the failure and give the supplier 10 days (or longer, if necessary) to assure the Postal Service of steps that will be taken to cure the failure.
- (c) When the time remaining in the contract delivery schedule does not permit a response period of 10 days or longer, a demand may be made part of the notice described in 6.9.3.b.5.

7. *Termination Notice*

- (a) Immediately upon determining that termination is proper under 6.9.3.b.4., or upon expiration of the 10-day or longer period allowed by a notice under 6.9.3.b.6., the contracting officer may issue a notice of termination for default, unless it is determined that nonperformance will be cured.
- (b) When a demand for adequate assurance has been issued, the notice of termination must be coordinated with counsel before issuance.
- (c) The notice of termination for default must meet all the general requirements set forth in 6.9.1.d, as well as:
  - (1) Set forth the contract number and date;
  - (2) Describe the acts or omissions constituting the default;
  - (3) State that the supplier's right to proceed with performance of the contract (or a specified portion of the contract) is terminated;
  - (4) State that the supplies or services terminated may be procured against the supplier's account, and that the supplier will be held liable for any excess repurchase costs;
  - (5) State that the Postal Service reserves all rights and remedies provided by law or under contract, in addition to charging excess costs; and
  - (6) Inform the supplier that the termination is subject to Clause B-9, *Claims and Disputes*.
- (d) When the contracting officer has determined that the failure to perform is not excusable, the termination notice must also state that it reflects that decision, and that the supplier has the right to appeal as specified in Clause B-9, *Claims and Disputes*.
- (e) The contracting officer must make the same distribution of the termination notice as was made of the contract, and any surety must be furnished a copy and asked to advise whether it desires to arrange for completion of the work.
- (f) The contracting officer must notify the information service center to withhold further payments under the terminated contract.

8. *Procedure in Lieu of Termination.* When the contracting officer determines that the supplier's failure to perform arose from causes beyond its control and without its fault or negligence, the contracting officer may not terminate the contract for default. When it is in the interest of the Postal Service, the contracting officer may, instead of terminating the contract for default:

- (a) Terminate the contract for convenience;
  - (b) Permit the supplier, its surety, or its guarantor to continue performance under a revised delivery schedule;
  - (c) Permit the supplier to continue performance by means of a subcontract or other arrangement with an acceptable third party, if the rights of the Postal Service are adequately preserved; or
  - (d) Execute a no-cost termination settlement agreement (or terminate on notice if allowed under the contract) if the requirement for the supplies and services specified in the contract no longer exists and the supplier is not liable to the Postal Service for damages, as provided below.
9. *Determination Following Termination Notice.* When the contracting officer is unable to determine, before issuing the notice of termination, whether the supplier's failure to perform arose from causes beyond its control and without its fault or negligence, the contracting officer must make a written decision on that point as soon as practicable after issuing the notice. This decision must be delivered promptly to the supplier, with a notification of the right to appeal as specified in Clause B-9, *Claims and Disputes*.
10. *Contracting Officer Memorandum.* When a contract is terminated for default, or when a procedure authorized by 6.9.3.b.8. is followed, the contracting officer must prepare a memorandum for the contract file that fully explains the action taken.

6.9.3.c *Contracts Other than Fixed-Price*

1. *Postal Service Rights and Obligations.* The right to terminate a contract that is not fixed-price for default is provided under Clause B-12, *Termination for Convenience or Default*. In the event of termination, the supplier must be reimbursed costs allowed under the clause (the costs of preparing the supplier's settlement proposal are not allowable). Any fee payable under the contract must be reduced as directed by the clause. The clause does not give the Postal Service the right to recover excess repurchase costs, but it does give the Postal Service continuing rights when the supplier fails to replace or correct defective supplies.
2. *Determination and Notice.* The contracting officer must consider the factors in b.2 in determining whether termination for default is appropriate. Under Clause B-12, *Termination for Convenience or Default*, the supplier must be given the notice or notices required by 6.9.3.b.5. and 6.9.3.b.6., before terminating for default.

#### 6.9.4 **Termination on Notice**

- 6.9.4.a *General.* Termination on notice is the exercise of a right to terminate a contract without further obligation. Such a right is frequently provided in certain structured contracts (see 4.5.8), particularly those requiring the performance of services or those of indefinite length. If appropriate to the particular purchase, contracting officers, with the assistance of assigned counsel, may draft and include contract clauses which provide only the Postal Service or both parties the right to terminate on notice. The clause should provide that the notice to terminate will be provided to the other party a certain number of days before the termination will occur.
- 6.9.4.b *Written Notice.* If the contract contains a termination on notice clause, the Postal Service may terminate the contract by sending the supplier a written notice consistent with the clause. Compliance with the clause is required; a supplier need not honor a notice inconsistent with the contract terms.
- 6.9.4.c *Default.* If a contract containing a termination for notice clause also contains a clause allowing for termination for default or for cause which calls for less notice than that required by the termination on notice clause, and it is subsequently established that the termination for default or cause was improper, the supplier's damages entitled will be limited to the additional amount to which the supplier would have been entitled had the termination for default or cause been a termination on notice.

## 6.10 Remedies and Damages

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### 6.10.1 **Remedies**

- 6.10.1.a *Postal Service's Security Interest.* On rightful rejection or justifiable revocation of acceptance, the Postal Service has a security interest in supplies delivered under the contract for any payments and expenses reasonably incurred in inspection, receipt, transportation, care, and custody (in other words, they can be used to secure payment to cover those incurred costs).
- 6.10.1.b *Repurchase Against Supplier's Account*
1. When supplies or services are still required after termination for default, the contracting officer may repurchase the same or similar supplies or services against the supplier's account as soon as practicable. The repurchase price must be reasonable considering the quality and time requirements. Whenever practicable, the contracting officer should make the decision to repurchase before issuing a termination notice.
  2. The contracting officer may repurchase a larger quantity than the quantity terminated for default when needed, but the defaulting supplier may be charged for no more than the terminated quantity (including any variations in quantity permitted by the terminated contract).
  3. If the repurchase is for a quantity no larger than the terminated quantity, the contracting officer may use any terms and purchase methods appropriate for the repurchase, following normal approval or deviation

procedures. If the repurchase is for a larger quantity than the terminated quantity, the entire quantity must be treated as a new purchase.

4. If the repurchase price is higher than the price of the terminated supplies or services, the contracting officer must, after final payment on the repurchase contract, demand the excess amount from the supplier, in writing, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors.

## 6.10.2 Damages

6.10.2.a *Default.* If a contract is terminated for default, or if a procedure is used in lieu of termination for default, the contracting officer must ascertain and demand any damages to which the Postal Service may be entitled. These damages are in addition to any excess repurchase cost.

### 6.10.2.b *Breach Damages for Accepted Supplies*

1. When the contracting officer has accepted defective supplies under 6.3.1.b.5, the Postal Service may recover, as damages for any nonconformity, the loss under usual circumstances resulting from the supplier's breach. This may be determined in any reasonable manner.
2. Damages for breach of warranty are the difference, at the time and place of acceptance, between the value of the supplies or services accepted and the value they would have had if they had been as warranted, unless special circumstances show there are proximate damages (damages resulting directly from the breach of warranty) of a different amount.
3. Normally, incidental and consequential damages may also be recovered.
  - (a) Incidental damages include expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of supplies rightfully rejected; any commercially reasonable charges; expenses in connection with repurchase; and any other reasonable expense incidental to the delay or other breach.
  - (b) Consequential damages include:
    - (1) Any loss resulting from contract requirements and needs which the supplier should have been aware of when the contract was signed and which could not be reasonably prevented; and
    - (2) Injury to people or property resulting directly from a breach of warranty.



6.10.2.c *Deduction of Damages from the Price.* The contracting officer, on notifying the supplier, may deduct all or any part of the damages resulting from any breach of the contract, or from late delivery or delay not subject to liquidated damages (see 2.2.6), from any part of the price still due.

6.10.2.d *Damages for Nondelivery or Repudiation*

1. Damages for nondelivery or repudiation by the supplier when repurchase is not possible are the difference between the market price at the time when the contracting officer learned of the breach and the contract price, together with any incidental and consequential damages, but less expenses saved as a consequence of the supplier's breach.
2. Market price is determined at the place of acceptance or, in cases of rejection after arrival or revocation of acceptance, at the place of arrival.

# 7 Bonds, Insurance and Taxes

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# 7 Bonds, Insurance, and Taxes

## 7.1 Bonds

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### 7.1.1 General

7.1.1.a *Policy.* Bonds (other than bonds required for construction contracts) (see 7.1.2.a) and performance guarantees should only be obtained when needed to protect the interest of the Postal Service. Purchase plans (see 2.1) must describe and explain any requirements for bonds and performance guarantees.

#### 7.1.1.b Definitions

1. *Annual bond.* A single bond in place of separate bonds to secure all of a supplier's obligations under contracts entered into during a specific fiscal year.
2. *Bond.* A written instrument executed for the benefit of the Postal Service as security for the supplier's obligations, and to assure payment of any bonded loss. A bond is executed by an offeror or supplier identified in the instrument as the principal, together with a second party identified as the surety.
3. *Consent of surety.* An acknowledgment by a surety that its bond continues to apply to the contract as modified.
4. *Fidelity bond.* A bond to assure the faithful performance of an employee's duties to his or her employer and the employer's clients. The bond is used to cover losses such as employee thefts or embezzlements.
5. *Patent infringement bond.* A bond given as security for a supplier's obligations under a patent clause.
6. *Payment bond.* A bond to assure payment of all persons supplying labor and material under a contract.
7. *Performance bond.* A bond given as security for the supplier's obligations under a contract.
8. *Irrevocable letter of credit (ILC).* A written commitment by a federally insured financial institution to pay all or part of a stated amount of money on demand by the Postal Service until the expiration date of the letter. The letter of credit cannot be revoked or conditioned.

9. *Penal amount.* The amount specified in a bond (expressed in terms of dollars or a percentage of the contract price) as the maximum payment for which the surety is obligated.
10. *Surety.* An individual or corporation legally liable for another's debt, default, or failure to satisfy a contractual obligation.

## 7.1.2 Performance and Payment Bonds for Construction Contracts

### 7.1.2.a General

1. The Miller Act (40 U.S.C. 2701-270f) requires performance and payment bonds or alternate payment protection for any construction, alteration, or repair of any public building or public work valued at over \$25,000.
2. For construction contracts greater than \$25,000 but less than \$100,000, the contracting officer must select a payment bond and one or more of the following payment protections, giving consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives.
  - (a) An irrevocable letter of credit.
  - (b) Certificates of deposit. The supplier deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an executable form, executable by the contracting officer.
  - (c) A tripartite escrow agreement. The prime supplier establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement must establish the terms of payment under the contract and of resolution of disputes among parties. The Postal Service makes payments to the supplier's escrow account, and the escrow agent distributes the agreement, or triggers the disputes resolution procedures if required.
  - (d) A deposit of the types of security listed in 7.1.9.d.
3. The supplier will submit to the Postal Service one of the payment protections selected by the contracting officer.
4. For construction contracts greater than \$100,000, the supplier must provide the following:
  - (a) A payment bond.
  - (b) A performance bond.

## 5. Amount

- (a) Unless the contracting officer determines that a lesser amount is adequate for the protection of the Postal Service, the penal amount of a performance bond must equal 100 percent of the original contract price (see (c) below), and, if the contract price increases, an additional amount equal to 100 percent of the increase. The contracting officer must include the bond amount in the schedule.
- (b) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal 100 percent of the original contract price (see (c) below), and, if the contract price increases, an additional amount equal to 100 percent of the increase. The amount of the payment bond may not be less than the amount of the performance bond. The contracting officer must indicate the bond amount in the schedule.
- (c) The original contract price is (1) the award price of the contract; (2) the price payable for the estimated total quantity of a requirements contract; or (3) the price payable for the specified minimum quantity of an indefinite delivery contract. The original contract price does not include the price of any options except options exercised at the time of contract award.

## 6. Solicitation Provisions

- (a) For requirements estimated to exceed \$25,000 but not greater than \$100,000, include Provision 7-5, *Alternate Payment Protections*. Complete the provision by specifying the payment protection selected, the penal amount required, and the deadline for submission. For payment bonds, include Provision 7-2, *Payment Bond Requirements*.
- (b) For requirements estimated to exceed \$100,000, include Provision 7-1, *Performance Bond Requirements*, and Provision 7-2, *Payment Bond Requirements*.

## 7.1.3 Performance and Payment Bonds for Other than Construction Contracts

### 7.1.3.a Performance Bonds

- 1. *Requirement.* Performance bonds may be required only if the contracting officer determines that performance bonding is essential to the interest of the Postal Service. Examples of situations in which a performance bond may be needed include times when:
  - (a) A contract provides for the use of Postal Service property or funds in contract performance;
  - (b) A supplier has sold all its assets to, or merged with, another firm and the Postal Service needs assurance of the new firm's capability; or

## 7.1.3.b

- (c) The product or service is not scheduled for first delivery until at least 12 months after contract award, and substantial progress payments are contemplated.
2. *Amount.* The penal amount must be the minimum needed to protect the Postal Service's interest.
3. *Solicitation Provision.* Include Provision 7-1, *Performance Bond Requirements*, in solicitations for nonconstruction contracts if it is determined that performance bonding is essential to the interest of the Postal Service. If the penal amount is less than 100 percent of the contract price, the provision must be modified accordingly.

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

7.1.3.c *Payment Bonds*

1. *Requirement.* Payment bonds may be required only if the contracting officer determines that payment bonding is essential to the interest of the Postal Service. Examples of situations in which a payment bond may be needed include times when:
  - (a) A contract is for supplies or services unique to the Postal Service that can be obtained only from a source that is not the producer of the supplies or services;
  - (b) A supplier has sold all its assets to, or merged with another firm and the Postal Service needs assurance of the new firm's responsibility;
  - (c) Supplies requiring substantial production costs are not scheduled for first delivery until several months after contract award, and no progress payments are contemplated; or
  - (d) Uninterrupted provision of the supplies or services is essential to the continued operation of Postal Service functions.
2. *Amount.* The penal amount must be the minimum needed to protect the Postal Service's interest.
3. *Solicitation Provision.* Include Provision 7-2, *Payment Bond Requirements*, in solicitations for nonconstruction contracts if it is determined that payment bonding is essential to the interest of the Postal Service.

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

#### 7.1.4 **Patent Infringement Bonds**

A patent infringement bond may be required under a contract containing a patent indemnity clause if a performance bond is not obtained. The penal amount must be the minimum necessary to protect the Postal Service's interest. Clause 7-1, *Patent Infringement Bond Requirements*, must be included in the contract if the supplier may be required to submit a patent infringement bond.

#### 7.1.5 **Fidelity Bonds**

A fidelity bond in an amount sufficient to protect the interest of the Postal Service may be required for any contract that requires supplier employees to handle Postal Service funds. When a fidelity bond is required, Provision 7-3, *Fidelity Bond Requirements*, must be included in the solicitation, and the amount must be reviewed periodically to ensure that the Postal Service's interest is adequately protected.

#### 7.1.6 **Contract Postal Unit Bonds**

Contract postal unit bonds impose obligations on a supplier similar to those required under performance, payment, and fidelity bonds. Generally, contract postal unit bonds are required before a contract postal unit contract may be awarded, but in certain circumstances this requirement can be waived by the contracting officer.

#### 7.1.7 **Other Types of Bonds**

Bonds other than those discussed in this chapter may be required when the contracting officer considers them in the Postal Service's interest. In these cases, appropriate solicitation provisions and contract clauses must be drafted with the assistance of assigned counsel.

#### 7.1.8 **Execution of Bonds**

- 7.1.8.a *Prescribed Formats.* See the relevant handbook for guidance and procedures.
- 7.1.8.b *Other Formats.* When there is no prescribed format for a bond (as when a patent infringement or fidelity bond is required), a suitable commercial bond form may be used, or an appropriate format may be prepared with the assistance of assigned counsel.
- 7.1.8.c *Original Copy.* An original signed copy of any bond must be retained in the solicitation or contract file.
- 7.1.8.d *Authority of Agents.* Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.



- 7.1.8.e *Partnership as Principal.* When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase “a partnership composed of.” When a corporation is a principal, the state of incorporation must be listed.
- 7.1.8.f *Date.* Unless an annual bond is accepted, performance or payment bonds must be dated after the date of the contract. (See 4.3 for award procedures for construction contracts.)
- 7.1.8.g *Contract Modifications*
1. When a contract modification changes the contract scope or increases the contract price by ten percent or more, or when the contracting officer determines that the amount of the original bond must be increased, the supplier and the surety must execute a consent of surety and increase of penal amount, and submit it to the contracting officer. When more than one surety’s consent is required, each surety must execute the form.
  2. When an increased bond amount is obtained from a party other than the original surety, the original surety must execute a consent of surety.
  3. Novation agreements (see 6.5.4.a.2) require the execution of a consent of surety.

## 7.1.9 Sureties

- 7.1.9.a *Acceptable Sureties*
1. Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the supplier’s obligation.
  2. Clause 7-2, *Additional Bond Security*, must be included in all contracts for which a bond is required.
- 7.1.9.b *Corporate Sureties.* Any corporate surety offered for a bond furnished the Postal Service must appear on the list contained in Treasury Department Circular 570. The amount of the bond may not exceed the underwriting limit stated for the surety in that list.
- 7.1.9.c *Individual Sureties.* The Postal Service does not accept individual sureties.
- 7.1.9.d *Deposit of Assets Instead of Surety Bonds*
1. In lieu of any bond (other than a payment bond for a construction contract), the supplier may deposit certain kinds of assets with the Postal Service instead of furnishing a bond.
  2. The only assets acceptable in place of a surety bond are described below:
    - (a) United States bonds or notes with a maturity date less than 5 years from the date of the contract, together with an agreement authorizing collection or sale in the event of default. The par value of the bonds or notes must be at least equal to the penal amount of the bond.

- (b) A certified check, cashier's check, bank draft, postal money order, or currency. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the United States Postal Service.
3. The contracting officer must deposit currency, checks, and drafts with the information service center, with instructions to hold the funds for the benefit of the supplier. A perpetual inventory of all deposited items must be kept by the senior contracting official at the purchasing office.
4. When the supplier pledges assets instead of providing a surety bond, the supplier must complete the bond form as principal, and the bond form must describe the assets pledged.
5. For all purchases involving the furnishing of bonds (other than payment bonds for construction contracts), include Provision 7-4, *Deposit of Assets Requirements*, in the solicitation.
6. Include Clause 7-3, *Deposit of Assets Instead of Surety Bonds*, in every contract requiring a bond for which assets may be deposited in lieu of bonds.

#### 7.1.9.e *Irrevocable Letters of Credit*

1. Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured. A separate ILC is required for each bond.
2. The ILC must be irrevocable, unconditional, expire only as provided in paragraph 6 below and be issued by an acceptable federally insured financial institution. ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.
3. To draw on the ILC, the contracting officer will use a sight draft and present it with the ILC to the issuing financial institution or the confirming financial institution (if any).
4. If the supplier does not furnish an acceptable ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.
5. If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer will draw on the ILC prior to the expiration date of the ILC to cover these claims.
6. Expiration dates will be established as follows:
  - (a) For construction contracts subject to the provisions of the Miller Act, the later of:
    - (1) One year following the expected date of final payment;
    - (2) For performance bonds only, until completion of any warranty period; or
    - (3) For payment bonds only, until resolution of all claims filed against the performance bond during the one-year period following final payment.

- (b) For other contracts not subject to the Miller Act, the later of:
  - (1) 90 days following final payment; or
  - (2) Until completion of any warranty period for performance bonds only.
- 7. The ILC must be issued or confirmed by a federally insured financial institution rated investment grade or better.
  - (a) The supplier shall provide the contracting officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.
  - (b) If the contracting officer learns that a financial institution's ratings has dropped below the required level, the contracting officer will give the supplier 30 days to substitute an acceptable ILC or will draw on the ILC using a sight draft.
- 8. When the contract performance period is extended, the contracting officer will require the supplier to provide an ILC with an appropriately extended maturity that meets the requirements of 7.1.9.e.6 above.

## 7.1.10 **Contract Administration**

### 7.1.10.a *Information and Notice to Sureties*

1. *Correspondence.* A copy of all correspondence relating to contract modification, termination, renewal, or nonperformance must be provided to each surety, with proof of delivery requested. Additional information on contract performance and payment must be provided to sureties upon request.
2. *Furnishing Information to Subcontractors and Suppliers.* When a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The contracting officer may furnish additional general information on such matters as the progress of the work, the payments made, and the estimated percentage of completion.
3. *Failure to Perform.* The contracting officer must send each surety a copy of any notice of impending termination, demand for adequate assurances, assessment of liquidated or other damages, or other formal notice of failure to perform under the contract, with a notice that the surety may be liable for damages suffered by the Postal Service.
4. *Claims Against Sureties.* If a supplier's failure to perform necessitates a claim against a surety, the contracting officer must give the surety written notice of the amount of and reasons for the claim. If the surety refuses to pay or does not respond, the contracting officer must obtain procedural assistance from assigned counsel. The contracting officer will only authorize payment from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the supplier that the payment is due and owed, or a signed agreement between parties as to the amount due and owed.

#### 7.1.10.b *Surety Takeover Agreements*

1. Because of the surety's liability for damages resulting from a supplier's default, the surety has certain rights and interests in the completion of the contract work and the application of any undisbursed funds. Before terminating a contract for default, the contracting officer must consider any proposal by the surety for completion of the work. The surety should be permitted to complete the work unless the contracting officer has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified.
2. Because of the possibility of conflicting demands for the defaulting supplier's unpaid earnings (including retained percentages and unpaid progress payments), the surety may condition its offer of completion upon the execution of a takeover agreement establishing the surety's right to payment from the unpaid earnings. If so, and with the concurrence of the Vice President, Purchasing and Materials, the contracting officer may enter into such an agreement with the surety in writing after the effective date of contract termination. The contracting officer should consider including the defaulting supplier as a party to the agreement in order to preclude any disagreement on the supplier's residual rights.
3. The agreement must provide that the surety will complete the work according to all contract terms and conditions, and that the Postal Service will pay the surety the balance of the contract price unpaid at termination, but not more than the surety's costs and expenses, subject to the following conditions:
  - (a) Any unpaid earnings of the defaulting supplier, including retained percentages and progress payments for work accomplished before termination, are subject to debts owed the Postal Service by the supplier, except to the extent that the unpaid earnings are required to pay the completing surety the actual costs and expenses it incurs in completing the work, exclusive of the surety's payments and obligations under the payment bond given in connection with the contract.
  - (b) The agreement may not waive or release the Postal Service's right to liquidated damages for any delay in completion of the work that is not excusable under the contract.
  - (c) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings unless the assignee consents to the payment in writing.
  - (d) The surety may be reimbursed for discharging its liabilities under the payment bond of the defaulting supplier only when:
    - (1) There is mutual agreement among the Postal Service, the defaulting supplier, and the surety;
    - (2) The Postal Service Board of Contract Appeals makes a final determination of the amount due; or
    - (3) A court of competent jurisdiction orders payment.

**7.1.10.c Contract Completion**

1. Upon supplier completion of all contract obligations, the contracting officer must issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from any obligation under a payment bond.
2. When the supplier has deposited assets instead of providing a surety on a payment bond, the contracting officer must refund the assets, with accrued interest, within 90 days after final completion of contract performance, unless notice of a claim is received during the 90-day period. If a claim is received, the assets may be released only with the agreement of the claimant or by order of a court of competent jurisdiction.
3. Assets deposited to secure any other bond may be refunded, with accrued interest, upon final completion and receipt of the supplier's release (see 6.4.3.c).
4. Upon request, the contracting officer will furnish a Certificate of Substantial Completion to sureties of a construction supplier if the project is substantially complete (usable for the purpose intended). If the contracting officer is uncertain whether the project is substantially complete, the advice of assigned counsel must be obtained.

## 7.2 Insurance

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**7.2.1 Policy**

7.2.1.a *General.* Suppliers may be required to carry insurance only when necessary to protect the interest of the Postal Service. Examples of situations that may warrant insurance are when:

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

**7.2.1.b Fixed-Price Contracts**

1. The Postal Service is not usually concerned with the insurance carried by fixed-price suppliers, except in special circumstances such as the following:
  - (a) The supplier, or a segregated operation of the supplier, is engaged primarily in work for the Postal Service.
  - (b) Postal Service property of substantial value is involved.
  - (c) The contract work required is performed within a Postal Service facility.

- (d) The Postal Service agrees to assume risks for which the supplier ordinarily obtains commercial insurance.
2. In circumstances such as those described in subparagraph 7.2.1.b.1. above, the types and amounts of liability insurance prescribed in 7.2.2 may be required. However, a qualified program of self-insurance (see 7.2.3) may be substituted for any of those types of insurance.
3. Professional services suppliers must be required to carry errors and omissions insurance in accordance with 7.2.4.

#### 7.2.1.c *Non-Fixed-Price Contracts*

1. The types of insurance referred to in 7.2.2, with limits of liability as prescribed in 7.2.2, are required under non-fixed-price prime contracts and any non-fixed-price subcontracts under them. However, a qualified program of self-insurance (see 7.2.3) may be substituted for any such type of required insurance.
2. Professional services suppliers must be required to carry errors and omissions insurance in accordance with 7.2.4.
3. The contracting officer may waive a requirement for insurance with the advice of assigned counsel.

### 7.2.2 **Types of Insurance**

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

#### 7.2.2.b *General Liability Insurance*

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

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

### 7.2.3 Self-Insurance

A qualified program of self-insurance covering any kind of liability may be approved in place of any type of insurance discussed in 7.2.2 when found to be in the interest of the Postal Service. However, in a jurisdiction where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved only if:

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

### 7.2.4 Errors and Omissions Insurance

7.2.4.a *Professional Services.* Suppliers providing the following categories of services must carry errors and omissions (malpractice) insurance:

1. Accountants.
2. Architects.
3. Engineers.
4. Fiscal agents.
5. Medical doctors and dentists.

7.2.4.b *Amount.* Insurance coverage should be at least \$200,000, unless the contracting officer determines that a different limit is needed to protect the interests of the Postal Service.

7.2.4.c *Waiver.* The contracting officer may waive the requirement for errors and omissions insurance in whole or in part, with the concurrence of assigned counsel.

7.2.4.d *Other Professional Services.* The contracting officer may require other professional services suppliers to carry errors and omissions insurance when in the interest of the Postal Service.

### 7.2.5 Insurance Policies

When insurance is required, it may be provided either by specific insurance policies or by the supplier's existing insurance policies. When existing policies are used, they must be amended to make the Postal Service a loss payee.

### 7.2.6 Contract Clauses

Include Clause 7-4, *Insurance*, when a supplier is required to carry insurance. Include Clause 7-5, *Errors and Omissions*, when errors and omissions insurance is required in accordance with 7.2.2.

### 7.2.7 Notice of Cancellation or Change

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

## 7.3 Taxes

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### 7.3.1 General

- 7.3.1.a Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and pertinent tax laws and regulations. Therefore, when tax questions arise, contracting officers must request assistance from assigned counsel.
- 7.3.1.b To ensure consistent treatment within the Postal Service, the Senior Counsel, Contract Protests and Policies, must be consulted before negotiating with any taxing authority for the purpose of:
1. Determining whether a tax is valid or applicable; or
  2. Obtaining exemption from, or refund of, a tax.
- 7.3.1.c Usually, as discussed in 7.3.3.c.2, suppliers are responsible for settling tax applicability questions in consultation with authorities, independent of Postal Service involvement. When the constitutional immunity of the Postal Service from state or local taxation is at issue, however, suppliers should be discouraged from negotiating independently with taxing authorities, and assigned counsel should be consulted, if the contract is either:
1. A cost-reimbursement contract; or
  2. A fixed-price contract containing a tax escalation clause.
- 7.3.1.d See 4.5.7 regarding taxes in connection with utility contracts.

### 7.3.2 Federal Excise Taxes

- 7.3.2.a *Applicability.* Federal excise taxes are levied on the sale or use of particular supplies and services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041 et seq., and its implementing regulations, 26 CFR 40 through 299, cover miscellaneous federal excise tax requirements. Questions on federal excise taxes should be directed to assigned counsel. The most common excise taxes are:
1. Manufacturers' excise taxes imposed on certain motor vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and
  2. Special fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.



- 7.3.2.b *General Exemptions from Federal Excise Taxes.* No federal manufacturers' or special fuels excise taxes are imposed when the supplies are for any of the following:
1. *Shipment to a U.S. possession or Puerto Rico, or for export.* Shipment or export must occur within 6 months of the time when title passes to the Postal Service. When the exemption is claimed, the words "for export or shipment to a possession" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export or shipment to a possession (see 26 CFR 48.4041-12).
  2. Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes, however) (see U.S.C. 4221).
  3. Emergency vehicles (see 26 U.S.C. 4064(a) and 4064(b)(1)(c)).
- 7.3.2.c *Solicitations.* Contracting officers must solicit price proposals on a tax-exclusive basis when it is known that the Postal Service is exempt from federal excise taxes and the exemption is at least \$100. Proposals must be solicited on a tax-inclusive basis when no exemption exists or the exemption is less than \$100.

### 7.3.3 **State and Local Taxes**

- 7.3.3.a *Definition.* State and local taxes means taxes levied by the states, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.
- 7.3.3.b *Applicability*
1. Although the Postal Service, as an establishment of the federal government, is constitutionally immune from state and local taxes imposed directly on it, the applicability of particular taxes is a legal question often requiring the advice and assistance of assigned counsel. The applicability of a tax in a postal transaction may depend on the nature of the tax and whether its legal incidence, as opposed to its economic burden, is on the Postal Service as purchaser. In many instances in which the Postal Service is not constitutionally exempt, it may take advantage of statutory exemptions provided by state or local law.
  2. Prime suppliers and subcontractors may not normally be designated as agents of the Postal Service for the purpose of claiming exemption from state and local taxes. Such designation, when appropriate, must be accomplished in the solicitation, and only after coordination with assigned counsel.
- 7.3.3.c *Exemption from Tax*
1. Whenever a state or locality asserts its right to tax Postal Service property directly or to tax a supplier's possession or use of, or interest in, Postal Service property, the contracting officer must obtain advice from assigned counsel concerning the appropriate course of action.

2. Under paragraph k of Clause 4-1, or if the contract includes Clause 7-6, *Federal, State and Local Taxes*, Clause 7-7, *Federal, State, and Local Taxes (Short Form)*, or Clause 7-8, *Federal, State, and Local Taxes (Noncompetitive Contract)* (see 7.3.4), it is the offeror's responsibility to determine to what extent state and local taxes are applicable to its proposal. The contracting officer should make no representations concerning the applicability of any state or local tax, and except as provided in subparagraph 3 following, the Postal Service should have no involvement in resolving any dispute between the supplier and a taxing authority concerning tax applicability.
3. Consistent with 7.3.3.c.2, and regarding fixed-price contracts, the Postal Service must, upon the supplier's request, furnish the supplier evidence to establish exemption from any specified tax if a reasonable basis for the exemption exists. When requested, the contracting officer may furnish such evidence under cost-reimbursement contracts. Evidence may also be furnished upon request under other contracts that contain no tax provision if the supplier (a) certifies that the contract price does not include the tax or, if the transaction or property is granted an exemption, (b) consents to a reduction in the contract price.
4. Evidence of exemption may include:
  - (a) A copy of the contract.
  - (b) Copies of other documents (such as purchase orders, shipping documents, or invoices) identifying the Postal Service as the buyer.
  - (c) A U.S. Tax Exemption Certificate (Standard Form 1094).
  - (d) A state or local form indicating that the supplies or services are for the exclusive use of the Postal Service or the federal government.
  - (e) Any other state or locally required document for establishing exemption.
  - (f) Shipping documents indicating that shipments are in interstate or foreign commerce.

7.3.3.d *Matters Requiring Special Consideration.* The resolution of tax issues requiring special consideration must be coordinated with assigned counsel in the course of solicitation preparation. The following are examples of state and local tax issues that may require special contract treatment.

1. When there is a reasonable question of the applicability or allocability of a tax, or when the applicability of a tax is in litigation, the contract may:
  - (a) State that the contract price includes or excludes the particular tax and is subject to adjustment upon resolution of the tax question; or
  - (b) Require the supplier to take specific actions regarding payment, non-payment, refund, protest, or other treatment of the tax.

2. When the applicability of state and local taxes depends on the place and terms of delivery, and the effect of tax on the contract price will be substantial, alternative places of delivery and contract terms should be considered in light of tax consequences.
3. When leased equipment is to be obtained under an indefinite-delivery contract, the supplier's property may be subject to a wide variety of state and local property, use, or other taxes. Because these taxes can vary considerably from jurisdiction to jurisdiction, use Clause 7-9, *State and Local Taxes (Indefinite Delivery Equipment Rental)*, to relieve the supplier of uncertainty about tax consequences in this situation.
4. See 4.5.7.b.2.(d) concerning tax issues in connection with utility service contracts.

#### 7.3.4 **Contract Clauses**

- 7.3.4.a Paragraph k of Clause 4-1 addresses the supplier's responsibility for including in the contract price all applicable federal, state and local taxes and duties. Clause 7-6, *Federal, State, and Local Taxes*, or Clause 7-7, *Federal, State, and Local Taxes (Short Form)*, may be used as substitutes for paragraph k of Clause 4-1 when the contract is fixed-price.
- 7.3.4.b Include Clause 7-8, *Federal, State, and Local Taxes (Noncompetitive Contract)*, in fixed-price noncompetitive contracts, other than those awarded using commercial procedures, when the contract price does not include any contingency for state or local taxes.
- 7.3.4.c Include Clause 7-9, *State and Local Taxes (Indefinite Delivery Equipment Rental)*, when leased equipment is to be obtained under a contract for indefinite delivery.

# 8 Patents and Data Rights

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# 8 Patents and Data Rights

## 8.1 General Policies

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### 8.1.1 Acquiring Intellectual Property Rights

- 8.1.1.a *General.* Patents, copyrights, and other rights in data are valuable intellectual property. The Postal Service acquires patents, copyrights, and other rights in data as necessary to:
1. Enhance the competitive purchasing process;
  2. Ensure the ability to use, maintain, repair, and modify equipment or products procured under Postal Service contracts;
  3. Recoup development costs of, and fund improvements in, Postal Service products and equipment;
  4. Develop products and equipment for Postal Service and public use; and
  5. Protect its position in the competitive marketplace.
- 8.1.1.b *Non-Impairment of Private Rights.* The Postal Service's efforts directed toward competition must not improperly demand or use data relating to privately developed intellectual property rights. The Postal Service complies with applicable laws regarding intellectual property rights. The Postal Service, however, will not refuse to award a contract on the grounds that the prospective supplier might infringe a patent (see 8.2.3).
- 8.1.1.c *Commercial Application.* The Postal Service encourages commercial application of inventions made under its contracts consistent with its expressed policies for acquisition of data rights and inventions.
- 8.1.1.d *Indemnification for Use of Private Patents for Commercial Items.* The Postal Service seeks indemnification for a supplier's use of private patents when the supplies or services procured are sold in the commercial open market.
- 8.1.1.e *Claims Against USPS.* Suppliers must protect the Postal Service against claims resulting from suppliers' use of data not supplied by the Postal Service.

## 8.2 Acquisition of Rights

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### 8.2.1 General

- 8.2.1.a The Postal Service acquires patent rights, rights in data, and rights in software to the degree necessary to protect the Postal Service's interests. Those rights can include:
1. Postal Service title to patents.
  2. Less than Postal Service title to patents, such as nonexclusive licenses.
  3. Unlimited rights or title to technical data and software.
  4. Limited rights to technical data and restricted rights in software. These rights may be exclusive or nonexclusive.
- 8.2.1.b Because the Postal Service is charged with behaving in a businesslike manner, it is appropriate for it to consider acquiring these rights in manners consistent with its business purpose. Determinations in this regard are made by the contracting officer, with the advice of the requiring activity and assigned counsel, giving full consideration to the costs and benefits of the chosen approach. Thus, for example, decisions to acquire Postal Service title to patents or unlimited rights to technical data developed by the supplier at private expense must take into account the impact on the cost of the contract and the extent to which prospective offerors may not wish to part with such rights. Conversely, determinations to take only lesser rights must consider the effect on the Postal Service of the exploitation of those rights by the supplier or others.

### 8.2.2 Acquisition of Patent Rights

- 8.2.2.a *Covered Contracts.* This part applies to all contracts and subcontracts for research, experimental, developmental, or engineering work or for initial production of products or equipment developed under a Postal Service contract.
- 8.2.2.b *Postal Service Title.* Postal Service title must be acquired to subject inventions under a covered contract unless the contracting officer, after consultation with the purchase team and the patent counsel, determines that an alternate arrangement is in the best interests of the Postal Service. The determination concerning alternate arrangements may be made at the time of solicitation.
- 8.2.2.c *Less Than Postal Service Title.* When appropriate, the Postal Service may acquire less than title to subject inventions under covered contracts. However, in no case may the Postal Service acquire less than a nonexclusive royalty-free license to make, use and sell each subject invention throughout the world on behalf of the Postal Service. If the Postal Service takes less than title, it may allow the supplier to retain title to all subject inventions, or may allow the supplier to elect whether to retain title on an invention-by-invention basis. When suppliers are allowed to retain title, the contract must provide adequate provisions allowing the Postal Service to control the supplier's sale of the invention to competitors of the Postal Service. As an alternative, the



contracting officer may consider providing for a sharing of revenue for all commercial sales of the invention, subject to a requirement that any sale of a subject invention to an organization which provides postal or parcel delivery services in competition with the Postal Service requires the advance written approval of the contracting officer. Any such alternative must be coordinated with the patent counsel.

8.2.2.d *Alternate Proposals*

1. The contracting officer may consider any alternate proposal giving a supplier greater rights in an invention made in the performance of a contract than the solicitation contemplates if it will yield a net benefit to the Postal Service.
2. Provision 8-1, *Alternate Intellectual Property Rights Proposals*, may be included in all solicitations for covered contracts, and alternate proposals may be considered as part of the evaluation process.

8.2.2.e *Alternate Agreements After Award*. An alternate agreement on patent rights for inventions developed at supplier expense but intended for delivery under a covered contract may be negotiated after award when in the interest of the Postal Service. Before initiating negotiations, the contracting officer must seek the advice of patent counsel.

8.2.2.f *Other Contracts*. The contracting officer may provide for Postal Service acquisition of patent rights or may solicit alternate agreements for contracts not covered by this part with the concurrence of patent counsel. Particular consideration should be given to including such provisions in non-covered contracts if it appears likely that the supplier will make an invention in performing the contract.

8.2.2.g *Clauses*. Clause 8-1, *Patent Rights*, must be included in contracts in which the Postal Service will take title to inventions. Clause 8-15, *Patent Rights Supplier Retention*, must be included in contracts providing for the supplier's election to retain invention rights. If an alternate patent proposal is accepted, the clause must be appropriately modified, with the concurrence of counsel, to reflect the specific rights in subject inventions that will be acquired by the Postal Service. The modified clause must clearly state that all other Postal Service rights in subject inventions remain in effect with full force. When Clause 8-15 is included in contracts, Clause 8-16, *Postal Service Title in Technical Data and Computer Software*, must also be included.

## 8.2.3 **Use of Private Patents**

8.2.3.a *Authorization and Consent*

1. When the government has authorized or consented to the manufacture or use of an invention described in and covered by a U.S. patent, suit for recovery of the reasonable and entire compensation for the manufacture or use of the invention by or for the United States by a supplier (including a subcontractor at any tier) can be maintained only against the government in the United States Court of Federal Claims and not against the supplier or subcontractor (28 U.S.C. 1498). To

ensure that work by a supplier or subcontractor under a Postal Service contract may not be enjoined by reason of patent infringement, the Postal Service provides its authorization and consent to the use of private patents by its suppliers and subcontractors in certain situations. Broad authorization and consent is provided in the conduct of research and development activities so that the supplier or subcontractor need not avoid or invent around particular technology areas. In contracts for supplies or construction, a more limited authorization and consent is provided.

2. The liability of the Postal Service for damages in a suit of the nature described in subparagraph a.1 against it may ultimately be borne by the supplier or subcontractor in accordance with the terms of any patent indemnity clause included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the supplier or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.
3. Clause 8-2, *Authorization and Consent*, must be included in all covered contracts except those performed outside the United States.

#### 8.2.3.b *Notice and Assistance*

1. Clause 8-3, *Notice and Assistance Regarding Patent and Copyright Infringement*, must be included in all covered contracts except those performed outside the United States.
2. If the contracting officer receives notice of an infringement claim, patent counsel must be notified immediately.

### 8.2.4 **Patent Indemnification**

8.2.4.a *Indemnification by Postal Service.* The contracting officer may not use any contract clause providing for indemnification by the Postal Service for patent infringement by a supplier or subcontractor.

#### 8.2.4.b *Indemnification by Supplier*

1. The Postal Service's policy is to acquire indemnification for the use, by or on behalf of the Postal Service, of private patents without the authorization or consent of the patentee, when the use relates to supplies or services that the supplier offers or provides to the commercial open market.
2. Except as provided in 8.2.4.c, paragraph h of Clause 4-1, *General Terms and Conditions*, or Clause 8-4, *Patent Indemnity*, must be included in all contracts. The clause may be used in other contracts if patent infringement is likely.

#### 8.2.4.c *Waiver or Modification of Patent Indemnity*

1. If it is in the interest of the Postal Service to do so, the contracting officer may waive or modify the right to patent indemnification, with the prior approval of patent counsel. If the waiver or modification to the right to patent indemnification is for research or development, Clause 8-5, *Waiver of Indemnity*, must be used, and the contract must be modified as applicable patents are identified.
2. If patent indemnification will be waived completely, paragraph h of Clause 4-1 or Clause 8-4 may not be used.
3. Clause 8-5 must be used if the waiver applies only to specific patents. Those patents to which the waiver applies must be listed in the clause.

## 8.3 Rights in Data

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### 8.3.1 Definitions

- 8.3.1.a *Computer*. A device capable of accepting data, performing prescribed operations on the data, and supplying the results of those operations. It includes any device that operates on (1) discrete data by performing arithmetic and logic processes on the data or (2) analog data by performing physical processes on the data.
- 8.3.1.b *Computer Database*. A collection of data in a form capable of being processed and operated on by a computer.
- 8.3.1.c *Computer Program*. Instructions or statements including, but not limited to, source code, object code, and algorithms, in computer usable form, that cause a computer to perform specified operations. Computer programs may be machine-dependent or machine-independent, and may be general or specific in purpose.
- 8.3.1.d *Computer Software*. Computer programs, computer databases, and their documentation.
- 8.3.1.e *Computer Software Documentation*. Information, including computer listings and printouts in human-readable form, that (1) documents the design or detail of computer software, (2) explains its capabilities, or (3) provides operating instructions for using it.
- 8.3.1.f *Data*. Recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- 8.3.1.g *Firmware*. Hardware-embedded and hardware-oriented programming that is used for machine control, error recovery, mathematical functions, applications programs, and the like, including firmware furnished with a computer, commercially available proprietary firmware acquired separately, and all related vendor documentation and manuals.

- 8.3.1.h *Form, Fit, and Function Data.* Data relating to an item component, or process that is sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
- 8.3.1.i *Limited Rights.* The rights of the Postal Service in limited rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.
- 8.3.1.j *Limited Rights Data.* Data, other than computer software, developed at private expense.
- 8.3.1.k *Restricted Computer Software.* Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, *including minor modifications of this computer software.*
- 8.3.1.l *Restricted Rights.* The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice included in a computer software rights clause of the contract, or as otherwise may be included or incorporated in the contract.
- 8.3.1.m *Technical Data.* Data, other than computer software, of a scientific or technical nature.
- 8.3.1.n *Unlimited Rights.* The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

### 8.3.2 **Data Rights Acquisition Policy**

- 8.3.2.a *General.* It is the policy of the Postal Service to acquire only the technical data, computer software and firmware and the rights to them essential to its needs. These needs include competition, operation and maintenance of equipment and supply items, dissemination of research and development contract data to users, recoupment of investments in technology or product developments and position in the competitive marketplace, personnel training, inspection and quality assurance, logistics support, and packaging. These needs must be balanced against the valid economic interest that commercial organizations have in technical data and computer software developed at their own expense for competitive purposes.
- 8.3.2.b *Unlimited Rights in Data*
1. Unless 8.3.2.c applies, technical data in the following categories must be acquired with unlimited rights (except for copyrights):
    - (a) Data first produced in the performance of a Postal Service contract (except to the extent that it constitutes minor modifications of data that is limited rights data).

- (b) Form, fit, and function data (including such data describing Limited Rights Data subject to the contract) delivered under the contract.
  - (c) Data that constitutes manuals or instructional and training materials for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under the contract (but see 8.3.2.g).
  - (d) All other technical data delivered under the contract unless it is limited rights data (see 8.3.2.c).
2. If any of the foregoing data is published copyrighted data, the Postal Service acquires it under a copyright license, as provided in 8.3.2.f, rather than with unlimited rights.
  3. Unless 8.3.2.c applies, computer software in the following categories is acquired with unlimited rights:
    - (a) Computer software first produced in the performance of a Postal Service contract (except to the extent that it constitutes minor modifications of computer software that is restricted computer software).
    - (b) Form, fit, and function data (including such data describing restricted computer software subject to the contract) required to be delivered under the contract.
    - (c) All other computer software delivered under the contract unless it is restricted computer software.

8.3.2.c *Acquisition of Rights in Data.* When it has been determined by the purchase team, with the consultation and concurrence of the patent counsel, that it is in the best interests of the Postal Service to take title to technical data or computer software first produced in the performance of a Postal Service contract, Clause 8-16, *Postal Service Title in Technical Data and Computer Software*, must be incorporated into the contract.

8.3.2.d *Privately Developed Data*

1. Data developed at private expense, including minor modifications thereof, is usually acquired with limited rights. To assert that technical data is limited rights data, the supplier must identify such data in accordance with Provision 8-2, *Representation of Rights in Data*, and, when it is delivered to the Postal Service, place on it the limited rights legend required by the contract.
2. Restricted computer software normally is acquired with restricted rights. Suppliers claiming that software is restricted computer software must identify such software in accordance with Provision 8-2, and, when it is delivered to the Postal Service, place on it the contract-required restricted rights legend.
3. When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

4. A supplier's claim that data or software has been developed at private expense must be supported by clear and convincing evidence that the data or software was developed and is related to a workable device, computer program, or software routine (including separately identifiable components, modules, subsystems, and subroutines) incorporated into larger systems or programs responsive to a contract requirement, before Postal Service funding was introduced into the development process.
5. The Postal Service's recognition of Limited Data Rights or Restricted Computer Software Rights must be incorporated into the contract using Clause 8-17, *Delivery of Limited Rights Data and Restricted Computer Software*.

8.3.2.e *Unmarked or Improperly Marked Technical Data or Software*

1. Technical data or software received without a restrictive legend is deemed to have been furnished with unlimited rights. However, the contracting officer may permit the supplier to place a restrictive legend on the technical data or software within 6 months of delivery if the supplier demonstrates that (a) its omission was inadvertent, and (b) use of the legend is authorized. The Postal Service has no liability with respect to the use or disclosure of the technical data or software made before the actual addition of the legend to the data or software.
2. Technical data or software received with a restrictive legend not permitted by the terms of the contract may only be used with limited rights pending inquiry to the supplier. If no response has been received within 30 days, or if the response fails to show that the restriction is authorized, the contracting officer may obliterate the legend, notify the supplier accordingly, and thereafter use the technical data or software as if it were acquired with unlimited rights.
3. If the contract authorizes the supplier to furnish technical data or software with limited rights, but the restrictive legend employed by the supplier is not in the form prescribed by the contract, the technical data or software must be used with limited rights, and the supplier will be required to amend the legend to conform with that specified in the contract. If the supplier fails to so amend the legend within 30 days after notice, the contracting officer may correct the legend and notify the supplier of the action.
4. The procedures of this paragraph e may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) (see 1.6.5) if necessary to respond to a request under the Freedom of Information Act. The supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on technical data, unless the action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

8.3.2.f *Copyrighted Data*

1. Under contracts for basic research, suppliers may establish claim to copyright in technical or scientific articles based on, or containing, data first produced in the performance of work under a Postal Service contract only if the data is to be published in academic, technical, or professional journals, symposia proceedings, or similar works. Otherwise, the permission of the contracting officer must be obtained if the supplier desires to establish claim to copyright in data first produced in the performance of a contract.
2. Unless otherwise approved by the contracting officer with concurrence of patent counsel, whenever a supplier establishes claim to copyright first produced in the performance of a contract, the supplier must grant the Postal Service a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform and display publicly by or on behalf of the Postal Service, covering all such data.
3. If any data not first produced in performing a contract is subject to a claim of copyright, the supplier may not incorporate it in data delivered under the contract without either:
  - (a) Acquiring for or granting to the Postal Service copyright license rights in it; or
  - (b) Obtaining permission from the contracting officer to do otherwise.
4. The copyright license the Postal Service acquires for the data in subparagraph e.3 will normally be of the same scope as discussed in subparagraph e.2. However, contracting officers may, on a case-by-case basis, obtain a license of different scope if the contracting officer determines that it is consistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the delivered data. In addition, if computer software not first produced in the performance of a Postal Service contract is delivered with a claim of copyright, the Postal Service's license will be as set forth in paragraph c of Clause 8-9, *Rights in Computer Software*, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.
5. If supplier action causes limited rights data or restricted computer software to be published with the claim of copyright after the data has been delivered to the Postal Service without a notice, the Postal Service is relieved of disclosure and use limitations and restrictions regarding the data, and the supplier should advise the Postal Service, request that a copyright notice be placed on the copies of the data delivered to the Postal Service, and acknowledge that the applicable copyright license described in subparagraph f.2 applies.

**8.3.2.g Acquisition of Additional Rights in Data**

1. The Postal Service may purchase as a separately priced contract item specific rights in privately developed data (such as unlimited rights in limited rights data) when the contracting officer determines that there is a clear need for these rights in order to accomplish an essential function of the Postal Service. The acquisition of such data rights must be based on a specific written determination of the contracting officer evaluating all alternative methods of accomplishing the function and demonstrating that the acquisition of data rights is the most cost-effective method available to the Postal Service.
2. When additional rights in data are needed, it is possible that the Postal Service does not need unlimited rights but only the right to use the data for Postal Service purposes. One method of acquiring additional rights is to acquire the right to direct the supplier to license other suppliers to use the data to perform work for the Postal Service.
3. When additional rights are acquired, Clause 8-14, *Acquisition of Additional Rights in Data*, must be included in the contract and the contract schedule must list:
  - (a) The items, components, or processes for which additional rights in technical data will be furnished; and
  - (b) The computer software for which additional rights will be furnished.
4. This list must specify for each listed item whether the supplier will furnish unlimited rights, limited rights, directed license rights (see subparagraph f.2 ), or some other form of rights agreed to by the parties.

**8.3.2.h Manuals and Instructional Materials.** Manuals or instructional and training materials comprising technical data must be obtained with unlimited rights to allow use by Postal Service employees and Postal Service suppliers in the course of installation, training operation, or routine maintenance and repair of equipment. Suppliers may request the exclusion of specified limited rights data from the specifications for manuals or training materials. However, if the contracting officer determines that such data is necessary to perform any of these functions, the data must be delivered with unlimited rights.

**8.3.2.i Technical Data Necessary to Procure Repair Parts**

1. When a solicitation is for the development or manufacture of equipment or a supply item that will require the future purchase of substantial quantities of repair parts, and it appears likely that the supplier will incorporate limited rights data in the drawings and specifications, the contracting officer must consider including in the contract the Postal Service right to use the data to obtain competition in procuring repair parts. When unknown factors, such as cost, make the feasibility of acquiring such rights uncertain, the solicitation may include the rights as a separately priced optional line item.



2. If the solicitation contemplates the acquisition of this additional right, Provision 8-3, *Use of Limited Rights Data for Purchasing of Repair Parts*, must be included in the solicitation, and the Limited Rights Notice in Clause 8-6, *Rights in Technical Data*, must be modified by Clause 8-18, *Manufacture of Repair Parts*.

8.3.2.j *Subcontracts*. It is the responsibility of the supplier to obtain from subcontractors all the data and rights in data necessary to fulfill the supplier's obligations under the contract. If a subcontractor refuses to accept a supplier's terms giving the Postal Service the required data and rights in data, the supplier must notify the contracting officer and seek approval for the subcontract data provisions.

8.3.2.k *Modification of Postal Service Rights*. The Postal Service's rights in technical data and computer software may not be modified except as provided in this part or in 8.3.4. Acceptance from one source of technical data or computer software subject to limited or restricted rights does not affect the Postal Service's rights in such data or similar data acquired from other sources.

### 8.3.3 **Data Ordering**

8.3.3.a *Basic Policy*. To the extent that the Postal Service's requirements for data are known at the time of contract award, the contract should specify the data to be delivered to the Postal Service.

8.3.3.b *Additional Ordering of Data*. In some cases, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at the time of contract award. Clause 8-8, *Additional Data Requirements*, is used to enable the later ordering of additional data as the actual requirements become known. The clause must be used in solicitations and contracts involving experimental, developmental, research, or demonstration work unless there is certainty that all the requirements for data are specified in the contract. The contracting officer may permit the supplier to identify in the contract data not to be ordered for delivery under Clause 8-8, if that data is not necessary to meet the Postal Service's requirements.

### 8.3.4 **Solicitations**

#### 8.3.4.a *Supplier's Representation*

1. When the Postal Service needs title to data first developed under the Postal Service contract or data with unlimited rights, but there is a possibility that one or more offerors will propose to deliver technical data or computer software with restrictions on use or disclosure, the solicitation must contain Provision 8-2, *Representation of Rights in Data*.
2. The solicitation may require the supplier to identify all limited rights data and restricted computer software after award if identification is impracticable before award, and to identify limited rights data and restricted computer software relating to any changed requirements.

- 8.3.4.b *Data Offered with Restrictions.* After review of the data to be furnished with restrictions, the purchase team may recommend to:
1. Negotiate to acquire unlimited rights or an option for unlimited rights;
  2. Modify the requirement for title or unlimited rights;
  3. Negotiate to acquire additional data rights necessary to accomplish the purpose for which the data is being acquired; or
  4. Reject the proposal as not in the interest of the Postal Service.
- 8.3.4.c *Alternate Proposals*
1. The Postal Service may consider an alternate proposal giving a supplier greater rights in data if it is necessary to permit the commercial use of the data or yield a net benefit to the Postal Service.
  2. Provision 8-1, *Alternate Intellectual Property Rights Proposals*, may be included in all solicitations for contracts requiring the delivery of data, and alternate proposals must be considered as part of the evaluation process.

### 8.3.5 **Technical Data Contract Clauses**

- 8.3.5.a *Basic Clauses*
1. Clause 8-6, *Rights in Technical Data*, and Clause 8-7, *Withholding Payment (Technical Data and Computer Software)*, must be included in the contract when technical data will be acquired.
  2. Clause 8-16, *Postal Service Title in Technical Data and Computer Software*, must be included in the contract when title to technical data or computer software will be acquired.
  3. If the data requirements are not adequately fixed and specified at the time of contracting, Clause 8-8, *Additional Data Requirements*, must also be included in the contract.
- 8.3.5.b *Alternate Arrangements.* When, in accordance with 8.3.2.f, the contracting officer determines to acquire specific technical data items with Postal Service rights greater than those specified in Clause 8-6, the contract must specifically describe the applicable data items sought and Clause 8-14, *Acquisition of Additional Rights in Data*, must also be included in the contract. If an alternate data rights proposal is accepted in accordance with 8.3.4.c, Clause 8-6 (see subparagraph a.1) must be appropriately modified by special provision to reflect the data rights being acquired.
- 8.3.5.c *Computer Software.* When computer software is to be generated or produced under a contract, the contracting officer must include Clause 8-9, *Rights in Computer Software*, in the contract in addition to the appropriate clauses prescribed in paragraphs a and b above.

## 8.3.6 Acquisition of Rights in Computer Software

- 8.3.6.a *Covered Contracts.* This part applies to contracts under which computer software (computer programs, computer databases, and their documentation) will be generated, developed, or modified using Postal Service funds and those for specific acquisition of computer software developed at private expense.
- 8.3.6.b *Computer Software Developed at Private Expense*
1. If restricted computer software will be delivered, Clause 8-9 must be used. Unless otherwise agreed to, the restricted rights obtained by the Postal Service are as set forth in the Restricted Rights Notice contained in the clause. Restricted computer software may not be used or reproduced by or disclosed outside the Postal Service, except to the extent provided for by the contract. The restricted computer software may be:
    - (a) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation to which the computer or computers may be transferred;
    - (b) Used or copied for use in or with a backup computer if any computer for which it was acquired becomes inoperative;
    - (c) Reproduced for safekeeping (archives) or backup purposes;
    - (d) Modified, adapted, or combined with other computer software, provided the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights, unless otherwise agreed to by the parties;
    - (e) Disclosed to and reproduced for use by support service suppliers, subject to the same restriction under which the Postal Service acquired the software; and
    - (f) Used in accordance with b.1(a) through (e), without disclosure prohibitions, if the computer software is published copyrighted computer software.
  2. The restricted rights set forth in subparagraph b.1 are the minimum rights the Postal Service normally obtains in restricted computer software and automatically apply when it is provided under the Restricted Rights Notice of Clause 8-9. Either greater or lesser rights, consistent with the purposes and needs for which the software is to be procured, may be specified by the contracting officer in a particular contract. For example, consideration should be given to any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and databases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice must be expressly stated in the contract or in a collateral agreement incorporated in the contract, and the notice modified accordingly.

3. When needed to determine whether restricted computer software must be delivered by a supplier, Provision 8-2, *Representation of Rights in Data*, may be included in any solicitation containing Clause 8-9. This representation requests that an offeror state, to the extent feasible, whether restricted computer software is likely to be used in meeting the contract requirements.

8.3.6.c *Marking of Computer Software.* Restricted computer software delivered to the Postal Service must contain the legend prescribed by paragraph g of Clause 8-9, if the supplier desires to protect the restricted computer software. All markings (notices, legends, identifications) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made must be in human-readable form that can be readily and visually perceived, and in addition may be in machine-readable form as appropriate and feasible under the circumstances. These markings must be affixed by the supplier to the computer software before its delivery to the Postal Service.

8.3.6.d *Clauses*

1. Contracts that call for the delivery of computer software and contracts that call for development, generation, or modification of computer software (whether or not delivery of the computer software is required) must include Clause 8-9 and Clause 8-7, *Withholding Payment (Technical Data and Computer Software)*.
2. If technical data, as well as computer software, is to be delivered, Clause 8-6, *Rights in Technical Data*, must also be included in the contract.
3. If the computer software deliverables are not fixed at the time of contract award, Clause 8-8, *Additional Data Requirements*, must be included in the contract.

### 8.3.7 **Special Works**

8.3.7.a *Covered Contracts.* This part applies to all contracts for special works if the Postal Service specially commissions the works and requires ownership and control of them. Examples of such contracts may include those for (1) the production of audiovisual works (including motion pictures and television recordings) or the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) histories of the Postal Service; (3) works pertaining to recruiting, morale, training, or career guidance; (4) surveys of facilities; (5) works pertaining to the instruction or guidance of Postal Service employees in the discharge of their official duties; or (6) production of technical reports, studies, or similar documents not otherwise covered by 8.3.2.

8.3.7.b *Restrictions on Release*

1. Because the release of works covered by this part by the supplier preparing the works would prejudice the Postal Service's activities, release must be restricted.

2. Contracts for items such as audiovisual works and sound recordings may include limitations in connection with music licenses, talent releases, and the like that are consistent with the purpose for which the works are acquired.
- 8.3.7.c *Assignment of Copyrights.* The contract must enable the Postal Service to obtain ownership of the copyright in the works described above. This is to be accomplished by contract provisions requiring the supplier to assign copyrights to the Postal Service in those works in which the Postal Service would not otherwise be considered the author under section 201(b) of Title 17, United States Code.
- 8.3.7.d *Indemnification.* Preparation of certain types of copyright works requires talent releases and other permission from artists, models, and in some cases other copyright owners. Therefore, an indemnification for any liability that may be incurred by the Postal Service for any violation of proprietary rights, including copyrights, or right of privacy or publicity, or for libelous or other unlawful matter arising out of or contained in any production or compilation of data, should be acquired from the supplier.
- 8.3.7.e *Clauses.* Clause 8-10, *Rights in Data — Special Works*, must be included in covered contracts. When appropriate, Clause 8-7, *Withholding Payment (Technical Data and Computer Software)*, may also be included in the contract.

### 8.3.8 Existing Works

- 8.3.8.a *Covered Contracts.* Contracts for the procurement of existing works (other than computer programs and audiovisual works), such as books and periodicals, generally require no specific contract coverage for data rights. When reproduction rights are required in such works, specific contract coverage is needed.
- 8.3.8.b *Clause.* If reproduction rights are to be obtained for existing works (other than computer programs and audiovisual works), Clause 8-11, *Rights in Data — Existing Works*, must be included in the contract.

### 8.3.9 Royalties

- 8.3.9.a *Reporting Royalties*
1. Provision 8-4, *Royalty Report*, must be included in any solicitation that may result in other than a firm-fixed-price contract.
  2. The contracting officer must forward any information received regarding royalties to the General Counsel.
  3. The General Counsel must advise the contracting officer concerning any royalties that are excessive or that the Postal Service is not obligated to pay.
- 8.3.9.b *Refunds of Royalties.* When the price of a contract described in subparagraph a.1 is based in part on a contingency for patent royalties that may not have to be paid by the supplier, Clause 8-12, *Refund of Royalties*, must be included in the contract.

### 8.3.10 **Professional Services**

Contracts for professional consultant, research, technical development or other specialized support services may require access to Postal Service information. The products of such contracts may not otherwise be covered by the policies of 8.2 or 8.3, and generally have unknown long-term implications and therefore require broad rights in intellectual property to flow to the Postal Service. Clause 8-13, *Intellectual Property Rights*, must be included in such contracts.

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# 9 Labor Policies

## 9.1 General

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Purchase teams must:

1. Maintain good relations with industry and labor so that Postal Service purchasing requirements may be met without delay;
2. Be impartial in any dispute between supplier management and labor, and not try to conciliate, mediate, or arbitrate a labor dispute;
3. Cooperate fully with the Department of Labor's investigation and enforcement activities; and
4. Cooperate fully with federal and state agencies responsible for enforcing requirements in such areas as safety, health and sanitation, work hours and minimum wages, equal employment opportunity, and child and convict labor.

## 9.2 Convict Labor

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### 9.2.1 Policy

Under 39 U.S.C. 2201, the Postal Service may not contract for supplies to be manufactured by convict labor, except for purchase from Federal Prison Industries, Inc. (see 3.4.2). The Postal Service may purchase supplies from firms employing persons on parole or probation under the conditions set forth in Executive Order 11755, December 29, 1973, as amended, which the Postal Service has elected to follow.

### 9.2.2 Clause

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

## 9.3 Contract Work Hours and Safety Standards Act

### 9.3.1 Requirement

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts contain a clause specifying that no laborer or mechanic doing any work under the contract may be required or permitted to work more than 40 hours in any workweek unless paid at least one and one-half times the basic rate of pay for all overtime hours. A violation makes the supplier liable for liquidated damages. Lease agreements, being subject to Reorganization Plan No. 14 of 1950 under 39 U.S.C. 410(d), are subject to the safety standards of the Act in addition to the overtime pay requirements.

### 9.3.2 Exemptions

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

### 9.3.3 Clause

Clause 9-2, *Contract Work Hours and Safety Standards Act — Overtime Compensation*, is incorporated by reference in Clause 4-2, and must be checked-off by contracting officers for all contracts, lease agreements, and ordering agreements that may involve the employment of laborers or mechanics, except:

- 9.3.3.a Construction contracts and lease agreements involving alterations or improvements of \$2,000 or less, and other contracts and lease agreements of \$2,500 or less;
- 9.3.3.b Indefinite delivery contracts and ordering agreements, if the total amount of all orders placed for 1 year after the effective date will not exceed the limits in 9.3.3.a;
- 9.3.3.c Contracts for supplies usually purchased in the open market or requiring labor merely incidental to the sale;
- 9.3.3.d Contracts for work subject solely to the Walsh-Healey Public Contracts Act (see 9.5);
- 9.3.3.e Contracts for transportation by land, air, or water; and
- 9.3.3.f Any other contracts exempt under regulations of the Secretary of Labor (see 29 CFR 5.15).

### 9.3.4 Enforcement

Investigation and enforcement will be in accordance with 9.4.5.

## 9.4 Construction Contracts and Lease Agreements

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### 9.4.1 Definitions

- 9.4.1.a *Construction*. Is defined in 4.4.3.a.2; however, for the purposes of this paragraph, this definition:
1. Applies only if the work is performed at a specified work site, so that wage rates can be determined for the locality;
  2. Does not apply to construction so closely related to research, experiment, and development that it cannot be performed separately, or is itself the subject of research, experiment, or development;
  3. Does not apply to manufacturing or furnishing equipment, components, or other materials, except manufacturing or fabricating construction materials and components on site by a construction supplier or subcontractor under a contract that otherwise meets the definition; and
  4. Does not apply to contracts solely for dismantling, demolishing, or removing improvements, unless further work that will result in the construction, alteration, or repair of a building or work at that location is contemplated.
- 9.4.1.b *Laborers and Mechanics*. People who work predominantly with their hands or with construction tools and equipment. In this part, the term includes working foremen, apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, cooks, and storekeepers.
- 9.4.1.c *Work Site*. The place where a construction contract is performed, and adjacent or nearby sites of job headquarters, storage yards, prefabrication or assembly yards, quarries or borrow pits, batch plants, and similar facilities set up to serve the contract operation exclusively. Transportation of materials, equipment, or personnel to and from the construction site by employees of construction suppliers or subcontractors is included, but transportation by common carriers, material suppliers, or manufacturers is not.

### 9.4.2 Labor Standards for Construction

- 9.4.2.a *Davis-Bacon Act*. The Davis-Bacon Act (40 U.S.C. 276a et seq.) requires that construction contracts over \$2,000 contain a provision setting the minimum wages to be paid to all classes of laborers and mechanics working on the work site. Minimum wage rates are determined by the Secretary of Labor on the basis of prevailing wage rates.
- 9.4.2.b *Copeland Act*. The Copeland Anti-Kickback Act (18 U.S.C. 874 and 41 U.S.C. 276(c)) applies to any contract over \$2,000 subject to the Davis-Bacon Act. The Copeland Act makes it unlawful to force laborers or mechanics to give up any part of their compensation except for permissible deductions such as taxes and union dues.

- 9.4.2.c *Contract Work Hours and Safety Standards Act.* The overtime pay requirements of the Contract Work Hours and Safety Standards Act (see 9.3) apply to all construction contracts and lease agreements involving the employment of laborers and mechanics in construction work, with the exceptions described in 9.3.3.a.
- 9.4.2.d *Department of Labor Regulations.* Regulations covering the administration and enforcement of these laws are published by the Department of Labor in 29 CFR 3 and 5.
- 9.4.2.e *Other Contracts Involving Construction.* The labor standards and regulations described in 9.4.2.a through 9.4.2.d do not apply to contracts for supplies, services, maintenance, research and development, or other nonconstruction requirements, unless the contracts also involve construction. The labor standards in this part apply whenever such a contract specifically requires substantial construction work, or a substantial amount of construction work will be necessary to meet the requirements, and the construction work is performed separately from the rest of the contract work. (“Substantial” refers to the type and quantity of construction, not merely its total value in relation to the contract price.) The contract must specifically identify the work covered by the labor standards.

### 9.4.3 **Labor Standards for Leases**

- 9.4.3.a *Davis-Bacon Act.* The Davis-Bacon Act requirements for minimum wages for laborers and mechanics (see 9.4.2.a) apply to any lease of, or agreement to lease, interior space netting more than 6,500 square feet.
- 9.4.3.b *Work Hours and Safety Standards*
1. The Contract Work Hours and Safety Standards Act requirements for overtime pay apply to all leases except those described in 9.3.3.a. The Act’s health and safety standards apply to all leases and agreements to lease, regardless of building size or rental amount, that involve the employment of laborers or mechanics in construction work.
  2. These requirements apply not only to laborers and mechanics employed at the work site but to any laborers or mechanics working under the contract, including subcontractors furnishing supplies or materials if the work is performed directly on or adjacent to the work site or fabricated specifically for the project.

### 9.4.4 **Clauses**

- 9.4.4.a *Construction Contracts.* Clause 9-2 (see 9.3.3) and Clause 9-3, *Davis-Bacon Act*, are incorporated by reference in Clause 4-2, and must be checked-off by contracting officers for all construction contracts over \$2,000.
- 9.4.4.b *Construction Contracts With States.* If a construction contract over \$2,000 is with a state or a political subdivision of a state, the contract must include Clause 9-4, *Compliance by States with Labor Standards*.

#### 9.4.4.c *Leases*

1. All leases and agreements to lease involving construction work by laborers or mechanics must contain Clause 9-5, *Contract Work Hours and Safety Standards Act — Safety Standards*.
2. All leases and agreements to lease involving more than \$2,000 of construction work by laborers or mechanics must contain Clause 9-2.
3. All leases and agreements to lease interior space netting more than 6,500 square feet and involving construction work over \$2,000 must include Clause 9-3.

### 9.4.5 **Administration and Enforcement**

9.4.5.a *General.* Contracting officers must make sure that suppliers and lessors are fully informed of the labor standards provisions in their contracts and their responsibilities under those provisions. Unless it is clear that the supplier or lessor is already fully informed, the supplier or lessor must be informed by conference or letter as soon as possible after the contract is awarded.

9.4.5.b *Applicability.* The following requirements apply to all contracts and leases containing the clauses prescribed in 9.4.4.

#### 9.4.5.c *Wage Determinations*

1. *General Wage Determinations.* Unlike project wage determinations, general wage decisions do not expire, but are modified or superseded to keep them current. They are available by subscription from the Department of Labor. A general wage determination may be requested for an area where none presently exists if a large number of contracts for a specific type of construction are expected in that area.
2. *Project Wage Determinations.* If no general wage determination is applicable to a project, the contracting officer must request a project wage determination from the local Regional Administrator, Department of Labor, using Standard Form 308, *Request for Determination and Response to Request*.
3. *Time for Making Requests.* Whenever possible, the contracting officer must request any needed wage determination in sufficient time to receive it for inclusion in the solicitation, normally 30 days before the date planned for issuance of the solicitation.
4. *Incorporation by Amendment.* If a wage determination cannot be obtained before issuing the solicitation, it may be incorporated in the solicitation by an amendment furnished to all offerors. If there is not enough time to issue an amendment before proposals are due, and the due date for proposals cannot be extended, the amendment must be a subject of discussions (see 4.2.5.c).
5. *Limitations.* Project wage determinations are effective for 120 days from the date of the determination. If a project wage determination will expire before a contract or lease agreement can be awarded, the contracting officer must request a new determination in time for it to be included in a solicitation amendment before proposals are due.

6. *Extensions.* The Department of Labor may extend the effective period of a wage determination that expired after proposals were due but before award. The request must be submitted to the Secretary of Labor with a finding by the Vice President of Purchasing and Materials that the wage determination expired unavoidably and an extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Postal Service business.
  7. *Modifications.* Any modification of a wage determination by the Department of Labor must be made part of the contract or lease agreement if received before award, using the procedures in 9.4.5.c.4.
  8. *Posting.* The contracting officer must instruct the supplier to post a copy of the wage determination in a prominent place at the work site where it can easily be seen by the workers.
  9. *Additional Classifications.* Any class of laborers or mechanics working under the contract but not listed in the wage determination must be classified or reclassified to conform to the wage determination. Whatever action is taken must be reported to the Department of Labor. If there is any disagreement about the proper classification or reclassification, the contracting officer must submit the question, with a recommendation, to the Secretary of Labor for final determination.
- 9.4.5.d *Subcontracts.* The contracting officer must obtain a list of all subcontracts, with descriptions of the work to be done under each, to assist in the payroll review required under subparagraph 9.4.5.e.
- 9.4.5.e *Payrolls and Compliance Statements*
1. *Submissions.* Suppliers, or lessors, and subcontractors must submit copies of weekly payrolls to the contracting officer within 7 days after the payroll payment dates. They must also submit weekly compliance statements required by the Copeland Act regulations (see 29 CFR 3.3).
  2. *Examination.* The contracting officer must examine the payrolls and statements to make sure the suppliers, lessors, and subcontractors comply with contract, statutory, and regulatory requirements.
  3. *Retention.* Payrolls and compliance statements must be retained for 3 years from the contract completion date and produced to the Department of Labor upon request.
- 9.4.5.f *Investigations*
1. The contracting officer must make whatever investigations are necessary to ensure compliance with contract, statutory, and regulatory requirements. Contracts of 6 months or less must be investigated before final payment is made, if possible. Longer contracts and lease agreements must be investigated as often as necessary to ensure compliance. Investigations must include interviews with employees on a sampling basis.

2. Special detailed investigations must be made when there are complaints or other evidence of violations. Complaints must be given priority.
3. Written or oral statements made by an employee must be kept confidential and may not be disclosed to the employer without the employee's consent.

9.4.5.g *Enforcement Reports*

1. If underpayments total less than \$1,000, are not willful, and have been made good to the employees, the contracting officer must submit a factual summary report to the Department of Labor in accordance with 29 CFR 5.7(a)(1), unless the Department did not request any future compliance investigation.
2. If underpayments total \$1,000 or more or are willful, the contracting officer must submit as soon as possible a detailed enforcement report to the Secretary of Labor through the Office of Inspector General. The report must include a statement of findings about the violations and information about restitution, payment deductions, and contract terminations, as well as the names and addresses of the workers, lessors, suppliers, and subcontractors concerned.
3. If there is substantial evidence that violations are willful and violate the False Affidavits Act (18 U.S.C. 1001) or another criminal statute, the matter must be referred to the Office of Inspector General, the Attorney General, and the Secretary of Labor.

9.4.5.h *Semiannual Enforcement Reports.* The Vice President, Purchasing and Materials (VP, P&M), must submit semiannual reports to the Secretary of Labor on compliance with and enforcement of labor standards and prevailing wage determinations. A copy of each report must be furnished to the Inspection Service. Reports for the period January 1-June 30 are due by July 31, and reports for the period July 1-December 31 are due by January 31.

9.4.5.i *Suspensions and Deductions of Contract Payments.* If a supplier, lessor, or subcontractor fails or refuses to pay all or any part of the wages due workers, the contracting officer may suspend contract or rent payments in amounts equal to the unpaid wages and liquidated damages that may be due, until restitution has been made or deductions against payment vouchers are made as provided in this paragraph. If failure or refusal to pay continues or appears to be willful or there is failure or refusal to comply with other contract, statutory, or regulatory requirements, the contracting officer may suspend contract or rent payments until violations stop. If restitution is not made within a reasonable time or before final payment under the contract or lease agreement, the contracting officer must send the information service center a report on Standard Form 1093, *Schedule of Withholdings Under the Davis-Bacon Act, and/or the Contract Work Hours and Safety Standards Act*, stating the amounts to be withheld for underpayment of wages and liquidated damages. These amounts must be deducted from the payments made to the supplier or lessor and disposed of in accordance with the contracting officer's instructions.



- 9.4.5.j *Restitution.* Suppliers, lessors, or subcontractors may make restitution of amounts due workers at any time. If wages were underpaid, the contracting officer must ask the supplier to make restitution to the employees or to plans, funds, or programs for any type of fringe benefit listed in the wage determination.
- 9.4.5.k *Contract Termination*
1. *Construction Contracts.* Whenever a contract is terminated for labor standards violations, the contracting officer must send a report to the Secretary of Labor and the Comptroller General. The report must give the name and address of the violating supplier or subcontractor; the name and address of the supplier or subcontractor that will complete the work; and the contract number, dollar amount, and description of work for the replacement contract.
  2. *Lease Agreements.* A lease agreement may be terminated and the lessor, general supplier, or subcontractor declared ineligible under 29 CFR 5.6 for violating the Contract Work Hours and Safety Standards Act. However, a lease agreement may not be terminated for failure to pay prevailing wages.
- 9.4.5.l *Liquidated Damages.* If the VP, P&M, finds that an assessment of liquidated damages for failure to pay overtime wages is incorrect, or that the failure to pay overtime wages was inadvertent, the Vice President may adjust the damages or release the supplier, lessor, or subcontractor from liability when the amount of damages is \$100 or less. If the amount is over \$100, the Vice President may recommend adjustment or relief to the Secretary of Labor (see 29 CFR 5.8).

## 9.5 Walsh-Healey Public Contracts Act

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### 9.5.1 General

The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) requires that certain contracts for the manufacture or furnishing of supplies must incorporate the Walsh-Healey Public Contracts Act requirements by reference. No contracting officer, supplier, or subcontractor may purchase quantities amounting to less than \$10,000 to avoid compliance with the Act.

- 9.5.1.a If a contract for \$10,000 or less is modified to exceed \$10,000, the Act applies.
- 9.5.1.b If a contract that exceeds \$10,000 is modified to \$10,000 or less, the work performed after the modification is subject to the Act if both parties agreed to the modification.
- 9.5.1.c The Act applies to indefinite delivery contracts and ordering agreements if the aggregate amount of all orders is expected to exceed \$10,000 during the year following award. Indefinite delivery contracts and ordering agreements not initially subject to the Act become subject to the Act if orders will exceed \$10,000 during any year after the first year. Applicability must therefore be determined annually until the contracts or agreements become subject to the act.

### 9.5.2 **Clause**

All contracts subject to the Act (see 9.5.3) must include Clause 9-6, *Walsh-Healey Public Contracts Act*, which is incorporated by reference in Clause 4-2, and must be checked-off by the contracting officer as appropriate.

### 9.5.3 **Exemptions**

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

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

### 9.5.4 **Other Responsibilities**

When a contract subject to the Act is awarded, the contracting officer, under the regulations or instructions issued by the Secretary of Labor, must:

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

### 9.5.5 **Exceptions to Required Stipulations**

The Secretary of Labor may allow exceptions to the requirement that the representations and stipulations of the Act be included in contracts. The contracting officer must submit requests for exceptions to the Administrator, Wage and Hour Division, Department of Labor, through the Manager, Purchasing Policies and Programs.

## 9.6 **Fair Labor Standards Act of 1938**

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### 9.6.1 **General**

The Fair Labor Standards Act (29 U.S.C. 201-219) provides for minimum wages and maximum workhours and a Wage and Hour Division in the Department of Labor to interpret and enforce the Act (including investigating and inspecting general suppliers). It also prohibits oppressive child labor. The Act applies to all employees (with some exceptions) engaged in interstate or foreign commerce, the production of supplies for such commerce, or any closely related process or occupation essential to such production.

### 9.6.2 **Inquiries About the Act**

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

## 9.7 **Equal Employment Opportunity**

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### 9.7.1 **General**

- 9.7.1.a Executive Order (EO) 11246 prohibits any discrimination in employment by government suppliers and subcontractors based on race, color, religion, sex, or national origin. The Executive Order sets forth a clause for inclusion in all nonexempt government contracts and subcontracts (Clause 9-7, *Equal Opportunity*).
- 9.7.1.b The Secretary of Labor is responsible for issuing regulations implementing EO 11246. These regulations are in 41 CFR 60. The Secretary has delegated to the Director, Office of Federal Contract Compliance Programs (OFCCP), the authority and responsibility to carry out the program.
- 9.7.1.c No contract (or contract modification involving new procurement) may be entered into, and no subcontract approved, with a supplier or subcontractor found ineligible by the Director, OFCCP, for reasons of noncompliance with EO 11246.
- 9.7.1.d Contracting officers and suppliers may not contract for supplies and services in a way designed to avoid the requirements of EO 11246.
- 9.7.1.e Supplier disputes related to compliance with EO 11246 must be handled according to the regulations of the Secretary of Labor (see 41 CFR 60-1.1).

### 9.7.2 **Exempt Contracts**

- 9.7.2.a *Transactions of \$10,000 or Less*
  1. Contracts and subcontracts of \$10,000 or less are exempt from the requirements of EO 11246 and Clause 9-7, unless the aggregate amount of all contracts or subcontracts awarded to the supplier or subcontractor in any 12-month period will exceed \$10,000. (However, government bills of lading, contracts with depositories of Postal Service funds, and contracts with financial institutions that are issuing and paying agents for U.S. savings bonds and savings notes are not exempt regardless of amount.)
  2. Indefinite delivery contracts and ordering agreements are exempt only when the amount to be ordered in any year under the contract will not exceed \$10,000. The contracting officer must determine this at the time of award for the first year, and annually for each succeeding year. Whenever a single order exceeds \$10,000, Clause 9-7 applies. Once Clause 9-7 applies, it continues in effect for the duration of the contract or ordering agreement, regardless of the amounts ordered or expected to be ordered.

- 9.7.2.b *Contracts With State or Local Governments.* If a contract is with a state or local government, the agencies, instrumentalities, or subdivision that are not involved in the contract work do not fall under the requirements of EO 11246.
- 9.7.2.c *Contracts With Certain Educational Institutions.* It is not a violation of EO 11246 for an educational institution to employ members of a particular religion if the institution is owned, supported, controlled, or managed (in whole or substantial part) by a religious group, or if the curriculum propagates a particular religion.
- 9.7.2.d *Work On or Near Indian Reservations.* It is not a violation of EO 11246 for a supplier to announce publicly a preference for employment of American Indians living on or near an Indian reservation. "Near" includes the area within which a person could commute daily. Suppliers extending such a preference must not, however, discriminate among Indians on the basis of religion, sex, or tribe. Using such a preference does not exclude a supplier from complying with the Executive Order.
- 9.7.2.e *Contracts Exempted by the Vice President.* The VP, P&M, may determine that a contract is essential and must be awarded without complying with one or more of the requirements of EO 11246 in the interest of the Postal Service.
- 9.7.2.f *Contracts Exempted by the Director, OFCCP*
1. The Director, OFCCP, may exempt the Postal Service from having to include one or more of the requirements of EO 11246 in any contract when required by special circumstances in the national interest. The Director may also exempt groups or categories of contracts when it is not feasible to act upon each request individually or when group exemptions are more convenient.
  2. The Director, OFCCP, may exempt any facilities of a supplier that are totally separate and distinct from work related to the contract when the exemption will not interfere with the effectiveness of EO 11246.
  3. Contracting officers may request exemptions by submitting a justification to the Director, OFCCP, through the VP, P&M.
  4. The Director, OFCCP, may withdraw an exemption for a specific contract or group of contracts. Such withdrawal does not apply to contracts awarded before withdrawal, or to competitive contracts when the withdrawal is made less than 10 days before the date set for receipt of proposals.

### 9.7.3 **Preaward Compliance Reviews**

- 9.7.3.a Before awarding any contract of \$10 million or more (excluding construction contracts and contracts exempt under 9.7.2), the contracting officer must request the appropriate OFCCP regional office to conduct a compliance review of the supplier's employment practices, and those of all known first-tier subcontractors with subcontracts of \$10 million or more, except when a compliance review has been conducted within 12 months before award. This requirement applies to a modification of an existing contract that increases its value to \$10 million or more, a contract modification adding new procurement of \$10 million or more, a letter contract, and an indefinite delivery contract or ordering agreement under which orders are expected to aggregate \$10 million or more.

- 9.7.3.b The contracting officer must include the following information in the preaward request: name and address of prospective supplier or subcontractor; telephone number; anticipated award date; information about previous government contracts or subcontracts held; place of performance; and the estimated dollar amount of the contract or subcontract. Whenever possible, preaward review requests must be submitted at least 30 days before the anticipated award date. Oral requests must be confirmed in writing.
- 9.7.3.c If the OFCCP has not made a final preaward determination within 30 days from submission of the request, the contracting officer must withhold award of the contract for an additional 15 days, or until clearance is received, whichever occurs first. If the additional 15 days expire, and the OFCCP has neither found the supplier to be in compliance nor made a final written determination declaring the supplier ineligible for reasons of noncompliance, the award may be made. The contracting officer must notify the OFCCP regional office of the award.
- 9.7.3.d These procedures do not apply when the VP, P&M, finds that the procedures would delay an urgent or critical award or delay an award beyond the time specified for acceptance of a proposal. In such cases, the contracting officer must inform the Director, OFCCP, requesting a postaward review.

#### 9.7.4 **Affirmative Action Programs**

- 9.7.4.a *Nonconstruction.* Except for contracts exempt under 9.7.2, each nonconstruction supplier and each subcontractor with 50 or more employees and (1) a contract or subcontract of \$50,000 or more or (2) government bills of lading that in any 12-month period, total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments (see 41 CFR 60-1.40).
- 9.7.4.b *Construction*
1. Except for contracts exempt under 9.7.2, construction suppliers are required to meet affirmative action requirements that apply to covered geographical areas or projects, and the applicable requirements of 41 CFR 60-1 and 60-4.
  2. A contracting officer contemplating a construction project over \$10,000 within a geographic area not known to be covered by specific affirmative action goals must request the most current information from the OFCCP regional office before issuing the solicitation.
  3. Contracting officers must give written notice to the OFCCP regional office within 10 days after award of a contract subject to these requirements.

### 9.7.5 **Poster OFCCP-1420**

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

### 9.7.6 **Inquiries**

- 9.7.6.a Inquiries from suppliers regarding status of compliance with EO 11246, or rights to appeal any of the enforcement actions in 9.7.8, must be referred to the OFCCP regional office.
- 9.7.6.b Inquiries from labor unions regarding revision of a collective compliance with EO 11246 must be referred to the OFCCP regional office, and the complainant must be notified of the referral in writing. The complainant's name, the nature of the complaint, or the fact that the complaint was received may be disclosed only to the OFCCP.

### 9.7.7 **Complaints**

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

### 9.7.8 **Enforcement**

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

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

### 9.7.9 Solicitation Provisions

Paragraph d of Provision 4-3, *Representations and Certifications*, addresses the certification for nonsegregated facilities and applies to all contracts except those exempt from EO 11246 under 9.7.2. In addition, solicitations must include the following provisions:

#### 9.7.9.a Other Than Construction

1. Provision 9-1, *Equal Opportunity Affirmative Action Program*, which is incorporated by reference in Provision 4-3, and must be checked-off by contracting officers when proposals of \$50,000 or more are anticipated from offerors having 50 or more employees.
2. Provision 9-2, *Preaward Equal Opportunity Compliance Review*, which is incorporated by reference in Provision 4-3, and must be checked-off by contracting officers when the amount of the contract is expected to be \$10 million or more.

9.7.9.b *Construction*. Paragraph d of Provision 4-3 applies, as does Provision 9-3, *Notice of Requirement for Equal Opportunity Affirmative Action*. This provision is also included by reference in Provision 4-3, and must be checked-off as appropriate.

### 9.7.10 Clauses

Contracts not exempt from EO 11246 under 9.7.2 must include the following clauses:

- 9.7.10.a Clause 9-7, *Equal Opportunity*, which is incorporated by reference in Clause 4-2 and must be checked-off by the contracting officer.
- 9.7.10.b Clause 9-8, *Affirmative Action Compliance Requirements for Construction*, in contracts for construction.
- 9.7.10.c Clause 9-9, *Equal Opportunity Preaward Compliance of Subcontracts*, in contracts over \$10 million.

## 9.8 Service Contract Act

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### 9.8.1 General

The Service Contract Act of 1965 (Public Law 89-286, 41 U.S.C. 351 et seq.) applies to any contract whose principal purpose is to provide services to be performed by service employees.

- 9.8.1.a Employees working under a service contract must be paid no less than the minimum wage specified by the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).
- 9.8.1.b Service contracts over \$2,500 must contain the clauses required by 9.8.5 concerning minimum wages, including fringe benefits; safe and sanitary working conditions; and employee notification of the compensation required under the Act.

- 9.8.1.c Many types of services are covered by the Act, which attempts to cover contract workers who do not fall under the Davis-Bacon Act for construction and the Walsh-Healey Public Contracts Act for supplies. 29 CFR 4, Subpart C, and CFR 4.101 provide examples of coverage. The Act does not cover executive, administrative, or professional personnel. If services are only incidental to the performance of a contract, the Act does not apply.
- 9.8.1.d The Act also applies to subcontracts under covered contracts, and suppliers must include the Service Contract Act provisions in subcontracts for services. Except where indicated, the terms “contract” and “supplier” include “subcontracts” and “subcontractors” in this part.
- 9.8.1.e The Secretary of Labor administers and enforces the Service Contract Act.

## 9.8.2 Exemptions

- 9.8.2.a The following contracts are exempt from the Service Contract Act, subject to 9.8.2.b:
  - 1. Any contract for construction, alteration, or repair, including painting and decorating.
  - 2. Any work covered by the Walsh-Healey Public Contracts Act (see 9.5).
  - 3. Any contract for transporting freight or personnel by ship, plane, bus, truck, express, railway line, or oil or gas pipeline when published tariff rates are in effect or rates are covered by section 10721 of the Interstate Commerce Act.
  - 4. Any service contract with a radio, telephone, telegraph, or cable company subject to the Communications Act of 1934.
  - 5. Any contract for public utility services, including electric light and power, water, steam, and gas.
  - 6. Any employment contract with individuals for direct services.
  - 7. Any contract that is principally for contract postal units.
  - 8. Contracts with common carriers for mail transportation by rail, air (except air-taxi routes), bus, or ocean vessel on regularly scheduled runs over established routes, when mail accounts for a small portion of the revenue.
  - 9. Contracts for mail service with an individual owner/operator, when it is not believed that the supplier will hire service employees under the contract except for short vacations or unexpected contingencies or emergencies.
  - 10. Contracts principally for the maintenance, calibration, or repair of:
    - (a) Automated data processing equipment (including office information and word processing equipment);
    - (b) Scientific and medical equipment involving sophisticated technology; or
    - (c) Office or business machines not included under (1) above, when the services are performed by the manufacturer or supplier.



- 9.8.2.b The exemptions in 9.8.2.a apply only when the supplier certifies that:
1. The equipment is commercially available, used regularly outside the government, and normally sold or traded by the supplier to the public in substantial quantities;
  2. Prices are established catalog or market prices; and
  3. Wages and fringe benefits paid under the contract are the same as the supplier pays employees servicing the same equipment for commercial customers.

### 9.8.3 Clauses

- 9.8.3.a *Contracts Over \$2,500.* Clause 9-10, *Service Contract Act*, must be included in every contract for services covered by the Act that is over \$2,500 or is modified to exceed \$2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than \$2,500. Clause 9-10 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.
- 9.8.3.b *Contracts of \$2,500 or Less.* Every contract of \$2,500 or less for services covered by the Act must include Clause 9-11, *Service Contract Act — Short Form*. Clause 9-11 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.
- 9.8.3.c *Multiyear Service Contracts and Service Contracts With Renewal Options.* Except for mail transportation contracts, multiyear service contracts and service contracts with options to renew that include Clause 9-10 or Clause 9-11 must also include Clause 9-12, *Fair Labor Standards Act and Service Contract Act — Price Adjustment*. Clause 9-12 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.

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

- 9.8.4.a The contracting officer must file a notice of intent to make a service contract with the Wage and Hour Division, Employment Standards Administration, Department of Labor, for any contract over \$2,500 covered by the Act. Standard Form 98, *Notice of Intention to Make a Service Contract*, must be used. The notice must be accompanied by Standard Form 98a or a statement indicating the numbers and classes of service employees expected to perform the contract, or a statement that the number will not exceed five.
- 9.8.4.b Whenever possible, notice of intent must be filed at least 60 days (30 days for unanticipated requirements) before a competitive solicitation is issued, noncompetitive negotiations begin, an option is exercised, a contract is extended, or the anniversary date of a multiyear contract. If it is not possible to file a notice before the 30-day limit, it must be filed as soon as possible, with an explanation of why it was not filed on time.

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

### 9.8.5 **Minimum Wage Determinations**

- 9.8.5.a If more than five service employees will be involved in performing work covered by the Service Contract Act, the contract may not be awarded without a Department of Labor determination of applicable minimum wages and fringe benefits, unless the determination will be incorporated in the contract after award.
- 9.8.5.b The required determination will normally be issued by the Wage and Hour Division, Employment Standards Administration, in response to the notice of intent filed under 9.8.4, in sufficient time to be included as an attachment to the solicitation.
- 9.8.5.c If the place of performance is unknown when the solicitation is issued, a wage determination need not be included in the original solicitation. Instead, when proposals are received, a notice of intent must be filed in accordance with 9.8.4 showing each location where the contract might be performed, so that a wage determination may be made for each. The wage determination that applies to the successful offeror must be included in the contract. If the Department of Labor finds this impracticable, the Department may issue a composite wage determination.
- 9.8.5.d The contracting officer must contact the Wage and Hour Division to find out whether a wage determination is still current when a solicitation or negotiation has been delayed for more than 60 days from the anticipated date of award stated on the Standard Form 98 submitted. Any wage determination received in response must replace the earlier wage determination.
- 9.8.5.e When a notice of intent has been filed but the wage determination has not been received in time for attachment to the solicitation, the solicitation must state that the wage determination will be issued as an amendment to the solicitation or incorporated into the contract at the time of award.
- 9.8.5.f Any revision of a wage determination received less than 10 days before proposals are due is not effective unless there is enough time to notify offerors. If the contract action involves noncompetitive procedures, exercise of an option or extension of a contract, any revision of a wage determination received after award is not effective if performance begins within 30 days after award; otherwise, any revision received at least 10 days before performance begins is effective.

- 9.8.5.g If circumstances require that a contract be awarded before a wage determination is obtained, the contract must include Clause 9-10, *Service Contract Act*, and provide for equitable adjustment of the contract terms when the wage determination is incorporated, effective from the date of issuance unless another effective date is specified in the determination. The notice of intent, if not already filed, must be filed promptly and explain the need for immediate award.
- 9.8.5.h The Wage and Hour Division may require that a wage determination be applied to a contract retroactively, if the contract is subject to the Service Contract Act and more than five service employees are involved in performing the work. If the contracting officer questions the applicability of the Act to the contract, the contracting officer must forward the matter for resolution to assigned counsel. If it is determined that the Service Contract Act is not applicable to the contract, the contracting officer must advise the Department of Labor of the basis for this determination. No further action is needed unless the Secretary of Labor determines that the contract is subject to the Act.
- 9.8.5.i If a wage determination does not contain all the classifications and rates requested in the notice of intent, those classifications for which no determinations were received must be deleted from the attachment incorporating the wage determination. When omitted classifications or classifications not previously contemplated are found necessary after award, they must be incorporated following the procedures in Clause 9-10.

#### 9.8.6 **Notice of Award**

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

ATTENTION OFFICE OF SPECIAL WAGE STANDARDS  
DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

#### 9.8.7 **Department of Labor Poster**

At the time of award, the contracting officer must supply the supplier with WH Publication 1313, a Department of Labor combination letter and poster explaining the Service Contract Act.

#### 9.8.8 **Inquiries Concerning the Act**

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

DEPUTY ASSISTANT SECRETARY  
EMPLOYMENT STANDARDS ADMINISTRATION  
DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

Questions concerning safety or health must be referred to:

DIRECTOR  
BUREAU OF LABOR STANDARDS  
EMPLOYMENT STANDARDS ADMINISTRATION  
DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

Questions may also be directed to any regional office of the Employment Standards Administration.

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

### 9.8.9.a *Withholding*

1. A violation of the stipulations of Clauses 9-10 or 9-11 makes the responsible party liable for the sum of any deductions, rebates, refunds, or underpayments due employees. At the written request of a District Director (or above) of the Department of Labor, as much of the accrued payment due on the contract (or any other contract between the supplier and the Postal Service that has not been assigned) must be withheld as is necessary to pay the employees. Withheld sums must be kept in an escrow fund. Any compensation that the Postal Service or the Wage and Hour Division has found to be due must be paid directly from the withheld payments.
2. If the withheld payments are insufficient to reimburse the underpaid employees, this fact must be reported to the General Accounting Office (for possible setoff), the Wage and Hour Division of the Department of Labor, and the Department of Justice. The United States may bring an action to recover the remaining amount. Any sums recovered must be held in the escrow fund and paid, on order of the Secretary of Labor, directly to the underpaid employees.

9.8.9.b *Termination.* Any violation of Clauses 9-10 or 9-11 may be cause to terminate the supplier's right to continue the work. If the contract is terminated, the Postal Service may enter into other contracts or arrangements to complete the work, charging any additional costs to the supplier.

## 9.8.10 **List of Violators**

The Comptroller General sends a list of the names of people or firms in violation of the Service Contract Act to all government agencies. Unless the Secretary of Labor recommends otherwise, Postal Service contracts may not be awarded to any violator on the list (or to any firm, corporation, partnership, or association in which such violator has a substantial interest) for 3 years from the date the list was published.

## 9.9 Employment of the Handicapped

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### 9.9.1 Policy

It is Postal Service policy to comply with the Rehabilitation Act of 1973 (29 U.S.C. 702 et seq.), Executive Order 11758 of January 15, 1974, and the implementing regulations of the Secretary of Labor (41 CFR 60-741). The Act requires suppliers to take affirmative action to employ and advance qualified individuals without discrimination as to their physical or mental handicaps.

### 9.9.2 Applicability

With the exceptions below, every contract for supplies or services (including construction and transportation services) over \$2,500 must include Clause 9-13, *Affirmative Action for Handicapped Workers*. Clause 9-13 is incorporated by reference in Clause 4-2, and must be checked-off by the contracting officer when applicable.

9.9.2.a *Contracts with State and Local Government.* The requirements of Clause 9-13 do not apply to any agency, instrumentality, or subdivision of the state or local government that does not participate in work under the contract.

9.9.2.b *Exemption.* The VP, P&M, may exempt any supplier or subcontractor (or any group or category of supplier or subcontractor) from any provisions of Clause 9-13 in the Postal Service's interest.

9.9.2.c *Request for Exemption.* The contracting officer must submit a justification for any proposed exemption to the VP, P&M.

9.9.2.d *Department of Labor Notices.* Under Clause 9-13, the contracting officer must supply the supplier with Department of Labor notices that state the supplier's obligations and handicapped individuals' rights under the Employment of the Handicapped program. These notices may be obtained from:

OFFICE OF INFORMATION  
EMPLOYMENT STANDARDS ADMINISTRATION  
DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

### 9.9.3 Collective Bargaining Agreements

When performance under Clause 9-13 requires revision of a collective bargaining agreement, the unions that are parties to such agreements must be advised that the Department of Labor will give them appropriate opportunity to express their views. Neither the contracting officer nor any representative of the contracting officer may discuss with representatives of the supplier or of labor any aspects of the collective bargaining agreements.

#### 9.9.4 **Complaints**

The contracting officer must forward any complaint concerning the Act through channels to the VP, P&M. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, P&M.

#### 9.9.5 **Department of Labor Sanctions**

When Policies, Planning, and Diversity is notified that the Department of Labor has imposed sanctions on a supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the supplier) for violation of Clause 9-13, the contracting officer must put the sanctions into effect as soon as possible.

## 9.10 Veterans

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#### 9.10.1 **Requirement**

The Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 4212), Executive Order 11701 of January 23, 1973, the Veterans Employment Opportunities Act of 1999, and the implementing regulations of the Secretary of Labor (41 CFR 60-250) require suppliers to take affirmative action to employ veterans of the Vietnam era without discrimination based on their disability, and to list all employment openings with appropriate local employment services.

#### 9.10.2 **Applicability**

9.10.2.a *General.* Except as provided in 9.10.2.b, every contract for supplies or services (including utility, construction, and transportation services) or for the use of real or personal property (including lease arrangements) in the amount of \$10,000 or more must include Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era*, which is included in Clause 4-2, and must be checked-off by the contracting officer as applicable. No contracting officer, supplier, or subsupplier may purchase quantities of supplies or services in less-than-normal quantities to avoid application of Clause 9-14.

#### 9.10.2.b *Exceptions*

1. *Contracts with State and Local Governments.* Clause 9-14 does not apply to any agency, instrumentality, or subdivision of a state or local government that does not participate in work under the contract.
2. *Exemption.* The Postmaster General (with the concurrence of the Director, Office of Federal Contract Compliance Program (OFCCP), Department of Labor) may exempt any contract or category of contracts from any part of Clause 9-14 in the national interest.

9.10.2.c *Request for Exemption.* The contracting officer must submit a detailed justification for any proposed exemption to the VP, P&M, for submission through channels to the Postmaster General and the Director, OFCCP.

### 9.10.3 **Department of Labor Notices**

The contracting officer must furnish the supplier appropriate notices for posting when such notices are prescribed by the Director, OFCCP.

### 9.10.4 **Complaints**

The contracting officer must forward any complaint concerning the Act through channels to the VP, P&M. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, P&M.

### 9.10.5 **Department of Labor Sanctions**

When Purchasing Policies and Programs is notified that the Department of Labor has imposed sanctions on a supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the supplier) for violation of Clause 9-14, the contracting officer must put the sanctions into effect as soon as possible.

Appendix A

**Solicitations**

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## Appendix A

# Solicitations

## A.1 General

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### A.1.1 Introduction

This appendix discusses Postal Service solicitations and contains the text of provisions discussed in Chapters 1 through 9 of the *Purchasing Manual*.

### A.1.2 Use

Postal Service solicitations are intended (1) to inform suppliers fully of the Postal Service's needs for the particular purchase, (2) to explain how proposals will be evaluated, and (3) to identify the particular aspects of value deemed important to the success of the purchase.

### A.1.3 Numbering of Provisions

*Purchasing Manual* solicitation provisions are numbered by the *Purchasing Manual* chapter in which their use is discussed. Thus, Provision 7-1, *Performance Bond Requirements*, is prescribed in Chapter 7. Some provisions are not discussed in PM Chapter 1 through 9, but may be used in solicitations as deemed necessary by the purchase team. These provisions are identified by an A prefix (for example, Provision A-1, *Restrictions on Disclosure and Use of Data*). Part A.3, *Solicitation Provisions*, contains the text of the provisions, and in parentheses to the right of the provision title is a reference to the chapter, section, and part where the provision is prescribed. When considering the inclusion of provisions in a solicitation, purchase teams should consult the referenced PM text.

## A.2 Preparation

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### A.2.1 Solicitation Contents

- a. *General.* As stated in PM 4.1, Postal Service purchasing employs a single, commercial process based on the proven business practices of the private sector, matched to its responsibilities as a public institution. Therefore, Postal Service solicitations (as well as Postal Service contracts, see 4.2.7 and Appendix B), generally mirror the solicitation provisions commonly used in the private sector, to which are added the provisions required by policy, statute, or Executive Order. Provisions 4-1, *Standard Solicitation Provisions*, 4-2, *Evaluation*, and 4-3, *Representations and Certifications*, contain the basic elements of a solicitation. With the exception of Provision 4-3, purchase teams are encouraged to modify, add to, or supplement the thrust of these basic provisions, as they feel necessary to ensure the success of the purchase. Additionally, as discussed in Chapters 1 through 9 of the PM, certain types of solicitations and purchases may mandate the inclusion of additional provisions (see the discussion of the provisions at the PM section referenced in Part A.3). When modifying, adding to, or supplementing any of the provisions included in this Appendix A, purchase teams must consult assigned counsel.
- b. *Provision 4-1, Standard Solicitation Provisions.* Provision 4-1 provides a single set of supplier instructions when soliciting offers or proposals. This provision requires the submission of past performance and capability information (see 2.1.9.c) and, if Form 8203, *Order/Solicitation/Offer/Award*, is not included with the solicitation, a statement from the supplier specifying its agreement with all terms, conditions and provisions in the solicitation.
- c. *Provision 4-2, Evaluation.* Provision 4-2 provides the purchase team the opportunity to alert the supplier community to the relative importance it places on the evaluation factors (see 2.1.10). Purchase teams must carefully consider the wording of this provision, and adapt it as necessary to the success of the purchase. In certain cases, price may be the deciding factor. See 2.1.10.
- d. *Provision 4-3, Representations and Certifications.* This provision provides a consolidated list of the certifications and representations required of all suppliers. Depending on the nature of the purchase, additional representations and certifications may be required when checked-off by the contracting officer.

### A.2.2 Additional Provisions

Depending on the nature of the purchase, additional solicitation provisions may be needed for a particular solicitation. Contracting officers and purchase teams should consult the PM discussion of such provisions at the reference cited with the text of the provision in A.3, or develop customized provisions necessary to the success of the purchase.

## A.3 Solicitation Provisions

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**Provision A-1 Restriction on Disclosure and Use of Data (January 1997)** (4.2.2)

Offerors that include in their proposals data they do not want used or disclosed by the Postal Service for any purpose other than proposal evaluation may take the following steps:

- a. “This proposal includes data that may not be duplicated, used, or disclosed outside the Postal Service — in whole or in part — for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of — or in connection with — the submission of such data, the Postal Service will have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Postal Service’s right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (*Offeror insert numbers or other identification of sheets*).”
- b. Mark each sheet of data they wish to restrict with the following legend:  
“Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

**Provision A-2 Solicitation for Information or Planning Purposes (January 1997)** (4.2.2)

- a. The Postal Service does not intend to award a contract on the basis of this solicitation or to pay for the information solicited.
- b. This solicitation is issued for the purpose of: (*Contracting officer state purpose of solicitation*).

**Provision 1-1 Supplier Clearance Requirements (January 1997)** (1.6.11)

The contract resulting from this solicitation will require the contractor or its employees (including subcontractors and their employees) to have access to occupied postal facilities, and/or to postal information and resources, including postal computer systems. Clearance in accordance with *Administrative Support Manual 272.3* will be required before that access will be permitted. It is the contractor’s obligation to obtain and supply to the Postal Service the forms and information required by that regulation.

Offerors must familiarize themselves with the requirements of that section, taking into account in their offices the time and paperwork associated with the screening.

**Provision 1-2 Domestic Source Certificate — Supplies (January 1997)** (1.6.13)

The offeror certifies that each end product, except those listed below, is a domestic-source end product (as defined in the *Preference for Domestic Supplies* clause) and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States. Excluded end products (*Offeror show country of origin for each excluded end product*):

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**Provision 1-3 Domestic Source Certificate — Construction Materials (January 1997)** (1.6.13)

The offeror certifies that only domestic construction materials (as defined in the *Preference for Domestic Construction Materials* clause) will be used in the performance of this contract, except for foreign construction materials listed below:

<u>Material</u>	<u>Quality</u>	<u>Estimated Cost</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Provision 1-4 Prohibition Against Contracting with Former Postal Service Officers or PCES Executives (January 1997)** (1.6.14)

The offeror represents that former Postal Service officers or Postal Career Executive Service (PCES) executives will not be employed as key personnel, experts or consultants in the performance of the contract if such individuals, within five years of their retirement from the Postal Service, will be performing substantially the same duties as they performed during their career with the Postal Service. In addition, no contract resulting from this solicitation may be awarded to such individuals or entities in which they have a substantial interest, for five years after their retirement from the Postal Service, if the work called for in the solicitation requires such individuals to perform substantially the same duties as they performed during their career with the Postal Service.

**Provision 1-5 Proposed Use of Former Postal Service Employees (October 2001)** (1.6.14)

In its proposal, the supplier must identify any former Postal Service employee it proposes to engage in the performance, directly or indirectly, in the performance of the contract. The Postal Service reserves the right to require the supplier to replace the proposed individual with an equally qualified individual.

**Provision 2-1 Warranty Information (January 1997)** (2.2.4)

Offerors are encouraged to submit information on any standard commercial warranties provided for offered products. The Postal Service will consider these warranties in determining the most advantageous proposal, to the extent provided in the evaluation factors.

**Provision 2-2 Time of Delivery (January 1997)** (2.2.5)

- a. The Postal Service requires delivery to be made according to the delivery schedule specified in Section C of the contract Schedule. The Postal Service will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above will be considered unacceptable and rejected. When an offeror offers an earlier delivery schedule than required, the Postal Service reserves the right to award under either the required delivery schedule or the proposed delivery schedule. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

**(ALTERNATE (a)(1) — DESIRED DELIVERY)**

- a. The Postal Service desires delivery according to the desired delivery schedule specified in Section C of the contract Schedule. If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose an alternative delivery schedule. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Postal Service's required delivery schedule specified in Section C of the Schedule. Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable specified required delivery period will be considered unacceptable and if the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

**(End of Alternate (a)(1))**

- b. The Contract Award provision of the solicitation provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Postal Service will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

**(ALTERNATE (b)(1) — AWARD BASED ON CALENDAR DATES AFTER ASSUMED DATE OF AWARD)**

- b. The delivery dates or specific periods contained in Section C are based on the assumption that the Postal Service will make award by the date of award specified in Section C of the contract Schedule. Each delivery date in the delivery schedule will be extended by the number of calendar days after the above date that the contract is in fact awarded.

**(End of Alternate (b)(1))**

**(ALTERNATE (b)(2) — AWARD BASED ON CALENDAR DATES AFTER ASSUMED DATE OF RECEIPT OF NOTICE OF AWARD)**

- b. The delivery dates or specific periods contained in Section C are based on the assumption that the supplier will receive notice of award by the date specified in Section C of the contract Schedule. Each delivery date in the delivery schedule will be extended by the number of calendar days after the above date that the supplier receives notice of award, provided that the supplier promptly acknowledges receipt of notice of award.

**(End of Alternate (b)(2))**

**Provision 2-3 Evaluation of Options (January 1997) (2.2.8)**

- a. Unless it is determined in accordance with PM 2.2.8 that evaluation of options is not in the best interest of the Postal Service, option prices will be included in the evaluation of offers for award purposes. Evaluation of options does not obligate the Postal Service to exercise the options.
- b. If the Postal Service elects to exercise an option at the time of award, proposals will be evaluated on the basis of total price for the basic quantity and for the option quantity to be exercised with the award. In all other cases, proposals will be evaluated by adding the total price for all option quantities to the total price for the basic quantity.
- c. Any proposal that is materially unbalanced as to prices for basic and option quantities may be disregarded as unacceptable. An unbalanced proposal is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

**Provision 2-4 Evaluation Exclusive of Options (January 1997)** (2.2.8)

The Postal Service will evaluate offers for award purposes by including the price for the basic requirement, i.e., options will not be included in the evaluation of award purposes.

**Provision 2-5 Evaluation Exclusive of Unpriced Options (January 1997)** (2.2.8)

The Postal Service will evaluate the unpriced option at the time the option is exercised.

**Provision 2-6 Credit Card Order Acceptance Requirement (November 2000)** (2.4.6)

The Postal Service intends to place credit card orders, using an authorized Postal Service credit card, under the ordering agreement or contract resulting from this solicitation. Any supplier entering into an ordering agreement or awarded a contract as a result of this solicitation must have the capability to accept orders made with such a credit card.

**Provision 2-7 Brand Name or Equal (January 1997)** (2.3.1)

- a. One or more items called for by this solicitation have been identified in the Schedule by a brand-name-or-equal product description. Proposals offering equal products will be considered for award if these products are clearly identified and are determined by the Postal Service to contain all of the essential characteristics of the brand-name products referenced in the solicitation.
- b. Unless the offeror clearly indicates in the proposal that the proposal is for an equal product, the proposal will be considered as offering a brand-name product referenced in the solicitation.
- c. If the offeror proposes to furnish an equal product, the brand name and model or catalog number, if any, of the product to be furnished must be inserted in the space provided in the solicitation. The evaluation of proposals and the determination as to equality of the product offered will be based on information furnished by the offeror or identified in the proposal, as well as other information reasonably available to the purchasing activity. The purchasing activity is not responsible for locating or obtaining any information not identified in the proposal and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of the proposal:



- (1) All descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to establish exactly what the offeror proposes to furnish and to determine whether the product offered meets the requirements of the solicitation; or
  - (2) Specific references to information previously furnished or to information otherwise available to the purchasing activity to permit a determination as to equality of the product offered.
- d. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offeror must:
- (1) Include in the proposal a clear description of the proposed modifications; and
  - (2) Clearly mark any descriptive material to show the proposed modifications.

**Provision 3-1 Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements (February 1999)** (3.2.3)

All suppliers, except small businesses, or unless this purchase is being made under commercial purchasing procedures, must submit with their proposals the contract-specific subcontracting plan required by Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements*. Generally, this plan must be agreed to by both the supplier and the Postal Service before award of the contract.

**Provision 4-1 Standard Solicitation Provisions (January 2002)** (4.2.2)

- a. *Submission of Offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified on this solicitation. Offers may be submitted on PS Form 8203, *Order/Solicitation/Offer/Award*, letterhead stationary, or as otherwise specified in the solicitation. As a minimum offers must show:
- (1) Solicitation number;
  - (2) The name, address and telephone number of the offeror;
  - (3) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
  - (4) Terms of any expressed warranty;
  - (5) Price and any discount terms;
  - (6) "Remit to" address, if different than mailing address;
  - (7) A completed copy of the representations and certifications;
  - (8) Acknowledgment of Solicitation Amendments;

- (9) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items, and other references (including contract numbers, point of contact, with telephone numbers, and other relevant information); and
- (10) If the offer is not submitted on PS Form 8203, include a statement specifying the extent of agreement with all terms and conditions and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.
- b. *Period for Acceptance of Offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.
- c. *Product Samples.* When required by the solicitation, product samples must be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples must be submitted at no expenses to the Postal Service and returned at the sender's request and expense, unless they are destroyed during preaward testing.
- d. *Multiple Offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.
- e. *Late Offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered unless determined to be in the best interests of the Postal Service.
- f. *Type of Contract.* The Postal Service plans to award a \_\_\_\_\_ contract (*contracting officer insert type of contract; see PM 2.4*) under this solicitation, and all proposals must be submitted on this basis. Alternate proposals based on other contract types will \_\_\_ will not \_\_\_ be considered.
- g. *Contract Award.* The Postal Service may evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. Discussions may be conducted if the Postal Service determines they are necessary. The Postal Service may reject any or all offers if such action is in the best interest of the Postal Service; accept other than the lowest offer, and waive informalities and minor irregularities in offers received.
- h. *Multiple Awards.* The Postal Service may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Postal Service reserves the right to make an award on any items for quantity less than the quantities offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

- i. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service's *Purchasing Manual*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the *Purchasing Manual*, accessible online at [www.usps.com/business](http://www.usps.com/business). If checked, the following provision is incorporated in this solicitation by reference:
- (Contracting officer will check as appropriate.)  
 Provision 3-1, *Notice of Small, Minority, and Woman-owned Business Subcontracting Requirements* (February 1999) \_\_\_\_.

#### **Provision 4-2 Evaluation (January 2002)**

(4.2.2)

- a. *General.* The Postal Service will award a contract resulting from this solicitation to the offeror whose offer conforming to the solicitation is deemed to offer the Postal Service the best value, price and other factors as specified considered. The following performance evaluation factors will be used in the evaluation of offers:

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*(Contracting officer insert the proposal-specific and supplier-specific performance evaluation factors and indicate their relative importance. In addition, state, in accordance with PM 2.1.10, the relative importance of the performance evaluation factors as compared to price.)*

- b. *Options.* The Postal Service will \_\_\_ will not \_\_\_ evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Postal Service may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options will not obligate the Postal Service to exercise the option(s).
- c. *Notice of Award.* The Postal Service may accept an offer (or part of an offer), whether or not there are discussions after its receipt, before an offer's specified expiration time, unless a written notice of withdrawal is received before award. A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party.

**Provision 4-3 Representations and Certifications (January 2002)** (4.2.2)

- a. *Type of Business Organization.* The offeror, by checking the applicable blocks, represents that it:
- (1) Operates as:
- a corporation incorporated under the laws of the state of \_\_\_\_\_;
  - an individual;
  - a partnership;
  - a joint venture;
  - a limited liability company;
  - a nonprofit organization; or
  - an educational institution; and
- (2) Is (check all that apply)
- a small business concern;
  - a minority business (indicate minority below):
    - Black American
    - Hispanic American
    - Native American
    - Asian American:
  - a woman-owned business; or
  - none of the above entities.
- (3) *Small Business Concern.* A small business concern for the purposes of Postal Service purchasing means a business, including an affiliate, that is independently owned and operated, is not dominant in producing or performing the supplies or services being purchased, and has no more than 500 employees, unless a different size standard has been established by the Small Business Administration (see 13 CFR 121, particularly for different size standards for airline, railroad, and construction companies). For subcontracts of \$50,000 or less, a subcontractor having no more than 500 employees qualifies as a small business without regard to other factors.
- (4) *Minority Business.* A minority business is a concern that is at least 51 percent owned by, and whose management and daily business operations are controlled by, one or more members of a socially and economically disadvantaged minority group, namely U.S. citizens who are Black Americans, Hispanic Americans, Native Americans, or Asian Americans. (Native Americans are American Indians, Eskimos, Aleuts, and Native Hawaiians. Asian Americans are U.S. citizens whose origins are Japanese, Chinese, Filipino, Vietnamese, Korean, Samoan, Laotian, Kampuchean (Cambodian), Taiwanese, in the U.S. Trust Territories of the Pacific Islands or in the Indian subcontinent.)

- (5) *Woman-owned Business.* A woman-owned business is a concern at least 51 percent of which is owned by a woman (or women) who is a U.S. citizen, controls the firm by exercising the power to make policy decisions, and operates the business by being actively involved in day-to-day management.
- (6) *Educational or Other Nonprofit Organization.* Any corporation, foundation, trust, or other institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profits of any private shareholder or individual.
- b. *Parent Company and Taxpayer Identification Number*
- (1) A parent company is one that owns or controls the basic business policies of an offeror. To own means to own more than 50 percent of the voting rights in the offeror. To control means to be able to formulate, determine, or veto basic business policy decisions of the offeror. A parent company need not own the offeror to control it; it may exercise control through the use of dominant minority voting rights, proxy voting, contractual arrangements, or otherwise.
- (2) Enter the offeror's Taxpayer Identification Number (TIN) in the space provided. The TIN is the offeror's Social Security number or other Employee Identification Number used on the offeror's Quarterly Federal Tax Return, U.S. Treasury Form 941. Offeror's TIN: \_\_\_\_\_
- (3) Check this block if the offeror is owned or controlled by a parent company: \_\_\_\_\_
- (4) If the block above is checked, provide the following information about the parent company:  
 Parent Company's Name: \_\_\_\_\_  
 Parent Company's Main Office: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 No. and Street: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
 Parent Company's TIN: \_\_\_\_\_
- (5) If the offeror is a member of an affiliated group that files its federal income tax return on a consolidated basis (whether or not the offeror is owned or controlled by a parent company, as provided above) provide the name and TIN of the common parent of the affiliated group:  
 Name of Common Parent: \_\_\_\_\_  
 Common Parent's TIN: \_\_\_\_\_

c. *Certificate of Independent Price Determination*

- (1) By submitting this proposal, the offeror certifies, and in the case of a joint proposal each party to it certifies as to its own organization, that in connection with this solicitation:
  - (a) The prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other offeror or with any competitor;
  - (b) Unless otherwise required by law, the prices proposed have not been and will not be knowingly disclosed by the offeror before award of a contract, directly or indirectly to any other offeror or to any competitor; and
  - (c) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
- (2) Each person signing this proposal certifies that:
  - (a) He or she is the person in the offeror's organization responsible for the decision as to the prices being offered herein and that he or she has not participated, and will not participate, in any action contrary to paragraph a above; or
  - (b) He or she is not the person in the offeror's organization responsible for the decision as to the prices being offered but that he or she has been authorized in writing to act as agent for the persons responsible in certifying that they have not participated, and will not participate, in any action contrary to paragraph a above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to paragraph a above.
- (3) Modification or deletion of any provision in this certificate may result in the disregarding of the proposal as unacceptable. Any modification or deletion should be accompanied by a signed statement explaining the reasons and describing in detail any disclosure or communication.

d. *Certification of Nonsegregated Facilities*

- (1) By submitting this proposal, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.
- (2) As used in this certification, segregated facilities means any waiting rooms, work areas, rest rooms or wash rooms, restaurants or other eating areas, time clocks, locker rooms or other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment area, transportation, or housing

facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

- (3) The offeror further agrees that (unless it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors before awarding subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause; that it will retain these certifications in its files; and that it will forward the following notice to these proposed subcontractors (except when they have submitted identical certifications for specific time periods):

**Notice:** A certification of nonsegregated facilities must be submitted before the award of a subcontract exceeding \$10,000 that is not exempt from the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (quarterly, semiannually, or annually).

- e. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, its provision or clause number assigned to it in the Postal Service's *Purchasing Manual*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the *Purchasing Manual*, accessible online at [www.usps.com/business](http://www.usps.com/business). If checked, the following provision(s) is incorporated in this solicitation by reference:

*(Contracting officer will check as appropriate)*

- (1) Provision 1-2, *Domestic Source Certificate – Supplies* (January 1997) \_\_\_\_
- (2) Provision 1-3, *Domestic Source Certificate – Construction Materials* (January 1997) \_\_\_\_
- (3) Provision 9-1, *Equal Opportunity Affirmative Action Program* (January 1997) \_\_\_\_
- (4) Provision 9-2, *Preaward Equal Opportunity Compliance Review* (January 1998) \_\_\_\_
- (5) Provision 9-3, *Notice of Requirements for Equal Opportunity Affirmative Action* (January 1997) \_\_\_\_

#### **Provision 4-4 Demonstrability (January 1997)**

(4.5.5)

- a. At the sole discretion of the Postal Service and before award of the contract, the Postal Service, upon notification by the contracting officer, may request a test demonstration to validate the technical acceptability of the offeror's proposal. The intent of the Postal Service in any test demonstration is to conduct a test of any or all products proposed by

the offeror no less than 40 calendar days after receipt of the offeror's proposal and within 7 working days after the contracting officer's written notification, at a mutually agreeable site approved by the Postal Service.

- b. The demonstration serves the sole purpose of validating/confirming the offeror's proposal and will not result in any additional revisions to that proposal, nor be construed to be an opportunity to revise.
- c. While the Postal Service intends to conduct the demonstration only with the responsible offeror selected for this purchasing, the Postal Service reserves the right to request test demonstrations from any or all offerors in the competitive range. The demonstration will be conducted on a pass/fail basis. If the demonstration does not validate the offeror's proposal on the initial observation, the offeror will be afforded a second opportunity to correct the test deficiencies. Within 10 calendar days after notification of the unsatisfactory results, the offeror must conduct the second demonstration. If the offeror elects to substitute a product in any second demonstration, this product must be offered to the Postal Service at the same price (or a lower price), and be certified as functionally equivalent. If the offeror fails the second demonstration, the offeror will be unacceptable for after completion of the demonstration whether it was satisfactory or unsatisfactory.
- d. The Postal Service reserves the right to proceed with a demonstration by the next-ranked offeror if such demonstration has not already been accomplished. The same terms and conditions would apply to this offeror.

**Provision 4-5 Functional Demonstration (January 1997)** (4.5.5)

- a. The Postal Service may request functional demonstrations of some or all products proposed by an offeror during the technical evaluation process when Postal Service questions about specific products or families of products could be resolved more effectively through direct contact with the offeror and the proposed product.
- b. The Postal Service will provide the offeror with a list of products, software, or both, that will be required for the demonstration. The purpose of this request is to obtain operational information, and the requirements may be satisfied by visiting an operational site and/or development center. Such functional demonstrations may be held at a site selected by the offeror, subject to approval of the contracting officer. The Postal Service will request that the demonstration be held not less than 5, but no more than 10 working days following the date of the request.
- c. The offeror will not earn technical points as a result of the functional demonstration.



**Provision 4-6 System Integrity (January 1997)** (4.5.5)

To ensure the integrity of the Postal Service's computer operating systems, third-party software vendors must provide either a statement certifying that their product, when properly installed, will not compromise or otherwise degrade the integrity of the operating system; or provide the software source code.

**Provision 4-7 Postal Computing Environment (January 1997)** (4.5.5)

- a. The Postal Service is committed to building core information technology (IT) structure that can be shared and has sufficient robustness to accommodate new applications and future enhancements. Therefore, all IT infrastructure components provided and applications developed as a result of solicitation must be compliant with the specifications contained in USPS Handbook AS-820, *Postal Computing Environment*, and the Infrastructure Tool Kit (ITK). Copies of Handbook AS-820 and the ITK can be obtained from the contracting officer.
- b. Although the Postal Service discourages nonstandard or hybrid technical solutions, it recognizes that there may be occasions when such information technology or applications are necessary and prudent to fulfill certain business needs. Therefore, the offeror must notify the contracting officer in writing if:
  - (1) The business requirements cannot be met as defined within Handbook AS-820; or
  - (2) Handbook AS-820 and the ITK do not specify tools needed to meet the instant business requirements.

**Provision 4-8 Pre-Proposal Conference (January 1997)** (4.2.2)

- a. The Postal Service is planning a pre-proposal conference during which potential offerors may obtain a better understanding of the work required.
- b. Offerors are strongly urged to visit the site prior to the conference to inform themselves fully about the location and conditions under which the work is to be performed.
- c. Offerors are encouraged to submit all questions in writing at least 5 days before the conference. Questions will be considered at any time prior to or during the conference. Subsequent to the conference, the Postal Service will distribute to all conference participants and all other prospective offerors a record of the conference containing an abstract of the questions and answers, and a list of attendees. If warranted, an amendment will be issued to reflect changes to the solicitation.
- d. Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference or in the post-conference abstract, all terms and conditions of the solicitation remain unchanged unless changed by amendment.

**Provision 4-9 Preparation of Proposals (Construction) (January 1997)** (4.3.3)

- a. Offerors are expected to examine the drawings, specifications, and all provisions and instructions. Failure to do so will be at the offeror's risk.
- b. Each offeror must furnish the information required by the solicitation. The offeror must sign the proposal and print or type its name on the proposal and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the proposal.
- c. Time, if stated as a number of days, will include Saturdays, Sundays, and federal holidays.

**Provision 7-1 Performance Bond Requirements (January 1997)** (7.1.3)

- a. Any offeror selected for award of a contract as a result of this solicitation will be required to submit a performance bond in a penal amount equal to 100 percent of the contract price, within the time specified by the contracting officer.
- b. The bond must be executed on the Postal Service forms attached to this solicitation, and sureties must be acceptable to the Postal Service. Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list.
- c. Contract award will not be made until both an executed performance and payment bonds (see Provision 7-3) are received by the contracting officer.

**Provision 7-2 Payment Bond Requirements (January 1997)** (7.1.3)

- a. Any offeror selected for award of a contract as a result of this solicitation will be required to submit a payment bond in the penal amount set forth in the Schedule, within the time required by the contracting officer.
- b. The bond must be executed on the Postal Service forms attached to this solicitation, and sureties must be acceptable to the Postal Service. Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list.
- c. Contract award will not be made until both an executed payment and performance bonds (see Provision 7-1) are received by the contracting officer.

**Provision 7-3 Fidelity Bond Requirements (January 1997)** (7.1.5)

Any offeror awarded a contract as a result of this solicitation will be required to submit a fidelity bond in the penal amount set forth in the Schedule, in a form acceptable to and within the time specified by the contracting officer. Corporate sureties must appear on the list in Treasury Circular 570, and the amount of the bond may not exceed the underwriting limit stated for the surety on that list. Failure to submit an acceptable bond may be cause for termination of the contract for default.

**Provision 7-4 Deposit of Assets Requirements (January 1997)** (7.1.9)

- a. Except for payment bonds required for construction contracts, any offeror required to submit a surety bond as a result of this solicitation may instead deposit assets in a form acceptable to the Postal Service in an amount set forth in the Schedule.
- b. When assets are deposited, the offeror must execute the Postal Service bond form made a part of this solicitation. Failure to deposit assets acceptable to the Postal Service may be cause for termination of the contract for default.

**Provision 7-5 Alternative Payment Protections (January 1997)** (7.1.2)

- a. (The supplier shall submit one of the following payment protections:)
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- b. The penal sum of the payment protection shall be in the amount of \$\_\_\_\_\_.
- c. The submission of the payment protection is required by \_\_\_\_\_
- d. The payment protection shall provide protection for the full contract performance period plus 1-year period.
- e. Except for escrow agreements and payment bonds, which provide their own protection procedures, the contracting officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative judicial proceedings or mutual agreement of the parties.
- f. When a tripartite escrow agreement is used, the supplier shall utilize only suppliers of labor and material who signed the escrow agreement.

**Provision 8-1 Alternate Intellectual Property Rights Proposals (January 1997)** (8.2.2)

- a. The Postal Service intends to award a contract that may provide for Postal Service acquisition of one or more of the following:
  - (1) Title to any patents resulting from contract performance.
  - (2) Unlimited rights in certain data (technical data and computer software) delivered to the Postal Service during contract performance.
  - (3) Use and disclosure rights in data that may be copyrighted or may embody trade secrets or confidential commercial or financial information.
- b. Offeror may propose alternate intellectual property rights arrangements (including licensing arrangements for commercial exploitation of intellectual property developed under the contract); provided (i) the arrangements apply only to intellectual property developed solely at supplier private expense and not first produced in performance of this requirement, (ii) such arrangements are necessary to protect the offeror's trade secrets and commercial market competitiveness, and (iii) the Postal Service, including its support service suppliers and their subcontractors, subject to the same disclosure restrictions as the Postal Service, will have the right to utilize such intellectual property for its internal purposes. The following must be included in any alternate proposal.
  - (1) Suggested allocation of rights between the parties.
  - (2) Description of benefits (including royalties to the Postal Service) to each party if the alternate is selected.
  - (3) Costs to each party if alternate is selected (including royalties not collected by the Postal Service).
  - (4) Supporting documentation for calculating benefits and costs.
  - (5) A statement indicating willingness to accept the standard clauses (Patent Rights, Rights in Technical Data, and Rights in Computer Software) if the alternate is rejected.
- c. The contracting officer will consider alternate intellectual property rights proposals in determining which offeror's proposal is most favorable to the Postal Service, in accordance with the solicitation's evaluation and award section.

**Provision 8-2 Representation of Rights in Data (January 1997)** (8.3.4)

- a. By completion of the representation below, the offeror must identify in its proposal the data (including subcontractor-furnished data) it intends to identify as "limited rights data" or "restricted computer software," or that it does not intend to provide as required. Any identification of limited rights data or restricted rights computer software is not determinative of the status of such data, should a contract be awarded to the offeror.

*Representation Concerning Data Rights*

Offeror has reviewed the requirements for the delivery of technical data or computer software and states (*Offeror check appropriate block*):

None of the data proposed for fulfilling the requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling the requirements qualify as limited rights data or restricted computer software and are identified as follows:

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b. "Limited rights data" and "restricted computer software" are defined in the contract clauses entitled *Rights in Technical Data* and *Rights in Computer Software*.

**Provision 8-3 Use of Limited Rights Data for Purchase of Repair Parts (January 1997)** (8.3.2)

The Postal Service has determined that it may use competitive procedures to procure repair parts and assemblies for the equipment or supply items being developed or manufactured under this contract. The *Rights in Technical Data* clause in this solicitation has therefore been modified to provide that limited rights data furnished under any contract resulting from this solicitation may be used for the purpose of competitive purchasing.

**Provision 8-4 Royalty Report (January 1997)** (8.3.9)

Offerors must include in their proposals a report of any patent royalties or license fees that they expect to pay in connection with performance of any contract resulting from this solicitation. The report must include the following:

- a. Identification of patent, license agreement, and so forth.
- b. Reason for payment of royalty or license fee.
- c. Payee and amount payable.
- d. Rights obtained.

**Provision 9-1 Equal Opportunity Affirmative Action Program (January 1997)** (9.7.9)

The offeror, by checking the applicable block or blocks, represents that it (1) \_\_\_ has developed and has on file, \_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) and \_\_\_ has, \_\_\_ has not filed the required reports with the Joint Reporting Committee, or (2) \_\_\_ has not previously had contracts subject to the written affirmative action program requirement of the rules and regulations of the Secretary of Labor.

**Provision 9-2 Preaward Equal Opportunity Compliance Review (January 1998)** (9.7.9)

If the contract award will be \$10 million or more, the prospective supplier and its known first-tier subcontractors with subcontracts of \$10 million or more will be subject to a preaward compliance review. In order to qualify for award, the prospective supplier and first-tier subcontractors must be found in compliance pursuant to 41 CFR 60-1.20.

**Provision 9-3 Notice of Requirements for Equal Opportunity Affirmative Action (January 1997)** (9.7.9)

- a. The offeror's attention is called to the *Equal Opportunity* clause and the *Affirmative Action Compliance Requirements for Construction* clause.
- b. The goals for minority and female participation, expressed in percentage terms for the supplier's aggregate workforce in each trade on all construction work in the covered area, are as follows:
 

Goals for minority participation for each trade

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(Contracting officer insert goals.)

Goals for female participation for each trade

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(Contracting officer insert goals.)
- c. These goals apply to all the supplier's construction work performed in the covered area. If the supplier performs construction work in a geographical area located outside the covered area, the supplier must apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from the Office of Federal Contract Compliance Programs (OFCCP).

- d. The supplier's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 must be based on (1) its implementation of the *Equal Opportunity* clause, (2) specific affirmative action obligations required by the *Affirmative Action Compliance Requirements for Construction* clause, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The supplier must make a good-faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from supplier to supplier, or from project to project, for the sole purpose of meeting the supplier's goals will be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.
- e. The supplier must provide written notification to the Director, OFCCP, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification must list the:
  - (1) Name, address, telephone number, and employer's identification number of the subcontractor;
  - (2) Estimated dollar amount of the subcontract;
  - (3) Estimated starting and completion dates of the subcontract; and
  - (4) Geographical area in which the subcontract is to be performed.
- f. As used in this notice, and in any contract resulting from this solicitation, the covered area is (*Contracting officer insert description of the geographical area where the contract is to be performed, giving the state, county, and city*).

Appendix B

**Contract Clauses**

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## Appendix B

# Contract Clauses

## B.1 General

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### B.1.1 Introduction

This Appendix sets forth the general clauses to be included in solicitations and contracts and clauses that (1) may be included at the discretion of the purchase team or (2) must be included due to the type of contract used, the commodity being purchased, or due to other policies, laws or Executive Orders discussed in *Purchasing Manual* Chapters 1 through 9. Special clauses may be prescribed and set forth in handbooks or directives implementing or supplementing this manual (see 1.1.1.b).

### B.1.2 Numbering of Clauses

*Purchasing Manual* clauses are numbered by the *Purchasing Manual* chapter in which their use is discussed. Thus Clause 8-6, *Rights in Technical Data*, is prescribed in Chapter 8. Some clauses are not discussed in PM Chapters 1 through 9 or are discussed as alternates to the term and conditions contained in Clause 4-1, *General Terms and Conditions*, but are included in this Appendix and may be used in contracts as deemed appropriate by the purchase team; these clauses are identified by a “B” prefix. In addition, clauses unique to design and construction and mail transportation highway contracts are also included, and these are also identified by the “B” prefix. In parentheses to the right of the clause title is a reference to the chapter, section, and part where the clause is discussed.

## B.2 Basic Contract Clauses

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### B.2.1 **Clause 4-1, General Terms and Conditions; Modifications of Clauses**

Clause 4-1, *General Terms and Conditions*, contains the basic terms and conditions of Postal Service contracts. Its terms and conditions are modeled on those used in the private sector, and are intended to minimize administrative effort, thereby reducing costs. As discussed in 4.2.7.d, and subject to the restrictions in 1.3.1, these terms and conditions may be modified, added to, or supplemented as required. In addition, subject to 4.2.7.d, 1.3.1, and B.2.2 below, the other clauses in this Appendix may be modified, added to, or supplemented when doing so would ensure the success of the purchase. Assigned counsel must be consulted before modifying, adding to or supplementing PM clauses, and purchase teams should remember that less onerous terms and conditions usually result in lower overall cost.

### B.2.2 **Clause 4-2, Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders**

Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes, or Executive Orders*, contains several clauses, some of which are incorporated by reference, enforcing certain policies, statutes or Executive Orders applicable to Postal Service contracts. Clause 4-2 also contains a series of clauses which, depending on the nature of the purchase, may apply to a given contract, and which are checked-off by the contracting officer when they do. Neither Clause 4-2 nor any of the clauses incorporated by reference in it may be modified or replaced unless (1) a deviation has been granted (see 1.3.1.b) or the PM discussion of the clause provides instructions for such action (see, for example, PM 9.3.2 regarding exceptions granted by the Secretary of Labor).

## B.3 Clauses

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**Clause B-1 Definitions (January 1997)** (B.1.2)

As used in this contract, the following terms have the following meanings:

- a. *Contracting officer.* The person executing this contract on behalf of the Postal Service, and any other officer or employee who is a properly designated contracting officer; the term includes, except as otherwise provided in the contract, the authorized representative of a contracting officer acting within the limits of the authority conferred upon that person.
- b. *Subcontracts.* Except as otherwise provided in the contract, the term includes purchase orders under this contract.

**Clause B-2 (Reserved)****Clause B-3 Contract Type (January 1997)** (B.1.2)

This is a \_\_\_\_\_ contract.  
(Insert type of contract)

**Clause B-4 Variation in Quantity (January 1997)** (B.1.2)

- a. No variation in the quantity of any item called for by this contract will be accepted unless caused by conditions of loading, shipping, or packing, or allowances in the manufacturing process, and then only to any extent specified elsewhere in the contract.
- b. The supplier is responsible for delivering each item quantity within any allowable variations. If the supplier delivers, and the Postal Service receives, quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), these excess quantities will be treated as being delivered for the supplier's convenience.
- c. The Postal Service may retain excess quantities up to \$100 in value without compensating the supplier for them, and the supplier waives all right, title, or interests in them. Quantities in excess of \$100 will, at the option of the Postal Service, either be returned at the supplier's expense or retained and paid for at the contract unit price.
- d. If this contract calls for deliveries at different times, this clause applies to each delivery rather than to the aggregate of all deliveries under the contract.



**Clause B-5 Certificate of Conformance (January 2000)** (B.1.2)

- a. When authorized in writing by the contracting officer, the supplier may use a Certificate of Conformance for supplies or services that would otherwise require inspection. The right of inspection under the inspection provisions of this contract is not prejudiced by this procedure.
- b. The supplier's signed certificate must be attached to the inspection or receiving report.
- c. The Postal Service has the right to reject defective supplies or services within a reasonable time after delivery, by written notification to the supplier. The supplier must promptly replace, correct, or repair the rejected supplies or services at the supplier's expense.
- d. "I certify that on *(supplier insert date)*, the \_\_\_\_\_ *(insert supplier's name)* furnished the supplies called for by Contract No. *(supplier check which is applicable)* by shipment via \_\_\_\_\_ *(carrier)* on \_\_\_\_\_ *(identify the bill of lading or shipping document)* or \_\_\_\_\_ by placing them in local inventory. I further certify that the supplies are of the quality specified and conform in all respects with the contract requirements."

Date of Execution:

Signature:

Title:

**Clause B-6 (Reserved)****Clause B-7 Responsibility for Supplies (January 1997)** (B.1.2)

Except as otherwise provided in this contract:

- a. The supplier is responsible for the supplies covered by the contract until they are delivered at the designated delivery point, regardless of the point of inspection;
- b. After delivery and before Postal Service acceptance or rejection and notification, the Postal Service is responsible for loss or destruction of or damage to the supplies only if it results from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment; and
- c. The supplier bears all risks as to rejected supplies after notice of rejection, except that the Postal Service is responsible for loss, destruction, or damage resulting from the negligence of officers, agents, or employees of the Postal Service acting within the scope of their employment.

**Clause B-8 (Reserved)****Clause B-9 Claims and Disputes (January 1997)** (B.1.2)

- a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (“the Act”).
- b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.
- c. “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the supplier seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d.2 below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount is not acted upon in a reasonable time.
- d.
  - (1) A claim by the supplier must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the supplier is subject to a written decision by the contracting officer.
  - (2) For supplier claims exceeding \$100,000, the supplier must submit with the claim the following certification:

“I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the supplier believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the supplier.”
  - (3) The certification may be executed by any person duly authorized to bind the supplier with respect to the claim.
- e. For supplier claims of \$100,000 or less, the contracting officer must, if requested in writing by the supplier, render a decision within 60 days of the request. For supplier-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the supplier of the date by which the decision will be made.
- f. The contracting officer’s decision is final unless the supplier appeals or files a suit as provided in the Act.

- g. When a claim is submitted by or against a supplier, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in d(2) of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.
- h. The Postal Service will pay interest in the amount found due and unpaid from:
  - (1) The date the contracting officer receives the claim (properly certified, if required); or
  - (2) The date payment otherwise would be due, if that date is later, until the date of payment.
- i. Simple interest on claims will be paid at a rate determined in accordance with the *Interest* clause.
- j. The supplier must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

**Clause B-10 Pricing of Adjustments (January 1997)** (B.1.2)

When costs are a factor in determining any contract price adjustment under the *Changes* clause or any other provision of this contract, Chapter 5 of the *USPS Purchasing Manual* in effect on the date of this contract will serve as a guide in negotiating the adjustment.

**Clause B-11 (Reserved)**

**Clause B-12 Termination for Convenience or Default (January 1997)** (B.1.2)

- a. Performance under this contract may be terminated by the Postal Service in whole or in part whenever:
  - (1) The supplier defaults in performing this contract (including in the term “default” any refusal or failure to prosecute the work diligently enough to ensure its completion within the time specified or any extension), and fails to cure the default within 10 days (or for a longer period as the contracting officer may allow) after receipt from the contracting officer of a notice specifying the default; or

- (2) The contracting officer determines that termination is in the best interests of the Postal Service. A termination may be effected by delivery to the supplier of a notice of termination specifying whether the termination is for default or for the convenience of the Postal Service, the extent of work terminated, and the effective date of the termination. If, after notice of termination for default under subparagraph a.1 above, it is determined that the supplier was not in default or that the delay was excusable, the notice of termination will be deemed to have been issued for the convenience of the Postal Service.
- b. Upon receipt of a notice of termination, unless otherwise directed by the contracting officer, the supplier must take the following actions:
- (1) Stop work under the contract to the extent specified in the notice.
  - (2) Place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the unterminated work.
  - (3) Terminate all orders and subcontracts to the extent that they relate to the work terminated.
  - (4) Assign to the Postal Service, as directed by the contracting officer, all right, title, and interest of the supplier under the orders and subcontracts terminated. The Postal Service has the right, in its discretion, to settle or pay claims arising out of these terminations.
  - (5) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the contracting officer. The contracting officer's decision is final for the purposes of this clause.
  - (6) Transfer title to the Postal Service and deliver as directed by the contracting officer:
    - (a) Work in process, completed work, and other material produced as a part of or acquired for the work terminated; and
    - (b) The completed or partially plans, drawings, information, and other property that, if the contract had been completed, would have been furnished to the Postal Service.
  - (7) Use its best efforts to sell as directed by the contracting officer any property of the types referred to in subparagraph b.6 above, provided that the supplier may acquire property under the conditions prescribed and at prices approved by the contracting officer, and the proceeds of any such transfer will be applied in reduction of any payments to be made by the Postal Service to the supplier, or be credited to the price or cost of the work covered by this contract or paid in any manner directed by the contracting officer.
  - (8) Complete performance of the work not terminated.
  - (9) Take any action that may be necessary, or that the contracting officer may direct, for protecting and preserving any property related to this contract that is in the possession of this supplier and in which the Postal Service has or may acquire an interest.

- c. At any time, the supplier may submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not disposed of and may request the Postal Service to remove inventory items or enter into a storage agreement covering them. Not later than 15 days after receiving this request, the Postal Service will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the contracting officer upon removal of the items or, if the items are stored, within 45 days after submission of the list.
- d. After termination, the supplier must submit to the contracting officer a termination claim in the form and with the certification prescribed by the contracting officer. The claim must be submitted promptly, but in no event more than 180 days after the effective date of termination, unless an extension in writing is granted by the contracting officer. However, if the contracting officer determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 180-day period. Upon failure of the supplier to submit a termination claim within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the supplier by reason of the termination and will pay that amount.
- e. Subject to the provision of paragraph d above, the supplier and the contracting officer may agree upon the whole or any part of the amount to be paid (including and allowance for the fee) to the supplier by reason of the termination.
- f. If the supplier and the contracting officer fail to agree on the amount with respect to cost or fee, the contracting officer will determine, on the basis of information available, the amount, if any, due the supplier and pay the supplier as follows:
  - (1) If the settlement includes cost and fee:
    - (a) All costs and expenses reimbursable in accordance with this contract, not previously paid to the supplier and such as may continue for a reasonable time after termination;
    - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders;
    - (c) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims, together with reasonable storage, transportation, and other costs incurred in connection with protecting or disposing of the termination inventory (however, if the termination is for default, there must not be included any amount for the preparation of the supplier's settlement proposal); and

- (d) A portion of the fee payable under the contract, determined as follows:
  - (i) In the event of termination for convenience, a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractor's termination claims, less fee payments previously made; or
  - (ii) In the event of termination for default, that proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles accepted bears to the total number of articles of a like kind called for by this contract. If the amount determined under this subparagraph (2) is less than the total payment already made to the supplier, the supplier must repay to the Postal Service the excess.
- (2) If the settlement includes only the fee, its amount will be determined in accordance with f.1(d) above.
- g. Costs claimed, agreed to, or determined pursuant to paragraphs c, d, and e above must be in accordance with Chapter 5 of the USPS *Purchasing Manual* in effect on the effective date of termination. The final settlement is limited as provided in the *Limitation of Cost* clause of this contract.
- h. The supplier has the right of review, under the *Claims and Disputes* clause, of any determination made by the contracting officer under paragraph d or f above, except that if the supplier fails to request an extension of time, the supplier will have no right of review. In any case where the contracting officer determines the amount due under paragraph d or f above, the Postal Service must pay to the supplier the following:
  - (1) If there is no right of review under this clause or if no timely review has been taken, the amount determined by the contracting officer; or
  - (2) If a review has been taken, the amount finally determined.
- i. There will be deducted:
  - (1) All unliquidated advance or other payments made to the supplier applicable to the terminated portion of this contract;
  - (2) Any claim the Postal Service may have against the supplier; and
  - (3) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the supplier or sold in accordance with this clause.
- j. If the termination is partial, the portion of the fee payable for the continued portion of the contract must be equitably adjusted by agreement between the supplier and the contracting officer.

- k. The Postal Service may, under the terms and conditions it may prescribe, make partial payments against costs incurred by the supplier in connection with the terminated portion of the contract whenever, in the opinion of the contracting officer, the aggregate of the partial payments is within the amount to which the supplier will be entitled. If the total of these payments exceeds the amount finally determined to be due under this clause, the excess must be repaid to the Postal Service upon demand, together with interest calculated in accordance with the *Interest* clause of this contract, for the period from the date the excess payment is received by the supplier to the date on which the excess is repaid to the Postal Service. However, no interest will be charged with respect to an excess payment attributable to a reduction in the supplier's claim by reason of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition.

**Clause B-13 (Reserved)**

**Clause B-14 (Reserved)**

**Clause B-15 Notice of Delay (January 1997)** (B.1.2)

Immediately upon becoming aware of any difficulties that might delay deliveries under this contract, the supplier will notify the contracting officer in writing of them. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give notice may preclude later consideration of any request for an extension of contract time.

**Clause B-16 Suspensions and Delays (January 1997)** (B.1.2)

- a. If the performance of all or any part of the work of this contract is suspended, delayed, or interrupted by:
- (1) An order or act of the contracting officer in administering this contract; or

- (2) By a failure of the contracting officer to act within the time specified in this contract — or within a reasonable time if not specified — an adjustment will be made for any increase in the cost of performance of this contract caused by the delay or interruption (including the costs incurred during any suspension or interruption). An adjustment will also be made in the delivery or performance dates and any other contractual term or condition affected by the suspension, delay, or interruption. However, no adjustment may be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the supplier, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- b. A claim under this clause will not be allowed:
    - (1) For any costs incurred more than 20 days before the supplier has notified the contracting officer in writing of the act or failure to act involved; and
    - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

**Clause B-17 Disallowance of Costs (January 1997)** (B.1.2)

- a. The contracting officer may at any time issue the supplier a written notice of intent to disallow specified costs under this contract that have been determined not to be allowable under the contract terms.
- b. The supplier may, after receiving a notice of intent to disallow costs, submit a written response to the contracting officer, with justification for allowance of the costs. If the supplier does respond within 60 days, the contracting officer will, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

**Clause B-18 Subcontracts (January 1997)** (B.1.2)

- a. Subcontract, as used in this clause, includes, but is not limited to, purchase orders and changes and modifications to purchase orders. The supplier must notify the contracting officer reasonably in advance of entering into any subcontract if the supplier does not have a purchasing system approved by a federal government agency and if the subcontract:
  - (1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed \$25,000 including any fee;
  - (2) Is proposed to exceed \$100,000; or



- (3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that in the aggregate is expected to exceed \$100,000.
- b. The advance notification required by paragraph a above must include:
  - (1) A description of the supplies or services to be subcontracted;
  - (2) Identification of the type of subcontract to be used;
  - (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
  - (4) The proposed subcontract price and the supplier's cost or price analysis;
  - (5) The subcontractor's current, complete, and accurate cost or pricing data if required by other contract provisions; and
  - (6) A negotiation memorandum reflecting:
    - (a) The principal elements of the subcontract price negotiations;
    - (b) The most significant consideration controlling establishment of initial or revised prices;
    - (c) The reason cost of pricing data were or were not required;
    - (d) The extent, if any, to which the supplier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (e) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the supplier and subcontractor; and the effect of any such defective data on the total price negotiated;
    - (f) The reasons for any significant differences between the supplier's price objective and the price negotiated; and
    - (g) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation must identify each critical performance element, management decisions used to quantify each incentive element, reasons for incentives, and a summary of all trade-off possibilities considered.
- c. The supplier agrees to select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- d. The contracting officer may disapprove any subcontract in writing for which advance notification is required under paragraph a above.
- e. Even if the supplier's purchasing system has been approved, the supplier must obtain the contracting officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of the contract.
- f. The lack of disapproval does not constitute a determination:

- (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the acceptability of any subcontract price or of any amount paid under any subcontract; or
  - (3) To relieve the supplier of any responsibility for performing this contract.
- g. No subcontract under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

**Clause B-19 Excusable Delays (January 1997)**

(B.1.2)

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure by the supplier to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either of them, the supplier will not be deemed to be in default, unless:
  - (1) The supplies or services to be furnished by the subcontractor are obtainable from other sources;
  - (2) The contracting officer orders the supplier in writing to procure the supplies or services from other sources; and
  - (3) The supplier fails to comply reasonably with the order.
- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

**Clause B-20 Invoices (January 1997)**

(B.1.2)

- a. The supplier's invoices must be submitted before payment can be made.

- b. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
  - (1) Any services being billed for have been performed in accordance with the contract requirements; and
  - (2) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with shipping instructions issued by the contracting officer in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the contract.
- c. To ensure prompt payment, an invoice must be submitted for each destination and each shipment. Each invoice must contain:
  - (1) The supplier's name and address;
  - (2) The contract number;
  - (3) Any applicable task or delivery order number;
  - (4) A description of the supplies or services and the dates delivered or performed;
  - (5) The point of shipment or delivery;
  - (6) Any applicable unit prices and extensions;
  - (7) Shipping and payment terms; and
  - (8) Any additional information required by the contract.

**Clause B-21 Change-Order Accounting (January 1997)** (B.1.2)

The contracting officer may require change-order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The supplier, for each change or series of related changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) or work, both changed and not changed, allocable to the change. The supplier will maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the contracting officer or the matter is finally disposed of in accordance with the *Claims and Disputes* clause.

**Clause B-22 Interest (January 1997)** (B.1.2)

The Postal Service will pay interest on late payments and unearned prompt payment discounts in accordance with the Prompt Payment Act, 31 U.S.C. 3901 *et. seq.*, as amended by the Prompt Payment Act Amendments of 1988, P.L. 100-496.

**Clause B-23 Guaranteed Shipping Weight (January 1997)** (B.1.2)

- a. This clause applies if this contract contains a guaranteed shipping-weight provision.

- b. The supplier is responsible for the actual weight at the time of shipment. If the shipping weight exceeds the specified guaranteed shipping weight, the supplier will be liable for any resulting excess transportation costs.
- c. The supplier must determine the excess transportation costs and deduct them from the invoice, making reference on it to the applicable bill of lading numbers.
- d. When the excess transportation costs are not known and timely notification is not made to the contracting officer for possible price adjustment, 2 percent of the invoice amount covering each shipment with excess weight may be withheld until the Postal Service can calculate the excess costs. In this case, an administrative-cost fee of \$50 per shipment will be assessed in addition to any excess transportation costs incurred.

**Clause B-24 Frequency Authorization (January 1997)** (B.1.2)

- a. Authorization of radio frequencies required in support of this contract must be obtained through the contracting officer by the supplier or subcontractor in need thereof. Frequency-management procedures prescribed in the schedule of this contract must be followed in obtaining radio frequency authorization.
- b. For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the supplier or subcontractor must provide technical operating characteristics of the proposed electromagnetic radiating device to the contracting officer during the initial planning, experimental, or developmental phases of contractual performance.
- c. This clause, including this paragraph c, must be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio-frequency authorization is required.

**Clause B-25 Advertising of Contract Awards (January 1997)** (B.1.2)

Except with the contracting officer's prior approval, the supplier agrees not to refer in its commercial advertising to the fact that it was awarded a Postal Service contract or to imply in any manner that the Postal Service endorses its products.

**Clause B-26 Protection of Postal Service Buildings, Equipment, and Vegetation (January 1997)** (B.1.2)

The supplier must use reasonable care to avoid damaging buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Postal Service installation. If the supplier fails to do so and damages any buildings, equipment, or vegetation, the supplier must replace or repair the damage at no expense to the Postal Service, as directed by the contracting officer. If the supplier fails or refuses to make repair or replacement, the supplier will be liable for the cost of repair or replacement, which may be deducted from the contract price.

**Clause B-27 Performance at Occupied Postal Premises (January 1997)** (B.1.2)

- a. In performing this contract, the supplier must:
  - (1) Comply with applicable Occupational Safety and Health Standards (29 CFR 1910) promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970;
  - (2) Comply with any other applicable federal, state, or local regulations governing work-place safety to the extent they do not conflict with a.1 above; and
  - (3) Take all other proper precautions to protect the safety and health of the supplier's employees, Postal Service employees, and the public.
- b. The supplier must coordinate its use of the premises with the installation head or other representative designated by the contracting officer. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the supplier of Postal Service tools and equipment; the furnishing by the supplier of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Postal Service employees and property.

**Clause B-28 Safety and Health Standards (January 1997)** (B.1.2)

- a. Materials, supplies, articles, or equipment manufactured or furnished under this contract or order must conform to the Occupational Safety and Health Standards (29 CFR 1910) pursuant to authority in the Occupational Safety and Health Act of 1970 (OSHA), and to other safety and health requirements specified in this contract or order.
- b. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.

- c. If this contract or order contains a Postal Service standard and an OSHA standard covering the same general area of applicability, the Postal Service standard governs and takes precedence, unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
- d. Upon delivery of the first article under the contract or order, or if none, upon delivery of the first production quantity, the supplier must execute a certification in a form acceptable to the contracting officer, attesting to the conformance of the delivered items to the requirements of this clause.

### **Clause B-29 (Reserved)**

### **Clause B-30 Permits and Responsibilities (January 1997) (B.1.2)**

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the performance of the contract. The supplier is responsible for all damage to persons or property, including environmental damage, that occurs as a result of its omission(s) or negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, the environment, and the property of others.

### **Clause B-31 (Reserved)**

### **Clause B-32 Differing Site Conditions (January 1997) (B.1.2)**

- a. The supplier must promptly, and before such conditions are disturbed, notify the contracting officer in writing of:
  - (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or
  - (2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.
- b. The contracting officer shall promptly investigate the conditions, and if such conditions do materially so differ and will cause an increase or decrease in the supplier's cost of, or the time required for, performance of any part of the work under this contract whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- c. No claim of the supplier under this clause shall be allowed unless the supplier has given the notice required in (a) above; provided however, the time prescribed thereof may be extended by the Postal Service.
- d. No claim by the supplier for an equitable adjustment under this clause will be allowed if asserted after final payment under this contract.

**Clause B-33 Inspection and Acceptance (Construction)  
(January 1997)**

(B.1.2)

- a. Except as otherwise provided in this contract, inspection and testing by the Postal Service of materials and workmanship shall be made at reasonable times and at the site of the work, unless the contracting officer determines that it shall be made at the place of production, manufacture, or shipment of such material. The contracting officer's decision shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the supplier of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Postal Service after acceptance of the completed work under the terms of paragraph f of this section.
- b. The supplier shall without charge, replace any material or correct any workmanship found by the Postal Service not to conform to the contract requirements, unless the Postal Service consents to accept such material or workmanship with an appropriate adjustment in contract price. The supplier shall promptly segregate and remove rejected material from the premises.
- c. If the supplier does not promptly replace rejected material or correct rejected workmanship, the Postal Service may, by contract or otherwise, replace or correct it and charge the cost to the supplier.
- d. The supplier must furnish (without charge) all facilities, labor, and materials needed to conduct inspections and tests as required by the contracting officer. The supplier will be charged any additional costs of inspection if material and workmanship are not ready at the time specified by the supplier for inspection.
- e. The Postal Service may examine completed work by removing or tearing it out. The supplier must replace or correct any work found not to conform to contract requirements. If work is torn out and found to comply with contract requirements, the contracting officer must make an equitable adjustment for the services provided for the inspection and replacement of the work.
- f. The Postal Service will inspect the work as soon as practicable after completion. Acceptance by an authorized Postal Service representative is conclusive except in the case of latent defects, fraud, gross mistakes amounting to fraud, or Postal Service rights under any warranty or guarantee.

**Clause B-34 Notice to Proceed and Commencement, Prosecution and Completion of Work (January 1997)** (B.1.2)

No work will be performed except pursuant to a Notice to Proceed issued by the Contracting Officer.

The supplier will be required to (a) commence work under this contract within 10 calendar days after the date the supplier receives the Notice to Proceed, (b) prosecute the work diligently, and (c) complete the entire work, ready for use not later than \_\_\_\_\_ calendar days from the date of receipt of the Notice to Proceed. The time stated for completion includes final cleanup of the premises.

**Clause B-35 Specifications and Drawings (January 1997)** (B.1.2)

- a. The supplier must keep at the site, copies of the drawings and specifications and must at all times give the contracting officer access to them. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, is of like effect as if shown or mentioned in both. In case of discrepancy or conflicts between drawings and specifications, the specifications will govern.
- b. In case of difference between small and large-scale drawings, the large-scale drawings will govern. Schedules on any contract drawing will take precedence over conflicting information on that or any other contract drawing. On any of the drawings in which a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the work.
- c. When the word "similar" appears on the drawings, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the work.
- d. In case of discrepancy either in figures, drawings, or specifications, the matter must be promptly submitted to the contracting officer, who will promptly make determination in writing. Any adjustment by the supplier without such a determination will be at the supplier's own risk and expense. The contracting officer must furnish from time to time such detailed drawings and other information as may be necessary.
- e. The supplier must verify all dimensions shown of existing work, and all dimensions required for work that is to connect with work now in place, by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions must be referred to the contracting officer before the supplier performs any work affected by these discrepancies.



**Clause B-36 Postal Service Partial Occupancy (January 1997)** (B.1.2)

- a. The contracting officer reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the project by the Postal Service. Before such occupancy or use, the contracting officer must furnish the supplier an itemized list of work remaining to be performed or corrected. Failure to list an item will not relieve the supplier of the responsibility for complying with the terms of the contract.
- b. Costs incurred as a result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment under the *Changes* clause.

**Clause B-37 Changes (Construction) (January 1997)** (B.1.2)

- a. The contracting officer may at any time, without notice to any sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Postal Service-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- b. Any other written or oral order (which, as used in this paragraph b, includes direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order only if the supplier gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the supplier regards the order as a change order. This notification must be delivered to the contracting officer within 30 days of receipt of the change order.
- c. If any change under this clause causes an increase or decrease in the supplier's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, the contracting officer will make an equitable adjustment and modify the contract in writing. However, except for claims based on defective specifications, no claim for any change under paragraph b above will be allowed for any costs incurred more than 20 days before the supplier gives written notice as required. In the case of defective specifications for which the Postal Service is responsible, the equitable adjustment will include any increased cost reasonably incurred by the supplier in attempting to comply with the defective specifications.
- d. No claim by the supplier for an equitable adjustment will be allowed if asserted after final payment under this contract.
- e. See also Clause B-10, *Pricing of Adjustments* (January 1997).

**Clause B-38 Accident Prevention (January 1997)** (B.1.2)

- a. All construction work on this project must be performed in compliance with the Occupational Safety and Health Act of 1970 or with local or state occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).
- b. The supplier will maintain an accurate record of exposure data and all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The supplier must report the exposure data and accidents as prescribed by the contracting officer.
- c. Job Safety programs are required as follows:
  - (1) Within 30 days after receiving a notice to proceed, the supplier must submit to the contracting officer, in quintuplicate, a proposed job safety program designed to provide a system by which hazards on the project site will be controlled to minimize or eliminate occupational injuries or illnesses during performance of the contract.
  - (2) The proposed job safety program must state that subcontractors are required to comply with the general supplier's job safety rules and requirements issued under the authority of that program.
  - (3) The proposed job safety program must identify, by name, the supplier's representative responsible for the execution of the job safety program.

**Clause B-39 Indemnification (January 1997)** (B.1.2)

The supplier must save harmless and indemnify the Postal Service and its officers, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability resulting from, brought for, or on account of any personal injury or property damage received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this contract, resulting in whole or in part from negligent acts or omissions of the supplier, any subcontractor, or any employee, agent, or representative of the supplier or any subcontractor.

**Clause B-40 Construction Cost Breakdown (January 1997)** (B.1.2)

- a. Cost breakdown with proposal:  
If required by the contracting officer, the offeror must submit with its proposal a construction cost estimated breakdown on the attached form.
- b. Cost breakdown after award:  
If required by the contracting officer, the supplier must submit, within 30 calendar days after receiving the notice to proceed, a construction cost estimated breakdown on the sample forms, and instructions, provided in Section 01040, Division 1, *General Requirements*.

**Clause B-41 Conditions Affecting the Work (January 1997)** (B.1.2)

The supplier is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or its costs. Any failure by the supplier to have done so does not relieve the supplier from responsibility for successfully performing the work without additional expense to the Postal Service. The Postal Service assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents before execution of this contract, unless such understanding or representations by the Postal Service are expressly stated in the contract.

**Clause B-42 Performance of Work by Supplier (January 1997)** (B.1.2)

The supplier must perform on the site, with its own organization, work equivalent to at least \_\_\_\_\_ percent of the total amount of work to be performed under this contract. The percentage of work required to be performed by the supplier may be reduced with written approval of the contracting officer.

**Clause B-43 Superintendence by Supplier (January 1997)** (B.1.2)

The supplier must give personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the contracting officer, on the work at all times during progress, with authority to act for the supplier.

**Clause B-44 Use of Premises (January 1997)** (B.1.2)

- a. If the premises are occupied, the supplier, any subcontractors, and their employees must comply with the regulations governing access to, operation of, and conduct while on the premises and must perform the work required under this contract so as not to unreasonably interfere with the conduct of Postal Service business or use and occupancy by Postal Service tenants.
- b. Any requests received by the supplier from occupants to change the sequence of work must be referred to the contracting officer for determination.
- c. The supplier, any subcontractors, and their employees will not have access to any building outside the scope of this contract, without permission of the contracting officer.

**Clause B-45 Other Contracts (January 1997)** (B.1.2)

The Postal Service may award other contracts for additional work, and the supplier must cooperate fully with the other suppliers and Postal Service employees and carefully fit in its own work as may be directed by the contracting officer. The supplier must not commit or permit any act that will interfere with the performance of work by any other supplier or by Postal Service employees.

**Clause B-46 Subcontracts (Construction) (January 1997)** (B.1.2)

- a. Nothing in this contract may be construed to create any contractual relationship between any subcontractors, and the Postal Service. The divisions or sections of the specifications are not intended to control the supplier in dividing the work among subcontractor or to limit the work performed by any trade.
- b. The supplier is responsible to the Postal Service for acts and omissions of its own employees and of subcontractors and their employees. The supplier is also responsible for the coordination of the work of the trades, subcontractors, and suppliers.
- c. The Postal Service will not undertake to settle any differences among the supplier, subcontractors, or suppliers.

**Clause B-47 Permits and Responsibilities (Construction) (January 1997)** (B.1.2)

The supplier is responsible, without additional expense to the Postal Service, for obtaining any necessary licenses and permits, and for complying with any applicable federal, state, and municipal laws, codes, and regulations in connection with the prosecution of the work. The supplier is responsible for all damage to persons or property that occurs as a result of its negligence. The supplier must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The supplier is responsible also for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction that may have been accepted.

**Clause B-48 Payment (Construction) (January 1997)** (B.1.2)

- a. The Postal Service will make progress payments monthly or at more frequent intervals as determined by the contracting officer. Bond costs may be included in the supplier's estimates without proration. Before the first progress payment becomes due, the supplier must prepare a breakdown of the contract price acceptable to the contracting officer. The values in the breakdown will be used for determining progress payments. The supplier's overhead and profit must be prorated through the life of the contract.

- b. If the contract price is more than \$50,000, material delivered that will be incorporated into the structure may be taken into consideration in computing progress payments. Before each payment is made, the supplier must furnish to the contracting officer proof of the quantity, value, and delivery of materials.
- c. In making progress payments, the contracting officer will ordinarily retain ten percent of the progress payments earned. However, if the contracting officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, the contracting officer may authorize payment in full of all progress payment earned. Also, if the contracting officer considers the amount retained to be in excess of that adequate for the protection of the Postal Service, the contracting officer may release to the supplier all or a portion of the excess whenever the work is substantially complete. On completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention.
- d. All material and work covered by progress payments will be the sole property of the Postal Service. However, this paragraph d does not (1) relieve the supplier of responsibility for all material and work for which payment has been made or for restoration of any damaged work or (2) waive the right of the Postal Service to require fulfillment of all the contract terms.
- e. Before receiving a progress payment or final payment under this contract, the supplier must certify to the contracting office that payment due subcontractors or suppliers under contractual arrangements with them has been made from the proceeds of prior payments or will be made in timely fashion from the payment then due the supplier.
- f. Upon completion and acceptance of all work, the amount due the supplier under this contract must be paid upon the presentation of a properly executed invoice, after the supplier has furnished the Postal Service with a release of all claims against the Postal Service arising by virtue of this contract, other than claims in stated amounts that must be specifically excepted by the supplier from the operation of the release. If the supplier's claim to amounts payable under the contract has been assigned as provided in the *Assignment of Claims* clause, a release may also be required of the assignee.

**Clause B-49 Building Codes, Fees, and Charges (January 1997)** (B.1.2)

- a. State and local building codes and regulations do not apply as a matter of law to work inside the property lines of Postal Service-owned properties but generally do apply to Postal Service-leased properties. In compliance with Postal Service policy, the supplier must comply with all state and local building code requirements unless otherwise specifically provided.
- b. The supplier must pay all fees and charges for connections to outside services and for use of property outside the site.

**Clause B-50 Protection of Existing Vegetation, Structures, Utilities, and Improvements (January 1997)** (B.1.2)

- a. The supplier will preserve and protect all existing vegetation (such as trees, shrubs, and grass) and structures on or adjacent to the site of work that are not to be removed and that do not unreasonably interfere with the construction work. Care will be taken in removing trees authorized by the contracting officer for removal, to avoid damage to vegetation that will remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, will be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the contracting officer.
- b. The supplier will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is or should have been known, and will repair or restore any damage to these facilities resulting from failure to comply with the requirements of this contract or to exercise reasonable care in performing the work. If the supplier fails or refuses to repair any such damage promptly, the contracting officer may have the necessary work performed and charge the cost to the supplier.

**Clause B-51 Heat (January 1997)** (B.1.2)

Unless otherwise specified, or unless directed otherwise by the contracting officer, the supplier must:

- a. Provide heat as necessary to protect all work materials and equipment against injury from dampness and cold;
- b. Protect, cover, and/or heat, as may be necessary to produce and maintain a temperature of not less than 50 degrees Fahrenheit in the concrete during the placing, setting, and curing of concrete, and in the plaster during the application, setting, and curing of plaster; and
- c. Provide heat as necessary to produce in the area where the work is to be done a temperature of not less than 70 degrees Fahrenheit for the period beginning 10 days before the placing of interior finishes and finish materials and continuing until completion of beneficial occupancy of the area.

**Clause B-52 Debris and Cleanup (January 1997)** (B.1.2)

- a. The supplier must, during the progress of the work, remove and dispose of the resultant dirt and debris and keep the premises clean.
- b. The supplier will, upon completion of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain Postal Service property as provided by this contract), and leave the premises in a clean, neat, and orderly condition satisfactory to the contracting officer.

**Clause B-53 Survey Monuments and Bench Marks  
(January 1997)**

(B.1.2)

- a. The Postal Service has established, or will establish, such general reference points as will enable the supplier to proceed with the work. The supplier will provide new monuments where shown or specified. If the supplier finds that any previously established reference points have been destroyed or displaced, or that none has been established, the supplier must promptly notify the contracting officer.
- b. The supplier must protect and preserve established bench marks and monuments and make no changes in locations without the written approval of the contracting officer. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the work under this contract, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the contracting officer) be replaced and accurately located or relocated (as appropriate) at the supplier's expense, by a licensed engineer or licensed land surveyor.
- c. New monuments will be 6 inches square by 3 feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
- e. The supplier must verify the figures shown on the survey and site plan before undertaking any construction work and will be responsible for the accuracy of the finished work.
- f. After completion of construction and before final payment, the supplier must furnish the Postal Service blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

**Clause B-54 (Reserved)****Clause B-55 Standard References (January 1997)**

(B.1.2)

- a. All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in the contract as fully as if printed and bound with the specifications of this contract, in accordance with the following:

- (1) Wherever reference is made to standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the supplier must comply with the requirements set forth in the issue or edition identified in this contract except as modified or as otherwise provided in the specifications.
  - (2) Wherever reference is made to any document other than those specified in subparagraph a.1 above, the supplier must comply with the requirements set forth in the edition specified in this contract or, if not specified, the latest edition or revision, as well as the latest amendment or supplement in effect on the date of the solicitation except as modified by the specifications of this contract.
- b. Federal Specifications, Federal Standards, and Standard Specifications of the Public Buildings Service can be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards," "Product Standards," and "Simplified Practice Recommendations" should be addressed to:
- OFFICE OF PRODUCT STANDARDS  
NATIONAL BUREAU OF STANDARDS  
WASHINGTON DC 20234-0001
- Publications of associations referred to in the specifications can be obtained directly from the associations.
- c. Upon request, the supplier must make available at the job site, within a reasonable time, a copy of any trade manual or standard incorporated by reference in this contract that governs quality and workmanship.

**Clause B-56 Shop Drawings, Coordination Drawings,  
and Schedules (January 1997)**

(B.1.2)

- a. The supplier will submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the contracting officer, as follows:
  - (1) Shop drawings will include fabrication, erection, and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
  - (2) Drawings and schedules, other than catalogs, pamphlets, and similar printed material, must be submitted in reproducible form with two prints made by a process approved by the contracting officer. Upon approval, the reproducible form will be returned to the supplier which must furnish the number of additional prints, not to exceed ten required by the Special Conditions of the specifications. The supplier must submit shop drawings in catalog, pamphlet, and similar printed form in a minimum of four copies plus as many additional copies as the supplier may desire or need or for use by subcontractors.



- b. Before submitting shop drawings on the mechanical and electrical work, the supplier must obtain the contracting officer's approval of lists of mechanical and electrical equipment and materials as required by the specifications.
- c. The supplier will check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of the supplier's approval may be returned for resubmission.
- d. Each shop drawing or coordination drawing must have a blank area of 5 by 5 inches, located adjacent to the title block. The title block must display:
  - (1) Number and title of drawing;
  - (2) Date of drawing or revision;
  - (3) Name of project building or facility;
  - (4) Name of supplier and (if appropriate) of subcontractor submitting drawing;
  - (5) Clear identity of contents and location on the work; and
  - (6) Project title and contract number.
- e. Unless otherwise provided in this contract, or otherwise directed by the contracting officer, shop drawings, coordination drawings, and schedules must be submitted to the contracting officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit at least 10 working days for checking and appropriate action.
- f. Except as otherwise provided in paragraph g below, approval of drawings and schedules will be general and may not be construed as:
  - (1) Permitting any departure from the contract requirements;
  - (2) Relieving the supplier of responsibility for any errors, including details, dimensions, and materials; or
  - (3) Approving departures from full-size details furnished by the contracting officer.
- g. If drawings or schedules show variations from the contract requirements because of standard shop practice or for other reasons, the supplier must describe the variations in the letter of transmittal. If acceptable, the contracting officer may approve any or all variations and issue an appropriate change order. If the supplier fails to describe these variations, it will not be relieved of the responsibility for executing the work in accordance with the contract, even though the drawings or schedules have been approved.

**Clause B-57 Record “As Built” Drawings (January 1997)** (B.1.2)

- a. The supplier must, during the progress of the work, keep a master set of prints on the job site, on which is kept a careful and neat record of all deviations from the contract drawings prepared by the architect-engineer made during the course of the work.
- b. Upon completion of the project, these “as built” prints must be certified as to their correctness by the signature of the supplier and turned over to the architect-engineer for use in preparing a permanent set of “as built” drawings.

**Clause B-58 Spare-Parts Data (January 1997)** (B.1.2)

- a. The supplier must furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the contract; and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 180 days at the particular installation.
- b. The foregoing does not relieve the supplier of any responsibilities under the guarantees specified.

**Clause B-59 Construction Progress Chart (January 1997)** (B.1.2)

- a. Within 30 days after receiving notice to proceed, the supplier must prepare and submit to the contracting officer for approval six copies of a practical progress chart. The chart must show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the supplier proposes to carry on the work, the date on which it will start each category of work, and the contemplated dates for completion. The chart must be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. At the end of each progress payment period, or at such intervals as directed by the contracting officer, the supplier must:
  - (1) Adjust the chart to reflect any changes in the contract work, completion time, or both, as approved by the contracting officer;
  - (2) Enter on the chart the total percentage of work actually in place; and
  - (3) Submit three copies of the adjusted chart to the contracting officer.

- b. If in the opinion of the contracting officer the work actually in place falls behind that scheduled, the supplier must take such action as necessary to improve progress. The contracting officer may require the supplier to submit a revised chart demonstrating its program and proposed plan to make up lag in scheduled progress and to ensure completion of work within the contract time. If the contracting officer finds the proposed plan unacceptable, the supplier may be required to submit a new plan. If a satisfactory plan is not agreed upon, the contracting officer may require the supplier to increase the work force, the construction plan and equipment, or the number of work shifts, without additional cost to the Postal Service.
- c. Failure of the supplier to comply with these requirements will be considered grounds for determination by the contracting officer that the supplier is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

#### **Clause B-60 (Reserved)**

#### **Clause B-61 Warranty (Construction) (January 1997)** (B.1.2)

- a. Unless otherwise provided in the specifications, the supplier warrants that all work is in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for one year after the date of final acceptance under this contract.
- b. If, within the warranty period, the contracting officer finds that warranted work needs to be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in accordance with the contract terms, the supplier must promptly and without additional expense to the Postal Service:
  - (1) Place in a satisfactory condition all of the warranted work;
  - (2) Satisfactorily correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory work; and
  - (3) Satisfactorily correct any work, materials, or equipment disturbed in fulfilling the warranty.
- c. Should the supplier fail to proceed promptly in accordance with the warranty, the Postal Service may have the work performed at the supplier's expense.
- d. The supplier must obtain each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of the business or trade. The supplier must obtain and furnish to the Postal Service all information required to make any such guarantee or warranty legally binding and effective, and must submit both the information and the guarantee or warranty to the Postal Service in sufficient time to permit the Postal Service to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all work under this contract.

**Clause B-62 Samples (January 1997)**

(B.1.2)

- a. After contract award, the supplier must furnish samples required by the specifications or by the contracting officer, for the contracting officer's approval. They must be delivered to the contracting officer or to the architect as specified or as directed. The supplier must prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the work until the contracting officer approves in writing.
- b. Each sample must be labeled to show:
  - (1) Name of project building or facility, project title, and contract number;
  - (2) Name of supplier and (if appropriate) subcontractor;
  - (3) Identification of material or equipment, with specification requirement;
  - (4) Place of origin; and
  - (5) Name of producer and brand (if any).
- c. Samples of finish materials must have additional markings that will identify them under the finish schedules.
- d. The supplier must mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraphs b and c above. The supplier must also enclose a copy of that letter with the shipment and send a copy to the Postal Service representative on the project. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any contract requirement. Substitutions are not permitted unless approved in writing by the contracting officer.
- e. Approved samples not destroyed in testing will be sent to the Postal Service representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the supplier's expense if the supplier so requests at the time of submission.
- f. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material. The Postal Service reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service.
- g. Samples of materials or equipment delivered on the site or in place may be taken by the Postal Service representative for testing. Failure of a sample to meet contract requirements will automatically void previous approvals of the item tested. The supplier must replace materials or equipment found not to have met contract requirements, or there will be a proper adjustment of the contract price as determined by the contracting officer.

- h. Except as otherwise specified, if tests are called for in the specifications, the supplier must pay all costs of these tests. When tests are not specifically called for in the specifications but are required by the Postal Service, the Postal Service will pay all costs of the tests and related engineering services unless the tests indicate that the workmanship or materials used by the supplier are not in conformance with drawings, specifications, approved shop drawings, or the approved materials. In this event, the supplier must pay for the tests, remove all work and material failing to conform, and replace with work and materials in full conformity. All tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the contracting officer.

### **Clause B-63 Materials and Workmanship (January 1997)**

(B.1.2)

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the work must be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The supplier may substitute any equipment, material, or process that the contracting officer finds to be equal to that named. To obtain approval to use a different equipment, material, or process, the supplier must furnish the contracting officer the manufacturer's name, the model number, and other identifying data and information regarding the nature and performance of the proposed substitute. If requested by the contracting officer, samples must be submitted for approval at the supplier's expense, shipping charges prepaid. Materials or processes substituted without approval may be rejected.
- b. In the event of substitution in accordance with paragraph a above, the supplier must furnish to the contracting officer for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution.
- c. The supplier must obtain the contracting officer's approval of the machinery and mechanical equipment incorporated into the work. The supplier must submit samples of all materials and equipment as directed by the contracting officer or as required by the specifications.
- d. All work must be performed in a skillful and workmanlike manner. The contracting officer may, in writing, require the supplier to remove from the work any employee the contracting officer deems incompetent, careless, or otherwise objectionable.

**Clause B-64 Accountability of the Supplier (Highway)  
(January 1997)**

(B.1.2)

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.  
  
The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except
  - (1) The supplier is not liable for its failure to perform if the failure arises out of circumstances beyond its control, and without its fault or negligence, and
  - (2) The supplier is not liable for a failure of its subcontractors to perform if the subcontractor's failure arises out of circumstances beyond the supplier or the subcontractor's control, and without the fault or negligence of either.
- c. The supplier shall faithfully account for and deliver to the Postal Service all
  - (1) Mail,
  - (2) Moneys, and
  - (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into its possession during the term of this contract.
- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment for service not rendered.

**Clause B-65 Adjustments to Compensation (January 1997)**

(B.1.2)

Contract compensation may be adjusted, from time to time, by mutual agreement of the supplier and the contracting officer.

- a. Any such adjustments shall be made in accordance with the provisions of this clause and any USPS Management Instruction governing adjustments in effect on the date of adjustment.
- b. In connection with an adjustment, the contracting officer may examine such records and books of account maintained by the supplier as the contracting officer may deem necessary.
- c. Adjustments in compensation pursuant to this clause shall be memorialized by formal amendment to the contract.

- d. Should the Postal Service introduce procedures which affect the supplier's obligations with respect to the costs of fuel or taxes, the contract price will be adjusted with respect to those costs, pro rata, without entitlement to other compensation for those adjustments, subject to the resolution of any dispute about the adjustments under the *Claims and Disputes* clause.

## Clause B-66 (Reserved)

## Clause B-67 Changes (Transportation) (January 1997)

(B.1.2)

- a. *Service Changes*
  - (1) *Minor Service Changes.* The contracting officer may, at any time, without consulting the supplier, issue orders directing an extension, curtailment, change in line of travel, revisions of route, or increase or decrease in frequency of service or number of trips and fixing an adjustment in the supplier's compensation which increases or decreases the supplier's rate of pay by no more than \$2,500. If the supplier believes the increased cost of providing the service required by the order exceeds the increase made in compensation, it may request an adjustment of compensation for the service change.
  - (2) *Other Service Changes.* Service changes other than minor service changes, including increases or decreases in compensation, may be made by mutual agreement of the contracting officer and the supplier. Such changes shall be shall be memorialized by formal amendment to the contract.
- b. *Extra Trips*
  - (1) An extra trip is an additional trip of service operated on an infrequent time basis over the same route or part as normally provided under the terms of the contract. Extra trips shall be negotiated in advance of the performance when the contracting officer deems it appropriate. However, the contracting officer may order the supplier to perform such extra service at pro rata pay. If no rate of pay for extra trips has been negotiated in advance, the supplier shall nonetheless perform such extra trips as are ordered by the contracting officer and may, on an after-the-fact basis, obtain a lump sum reimbursement for the difference between costs incurred as a direct result of performing such extra trips and pro rata payment for such trips, provided that such claims costs are adequately supported by documentary evidence furnished to the contracting officer. Claims for compensation above pro rata pay for extra trips must be filed in writing with the contracting officer, accompanied by full supporting documentation of costs, no later than 90 days after the performance of such extra trips. When the contracting officer has ordered several extra trips under a single order, the 90-day period begins on the date of performance of the last trip performed under such order. Failure to agree to such compensation above pro rata pay shall be resolved under the *Claims and Disputes* clause.

c. *Detours*

When the regular line of travel of a contract route is impassable and the supplier performs full service over another and longer line of travel, the supplier's compensation shall be equitably increased for such service; provided, however, that such increase;

- (1) Comprises at least \$1.00 (one dollar) in an Postal Accounting Period, and
- (2) Does not exceed an amount determined by multiplying the additional miles actually traveled by the rate per mile that applies to the trip on which the detour was made, determined by dividing the regular compensation for the trip by the regular number of miles.

**Note:** No payments will be made with respect to any detour not reported to the contracting officer or the contracting officer's designee within 90 days after the detoured service is performed.

d. The supplier shall proceed diligently in accordance with service changes and extra trips ordered unilaterally by the contracting officer. Disputes concerning such orders shall be resolved pursuant to the *Claims and Disputes* clause.

e. *Liquidated Damages*

- (1) If this is a Highway Transportation Contract and it is terminated for convenience due to the implementation of Delivery Point Sequence, Reclassification, Priority Mail Processing Centers, or Integrated Mail Handling Systems, without fault on the part of the supplier, liquidated damages for the termination will be established as one-twelfth of the annual rate.

In the event of a partial termination for convenience or other service curtailment for these causes, liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to the amount established above.

- (2) In all other cases, if this is a Highway Transportation Contract or a Domestic Water Transportation Contract and is terminated for convenience without fault on the part of the supplier, liquidated damages for the termination will be established as:
  - (i) One third of the annual rate (if during the first two years), or
  - (ii) One-sixth of the annual rate (if during the third year), or
  - (iii) One-twelfth of the annual rate (if during the fourth year).

In the event of a partial termination for convenience or other service curtailment liquidated damages shall be established in the same proportion as the dollar amount of the contract rate reduction bears to (i), (ii), or (iii) above (as applicable).



**Clause B-68 Changes in Corporate Ownership or Officers (January 1997)** (B.1.2)

- a. This clause applies only if the supplier is a corporation and it holds no other regular highway transportation contracts or the aggregate annual rate dollar value of any regular highway transportation contracts it holds is less than \$150,000.
- b. A principal owner is any individual, partnership, corporation, or other entity which holds 25 percent or more of the supplier's stock. Corporate officers are the President, Vice President, and Secretary.
- c. The supplier shall furnish the contracting officer, in writing, the names of its principal owners and its corporate officers before contract award, renewal or novation.
- d. Except in the case of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing not less than 30 days prior to any planned change in the principal owners or corporate officers.
- e. In the event of death or incapacity of one or more of the principal owners or corporate officers, the supplier must notify the contracting officer in writing within 30 days.

**Clause B-69 Events of Default (January 1997)** (B.1.2)

The supplier's right to perform this contract is subject to termination under the clause entitled Termination for Default. The following constitute events of default, and this contract may be terminated pursuant to that Clause.

- a. The supplier's failure to perform service according to the terms of the contract;
- b. If the supplier has been administratively determined to have violated Postal laws and regulations and other laws related to the performance of the service;
- c. Failure to follow the instructions of the contracting officer;
- d. If the supplier transfers or assigns his contract, except as authorized herein, or sublets the whole or a portion of this contract contrary to the applicable provisions of the USPS *Purchasing Manual* or without any required approval of the contracting officer;
- e. If the supplier combines to prevent others from proposing for the performance of Postal Service contracts;
- f. The supplier's failure properly to account, deliver and pay over moneys, mail and other property pursuant to this contract;
- g. If the supplier or a partner, if the supplier is a partnership, or a principal owner or corporate officer, if the supplier is a corporation, (a) has been or is, during the term of the contract, convicted of a crime of moral turpitude affecting his or her reliability or trustworthiness as a mail transportation supplier, such as any form of theft, fraud, embezzlement or assault, or (b) associates with known criminals, or (c) otherwise is not reliable, trustworthy or of good character.

- h. Any breach by the supplier or subcontractor of any warranty contained in PS Form 7465, *Transportation Services Subcontract*;
- i. If the supplier allows any employed individual to operate a vehicle in connection with this contract who has a record indicating that it would be hazardous for that individual to do so;
- j. If the supplier's transportation equipment is insufficient, inadequate, or otherwise inappropriate for the service;
- k. If the supplier employs any individual in connection with the contract contrary to the instructions of the contracting officer;
- l. If at any time the supplier, its principal owners, corporate officers or personnel are disqualified by law or regulation from performing services under this contract, and upon notice thereof, the supplier fails to remove any such disqualification;
- m. If the supplier fails to establish and maintain continuously in effect insurance as required by this contract, or fails to provide proof of insurance prior to commencement of service and thereafter as required by the contracting officer;
- n. If the supplier fails to provide any notification of a change in principal owners or corporate officers which this contract may require; or
- o. If the supplier materially breaches any other requirement or clause of this contract.

**Clause B-70 Release of Supplier (January 1997)**

(B.1.2)

- a. The contracting officer may release an individual sole-proprietor supplier from the contract for reasons of physical disability which prohibit the supplier from adequately operating the route, or which endanger the supplier's life if operation of the route continues, if:
  - (1) The supplier applies to the contracting officer for a release;
  - (2) The contracting officer determines that a release will be in the interest of the Postal Service; and,
  - (3) The Postal Service secures a new contract.
- b. A release under this clause is not a termination for convenience, and the supplier expressly waives any claim for liquidated damages for such release.

**Clause B-71 Termination for Convenience (Transportation)  
(January 1997)** (B.1.2)

The contracting officer, on 30 days written notice, may terminate this contract or the right to perform under it, in whole or in part, when such action is in the best interest of the Postal Service. When a termination is effected under this clause, in the case of a highway transportation or domestic water transportation contract, the supplier shall be paid as liquidated damages the sum provided for in the *Changes (Transportation)* clause. For any other type of surface transportation contract, the Postal Service shall not be liable for any damages for a termination effected under this clause. The liquidated damages permitted by this contract, if any, constitute the supplier's full remedy for a whole or partial termination under this clause.

**Clause B-72 Termination for Convenience — Emergency  
Contracts (January 1997)** (B.1.2)

This contract may be terminated by the Postal Service upon notice of not less than 24 hours, or by the supplier upon notice of not less than 15 days; without the allowance of any damages or extra pay in lieu of damages.

**Clause B-73 Trailer Damage (January 1997)** (B.1.2)

a. *General*

- (1) The supplier is liable for any damage to a trailer owned or leased by the Postal Service or a third party caused by a negligent act or omission of the supplier or its subcontractors.
- (2) The Postal Service shall be liable for any damage to a trailer owned or leased by the supplier caused by a negligent act or omission of the Postal Service.

b. *Minor Repairs to Trailers*

- (1) The supplier shall perform minor repairs to all trailers used under this contract, including trailers furnished by the Postal Service, when such repairs are necessary for the safe completion of a trip of service. Minor repairs include repair or replacement of trailer tires. Tire carcasses shall be returned to the Postal Service.
- (2) The Postal Service shall reimburse the supplier for the costs of performing any repairs required under paragraph b which are reasonable, customary and fully documented.

c. *Major Repairs to Trailers.* The supplier is responsible for all major repairs to its trailers. If a trailer furnished by the Postal Service incurs major damage en route, and requires towing for repair, the supplier shall promptly notify the Administrative Official of these facts. Upon direction of the Administrative Official, the supplier shall tow the trailer, either to the nearest Postal Service Bulk Mail Center or to a repair facility. The Postal Service shall reimburse the supplier its costs incurred for towing service, so long as such costs are reasonable, customary and documented.

**Clause B-74 Payment (Highway) (January 1997)**

(B.1.2)

*General.* This is a fixed price contract for highway transportation service, to be provided according to the Statement of Work and Specifications. The basis for payment established for this contract is stated in the solicitation cover sheet. No adjustments will be made in contract price except as provided below or under other clauses of this contract.

Payment for services rendered under this contract will be made as follows:

- a. The St. Louis Accounting Service Center (ASC) will pay the supplier automatically at the conclusion of each Postal Accounting Period for which payment is due.
  - (1) If the fixed price is expressed as an annual rate, payment will be computed by dividing the annual rate stated in this contract by 365 (or 366 in any portion of the contract term beginning on July 1 of the calendar year preceding a leap year and ending on June 30 of the leap year), and multiplying that result by the number of days in that Postal Accounting Period. If this contract ends before the end of a Postal Accounting Period, payment will be based on the number of days within that period during which the contract was in force.
  - (2) If the fixed price is expressed as a unit rate (per trip, round trip, etc.), payment will be computed based on the number of units certified by the Administrative Official at the close of each Postal Accounting Period.
- b. From time to time the contracting officer may authorize (i) adjustments in compensation pursuant to the *Adjustment to Compensation* clause, or (ii) changes in service requirements or extra trips pursuant to the *Changes* clause. The Postal Service will file the appropriate documentation with the St. Louis ADC for such adjustments or changes and the supplier need not separately invoice for them.
- c. The supplier must invoice for all payments not covered by paragraph a or b above.
  - (1) Claims for damage to trailers must be filed and documented in accordance with Management Instruction PO-530-89-1, *Processing Trailer Damage Claims*, as amended, revised, or reissued from time to time.
  - (2) Requests for payment for detours must be filed as provided under the detours provision of the *Changes* clause.
  - (3) All other requests for payment must be submitted in accordance with the *Payment — Fixed Price* clause.
- d. Deductions may be made from payments otherwise due the supplier under this contract or any other contracts held by the supplier, for any amounts for which the supplier is liable as damages or otherwise.

**Clause B-75 Accountability of the Supplier (Non-Highway)  
(January 1997)** (B.1.2)

- a. The supplier shall supervise its operations and the operations of its subcontractors which provide services under this contract personally or through representatives. The supplier or its supervising representatives must be easily accessible in the event of emergencies or interruptions in service.
- b. In all cases, the supplier shall be strictly liable to the Postal Service for the Postal Service's actual damages if mail is subject to loss, rifling, damage, wrong delivery, depredation, and other mistreatment while in the custody and control of the supplier or its subcontractors.  
  
The supplier shall also be accountable and answerable in damages for the faithful performance of all other obligations assumed under this contract, whether or not it has entrusted part or all of its performance to another, except for any failure to perform that is excused by the *Excusable Delays* clause of this contract.
- c. The supplier shall faithfully account for and deliver to the Postal Service all
  - (1) Mail,
  - (2) Moneys, and
  - (3) Other property of any kind belonging to or entrusted to the care of the Postal Service, that come into the possession of the supplier during the term of this contract.
- d. The supplier shall, promptly upon discovery, refund (i) any overpayment made by the Postal Service for service performed, or (ii) any payment made by the Postal Service for service not rendered.

**Clause B-76 Excusable Delays (Mail Transportation Non-Highway)  
(January 1997)** (B.1.2)

- a. Except with respect to defaults of subcontractors, the supplier will not be in default by reason of any failure in performing this contract in accordance with its terms (including any failure to make progress in the prosecution of the work that endangers performance) if the failure arises out of causes beyond the control and without the fault or negligence of the supplier. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity or of the Postal Service in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier.
- b. If failure to perform is caused by the failure of a subcontractor to perform or make progress and arises out of causes beyond the control of both the supplier and subcontractor, and without the fault or negligence of either, the supplier will not be deemed to be in default, unless the supplier failed to take immediate, reasonable and prudent action to (i) replace its subcontractor or to (ii) otherwise mitigate the effects of its subcontractor's problems.

- c. Upon request of the supplier, the contracting officer shall ascertain the facts and extent of failure, and if the contracting officer determines that any failure to perform was occasioned by any of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Postal Service under any termination clause included in this contract.
- d. As used in this clause, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier.

**Clause B-77 Protection of the Mail (January 1997)** (B.1.2)

The supplier must protect and safeguard the mail from loss, theft, or damage while it is in the supplier’s custody or control and prevent unauthorized persons from having access to the mail.

**Clause B-78 Renewal (January 1997)** (B.1.2)

This contract may be renewed by mutual agreement of the parties.

**Clause B-79 Forfeiture of Compensation (January 1997)** (B.1.2)

If the supplier fails to perform a trip for any reason, the supplier shall forfeit the compensation otherwise due for that trip. If the supplier fails to perform a trip, and such failure is due to the fault or negligence of the supplier or of its subcontractors, the supplier shall be liable for all damages actually suffered by the Postal Service by reason of such failure.

**Clause B-80 Laws and Regulations Applicable (January 1997)** (B.1.2)

This contract and the services performed under it are subject to all applicable federal, state and local laws and regulations. The supplier shall faithfully discharge all duties and obligations imposed by such laws and regulations, and shall obtain and pay for all permits, licenses, and other authorities required to perform this contract.

**Clause B-81 Information or Access by Third Parties (January 1997)** (B.1.2)

The Postal Service retains exclusive authority to release any or all information about mail matter in the custody of the supplier and to permit access to that mail in the custody of the supplier. All requests by non-postal individuals (including employees of the supplier) for information about mail matter in the custody of the supplier or for access to mail in the custody of the supplier must be referred to the contracting officer or his or her designee.

**Clause B-82 Access by Officials (January 1997)** (B.1.2)

The supplier shall deny access to the cargo compartment of a vehicle containing mail therein to Federal, state or local officials except at a postal facility and in the presence of a postal employee, unless to prevent damage to the vehicle or its contents.

**Clause B-83 Payment (Air Taxi) (January 1997)** (B.1.2)

The Postal Service will pay the supplier the amounts due for services performed under this contract, less deductions, if any, as provided herein, subject to the following terms:

- a. *Payment Due Date:* Postal Service Form 2756, *Certification of Air Taxi Mail Service Performed*, will be made to effect payment. A carrier's billing invoice will not be required. Payment will be made by St. Louis Accounting Service Center (ASC) within 30 days after the end of the service period. Interest will be paid for late payment commencing on the 38th day after the end of the service period.
- b. *Compensation.*
  - (1) Full payment, at the rate provided in this contract, will be made for each scheduled trip which the supplier completes or serves at least one point on the route before being prevented from completing the trip due to weather or other conditions beyond the pilot's control, except for mechanical failure or an accident.
  - (2) Partial payment will be made as follows:
    - (a) For any trip canceled by the Postal Service prior to its commencement, payment will be at the rate of 50 percent of the trip rate.
    - (b) For a trip not completed because of mechanical failure or accident, compensation will be based upon point-to-point great circle trip miles completed.
  - (3) No payment will be made for a trip canceled other than by the Postal Service.

**Clause 1-1 Privacy Protection (November 2001)** (1.6.6)

In addition to other provisions of this contract, the supplier agrees to the following:

- a. *Privacy Act.* If the supplier operates a system of records on behalf of the Postal Service, the Privacy Act (5 U.S.C. 522a) and Postal Service regulations at 39 CFR Parts 266-267 apply to those records. The supplier is considered to operate a system of records if it manages records (including collecting, revising, or disseminating records) from which information is retrieved by the name of an individual or by some number, symbol, or other identifier assigned to the individual. The supplier agrees to comply with the Act and the Postal Service

regulations in designing, developing, and operating the system of records, including ensuring that records are current and accurate for their intended use, and incorporating adequate safeguards to prevent misuse or improper disclosure of personal information. Violations of the Act may subject the violator to criminal penalties.

- b. *Customer or Visitor Data.* If the supplier has access to Postal Service customer data, including address information or data regarding visitors to Postal Service Web sites, the supplier must comply with the following:
- (1) *General.* The supplier may use such data solely for purposes of this contract, and may not collect or use such information for non-Postal Service marketing, promotion, or any other purpose. The supplier must restrict access to such data to those employees who need the data to perform work under this contract, and must ensure that each such employee (including subcontractors' employees) sign a nondisclosure agreement, in a form suitable to the contracting officer, prior to being granted access to the data.
  - (2) *Data Ownership and Retention.* The Postal Service retains sole ownership and rights to the data. Upon completion of the contract, the supplier must turn over all data in its possession to the Postal Service and must certify that no data has been retained. The supplier may not create or derive personally identifiable information about customers or visitors, except as expressly provided by the customer or visitor.
  - (3) *Legal Demands for Information.* If a legal demand is made for data (such as by subpoena), the supplier must immediately notify the contracting officer and the nearest office of the Postal Service Inspection Service. After notification, the Postal Service will determine whether and to what extent to comply with the demand. Should the Postal Service agree to or unsuccessfully resist a legal demand, the supplier may, with the written permission of the contracting officer, release the data specifically demanded.
- c. *Online Assistance.* If the supplier has access to customer or visitor data obtained from a Postal Service Web site, or a Web site operated by the supplier on behalf of the Postal Service, or if the supplier assists in the design, development, or operation of a customer Web site for the Postal Service, the following apply:
- (1) *Privacy Policy.* The supplier agrees to act as agent of the Postal Service and to adhere to all provisions of the Postal Service's Internet Privacy Policy available at [www.usps.com](http://www.usps.com).
  - (2) *Tracking Devices.* Without prior approval of the Postal Service's chief privacy officer, any cookies or other tracking devices used by supplier may only be session, not persistent, devices; may not collect or derive any personally identifiable information regarding the customer or visitor; and may only serve to improve the efficiency of the customer's or visitor's use of the Web site.



- d. *Links and Banners.* If on the Postal Service's behalf, the supplier places a link to a www.usps.com Web site, or if it designs or places an ad banner, button, or link on a www.usps.com Web site or any Web site, the supplier must comply with the portion of the Postal Service Privacy Policy available at www.usps.com relating to (1) links and banners, and (2) use of tracking devices. The placement of any device not permitted under the Postal Service's Privacy Policy requires the prior written approval of the Postal Service's chief privacy officer.
- e. *Indemnification.* The supplier hereby indemnifies the Postal Service against all liability (including costs and fees) for damages arising out of violations of this clause.
- f. *Flow-down.* The supplier will flow this clause down to subcontractors that would be covered by any portion of this clause if they were the supplier.

**Clause 1-2 Advance Payments (January 1997)** (1.6.7)

- a. *Requirements for Payments.* Upon supplier submission of properly certified invoices or vouchers and contracting officer approval, advance payments will be made under this contract. The supplier will apply terms similar to those of this clause to any advance payments to subcontractors.
- b. *Use of Funds.* The supplier may pay only for properly allocable, allowable, and reasonable costs incurred. Determinations of whether costs are properly allocable, allowable, and reasonable will be in accordance with generally accepted accounting principles, subject to Chapter 5, Section 2, of the USPS *Purchasing Manual* as in effect on the date of this contract.
- c. *Repayment to the Postal Service.* At any time, the supplier may repay all or part of the funds advanced by the Postal Service. When requested in writing to do so by the administering office, the supplier must repay to the Postal Service any part of unliquidated advance payments considered by the administering office to exceed the supplier's current requirements or an amount calculated in accordance with paragraph d below.
- d. *Maximum Payment.* When the sum of all unliquidated advance payments exceeds 80 percent of the contract price, the Postal Service will withhold further payments. On contract completion or termination, the Postal Service will deduct from the amount due the supplier all interest charges payable. If previous payments to the supplier exceed the amount due, the excess amount must be paid to the Postal Service on demand. For purposes of this paragraph d, the contract price is the contract price stated at time of award, less any subsequent price reductions under the contract, plus any price increases resulting from any terms of the contract. Any payments withheld under this paragraph will be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract will resume.

e. *Interest*

- (1) The supplier must pay interest to the Postal Service on the daily balance of unliquidated advance payments at the daily rate specified in subparagraph e.3 below. Interest will be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing interest:
  - (a) Advance payments will be considered as increasing the unliquidated balance as of the date of the advance payment check;
  - (b) Repayment of the supplier's check will be considered as decreasing the unliquidated balance as of the date on which the check is received by the Postal Service authority designated by the contracting officer; and
  - (c) Liquidations by deductions from Postal Service payments to the supplier will be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.
- (2) Interest charges resulting from the monthly computation will be deducted from payments, other than advance payments, due the supplier. If the accrued interest exceeds the payment due, any excess interest will be carried forward and deducted from subsequent payments. Interest carried forward will not be compounded. Interest on advance payments will cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Postal Service. The Postal Service will charge interest on advance payments to subcontractors in the manner described above.
- (3) If interest is required under the contract, it will be paid at the rate determined in accordance with the *Interest* clause of this contract.
- (4) If the full amount of interest charged under this paragraph e has not been paid by deduction or otherwise upon completion or termination of this contract, the supplier must pay the remaining interest to the Postal Service on demand.

f. *Lien on Property under Contract*

- (1) All advance payments under this contract, together with interest charges, must be secured, when made, by a lien in favor of the Postal Service, paramount to all other liens, on the supplies or other things covered by the contract and on all material and other property acquired for or allocated to its performance, except to the extent that the Postal Service already has valid title to the supplies, materials, or other property as against the supplier's other creditors.
- (2) The supplier will prepare any documents necessary to perfect liens on such property required in any jurisdiction in which any such property is kept. The documents must be approved by the contracting officer and, upon approval, filed with appropriate jurisdictions. The supplier must pay any fees required for filing.

- (3) The supplier must identify, by marking or segregation, all property subject to a lien in favor of the Postal Service by virtue of this contract so as to indicate that it is subject to a lien and has been acquired for or allocated to performing the contract. If, for any reason, the property is not identified by marking or segregation, the Postal Service will have a lien to the extent of the Postal Service's interest under the contract on any mass of property with which the supplies, materials, or other property are commingled. The supplier must maintain adequate accounting control over the property on its books and records.
  - (4) If, under any termination clause in this contract, the contracting officer authorizes the supplier to sell or retain termination inventory, the approval constitutes a release of the Postal Service's lien to the extent that:
    - (a) The termination inventory is sold or retained; and
    - (b) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.
  - (5) If the supplier delivers to a third party any property on which the Postal Service has a lien, the supplier must notify the third party of the lien and obtain a receipt in duplicate acknowledging the existence of the lien. The supplier must give the contracting officer one copy of the receipt.
- g. *Insurance.* The supplier warrants that it maintains with responsible insurance carriers:
- (1) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;
  - (2) Adequate insurance against liability on account of damage to persons or property; and
  - (3) Adequate insurance under all applicable workers' compensation laws. The supplier agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on all materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Postal Service lien under paragraph f above; and furnish any certificate with respect to its insurance that the contracting officer may require.
- h. *Default*
- (1) By written notice to the supplier, the Postal Service may withhold further payments on this contract in the event of:
    - (a) Termination for default;

- (b) A finding by the contracting officer that the supplier will be unable to perform or has failed to:
    - (i) Observe any conditions of the advance payment terms;
    - (ii) Comply with any material term of the contract;
    - (iii) Make progress or maintain a financial condition adequate for performance of the contract;
    - (iv) Limit inventory allocated to the contract to reasonable requirements; or
    - (v) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
  - (c) The appointment of a trustee, receiver, or liquidator for any substantial part of the supplier's property, or the institution of proceedings by or against the supplier for bankruptcy, reorganization, arrangement, or liquidation.
- (2) If any of the events described in subparagraph h.1 above continues for 30 days after the notice to the supplier, the Postal Service may take any of the following actions:
- (a) Charge interest, in the manner prescribed in paragraph e above, on outstanding advance payments during the period of the event.
  - (b) Demand immediate repayment by the supplier of the unliquidated balance of advance payments.
  - (c) Take possession of and sell any property on which the Postal Service has a lien under the contract and, after deducting any expenses incident to the sale, apply the proceeds to reduce the unliquidated balance of advance payments or other claims against the supplier.
- (3) The actions described in this clause are in addition to any other rights of the Postal Service.
- i. *Prohibition Against Assignment.* Notwithstanding any other terms of this contract, the supplier may not assign it, any interest in it, or any claim under it to any party.
  - j. *Information and Access to Records.* The supplier must furnish to the administering office (1) monthly (or at other intervals as required) signed or certified balance sheets and profit and loss statements in the form prescribed by the contracting officer; and (2) if requested, other information concerning the operation of the supplier's business. The supplier must provide authorized Postal Service representatives proper facilities for inspecting the supplier's books, records, and accounts.
  - k. *Other Security.* If the contracting officer considers the security inadequate, the supplier must furnish additional security satisfactory to the contracting officer to the extent it is available.

- I. *Representations and Warranties*
  - (1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished the contracting officer fairly reflect the supplier's financial condition at the date shown or during the period covered, and there has been no subsequent materially adverse change;
  - (2) No litigation or proceedings are presently pending or threatened against the supplier, except as shown in the statements;
  - (3) The supplier has disclosed all contingent liabilities in the statements;
  - (4) None of the terms in this clause conflict with the authority under which the supplier is doing business or with the provision of any existing indenture, assignment, or agreement of the supplier;
  - (5) The supplier has the power to enter into this contract and to accept advance payments, and has taken all necessary action to authorize their acceptance under the terms of the contract;
  - (6) The supplier's assets are not subject to any lien or encumbrance except for current taxes not delinquent or as shown in the statements;
  - (7) All information furnished in connection with each request for advance payments is true and correct; and
  - (8) These representations and warranties are continuing and are considered to have been repeated by the submission of each invoice for advance payment.
- m. *Notice.* The supplier must notify the contracting officer in writing within 30 days of any material change in anything represented or warranted in paragraph 1 above.
- n. *Covenants.* While any advance payments made under this contract remain outstanding, the supplier, without the prior written consent of the contracting officer, may not:
  - (1) Mortgage, pledge, or otherwise encumber or allow to be encumbered any of the supplier's assets now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets allocated to performing this contract with respect to which the Postal Service has a lien under the contract;
  - (2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for amounts due or to become due;
  - (3) Sell, convey, or lease any substantial part of its assets;
  - (4) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;
  - (5) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

- (6) Pay any remuneration to its directors, officers, or key employees at rates higher than provided in existing agreements;
- (7) Change substantially its management, ownership, or control;
- (8) Merge or consolidate with any other firm or corporation, change the type business, or engage in any transaction outside the ordinary course of the supplier's business as presently conducted;
- (9) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;
- (10) Create or incur indebtedness for advances (other than those to be made under the terms of this contract) or borrowings; or
- (11) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than 80 percent of the assets shown in the last quarterly financial statement issued before contract award.

### **Clause 1-3 Progress Payments (January 1997)** (1.6.7)

Progress payments will be made to the supplier when requested as work progresses, but not more often than monthly, in amounts approved by the contracting officer, upon the following terms and conditions:

#### *a. Computation of Amounts*

- (1) No progress payments may exceed 80 percent of the amount of the supplier's total costs, plus the amount of progress payments that have been paid to supplier's subcontractors and other divisions.
- (2) The supplier's total costs must be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. These costs may not include:
  - (a) Any incurred by subcontractors or suppliers;
  - (b) Any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the supplier has acquired title and except for amounts paid under cost-reimbursement or time-and-materials subcontracts for work to which the supplier has acquired title; or
  - (c) Costs ordinarily capitalized and subject to depreciation or amortization, except for the properly depreciated or amortized portion of such costs.
- (3) The aggregate amount of progress payments made must not exceed 80 percent of the total contract price.
- (4) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph a, the supplier must pay the excess to the Postal Service upon demand.

- b. *Liquidation.* Except as provided in the *Termination for Convenience* clause, all progress payments must be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 80 percent of the gross amount invoiced, whichever is less. Repayment to the Postal Service required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.
- c. *Reduction or Suspension.* The contracting officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in paragraph b above, or both, whenever the contracting officer finds, upon substantial evidence, that the supplier:
- (1) Has failed to comply with any material requirement of this contract;
  - (2) Has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract;
  - (3) Has allocated inventory to this contract substantially exceeding reasonable requirements;
  - (4) Is delinquent in payment of the costs of performance of this contract in the ordinary course of business; or
  - (5) Has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
- d. *Title*
- (1) Immediately upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids; and drawings and technical data (to the extent that their delivery is required by other provisions of this contract), previously acquired or produced by the supplier and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices, will be vested in the Postal Service. Title to all similar property afterwards acquired or produced by the supplier and allocated or properly chargeable to this contract as aforesaid will be vested in the Postal Service upon said acquisition, production, or allocation.
  - (2) Notwithstanding that title to property is in the Postal Service through the operation of this clause, the handling and disposition of such property will be determined by the applicable provisions of this contract (e.g., paragraph h of this *Progress Payments* clause, and any termination clause included in the contract). Current production scrap may be sold by the supplier without approval of the contracting officer; in this case, the proceeds must be credited against the costs of contract performance. With the consent of the contracting officer, and on terms approved by the supplier, the supplier may acquire or dispose of property to which

- title is vested in the Postal Service under this clause, and, in that event, the costs allocable to the property so transferred from this contract must be eliminated from the costs of contract performance and the supplier must repay to the Postal Service (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred.
- (3) Upon completion of performance of all the obligations of the supplier under this contract, including liquidation of all progress payments under this clause, title to all property (or the proceeds thereof) not delivered to, and accepted by, the Postal Service under this contract, or not incorporated in supplies delivered and accepted and to which title has been vested in the Postal Service under this clause, will be vested in the supplier. The provisions of this contract referring to or defining liability for Postal Service-furnished property do not apply to property to which the Postal Service acquires title solely by virtue of this clause.
- e. *Risk of Loss.* Except to the extent that the Postal Service otherwise expressly assumes the risk of loss of property, title to which is vested in the Postal Service by this clause, in the event of the loss, theft, or destruction of or damage to any such property before its delivery to, and acceptance by, the Postal Service, the supplier must bear the risk of loss and must repay the Postal Service an amount equal to the unliquidated progress payments on the basis of costs allocable to such lost, stolen, destroyed, or damaged property.
- f. *Control of Costs and Property.* The supplier must maintain an accounting system and controls adequate for the proper administration of this clause.
- g. *Reports — Access to Records.* The supplier must:
- (1) Furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the contracting officer; and
  - (2) Give the Postal Service reasonable opportunity to examine and verify the supplier's books, records, and accounts.
- h. *Special Provisions Regarding Default.* If this contract is terminated for default:
- (1) The supplier must, upon demand, pay the Postal Service the amount of unliquidated progress payments; and
  - (2) With respect to all property for which the Postal Service elects not to require delivery, title will be vested in the supplier upon full liquidation of progress payments, and the Postal Service will not be liable for payment.



- i. *Reservation of Rights.* The rights and remedies of the Postal Service provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title under this clause, will excuse the supplier from obligations under this contract or constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Postal Service in exercising any right, power, or privilege under this clause will affect any such right, power, or privilege; nor will any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power, or privilege of the Postal Service.
- j. *Progress Payments to Subcontractors*
  - (1) Progress payments may include reimbursements for unliquidated progress payments paid by the supplier to subcontractors or other divisions under provisions which conform to subparagraph j.2 following.
  - (2) Provisions regarding progress payments must:
    - (a) Be substantially similar to and as favorable to the Postal Service as is this *Progress Payments* clause, no more favorable to the subcontractor or the other division than this clause is to the supplier, and on a basis of not more than 80 percent of total costs; and
    - (b) Make all rights of the subcontractor with respect to all property to which the Postal Service has title under the subcontract subordinate to the rights of the Postal Service to require delivery of such property to it in the event of default by the supplier under this contract or in the event of the bankruptcy or insolvency of the subcontractor.
  - (3) The Postal Service agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract must be applied to reduce the amount of unliquidated progress payments made by the Postal Service to the supplier under this contract. In the event that the supplier fully liquidates such progress payments made by the Postal Service to the supplier hereunder and there are unliquidated progress payments to any subcontractors, the supplier must be subrogated to all the Postal Service rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the supplier.
- k. *Requests.* Supplier's requests for progress payments under this clause must be submitted on Form 7305, *Supplier's Request for Progress Payment*.

**Clause 1-4 (Reserved)****Clause 1-5 Gratuities or Gifts (January 1997)** (1.6.10)

- a. The Postal Service may terminate this contract for default if, after notice and a hearing, the Postal Service Board of Contract Appeals determines that the supplier or the supplier's agent or other representative:
  - (1) Offered or gave a gratuity or gift (as defined in 5 CFR 2635) to an officer or employee of the Postal Service; and
  - (2) Intended by the gratuity or gift to obtain a contract or favorable treatment under a contract.
- b. The rights and remedies of the Postal Service provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**Clause 1-6 Contingent Fees (January 1997)** (1.8.2)

- a. The supplier warrants that no person or selling agency has been employed or retained to solicit or obtain this contract for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide, established commercial or selling agencies employed by the supplier for the purpose of obtaining business.
- b. For breach or violation of this warranty, the Postal Service has the right to annul this contract without liability or to deduct from the contract price or otherwise recover the full amount of the commission, percentage, brokerage fee, or contingent fee.

**Clause 1-7 Organizational Conflicts of Interest (January 1997)** (1.6.8)

- a. *Warranty Against Existing Conflicts of Interest.* The supplier warrants and represents that, to the best of its knowledge and belief, it does not presently have organizational conflicts of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except for advantages flowing from the normal benefits of performing this agreement.
- b. *Restrictions on Contracting.* The supplier agrees that during the term of this agreement, any extensions thereto, and for a period of 2 years thereafter, neither the supplier nor its affiliates will perform any of the following:
  - (1) Compete for any Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.

- (2) Contract (as the provider of a component or the provider of research or consulting services) with any offeror competing for any Postal Service contract for production of any product for which the supplier prepared any work statements or specifications or conducted any studies or performed any task under this agreement.
  - (3) Contract (as the provider of a component or the provider of research or consulting services) with the offeror which wins award of a Postal Service contract for production of any product for which the supplier prepared any work statement or specifications or conducted any studies or performed any task under this agreement.
- c. *Possible Future Conflicts of Interest.* The supplier agrees that, if after award of this agreement, it discovers any organizational conflict of interest that would diminish its capacity to provide impartial, technically sound, objective research assistance or advice, or would result in a biased work product, or might result in an unfair competitive advantage, except advantages flowing from the normal benefits of performing this agreement, the supplier will make an immediate and full disclosure in writing to the contracting officer, including a description of the action the supplier has taken or proposes to take to avoid, eliminate, or neutralize this conflict of interest.
- d. *Nondisclosure of Confidential Material*
- (1) The supplier recognizes that, in performing this agreement, it may receive confidential information. To the extent that and for as long as the information is confidential, the supplier agrees to take the steps necessary to prevent its disclosure to any third party without the prior written consent of the contracting officer.
  - (2) The supplier agrees to indoctrinate its personnel who will have access to confidential information as to the confidential nature of the information, and the relationship under which the supplier has possession of this information.
  - (3) The supplier agrees to limit access to the confidential information obtained, generated, or derived, and to limit participation in the performance of orders under this agreement to those employees whose services are necessary for performing them.
- e. *Postal Service Remedy.* If the supplier breaches or violates any of the warranties, covenants, restrictions, disclosures or nondisclosures set forth under this clause, the Postal Service may terminate this agreement, in addition to any other remedy it may have for damages or injunctive relief.

**Clause 1-8 (Reserved)****Clause 1-9 Preference for Domestic Supplies (April 2000)** (1.6.13)

- a. A 6 percent proposal evaluation preference will be given to domestic-source end products in accordance with Chapter 1, section 7 of the USPS *Purchasing Manual*. For the purposes of this clause:
- (1) *End products*. Articles, materials, and supplies to be acquired under this contract for Postal Service use;
  - (2) *Components*. Articles, materials, and supplies directly incorporated in the end products; and
  - (3) *Domestic-source end product*. This is (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States the cost of whose components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For procurements in excess of \$25,000, Canadian end products are treated as domestic. Components of foreign origin of the kind referred to in subparagraphs b.(2) or b.(3) below will be treated as components mined, produced, or manufactured in the United States.
- b. The contractor agrees that there will be delivered under this contract only domestic-source end products, except end products:
- (1) That the Postal Service determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
  - (2) For which the vice president of Purchasing and Materials determines that domestic preference is inconsistent with the interest of the Postal Service; or
  - (3) For which the vice president of Purchasing and Materials determines the cost to the Postal Service to be unreasonable.

**Clause 1-10 Preference for Domestic Construction Materials (January 1997)** (1.6.13)

- a. Preference will be given to domestic construction materials in accordance with chapter 1, section 6 of the USPS *Purchasing Manual*. For the purposes of this clause:
- (1) *Components*. Those articles, materials, and supplies incorporated directly into construction materials;
  - (2) *Construction materials*. Articles, materials, and supplies brought to the construction site for incorporation into the building or work; and

- (3) *Domestic construction material.* This is (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those determined to be unavailable under chapter 1, section 7 of the USPS *Purchasing Manual* will be treated as domestic.
  - (4) *Foreign construction material.* A construction material other than a domestic construction material.
- b. The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

**Clause 1-11 Prohibition Against Contracting with Former Officers or PCES Executives (January 1997)** (1.6.14)

During the performance of this contract, former Postal officers or Postal Career Executive Service (PCES) executives are prohibited from employment by the contractor as key personnel, experts or consultants, if such individuals, within 5 years after their retirement from the Postal Service, would be performing substantially the same duties as they performed during their career with the Postal Service.

**Clause 1-12 Use of Former Postal Service Employees (October 2001)** (1.6.14)

During the term of this contract, the supplier must identify any former Postal Service employees it proposes to be engaged, directly or indirectly, in contract performance. Such individuals may not commence performance without the contracting officer's prior approval. If the contracting officer does not provide such approval, the supplier must replace the proposed individual former employee with another individual equally qualified to provide the services called for in the contract.

**Clause 2-1 Inspection and Acceptance — Supplies (June 1999)** (2.2.1)

- a. The supplier must ensure and be able to substantiate that all supplies and services purchased by the Postal Service conform to the requirements specified in the contract.
- b. The Postal Service may reject defective supplies or services and:
  - (1) Require replacement or correction of the defects without cost to the Postal Service;

- (2) Acquire replacement products at the supplier's expense; or
  - (3) Accept the supplies or services at a reduced price.
- c. The contracting officer may revoke acceptance if nonconforming performance is accepted (1) because it has not been discovered before acceptance, as a result of the difficulty of discovery or because of the supplier's assurances, or (2) on the basis of a reasonable assumption that it would be cured.
- d. The Postal Service has the same rights and duties upon revocation as upon rejection. Revocation of acceptance must occur within a reasonable time after the contracting officer discovers the deficiency.
- e. The Postal Service reserves the right to inspect the supplies or services provided under this contract at any stage of contract performance. Inspection by the Postal Service does not relieve the supplier of the responsibility to provide performance that conforms to the requirements set forth in this contract.

**Clause 2-2 Quality Assurance I — Supplies (June 1999)** (2.2.1)

- a. The supplier must use a documented quality system acceptable to the Postal Service. As a minimum, the supplier's quality system must include controls and record keeping in the following areas:
  - (1) Inspection and testing;
  - (2) Inspection, measuring, and test equipment;
  - (3) Control of nonconforming products;
  - (4) Document control; and
  - (5) Corrective action.
- b. A quality system in compliance with ISO 9002 meets this requirement.
- c. The Postal Service has the right to evaluate the acceptability and effectiveness of the supplier's quality system before award and during contract performance.
- d. All supplier records pertaining to this contract must be kept by the supplier during contract performance and for 3 years after final payment is made under this contract.

**Clause 2-3 Quality Assurance II — Supplies (June 1999)** (2.2.1)

- a. The supplier's quality system must comply with the ISO 9001 quality system model, or a quality system deemed equivalent by the Postal Service.
- b. The Postal Service has the right to evaluate the acceptability and effectiveness of the supplier's quality system, before award, and during contract performance.

- c. All supplier records pertaining to this contract must be kept by the supplier during contract performance and for 3 years after final payment is made under this contract.

#### **Clause 2-4 First Article Approval — Supplier Testing (January 1997)**

(2.2.2)

- a. The supplier must test the number of units specified in the Schedule of this contract. The supplier must give the notice specified in the Schedule to the contracting officer, in writing, of the time and location of the testing so that the Postal Service may witness the tests.
- b. By the date specified in the Schedule, the supplier must submit to the contracting officer the first article test report marked “First Article Test Report” and identifying the contract number and lot/item number. After the Postal Service receives the test report, the contracting officer will notify the supplier within the time period set forth in the Schedule, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.
- c. If the first article is disapproved, the supplier, upon request of the Postal Service, must repeat any or all first article tests. After each request for additional tests, the supplier must make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the supplier, including any and all costs for additional tests following a disapproval. The supplier must then conduct the tests and deliver another report to the Postal Service under the terms and conditions and within the time specified by the Postal Service. The Postal Service must take action on this report within the same time limit referred to in paragraph b above. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Postal Service related to these tests.
- d. If the supplier fails to deliver any first article report on time, or the contracting officer disapproves any first article, the supplier will be deemed to have failed to make delivery within the meaning of the *Default* clause.
- e. Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the supplier may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

- f. If the Postal Service does not act within the time limit referred to in paragraphs b and c above, the contracting officer will, upon timely written request from the supplier, equitably adjust under the *Changes* clause the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

**Clause 2-5 First Article Approval — Postal Service Testing  
(January 1997)**

(2.2.2)

- a. At the time specified for first article testing, the supplier must deliver the units specified in the Schedule to the Postal Service at the testing facility set forth in the Schedule. The shipping documentation accompanying the first article must contain the number of this contract and the lot/item identification. The performance or other characteristics that the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.
- b. The contracting officer must, by written notice to the supplier within the time specified in the Schedule, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval does not relieve the supplier from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the supplier. A notice of disapproval will cite reasons for the disapproval.
- c. If the first article is disapproved, the supplier may be required, at the option of the Postal Service, to submit an additional first article for first article approval test. After each notification by the Postal Service to submit an additional first article, the supplier must at no additional cost to the Postal Service make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. The additional first article must be furnished to the Postal Service under the terms and conditions and within the time specified in the notification. The Postal Service must take action on this additional first article within the same time limit referred to in paragraph b above. The costs of additional first article approval tests and all costs related to such tests must be borne by the supplier. The Postal Service reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.



- d. If the supplier fails to deliver a first article on time, or if the contracting officer disapproves a first article, the contract may be terminated for default. Waiver of the right to terminate this contract for default does not relieve the supplier of responsibility to meet the delivery schedule for production quantities.
- e. When the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the supplier:
  - (1) May deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance; and
  - (2) Is responsible for removal and disposition of any first article from the Postal Service test site at the supplier's expense.
- f. The supplier is responsible for spare-parts support and repair of the first article during any first article approval test.
- g. Before first article approval, acquisition of materials or components for the balance of the contract quantity or commencement of production is at the supplier's sole risk.
- h. Costs incurred under paragraph g above are not allocable to this contract for progress payments before first article approval or for a termination settlement in the event of termination for convenience before first article approval.

**Clause 2-6 Delayed Acceptance (January 1997)** (2.2.3)

- a. Acceptance under this contract will not occur until the supplier has successfully completed the preacceptance tests set forth in the Schedule.
- b. The supplier will remove any equipment and material not accepted under this contract and restore the Postal Service facility to its original condition, at no cost to the Postal Service.
- c. The supplier will pay the costs of testing for all equipment and materials rejected for failure to meet the preacceptance test requirements.

**Clause 2-7 Incorporation of Warranty (January 1997)** (2.2.4)

The supplier's standard commercial warranty, as disclosed in the offeror's proposal, is incorporated as a part of this contract. However, any dispute concerning it will be resolved under the *Claims and Disputes* clause of this contract, notwithstanding any disputes procedure that may be specified in the warranty.

**Clause 2-8 Warranty (January 1997)** (2.2.4)

- a. The supplier warrants, for the period specified in the Schedule, that all supplies furnished under this contract, including packaging and markings, will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract.
- b. Within the time specified in the Schedule, the contracting officer must give written notice to the supplier of any breach of warranty and either:
  - (1) Require the prompt correction or replacement of any defective or nonconforming supplies; or
  - (2) Retain them, reducing the contract price by an amount equitable under the circumstances.
- c. When return for correction or replacement is required, the supplier is responsible for all costs of transportation and for risk of loss in transit.
- d. If the supplier fails or refuses to correct or replace the defective or nonconforming supplies, the contracting officer may correct or replace them with similar supplies and charge to the supplier any cost to the Postal Service. In addition, the contracting officer may dispose of the nonconforming supplies, with reimbursement from the supplier or from the proceeds for excess costs.
- e. Any supplies corrected or furnished in replacement are subject to this clause.
- f. Supplies, as used in this clause, includes related services.
- g. The rights and remedies of the Postal Service provided in this clause are in addition to, and do not limit, any rights afforded to the Postal Service by any other clause of the contract.

**Clause 2-9 Definition of Delivery Terms and Supplier's Responsibilities (January 1997)** (2.2.5)

- a. If the contract specifies "f.o.b. destination," the following apply:
  - (1) "F.o.b. destination" means delivery, free of expense to the Postal Service, to the specified delivery point.
  - (2) "F.o.b. destination, within the consignee's premises" means delivered free of expense to the Postal Service, within the doors of the specified building, including delivery to specific rooms when specified.
  - (3) The supplier must:
    - (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare shipments in accordance with carrier requirements;
    - (b) Prepare and distribute commercial bills of lading;
    - (c) Be responsible for loss or damage occurring before receipt at the specified point of delivery;

- (d) Furnish a delivery schedule and designate mode of delivery;
  - (e) Bear all delivery costs to the specified point of delivery; and
  - (f) Deliver goods, that meet the prescribed physical limitations of the current USPS *Domestic Mail Manual*, either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement.
- b. If the contract specifies “delivered postal facility, door, platform, or private siding,” the following apply:
  - (1) “Delivered postal facility, door, platform, or private siding” means delivery free of expense to the Postal Service:
    - (a) To the door of postal facilities having no platforms or private siding;
    - (b) On the platform at postal facilities having platforms but no private siding; or
    - (c) On the private siding at postal facilities having private siding.
  - (2) In addition to fulfilling the requirements of the *Responsibility for Supplies* clause, the supplier must:
    - (a) Pack and mark shipments to protect the goods from normal transportation hazards, promote prompt delivery, and comply with packing and marking specifications of the contract;
    - (b) Unload material at the door or on the platform in the case of b.1(a) and (b) above, free of expense to the Postal Service;
    - (c) Properly prepare and distribute commercial bills of lading; and
    - (d) Be responsible for loss or damage occurring before delivery to the specified delivery point.
- c. If the contract specifies “f.o.b. origin,” the following apply:
  - (1) “F.o.b. origin” means:
    - (a) Delivery on board the indicated type of conveyance of the carrier (or of the Postal Service), free of expense to the Postal Service, to the specified point from which the shipment will be made and from which line haul transportation service (as distinguished from switching, local drayage, or other terminal service) begins; or
    - (b) Delivered by the supplier, free of expense to the Postal Service, to any Postal Service designated point located within the same commercial zone (as prescribed by the Interstate Commerce Commission) as the f.o.b. point named in the contract.

- (2) The supplier must:
  - (a) Pack and mark shipments to comply with contract specifications or, in their absence, prepare the shipment in accordance with carrier requirements and good commercial practices and secure the lowest applicable transportation charge.
  - (b) Order specified carrier equipment when requested by the Postal Service. Otherwise, order appropriate carrier equipment not in excess of capacity to accommodate the shipment.
  - (c) When loaded by the supplier, load, stow, trim, block, and/or brace shipments as required by the carrier's rules and regulations.
  - (d) Be responsible for loss or damage occurring before delivery to the carrier; and for loss or damage due to improper packing/marking and, when loaded by the supplier, from improper loading, stowing, trimming, blocking, and/or bracing of the shipment.
  - (e) Complete the government bill of lading supplied by the Postal Service or, when none is supplied, prepare a commercial bill of lading or other transportation receipt, to show:
    - (i) A description of the shipment in terms of the governing freight classification or tariff under which the lowest freight rates are applicable;
    - (ii) The seals affixed to the conveyance, including the serial number on them, or other identification;
    - (iii) The length and capacity of cars or trucks ordered and furnished;
    - (iv) Other pertinent information required to effect prompt delivery to the consignee, including the routing and the name, delivery, and postal address of the consignee;
    - (v) Special instructions or annotations requested by the Postal Service for commercial bills of lading (for example, "To be converted to a government bill of lading"); and
    - (vi) The signature of carrier's agent and the date the shipment is received.
  - (f) Distribute the bill of lading, or other transportation receipt, as directed by the Postal Service.

- (g) Supply with each invoice a memorandum copy of the government bill of lading, clearly indicating the signature of the carrier's agent, date of pickup, and the weight accepted by the carrier. If the weight is determined by the carrier after pickup, it must be annotated on the memorandum copy of the government bill of lading along with the following:

"I certify that the weight information is that obtained from the carrier.

Signed: \_\_\_\_\_"

- (3) F.o.b. origin prices include delivery by the supplier, free of expense to the Postal Service, to any Postal Service designated point located within the same commercial zone (as prescribed by the Interstate Commerce Commission) as the f.o.b. point named in the contract.
- (4) Where delivery is to be made to points not included under paragraph 3 above, either of the following apply:
- (a) If the Postal Service has not specified otherwise, the supplier must ship on government bills of lading.
- (b) If the Postal Service specifies that shipment is to be made on endorsed commercial bills of lading the supplier will be required to prepay all transportation charges, as follows:
- (i) Delivery to the door of the specified destination by freight or express common carriers on articles for which store-to-door delivery is provided free, or subject to a charge pursuant to published tariffs or schedules filed with the federal and/or state regulatory bodies governing such carriers.
- (ii) Delivery to siding at destination if not covered under (1) above.
- (iii) Delivery to the freight station nearest destination if not covered under (1) or (2) above.
- (iv) The supplier must annotate the commercial bill of lading as follows: "Property of the United States Postal Service."

- (v) The actual transportation costs will be added to the supplier's invoice as a separate item. The costs must be based on the lowest published rate on file with the Interstate Commerce Commission or any state regulatory body. They must be supported by freight or express receipts marked "prepaid." If the receipts are not obtainable, annotate the invoice as follows:

"I certify that the items identified on this invoice were shipped prepaid, and freight or express receipts in support thereof are not obtainable:

Name:

Destination:

Names of Carriers:

Weight of shipment:

Transportation charges claimed:"

- (5) The Postal Service reserves the right to specify the mode of transportation and routing to be employed.

### Clause 2-10 Liquidated Damages (January 1997)

(2.2.6)

- a. If the supplier fails to complete the work, deliver the supplies, or perform the services within the time specified in this contract, or any extension, the supplier must, in place of actual damages, pay to the Postal Service \_\_\_\_\_ (*contracting officer insert amount*) for liquidated damages as agreed for each calendar day of delay.
- b. Alternatively, if completion, delivery, or performance is delayed beyond the contract dates, the Postal Service may terminate this contract in whole or in part under the *Termination for Default* clause, and the supplier will be liable for the agreed liquidated damages accruing until the time the Postal Service may reasonably obtain delivery or performance of similar facilities, supplies, or services. The liquidated damages will be in addition to excess costs of reprocurement.
- c. The supplier will not be charged with liquidated damages when the delay in completion, delivery, or performance arises out of causes beyond the control and without the fault or negligence of the supplier.

**Clause 2-11 Postal Service Property — Fixed-Price  
(January 1997)**

(2.2.7)

**a. Postal Service-Furnished Property**

- (1) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related information the supplier may request that may reasonably be required for the intended use of the property (hereinafter referred to as "Postal Service-furnished property").
- (2) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use (except for property furnished "as is") will be delivered at the times stated in the Schedule or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates. If Postal Service-furnished property is not delivered by these times, the contracting officer will, upon timely written request from the supplier, make a determination of any delay occasioned the supplier and will equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay, in accordance with the *Changes* clause.
- (3) Except for Postal Service-furnished property furnished "as is," if the Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier must notify the contracting officer and (as directed by the contracting officer) either (a) return it at the expense of the Postal Service or otherwise dispose of it, or (b) effect repairs or modifications. Upon the completion of (a) or (b), the contracting officer (upon written request from the supplier) will equitably adjust the delivery or performance dates or the contract price, or both, and any other affected contractual provision, in accordance with the *Changes* clause.
- (4) The provisions for adjustment in this paragraph a are exclusive, and the Postal Service is not liable to suit for breach of contract by reason of any delay in delivery of Postal Service-furnished property or its delivery in a condition not suitable for its intended use.

**b. Changes in Postal Service-Furnished Property**

- (1) By written notice, the contracting officer may (a) decrease the property provided or to be provided by the Postal Service under this contract, or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service, or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal and shipping of the property covered by this notice.

- (2) In the event of any decrease in or substitution of property pursuant to subparagraph b.1 above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Postal Service had agreed in the Schedule to make available for the performance of this contract, the contracting officer, upon the supplier's written request (or — if substitution causes a decrease in the cost of performance — on the contracting officer's own initiative), will equitably adjust any contractual provisions affected by the decrease, substitution, or withdrawal, in accordance with the *Changes* clause.
- c. *Title.* Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested. All Postal Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- d. *Use of Postal Service Property.* The Postal Service property, unless otherwise provided in this contract or approved by the contracting officer, must be used only for performing this contract.
- e. *Utilization, Maintenance, and Repair of Postal Service Property.* The supplier must maintain and administer, in accordance with sound industrial practice, a program or system for the utilization, maintenance, repair, protection, and preservation of Postal Service property until it is disposed of in accordance with this clause. If any damage occurs to Postal Service property, the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs; provided, however, that if the supplier cannot effect these repairs within the time required, the supplier will dispose of the property in the manner directed by the contracting officer. The contract price includes no compensation to the supplier for performing any repair or replacement for which the Postal Service is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement made at the direction of the Postal Service, in accordance with the *Changes* clause. Any repair or replacement for which the supplier is responsible under the provisions of this contract must be accomplished by the supplier at the supplier's own expense.



- f. *Risk of Loss.* Unless otherwise provided in this contract, the supplier assumes the risk of, and becomes responsible for, any loss or damage to Postal Service property provided under this contract upon its delivery to the supplier or upon passage of title to the Postal Service as provided in paragraph c above, except for reasonable wear and tear and except to the extent that it is consumed in performing this contract.
- g. *Access.* The Postal Service, and any persons designated by it, must at reasonable times have access to premises where any Postal Service property is located, for the purpose of inspecting it.
- h. *Final Accounting for and Disposition of Postal Service Property.* Upon completion, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract (including any resulting scrap) or not previously delivered to the Postal Service, and will prepare for shipment, deliver f.o.b. origin, or dispose of this property, as the contracting officer may direct or authorize. The net proceeds of disposal will be credited to the contract price or will be paid in such other manner as the contracting officer may direct.
- i. *Restoration of Supplier's Premises and Abandonment.* Unless otherwise provided in this contract, the Postal Service:
  - (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation with regard to restoration or rehabilitation of the supplier's premises, either in case of abandonment, disposition on completion of need or of the contract, or otherwise, except for restoration or rehabilitation costs properly included in an equitable adjustment under paragraph b or e above.

*Alternate Paragraph c (see 2.2.7.d.1(a))*

- c. *Title*
  - (1) Title to all Postal Service-furnished property remains in the Postal Service. To define the obligations of the parties under this clause, title to each item of facilities, special test equipment, or special tooling (other than that subject to a special-tooling clause) acquired by the supplier for the Postal Service under this contract will pass to and vest in the Postal Service when its use in the performance of this contract begins, or upon payment for it by the Postal Service, whichever is earlier, whether or not title was previously vested.
  - (3) Title to all material purchased by the supplier for whose cost the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon delivery of the material to the supplier by the vendor.
  - (4) Title to other material whose cost is reimbursable to the supplier under this contract will pass to and vest in the Postal Service upon:
    - (a) Its issuance for use in the performance of this contract; or

- (b) Reimbursement of its cost by the Postal Service, whichever occurs first.
- (5) All Postal Service-furnished property, together with all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c, is subject to the provisions of this clause and is hereinafter collectively referred to as "Postal Service property." Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.

#### **Clause 2-12 Postal Service Property — Short Form (January 1997) (2.2.7)**

- a. The Postal Service will deliver to the supplier, at the time and locations stated in this contract, the Postal Service property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered timely to the supplier, the contracting officer must equitably adjust affected provisions of this contract in accordance with the *Changes* clause when:
  - (1) The supplier submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- b. Title to Postal Service property remains in the Postal Service. The supplier may use the Postal Service property only in connection with this contract. The supplier must maintain adequate property control records in accordance with sound industrial practice and must make them available for Postal Service inspection at all reasonable times.
- c. Upon delivery of Postal Service property to the supplier, the supplier assumes the risk and responsibility for its loss or damage, except:
  - (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing the contract; or
  - (3) As otherwise provided in the contract.
- d. Upon completing this contract, the supplier must follow the contracting officer's instructions regarding the disposition of all Postal Service property not consumed in performing this contract or previously delivered to the Postal Service. The supplier must prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property, as directed or authorized by the contracting officer. The net proceeds of any such disposal will be credited to the contract price or will be paid to the Postal Service as directed by the contracting officer.

**Clause 2-13 Postal Service Property — Non-Fixed-Price  
(January 1997)**

(2.2.7)

**a. *Postal Service-Furnished Property***

- (1) Supplier's managerial personnel, as used in paragraph g of this clause, means any of the supplier's directors and officers and any of the supplier's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (a) All or substantially all of the supplier's business;
  - (b) All or substantially all of the supplier's operation at any one plant or separate location at which the contract is being performed; or
  - (c) A separate and complete major industrial operation connected with performing this contract.
- (2) The Postal Service will deliver to the supplier, for use in connection with and under the terms of this contract, the property described as Postal Service-furnished property in the Schedule or specifications, together with any related data and information the supplier may request that may be reasonably required for the intended use of the property (hereinafter referred to as "Postal Service-furnished property").
- (3) The contract delivery or performance dates are based on the expectation that Postal Service-furnished property suitable for use will be delivered at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the supplier to meet these delivery or performance dates.
- (4) If Postal Service-furnished property is received in a condition not suitable for its intended use, the supplier will, upon receipt, notify the contracting officer, detailing the facts, and, as directed by the contracting officer and at Postal Service expense, either effect repairs or modifications or return or otherwise dispose of the property. After the directed action is completed and upon written request from the supplier, the contracting officer will make an equitable adjustment as provided in paragraph h of this clause.
- (5) If Postal Service-furnished property is not delivered by the required time or times, the contracting officer will, upon the supplier's timely written request, make a determination of any delay caused the supplier and will make an equitable adjustment in accordance with paragraph h of this clause.

**b. *Changes in Postal Service-Furnished Property***

- (1) The contracting officer may, by written notice, (a) decrease the property provided or to be provided under this contract or (b) substitute other Postal Service-owned property for the property to be provided by the Postal Service or to be acquired by the supplier for the Postal Service under this contract. The supplier must promptly take any action the contracting officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

- (2) Upon the supplier's written request, the contracting officer will make an equitable adjustment to the contract in accordance with paragraph h of this clause, if the Postal Service has agreed in the Schedule to make property available for performing this contract and there is any:
  - (a) Decrease or substitution in this property pursuant to subparagraph b.1 above; or
  - (b) Withdrawal of authority to use property, if provided under any other contract or lease.
- c. *Title*
  - (1) The Postal Service retains title to all Postal Service-furnished property.
  - (2) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier.
  - (3) Title to all other property whose cost is reimbursable to the supplier will pass to and vest in the Postal Service upon:
    - (a) Issuance of the property for use in contract performance;
    - (b) Commencement of processing of the property or its use in contract performance; or
    - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.
  - (4) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph c (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.
- d. *Use of Postal Service Property.* The Postal Service property must be used only for performing this contract, unless otherwise provided in this contract or approved by the contracting officer.
- e. *Property Administration*
  - (1) The supplier is responsible and accountable for all Postal Service property provided under the contract and must establish and maintain a program or system for the control, use, maintenance, repair, protection, and preservation of Postal Service property in accordance with sound business practice.

- (2) If any damage occurs to Postal Service property the risk of which has been assumed by the Postal Service under this contract, the Postal Service will replace the items or the supplier must make such repairs as the Postal Service directs. However, if the supplier cannot effect these repairs within the time required, the supplier will dispose of the property as directed by the contracting officer. When any property for which the Postal Service is responsible is replaced or repaired, the contracting officer will make an equitable adjustment in accordance with paragraph h of this clause.
- f. *Access.* The Postal Service and its designees must have access at all reasonable times to the premises where any Postal Service property is located, for the purpose of inspecting it.
- g. *Limited Risk of Loss*
  - (1) The supplier is not liable for loss or destruction of, or damage to, the Postal Service property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs 2 and 3 below.
  - (2) The supplier is responsible for any loss or destruction of, or damage to, the Postal Service property provided under this contract (including expenses incidental to such loss, destruction, or damage):
    - (a) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
    - (b) That results from a risk that is in fact covered by insurance or for which the supplier is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
    - (c) For which the supplier is otherwise responsible under the express terms of this contract;
    - (d) That results from willful misconduct or lack of good faith on the part of the supplier's managerial personnel; or
    - (e) That results from a failure on the part of the supplier, due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel, to establish and administer a program or system of the control, use, protection, preservation, maintenance, and repair of Postal Service property as required by paragraph e of this clause.
  - (3)
    - (a) If the supplier fails to act, as described in g.2(e) above, after being notified (by certified mail addressed to one of the supplier's managerial personnel) of the Postal Service's disapproval, withdrawal of approval, or nonacceptance of the system or program, it will be conclusively presumed that this failure was due to willful misconduct or lack of good faith on the part of the supplier's managerial personnel.

- (b) In this event, any loss or destruction of, or damage to, the Postal Service property will be presumed to have resulted from such failure unless the supplier can establish by clear and convincing evidence that the loss, destruction, or damage:
    - (i) Did not result from the supplier's failure to maintain an approved program or system; or
    - (ii) Occurred while an approved program or system was maintained by the supplier.
- (4) If the supplier transfers Postal Service property to the possession and control of a subcontractor, the transfer does not affect the liability of the supplier for loss or destruction of, or damage to, the property. However, the supplier must require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the contracting officer, relieves the subcontractor from liability. In the absence of approval, the subcontract must contain appropriate provisions requiring the return of all Postal Service property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
- (5) Upon loss or destruction of, or damage to, Postal Service property provided under this contract, the supplier must so notify the contracting officer and communicate with any loss and salvage organization designated by the contracting officer. With the assistance of any such organization, the supplier must take all reasonable action to protect the Postal Service property from further damage, separate the damaged and undamaged Postal Service property, put all the affected Postal Service property in the best possible order, and furnish to the contracting officer a statement of:
  - (a) The lost, destroyed, and damaged Postal Service property;
  - (b) The time and origin of the loss, destruction, or damage;
  - (c) All known interests in commingled property of which the Postal Service property is a part; and
  - (d) Any insurance covering any part of or interest in the commingled property.
- (6) The supplier must repair, renovate, and take any other action with respect to damaged Postal Service property that the contracting officer directs. If the Postal Service property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the supplier's) that separation is impractical, the supplier may, with the approval of and subject to any conditions imposed by the contracting officer, sell the property for the account of the Postal Service. Such sales may be made in order to minimize the loss to

- the Postal Service, to permit the resumption of business, or to accomplish a similar purpose. The supplier is entitled to an equitable adjustment in the contract price for expenditures made in performing its obligations under subparagraph g.5 above and this subparagraph g.6 in accordance with paragraph h of this clause. However, the Postal Service may directly reimburse the loss and salvage organization for any of its charges. The contracting officer will give due regard to the supplier's liability under this paragraph g when making any such equitable adjustment.
- (7) The contract will not be reimbursed for, and may not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Postal Service property, except to the extent that the Postal Service may have expressly required the supplier to carry such insurance under another provision of this contract.
  - (8) In the event the supplier is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Postal Service property, the supplier must use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Postal Service property or must otherwise credit the proceeds to, or equitably reimburse, the Postal Service, as directed by the contracting officer.
  - (9) The supplier must do nothing to prejudice the Postal Service's rights to recover against third parties for any loss or destruction of, or damage to, Postal Service property. Upon the request of the contracting officer, the supplier will, at the Postal Service's expense, furnish to the Postal Service all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Postal Service) in obtaining recovery. In addition, when a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Postal Service property, the supplier must enforce this liability of the subcontractor for the benefit of the Postal Service.
- h. *Equitable Adjustment.* When this clause specifies an equitable adjustment, it will be made to any affected contract provision in accordance with the procedures of the *Changes* clause. When appropriate, the contracting officer may initiate an equitable adjustment in favor of the Postal Service. The right to an equitable adjustment shall be the supplier's exclusive remedy. The Postal Service is not liable to suit for breach of contract for:
- (1) Any delay in delivery of Postal Service-furnished property;
  - (2) Delivery of Postal Service-furnished property in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of Postal Service-furnished property;
- or

- (4) Failure to repair or replace Postal Service property for which the Postal Service is responsible.
- i. *Final Accounting for and Disposition of Postal Service Property.* Upon completing this contract, or at such earlier dates as may be fixed by the contracting officer, the supplier must submit, in a form acceptable to the contracting officer, inventory schedules covering all items of Postal Service property not consumed in performing this contract or delivered to the Postal Service. The supplier will prepare for shipment, deliver f.o.b. origin, or dispose of the Postal Service property as the contracting officer may authorize or direct. The net proceeds of any disposal will be credited to the cost of the work covered by this contract or paid to the Postal Service as directed by the contracting officer. The foregoing provisions apply to scrap from Postal Service property; provided, however, that the contracting officer may authorize or direct the supplier to omit from the inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of this scrap in accordance with the supplier's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the supplier's established accounting procedures.
- j. *Abandonment and Restoration of Supplier's Premises.* Unless otherwise provided in this contract, the Postal Service:
- (1) May abandon any Postal Service property in place, whereupon all obligations of the Postal Service regarding it will cease; and
  - (2) Has no obligation to restore or rehabilitate the supplier's premises under any circumstances (for instance, abandonment, disposition upon completion of need, or contract completion). However, if the Postal Service-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Postal Service property is substituted, then the equitable adjustment under paragraph h of this clause may properly include restoration or rehabilitation costs.
- k. *Communications.* All communications under this clause must be in writing.

*Alternate Paragraph c (see 2.2.7.d.1(c))*

- c. *Title*
- (1) The Postal Service retains title to all Postal Service-furnished property.
  - (2) All Postal Service-furnished property and all property acquired by the supplier, title to which vests in the Postal Service under this paragraph (collectively referred to as "Postal Service property"), is subject to the provisions of this clause. Title to Postal Service property is not affected by its incorporation into or attachment to any property not owned by the Postal Service, nor does Postal Service property become a fixture or lose its identity as personal property by being attached to any real property.



- (3) Title to all property purchased by the supplier for which the supplier is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of the contract, is to vest in the Postal Service, will pass to and vest in the Postal Service upon the vendor's delivery of such property to the supplier. Title to all other property whose cost is to be reimbursed to the supplier under this contract and that under the contract provisions is to vest in the Postal Service, will pass to and vest in the Postal Service upon:
  - (a) Issuance of the property for use in contract performance;
  - (b) Commencement of processing of the property or its use in contract performance; or
  - (c) Reimbursement of the cost of the property by the Postal Service, whichever occurs first.
- (4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 will vest in the supplier upon acquisition or as soon thereafter as feasible; provided, that the supplier has obtained the contracting officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more will vest as set forth in the contract. If title to equipment vests in the supplier under this subparagraph c.4, the supplier agrees that no charge will be made to the Postal Service for any depreciation, amortization, or use under any existing or future Postal Service contract or subcontract thereunder. The supplier will furnish the contracting officer a list of all equipment to which title is vested in the supplier under this subparagraph c.4 within 10 days following the end of the calendar quarter during which it was received.
- (5) Vesting title under subparagraph c.4 above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract the supplier accepts and agrees that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the contemplated financial assistance (title to equipment).

**Clause 2-14 Postal Service Property Furnished "As Is"  
(January 1997)**

(2.2.7)

- a. The Postal Service makes no warranty whatsoever with respect to Postal Service property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the supplier pursuant to the solicitation or (if not inspected by the supplier) as when last available for inspection under the solicitation.

- b. The supplier may repair any property made available to the supplier “as is.” Repair will be at the supplier’s expense except as otherwise provided in this clause. Such property may be modified at the supplier’s expense, but only with the written permission of the contracting officer. Any repair or modification of property furnished “as is” does not affect the title of the Postal Service.
- c. If there is any change (between the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation) in the condition of Postal Service property furnished “as is” that will adversely affect the supplier, the supplier must, upon receipt of the property, notify the contracting officer of that fact, and (as directed by the contracting officer) either (1) return the property at the expense of the Postal Service or otherwise dispose of it, or (2) effect repairs to return it to the condition it was in when inspected under the solicitation, or (if not inspected) as it was when last available for inspection under the solicitation. Upon completion of (1) and (2) above, the contracting officer, upon written request from the supplier, will equitably adjust any contractual provisions affected by the return, disposition, or repair, in accordance with the *Changes* clause. The foregoing provisions for adjustment are exclusive, and the Postal Service is not liable for any delivery of Postal Service property furnished “as is” in a condition other than that in which it was originally offered.
- d. Except as otherwise provided in this clause, Postal Service property furnished “as is” is governed by the *Postal Service Property* clause of this contract.

### Clause 2-15 Special Tooling (January 1997)

(2.2.7)

- a. *Definition*
  - (1) Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements so specialized that, without substantial modification or alteration, their use is limited to developing or producing particular supplies or performing particular services. The term includes all components of such items, but does not include:
    - (a) Consumable property;
    - (b) Special test equipment; or
    - (c) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.
  - (2) For the purposes of this clause, special tooling does not include:
    - (a) Items acquired by the supplier before the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or

- (b) Items specifically excluded by the Schedule.
- b. *Use of Special Tooling.* The supplier agrees not to use any items of special tooling purchased or manufactured by the supplier for the performance of this contract except in performing it, or as approved by the contracting officer.
- c. *List of Special Tooling.* Within 60 days after delivery of the first production end items under this contract, or such later date as the contracting officer may prescribe, the supplier must (if the contracting officer so requests) furnish the contracting officer a list of all special tooling acquired or manufactured by the supplier for use in the performance of this contract. The list shall specify the nomenclature, tool number, and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract, the supplier must furnish a final list in the same form covering all items not previously reported under this paragraph c; provided, however, that the contracting officer may, by written notice, waive this requirement or extend it until the completion of this contract and other contracts and subcontracts for which approval has been obtained under paragraph b above. Special tooling that has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph d below.
- d. *Changes in Design.* If any changes in design or specifications affect interchangeability of parts, the supplier will, unless otherwise agreed to by the contracting officer, give the contracting officer notice of any part that is not interchangeable with the new or superseding part; and the usable special tooling for each part covered in this notice will be retained by the supplier, subject to the provisions of paragraph i below, pending disposition under paragraph f below.
- e. *Supplier's Offer to Retain Special Tooling.* When the supplier furnishes a list or notice under paragraph c or d above, the supplier may designate the items of special tooling (either specifically or by listing the particular products, parts, or services for which they were used or designed) the supplier desires to retain, together with a written offer to retain them:
- (1) Free and clear of any Postal Service interest, for an amount designated in the offer that should ordinarily not be less than the fair value of the items, which fair value takes into account, among other things, their value to the supplier for use in further work; or
  - (2) For a period of time and under terms and conditions agreed to by the parties, subject to ultimate retention or disposition of these items in accordance with paragraph f below.
- f. *Disposition of Special Tooling*
- (1) Within 90 days after receipt of any list or notice under paragraph c or d above, or such further period as may be agreed upon by the parties, the contracting officer will furnish to the supplier:

- (a) A list specifying the particular products, parts, or services for which the Postal Service may require special tooling, together with a request that the supplier transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Postal Service all usable items of special tooling used or designed for the manufacture or performance of any designated portion of those products, parts, or services and on hand when production of the products or parts, or performance of the services, ceased;
  - (b) An acceptance or rejection of any offer made by the supplier under paragraph e above, or a request for further negotiation with respect to it;
  - (c) A direction to the supplier to sell, or to dispose of as scrap, for the account of the Postal Service, any or all of the special tooling covered by the list;
  - (d) A statement with respect to any or all of the special tooling covered by the list specifying that the Postal Service has no further interest in it and waives its rights in it; or
  - (e) Any combination of the foregoing, as the circumstances warrant.
- (2) The supplier will promptly comply with any request by the contracting officer under subparagraph f.1 preceding to transfer title to any items of special tooling, and will:
    - (a) Immediately prepare them for shipment by proper packaging, packing, and marking, in accordance with any instruction issued by the contracting officer, promptly delivering them to the Postal Service as directed by the contracting officer; or
    - (b) If a storage agreement has been entered into, prepare them for storage in accordance with that agreement, as directed by the contracting officer.
  - (3) To the extent that compliance with direction to ship or store under subparagraph f.2 preceding may occasion cost to the supplier for which the supplier will not otherwise be compensated, the contract price will be equitably adjusted in accordance with the *Changes* clause. Any items of special tooling delivered or stored must be accompanied by any operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed.
  - (4) If the contracting officer has requested further negotiations under f.1(b) above, the supplier agrees to enter into them in good faith with the contracting officer. Any items of special tooling not disposed of by transfer of title and delivery to the Postal Service, or by acceptance of an offer of the supplier made under paragraph e above, or of such offer as modified in the course of negotiations, must be disposed of in the manner set forth in f.1(c)

- or (d) above. Any failure of the contracting officer to give the required direction within the specified period will be construed as a direction pursuant to f.1(c) above.
- g. *Proceeds of Retention or Disposition of Special Tooling.* If the contracting officer accepts an offer of the supplier to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds will be:
- (1) Deducted from the amounts due to the supplier under this contract and the contract amended accordingly; or
  - (2) Otherwise paid as the contracting officer may direct.
- h. *Property Control.* The supplier agrees to follow normal industrial practice in maintaining property-control records on special tooling and to make them available for inspection by the Postal Service at all reasonable times. The supplier further agrees that, to the extent practicable, the supplier will identify by appropriate stamp, tag, or other mark all special tooling subject to this clause.
- i. *Maintenance Pending Disposition.* The supplier agrees that, between the date any usable items of special tooling are no longer needed by the supplier, within the meaning of this clause, and the date of their final disposition under this clause, the supplier will take all reasonable steps necessary to maintain their identity and existing condition, unless the contracting officer has directed that they be disposed of as scrap or has given notice under f.1(d) above. The supplier shall not be required to keep any such items in place.
- j. *Special Tooling Provisions for Subcontracts.* The supplier agrees, in placing any subcontracts or purchase orders under this contract that involve the use of special tooling whose full cost is charged to the subcontract or purchase order, to include therein appropriate provisions to obtain rights comparable to those granted to the Postal Service by this clause, unless the contracting officer determines, upon the supplier's request, that with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Postal Service. The supplier further agrees to exercise any rights for the benefit of the Postal Service as the contracting officer may direct.

**Clause 2-16 Special Test Equipment (January 1997)** (2.2.7)

- a. *Definition.* Special test equipment means electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment so specialized that, without substantial modification or alteration, their use (if they are to be used separately) is limited to testing in the development or production of particular supplies or in the performance of particular services. The term includes all components of any assemblies of such equipment, but does not include:
- (1) Consumable property;
  - (2) Special tooling; or

- (3) Buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment), general or special machine tools, or similar capital items.
- b. *Supplier Notice of Intent to Acquire Special Equipment.* This contract provides that the supplier will acquire special test equipment for the Postal Service but does not specify its exact nature. Before acquiring any special test equipment or components having an item acquisition cost of \$1,000 or more, the supplier must give the contracting officer 30 days' notice of intention to do so, including a full description of all such items and a list of alternative items that could be used. The Postal Service may elect within the 30-day period to furnish the special test equipment or any components. If the supplier has not received written notice within the period prescribed, the supplier may proceed to acquire the equipment or components, subject to any other applicable provisions of this contract.
- c. *Postal Service-Furnished Special Test Equipment.* If the Postal Service elects to furnish special test equipment or any components pursuant to paragraph b preceding, these items will be furnished subject to the *Postal Service Property* clause of this contract; provided, however, that the Postal Service is not obligated to deliver them any sooner than the supplier could have procured them after expiration of the 30-day notice period prescribed in paragraph b.
- d. *Equitable Adjustment.* If the Postal Service furnishes any special test equipment or components under paragraph c preceding, any affected provision of this contract will be equitably adjusted in accordance with the *Changes* clause.
- e. *Subcontracts.* If special test equipment or components having an item acquisition cost of \$1,000 or more are to be acquired for the Postal Service by a subcontractor under this contract, the Postal Service's rights to receive 30 days' advance notice from the supplier, and to furnish the items to the supplier and obtain an equitable adjustment of the prime contract therefor, in accordance with paragraphs b, c, and d above, will be preserved.

**Clause 2-17 Option for Increased Quantity (January 1997)** (2.2.8)

The Postal Service may increase the quantity of supplies called for in this contract by the amounts stated in the Schedule and at the unit prices specified in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-18 Option Item (January 1997)** (2.2.8)

The Postal Service may increase the quantity of supplies called for in this contract by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. Delivery of the items added by the exercise of this option will continue immediately after, and at the same rate as, delivery of like items called for under this contract, unless the parties otherwise agree.

**Clause 2-19 Option to Extend (Services Contract) (January 1997)** (2.2.8)

The Postal Service may require the supplier to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The contracting officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the supplier. The rates set forth in the Schedule will apply to any extension made under this option clause.

**Clause 2-20 Option to Renew (with Preliminary Notice) (January 1997)** (2.2.8)

This contract is renewable, at the option of the Postal Service, by the contracting officer giving written notice of renewal to the supplier within the period specified in the Schedule; provided that, the contracting officer will have given preliminary notice of the Postal Service's intent to renew at least 60 days before this contract is to expire (such a preliminary notice will not be deemed to commit the Postal Service to renewals). If the Postal Service exercises this option for renewal, the contract as renewed includes this option clause. The duration of this contract, including renewals, may not exceed the time limit set forth in the Schedule.

**Clause 2-21 Component Parts (January 1997)** (2.3.3)

The description of any component parts in the specification by use of brand or manufacturer's names indicates that there are no other acceptable sources for those components known to the Postal Service. Such descriptions are not meant to be restrictive, however, and the supplier may ask the contracting officer to recognize a supplier-proposed component not included in the specifications as equal to one of the specified components and permit its substitution; provided that the supplier submits any request for substitution in a timely manner and with sufficient information to enable the contracting officer to ascertain readily whether the proposed component is in fact equal to the component described in the specifications. The contracting officer's approval or disapproval of the request for substitution is final and not subject to the *Claims and Disputes* clause.

**Clause 2-22 Value Engineering Incentive (January 1997)** (2.2.10)

- a. *General.* The supplier is encouraged to develop and submit value engineering change proposals (VECPs) voluntarily. The supplier will share in savings realized from an accepted VECP as provided in paragraph h below.
- b. *Definitions*
  - (1) *Value Engineering Change Proposal (VECP).* A proposal that:
    - (a) Requires a change to the instant contract;
    - (b) Results in savings to the instant contract; and
    - (c) Does not involve a change in:
      - (i) Deliverable end items only;
      - (ii) Test quantities due solely to results of previous testing under the instant contract; or
      - (iii) Contract type only.
  - (2) *Instant Contract.* The contract under which a VECP is submitted. It does not include additional contract quantities.
  - (3) *Additional Contract Quantity.* An increase in quantity after acceptance of a VECP due to contract modification, exercise of an option, or additional orders (except orders under indefinite-delivery contracts within the original maximum quantity limitations).
  - (4) *Postal Service Costs.* Costs to the Postal Service resulting from developing and implementing a VECP, such as net increases in the cost of testing, operations, maintenance, logistics support, or property furnished. Normal administrative costs of processing the VECP are excluded.
  - (5) *Instant Contract Savings.* The estimated cost of performing the instant contract without implementing a VECP minus the sum of (a) the estimated cost of performance after implementing the VECP and (b) Postal Service costs.
  - (6) *Additional Contract Savings.* The estimated cost of performance or delivering additional quantities without the implementation of a VECP minus the sum of (a) the estimated cost of performance after the VECP is implemented and (b) Postal Service cost.
  - (7) *Supplier's Development and Implementation Costs.* Supplier's cost in developing, testing, preparing, and submitting a VECP. Also included are the supplier's cost to make the contractual changes resulting from the Postal Service acceptance of the VECP.
- c. *Content.* A VECP must include the following:
  - (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.



- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - (3) A separate, detailed cost estimate for (a) the affected portions of the existing contract requirement and (b) the VECP. The cost reduction associated with the VECP must take into account the supplier's allowable development and implementation costs.
  - (4) A description and estimate of costs the Postal Service may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - (5) A prediction of any effects the proposed change would have on Postal Service costs.
  - (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
  - (7) Identification of any previous submissions of the VECP to the Postal Service, including the dates submitted, purchasing offices, contract numbers, and actions taken.
- d. *Submission.* The supplier must submit VECPs to the contracting officer.
- e. *Postal Service Action*
- (1) The contracting officer will give the supplier written notification of action taken on a VECP within 60 days after receipt. If additional time is needed, the contracting officer will notify the supplier, within the 60-day period, of the expected date of a decision. The Postal Service will process VECPs expeditiously but will not be liable for any delay in acting upon a VECP.
  - (2) If a VECP is not accepted, the contracting officer will so notify the supplier, explaining the reasons for rejection.
- f. *Withdrawal.* The supplier may withdraw a VECP, in whole or in part, at any time before its acceptance.
- g. *Acceptance*
- (1) Acceptance of a VECP, in whole or in part, will be by execution of a supplemental agreement modifying this contract and citing this clause. If agreement on price (see paragraph h below) is reserved for a later supplemental agreement, and if such agreement cannot be reached, the disagreement is subject to the *Claims and Disputes* clause of this contract.
  - (2) Until a VECP is accepted by contract modification, the supplier must perform in accordance with the existing contract.
  - (3) The contracting officer's decision to accept or reject all or any part of a VECP is final and not subject to the *Claims and Disputes* clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).
- h. *Sharing.* If a VECP is accepted, the supplier will share in the contract savings as follows:

- (1) *Instant Contract Savings.* The supplier and the Postal Service will share equally in instant contract savings. Sharing will be accomplished by a modification reducing the contract price by an amount equal to 50 percent of the instant contract savings minus the supplier's allowable VECP development and implementation costs.
- (2) *Additional Contract Savings.* Unless this is a construction contract, the supplier will receive 25 percent of additional contract savings. Sharing will be accomplished by negotiating a price for the additional contract quantity that reflects a reduction in price by 75 percent of additional contract savings.
- (3) *Construction Contracts.* If this is a construction contract, only instant contract savings will be shared. Sharing will be accomplished in accordance with subparagraph h.1 above.

i. *Data*

- (1) The supplier may restrict the Postal Service's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering Incentive clause of contract \_\_\_\_\_, may not be disclosed outside the Postal Service or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Postal Service's right to use information contained in these data if it has been obtained or is otherwise available from the supplier or from another source without limitation."

- (2) If a VECP is accepted, the supplier hereby grants the Postal Service unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Postal Service will have the rights specified in the contract modification implementing the VECP and will appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Chapter 9 of the USPS *Purchasing Manual*.)

*Additional Paragraph j* (see 2.2.10.h)

- j. *Subcontracts.* The supplier must include an appropriate value engineering incentive clause in any firm-fixed-price subcontract of \$100,000 or more. In calculating any price adjustment for savings under this contract, the supplier's allowable VECP development and implementation costs include any subcontractor's allowable development and implementation costs. Subcontract savings are subject to the sharing arrangements in paragraph h of this clause, and will be taken into account in determining the savings under this contract.

**Clause 2-23 Reimbursement — Postal Service Testing (January 1997)** (2.2.1)

- a. The supplier will be charged at the rate of \$60 per work-hour for:
  - (1) The total time, including round-trip travel time, lost by Postal Service representatives when the supplier is not ready for inspection at the time inspection and testing is requested by the supplier; and
  - (2) The total time, including round-trip travel time, required by Postal Service representatives for reinspection and retesting resulting from rejection.
- a. Other out-of-pocket expenses incurred by the Postal Service as a consequence of the activities described in this clause will be billed to the supplier.

**Clause 2-24 Inspection and Acceptance — Supplies, Non-fixed Price (January 1997)** (2.2.1)

In addition to the requirements set forth in Clause 2-1, *Inspection and Acceptance*, the Postal Service may:

- a. At any time during contract performance, and for six months after acceptance, reject supplies or services that do not conform with the requirements of this contract. The supplier must correct or replace those rejected supplies or services within a reasonable time. The supplier may not provide supplies or services initially rejected, unless the cause for rejection is disclosed.
- b. In lieu of any other remedies permitted by this contract, deduct replacement or correction costs from payments due the supplier under this contract or require repayment of any payments already made, if the supplier fails to correct or replace rejected supplies or services within a reasonable time.
- c. At any time require the supplier to remedy, by correction or replacement, without cost to the Postal Service, any failure by the supplier to comply with the requirements of this contract, if this failure is due to fraud, lack of good faith, or willful misconduct on the part of any of the supplier's directors or officers or on the part of any of the supplier's managers, superintendents, or other equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the supplier's business;
  - (2) All or substantially all of the supplier's operation at any one plant or separate location at which this contract is being performed;
  - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
  - (4) All or substantially all of the supplier's operation under this contract.

**Clause 2-25 Unpriced Options (January 1997)** (2.2.8)

The Postal Service may elect to exercise the unpriced option described in the schedule. The contracting officer may exercise this option at any time within the period specified in the Schedule by giving written notice to the supplier. The price for this option will be negotiated at the time the option is exercised.

**Clause 2-26 Payment — Fixed Price (January 1997)** (2.4.3)

The Postal Service will pay the supplier, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for work or supplies delivered and accepted or services rendered and accepted, less any deductions provided for by the contract. Unless the contract otherwise specifies, payment will be made on partial deliveries accepted by the Postal Service if:

- a. The amount due on the deliveries warrants it; or
- b. The supplier requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price, whichever is less.

**Clause 2-27 Incentive Price Revision (January 1997)** (2.4.3)

- a. *General.* The supplies or services identified in the Schedule as items \_\_\_\_\_ (*Contracting officer insert Schedule line numbers*) are subject to price revision in accordance with the provisions of this clause. In no event may the total final price of such items exceed \$ \_\_\_\_\_ (*Contracting officer insert ceiling price*).
- b. *Definition.* Costs means allowable costs in accordance with Chapter 5 of the USPS *Purchasing Manual* in effect on the date of this contract.
- c. *Submission of Data*
  - (1) Within \_\_\_\_\_ days (*Contracting officer insert number of days*) after the end of the month in which the supplier has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph a above, the supplier must submit, in such form as the contracting officer may require:
    - (a) A detailed statement of all costs incurred up to the end of that month in performing all work under those items;
    - (b) An estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to them; and
    - (c) Any other relevant data the contracting officer may reasonably require.

- (2) If the supplier fails to submit the data required within the time specified and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess will bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the *Interest* clause of this contract.
- d. *Price Revision.* Upon receipt by the contracting officer of the data required by paragraph c above, the parties will establish the total final price in accordance with the following:
  - (1) On the basis of the information required by paragraph c above, together with any other pertinent information, the parties will negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Postal Service that are subject to price revision under this clause.
  - (2) The total final price will be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:
    - (a) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
    - (b) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit less \_\_\_\_\_ percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost exceeds the total target cost.
    - (c) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus \_\_\_\_\_ percent (*Contracting officer insert percent*) of the amount by which the total final negotiated cost is less than the total target cost.
  - (3) The total final price of the items specified in a above must be evidenced by a modification to this contract, signed by the supplier and the contracting officer. This price is not subject to revision, regardless of any changes in the cost of performing the contract, except to the extent that:
    - (a) The parties agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and
    - (b) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.
- e. *Adjusted Billing Price*
  - (1) Pending execution of the contract modification described in subparagraph d.3 above, the supplier must submit invoices or vouchers in accordance with the billing price as provided in this paragraph e. The billing price will be the target price shown in this contract.

- (2) If at any time it appears that the then current billing price will be substantially greater than the estimated final price, the parties must negotiate a reduction in the billing price. Similarly, the parties may negotiate an increase in the billing price by any or all of the difference between the target price and the ceiling price, upon the supplier's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.
  - (3) Any billing price adjustment must be reflected in a contract modification and will not affect the determination of the total final price under paragraph d above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers must be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits must be made promptly.
- f. *Limitations on Payments.* This paragraph f applies until final price revision under this contract has been completed.
- (1) Within 45 days after the end of each quarter of the supplier's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Postal Service under this contract, and for each quarter thereafter, the supplier must submit to the contracting officer a statement, cumulative from the beginning of the contract, showing:
    - (a) The total contract price of all supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have been established;
    - (b) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Postal Service and for which final prices have not been established;
    - (c) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph f) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Postal Service for which final prices have not been established — increased or decreased in accordance with subparagraph d.2 above, when the amount stated under f.1(b) above differs from the aggregate target cost of the supplies or services; and
    - (d) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Postal Service (including amounts applied or to be applied to liquidate progress payments).

- (2) Regardless of any provision of this contract authorizing greater payments, if on any quarterly statement the amount under f.1(d) above exceeds the sum due the supplier, as computed in accordance with f.1(a), (b) and (c) above, the supplier must immediately refund or credit to the Postal Service the amount of the excess. The supplier may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the *Progress Payments* clause. The supplier must provide complete details to support any claimed reductions in refunds.
  - (3) If the supplier fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Postal Service has overpaid the supplier, the supplier must repay the excess to the Postal Service immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess will bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the *Interest* clause.
- g. *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The supplier must:
  - (1) Insert in each subcontract other than a firm-fixed-price subcontract the substance of paragraph f above, and of this paragraph g, modified to omit mention of the Postal Service and to reflect the position of the supplier as purchaser and of the subcontractor as vendor; and
  - (2) Include in each cost-reimbursement subcontract a requirement that each subcontract other than a firm-fixed-price subcontract contain the substance of paragraph f above and of this paragraph g modified as required by subparagraph g.1 above.
- h. *Disagreements*. If the supplier and the contracting officer fail to agree upon the total final price within 60 days (or within such other period as the contracting officer may specify) after the date on which the data required by paragraph c above are to be submitted, the contracting officer must promptly issue a decision in accordance with the *Claims and Disputes* clause.
- i. *Termination*. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision must be established in accordance with this clause for completed supplies and services accepted by the Postal Service and those supplies and services not terminated under a partial termination. All other elements of the termination must be resolved in accordance with other applicable clauses of this contract.

- j. *Equitable Adjustment Under Other Clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment must be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price may be adjusted.
- k. *Exclusion from Target Price and Total Final Price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price may include any amount for that purpose.
- l. *Separate Reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation will be at Postal Service expense, that expense may not be included in any target price or in the total final price, but must be reimbursed separately.
- m. *Taxes.* As used in the *Federal, State, and Local Taxes* clause of this contract or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the supplier to pay or bear the burden of certain taxes or duties, the increase or decrease will be made in the total target price or, if it has been established, in the total final price, so that it will not affect the supplier's profit or loss on this contract.
- n. *Provisioning and Options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Postal Service option are subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Postal Service option will be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

**Clause 2-28 Economic Price Adjustment — Labor and Materials  
(January 1997)**

(2.4.3)

- a. If at any time during the performance of this contract the rates of pay for labor or unit prices for materials set forth in the Schedule increase or decrease, the supplier must notify the contracting officer within 60 days or within such further period as may be approved in writing by the contracting officer, but in any event not later than final payment under the contract. The notice must include the supplier's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph b below and must be accompanied by data, in such form as the contracting officer may require, explaining:
  - (1) The causes;



- (2) The effective date; and
  - (3) The amount of the increase or decrease and of the supplier's proposal for an equitable adjustment.
- b. Promptly upon receipt of any notice and data described in paragraph a above, the supplier and the contracting officer will negotiate an equitable adjustment (and its effective date) in the contract unit prices to reflect any change in the cost of performance of this contract due to changes in rates of pay for labor or unit prices for materials set forth in the Schedule; provided, however, that negotiations may be postponed by the contracting officer until an accumulation of changes results in an adjustment allowable under subparagraph c.5 below. The equitable adjustment, and its effective date, will be set forth in an amendment to this contract that also revises the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increases or decreases. Pending agreement on, or determination of, any such adjustment and its effective date, the supplier shall continue performance.
- c. Notwithstanding any other provision of this clause, any price adjustments under this clause are subject to the following limitations:
  - (1) There will be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule.
  - (2) There will be no adjustment other than for changes in the rates of pay for labor or unit prices of materials set forth in the Schedule.
  - (3) There will be no adjustment for any change in the quantities of labor or materials set forth in the Schedule for each item to be delivered.
  - (4) No upward adjustment will apply to supplies required by the delivery schedule to be delivered before the effective date of the adjustment but actually delivered later, unless the supplier's failure to deliver in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the supplier within the meaning of the *Default* clause, in which case the contract will be amended to make an equitable extension of the delivery schedule.
  - (5) Except as provided in paragraph d below, there will be no adjustment for any change in rates of pay for labor or unit prices for materials that would not result in a net change of at least 3 percent of the then-current total contract price.
  - (6) The aggregate of the increases in any contract unit price made under this clause may not exceed \_\_\_\_\_ percent (*Contracting officer insert percentage no higher than ten percent*) of the original contract unit price.
- d. If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to paragraph b above, the limitations of subparagraph c.5 above do not apply.

- e. The final invoice submitted under this contract must include a certification that the supplier has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that the supplier has given notice of all such decreases in compliance with paragraph a above.
- f. The contracting officer may examine the supplier's books, records, and other supporting data relevant to the cost of labor and materials during all reasonable times until the expiration of 3 years from the date of final payment under the contract.
- g. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

**Clause 2-29 Economic Price Adjustment (Index Method)  
(January 1997)**

(2.4.3)

Regardless of actual changes in the cost of labor and material during the performance period of this contract, price adjustments necessitated by such changes shall be made only as provided in this clause. The contracting officer shall place in the contract Schedule an adjustment formula that describes the elements that will be used to determine the adjusted contract price. The adjustment formula may identify some or all of the following as appropriate:

- (1) Contract line items, cycles, production runs or such other portion of the contract that will be subject to adjustment according to this clause;
- (2) Base unit price to be adjusted;
- (3) Portion of the base unit price subject to adjustment;
- (4) Index that will be used for the adjustment, paying particular attention to describe the index to avoid confusion over which release (i.e., preliminary, seasonally adjusted, subsequently revised, or final), issue, or date will be applicable;
- (5) Percent of the price governed by the chosen index;
- (6) Adjustment period;
- (7) Base period; and
- (8) Degree of specificity of the result (i.e., number of decimal places to be used).
- (9) Should the selected index be discontinued or substantially altered, both parties shall agree upon an appropriate replacement.

**Clause 2-30 Allowable Cost and Payment (January 1997)** (2.4.4)

- a. *Invoicing.* The Postal Service will make payments to the supplier when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer in accordance with Chapter 5 of the USPS *Purchasing Manual* in effect on the date of this contract, and the terms of this contract. The supplier must submit an invoice or voucher to the address specified in the Schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.
- b. *Reimbursement*
  - (1) For the purpose of reimbursing allowable costs, the term costs includes only:
    - (a) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
    - (b) When the supplier is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
      - (i) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
      - (ii) Direct labor;
      - (iii) Direct travel;
      - (iv) Other direct in-house costs; and
      - (v) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts.
    - (c) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
  - (2) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph e below, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph c below.
  - (3) Any statements in specifications or other documents incorporated by reference in this contract that designate performance of services or furnishing of materials at the supplier's expense or at no cost to the Postal Service will be disregarded for purposes of cost reimbursement under this clause.
- c. *Final Indirect Cost Rates*
  - (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with Chapter 5 of the USPS *Purchasing Manual* in effect for the period covered by the indirect cost rate proposal.

- (2) The supplier must, within 90 days after the end of each of its fiscal years, or by a later date approved by the contracting officer, submit to the contracting officer or contracting officer's representative proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates must be based on the supplier's actual cost experience for that period. The contracting officer or contracting officer's representative and the supplier must establish the final indirect cost rates as promptly as practical after receipt of the supplier's proposal.
  - (3) Agreement on final indirect cost rates must be set forth in a written understanding. The understanding may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution. The understanding must specify:
    - (a) The agreed upon final annual indirect cost rates;
    - (b) The bases to which the rates apply;
    - (c) The periods for which the rates apply;
    - (d) Any specific indirect cost items treated as direct costs in the settlement; and
    - (e) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.
  - (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the *Claims and Disputes* clause of this contract.
- d. *Billing Rates.* Until final annual indirect cost rates are established for any period, the Postal Service will reimburse the supplier at billing rates established by the contracting officer or the contracting officer's representative, subject to adjustment when the final rates are established. These billing rates:
- (1) Must be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- e. *Audit.* At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
- (1) Reduced by amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.

f. *Final Payment*

- (1) The supplier must submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but not later than one year (or longer, as the contracting officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the supplier's compliance with all terms of this contract, the Postal Service will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The supplier must pay to the Postal Service any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the supplier or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the supplier has been reimbursed by the Postal Service. Reasonable expenses incurred by the supplier for securing refunds, rebates, credits, or other amounts are allowable costs if approved by the contracting officer. Before final payment under this contract, the supplier and each assignee whose assignment is in effect at the time of final payment must execute and deliver:
  - (a) An assignment to the Postal Service, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including any interest) properly allocable to costs for which the supplier has been reimbursed by the Postal Service under this contract; and
  - (b) A release discharging the Postal Service and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:
    - (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
    - (ii) Claims (including reasonable incidental expenses) based upon liabilities of the supplier to third parties arising out of the performance of this contract, but only if the claims are not known to the supplier on the date of the execution of the release, and only if the supplier gives notice of the claims in writing to the contracting officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
    - (iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the supplier under the patent clauses of this contract, excluding, however, any expenses arising from the supplier's indemnification of the Postal Service against patent liability.

**Clause 2-31 Limitation of Cost (January 1997)** (2.4.4)

- a. The parties estimate that the cost to the Postal Service for performing this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed the estimated cost then set forth in the Schedule, the supplier must notify the contracting officer in writing to that effect, giving its revised estimate of the total cost for performing the contract.
- c. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the estimated cost set forth in the Schedule, and the supplier is not obligated to continue performance (including actions under the *Termination* clause) or otherwise to incur costs in excess of that estimated cost, unless the contracting officer notifies the supplier in writing that the estimated cost has been increased. No notice, communication, or representation in any other form or from any person other than the contracting officer may affect the estimated cost. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the estimated cost set forth in the Schedule, whether incurred during the course of the contract or as a result of termination. To the extent that the estimated cost set forth in the Schedule is increased, any costs incurred in excess of the estimated cost before the increase will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.
- d. Change orders issued under the *Changes* clauses are not an authorization to exceed the estimated cost set forth in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the estimated cost.
- e. If this contract is terminated or the estimated cost not increased, the Postal Service and the supplier must negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

**Clause 2-32 Limitation of Funds (January 1997)** (2.4.4)

- a. The parties estimate that the cost to the Postal Service for performing this contract will not exceed the estimated cost set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within this estimated cost.
- b. The amount presently available for payment and allotted to this contract, the items covered by this amount, and the period of performance it is estimated the allotted amount will cover are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The supplier agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Postal Service under this contract approximates but does not exceed the total actually allotted to the contract.
- c. Whenever the supplier has reason to believe that the costs it expects to incur in performing this contract in the next succeeding 60 days (see note 1), when added to all costs previously incurred, **will exceed 75 percent (see note 2) of** the total amount then allotted to the contract, the supplier must notify the contracting officer in writing to that effect. The notice must state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. No later than 60 days (see note 1) before the end of the period specified in the Schedule, the supplier must advise the contracting officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after this notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the contracting officer will, upon written request by the supplier, terminate this contract on that date, under the *Termination* clause. If the supplier, exercising reasonable judgment, estimates that the funds available will allow it to continue to discharge its obligations for a period extending beyond that date, the supplier must specify the later date in the request, and the contracting officer, in the contracting officer's discretion, may terminate the contract on that later date.
- d. Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause, the Postal Service is not obligated to reimburse the supplier for costs incurred in excess of the total amount from time to time allotted to the contract, and the supplier is not obligated to continue performance (including actions under the contract's *Termination* clause) or otherwise to incur costs in excess of that amount, unless the contracting officer notifies the supplier in writing that the amount has been increased, specifying an increased amount constituting the total amount then allotted to the contract. To the extent that the amount allotted exceeds the estimated cost set forth in the

Schedule, the estimated cost must be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the contracting officer may affect the amount allotted. In the absence of the specified notice, the Postal Service is not obligated to reimburse the supplier for any costs in excess of the total amount then allotted, whether incurred during the course of the contract or as a result of termination. To the extent that the amount allotted is increased, any costs incurred in excess of the amount previously allotted will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely for the purpose of covering termination or other specified expenses.

- e. Change orders issued under the *Changes* clause are not an authorization to exceed the amount allotted in the Schedule, in the absence of a statement in the change order or other contractual modification increasing the amount allotted.
- f. Nothing in this clause affects the right of the Postal Service to terminate this contract. If the contract is terminated, the Postal Service and the supplier must negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- g. If sufficient funds are not allotted to this contract to allow completion of the work contemplated, the supplier will be entitled to a percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

**Note:**

- 1. May be varied by contracting officer from 30 to 90 days.
- 2. May be varied by contracting officer from 75 to 85 percent.

**Clause 2-33 Cost Contract — No Fee (January 1997)** (2.4.4)

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the total estimated cost shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 (see note), whichever is less.

**Note:** May be changed by the contracting officer to \$10,000 in contracts with nonprofit organizations.



**Clause 2-34 Cost-Sharing Contract — No Fee (January 1997)** (2.4.4)

- a. The Postal Service will not pay the supplier a fee for performing this contract.
- b. After paying 80 percent of the Postal Service share of the total estimated cost of performance shown in the Schedule, the contracting officer may withhold further payment of allowable costs until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed one percent of the Postal Service's share of total estimated cost shown in the Schedule or \$100,000, whichever is less.

**Clause 2-35 Incentive Fee (January 1997)** (2.4.4)

- a. *General.* The Postal Service will pay the supplier for performing this contract a fee determined as provided in the contract.
- b. *Target Cost and Target Fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph d below.
  - (1) Target cost means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph d below.
  - (2) Target fee means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph d below.
- c. *Withholding Payment.* Normally, the Postal Service will pay the fee to the supplier as specified in the Schedule. However, when the contracting officer considers that performance or cost indicates that the supplier will not achieve target, the Postal Service will pay on the basis of an appropriate lesser fee. When the supplier demonstrates that performance or cost clearly indicates that the supplier will earn a fee significantly above the target fee, the Postal Service may, at the discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. The reserve may not exceed 15 percent of the applicable fee or \$100,000, whichever is less.
- d. *Equitable Adjustments.* When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, must be stated in a supplemental agreement to this contract.

e. *Fee Payable*

- (1) The fee payable under this contract will be the target fee increased by \_\_\_\_\_ cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_\_ cents (*contracting officer insert supplier's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than \_\_\_\_\_ percent or less than \_\_\_\_\_ percent (*contracting officer insert percentages*) of the target cost.
- (2) The fee will be subject to adjustment, to the extent provided in paragraph d above, and within the minimum and maximum fee limitations in subparagraph e.1 above, when the total allowable cost is increased or decreased as a consequence of:
  - (a) Payments made under assignments; or
  - (b) Claims excepted from the release required by subparagraph f.2 of the *Allowable Cost and Payment* clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph e. The termination will be accomplished in accordance with other applicable clauses of this contract.
- (4) For the purpose of fee adjustment, total allowable cost does not include cost arising out of:
  - (a) Any of the causes covered by the *Excusable Delays* clause, to the extent that they are beyond the control and without the fault or negligence of the supplier or any subcontractor;
  - (b) The taking effect, after the target cost is negotiated, of a statute, court decision, written ruling, or regulation that results in the supplier's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (c) Any direct cost attributed to the supplier's involvement in litigation as required by the contracting officer under a clause of this contract, including furnishing evidence and information requested under the *Notice and Assistance Regarding Patent and Copyright Infringement* clause;
  - (d) The purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons under the *Insurance* clause; or
  - (e) Any claim, loss, or damage resulting from a risk for which the supplier has been relieved of liability by the *Postal Service Property* clause.
- (5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph e, unless this contract specifically provides otherwise.

- f. *Contract Modification.* The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the supplier and the contracting officer.
- g. *Inconsistencies.* In the event of any inconsistencies between this clause and provisioning documents or Postal Service options under this contract, compensation for spare parts or other supplies and services ordered under those documents or options will be determined in accordance with this clause.

**Clause 2-36 Fixed Fee (January 1997)** (2.4.4)

- a. The Postal Service will pay the supplier for performing this contract the fixed fee specified in the Schedule.
- b. Payment of the fixed fee will be made as specified in the Schedule. After payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Postal Service's interest. This reserve may not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

**Clause 2-37 Award Fee (January 1997)** (2.4.4)

The estimated cost for this contract is \$\_\_\_\_\_.

The base fee is \$\_\_\_\_\_.

The award fee is \$\_\_\_\_\_.

The total estimated cost plus base and award fees is \$\_\_\_\_\_.

This contract will be modified to reflect the award fee as award fee determinations are made.

The amount of award fee the supplier earns, if any, is based on a subjective evaluation by the Postal Service of the quality of the supplier's performance in accordance with the award fee plan. The Postal Service will determine the amount of award fee at the intervals stated in the award fee plan that is applicable to this contract. The Fee Determination Official (FDO), who is identified in the award fee plan, will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the supplier and is not subject to the *Disputes* clause. The Postal Service may unilaterally change the award fee plan at any time, and will provide such changes in writing to the supplier prior to the beginning of the applicable evaluation period. The supplier must submit a voucher or invoice for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

**Clause 2-38 Payment (Time-and-Materials and Labor-Hour Contracts) (January 1997)** (2.4.5)

The Postal Service will pay the supplier as follows upon submission of invoices or vouchers approved by the contracting officer:

a. *Hourly Rate*

- (1) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number or direct labor hours performed. The rates will include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour will be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals if approved by the contracting officer). The supplier will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the contracting officer. Promptly after receipt of each substantiated voucher, the Postal Service will, except as otherwise provided in this contract, and subject to the terms of paragraph e below, pay the voucher as approved by the contracting officer.
- (2) Unless otherwise prescribed in the Schedule, the contracting officer will withhold five percent of the amounts due under this paragraph a, but the total amount withheld may not exceed \$50,000. The amounts withheld will be retained until the execution and delivery of any required release by the supplier.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule must not be varied by virtue of the supplier having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the contracting officer, overtime rates may be negotiated. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the contracting officer.

b. *Materials and Subcontracts*

- (1) Allowable costs of direct materials will be determined by the contracting officer in accordance with Chapter 5 of the USPS *Purchasing Manual* in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate.
- (2) The actual costs of subcontracts that are authorized under the *Subcontracts* clause of this contract are reimbursable; provided, they are consistent with subparagraph 3 following.
- (3) To the extent possible, the supplier must:
  - (a) Obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and

- (b) Take all available cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the supplier will promptly notify the contracting officer and give the reasons. Credit will be given to the Postal Service for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the supplier, or would have accrued except for the fault or neglect of the supplier. The benefits lost without fault or neglect on the part of the supplier, or lost through no fault of the contracting officer, will not be deducted from gross costs.
- c. *Total Cost.* It is estimated that the total cost for performing this contract will not exceed the ceiling price set forth in the Schedule, and the supplier agrees to use its best efforts to perform the work within this ceiling price. Whenever the supplier has reason to believe that the hourly rate payments and material costs that will accrue in performing the contract in the next 60 days, if added to all other payments and costs previously accrued, will exceed the ceiling price, the supplier must notify the contracting officer, giving any revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the supplier has reason to believe that the total price for this contract will be greater than or substantially less than the then stated ceiling price, the supplier must notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. Whenever the Postal Service has reason to believe that the work required will be greater than or substantially less than the then stated ceiling price, the contracting officer will advise the supplier, giving a revised estimate of the total amount of effort to be required under the contract.
- d. *Ceiling Price.* The Postal Service is not obligated to pay the supplier any amount in excess of the ceiling price in the Schedule, and the supplier is not obligated to continue performance if to do so would exceed the ceiling price, until the contracting officer notifies the supplier in writing that the ceiling price has been increased, specifying a revised ceiling price for performance under the contract. When the ceiling price is increased, any hours expended or material costs incurred in excess of the ceiling price before the increase will be allowable to the same extent as if expended or incurred afterwards.
- e. *Audit.* At any time or times before final payment, the contracting officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the supplier as the completion voucher or completion invoice and substantiating material, and upon compliance by the

supplier with any required release and all other terms of this contract, the Postal Service will promptly pay any balance due. The completion invoice or voucher, and substantiating material, must be submitted by the supplier as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

**Clause 2-39 Ordering (November 2000)** (2.4.6)

- a. Supplies or services to be furnished under this contract will be ordered by authorized Postal Service credit card, or issuance of delivery orders, during the period and by the activities specified in the Schedule.
- b. Orders may be issued in writing, by written telecommunication, electronic data interchange (EDI), or orally. Oral orders, other than authorized Postal Service credit card orders, must be confirmed in writing. Orders sent by mail are considered issued when placed in the mail.
- c. The supplier must report to the contracting officer in the format and intervals specified in the Schedule all orders charged to an authorized Postal Service credit card.
- d. All orders are subject to the terms and conditions of this contract. If there is any conflict between an order and this contract, the contract is controlling.

**Clause 2-40 Delivery-Order Limitations (January 1997)** (2.4.6)

- a. When the Postal Service requires supplies or services covered by this contract in an amount less than \_\_\_\_\_ (*Contracting officer insert minimum dollar amount or quantity*), the Postal Service is not obligated to purchase, and the supplier is not obligated to furnish, those supplies or services under this contract.
- b. The supplier is not obligated to honor:
  - (1) Any order for a single item in excess of \_\_\_\_\_ (*Contracting officer insert maximum dollar amount or quantity*);
  - (2) Any order for a combination of items in excess of \_\_\_\_\_ (*Contracting officer insert maximum dollar amount or quantity*); or
  - (3) A series of orders from the same ordering office in the course of \_\_\_\_\_ days (*Contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph b.1 or b.2 above.
- c. If this is a requirements contract, the Postal Service is not required to order a part of any one requirement from the supplier if that requirement exceeds the limitations stated in paragraph b above.

- d. If it is the supplier's intent not to honor an order received that exceeds the limitations stated in paragraph b above, the supplier must return the order to the ordering office within \_\_\_\_\_ days (*Contracting officer specify*) after issuance, with a written notice rejecting the order and giving the reasons; the Postal Service may then obtain the supplies or services from another source. If the supplier does not return the order with a notice of rejection as required, the supplier must honor the order as issued.

**Clause 2-41 Definite Quantity (January 1997)** (2.4.6)

- a. This is a definite-quantity contract. The Postal Service will order the quantity of supplies or services specified in the Schedule, and the supplier must furnish those supplies or services when ordered. Delivery or performance must be made at locations designated in orders issued in accordance with the *Ordering* clause and the contract Schedule. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- b. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

**Clause 2-42 Indefinite Quantity (January 1997)** (2.4.6)

- a. This is an indefinite-quantity contract; the quantities of supplies or services specified in the Schedule are not purchased until ordered. If this contract resulted from multiple awards under a single solicitation for the same or similar supplies or services to two or more sources, some or all of the orders issued will be subject to the competitive procedures described in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the maximum. The Postal Service must order at least the quantity of supplies or services designated in the Schedule as the minimum. There is no limit on the number of orders that may be issued, unless specified in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.

- c. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.

**Clause 2-43 Requirements (January 1997)** (2.4.6)

- a. This is a requirements contract for supplies or services described in the Schedule for the period specified. The supplies or services are not purchased until ordered. If the Postal Service's requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact may not be the basis for an equitable price adjustment unless specifically provided elsewhere in this contract.
- b. Delivery or performance must be as directed in orders issued in accordance with the *Ordering* clause and the contract Schedule. The supplier must furnish to the Postal Service, when ordered, the supplies or services specified in the Schedule, subject to any limitations in the *Delivery-Order Limitations* clause or in the contract Schedule. Orders may require delivery to multiple destinations or performance at multiple locations.
- c. Except as otherwise provided in this contract, the Postal Service must order from the supplier all the supplies or services specified in the Schedule that are required to be purchased by the activity or activities identified in the *Ordering* clause or the Schedule.
- d. The Postal Service is not required to purchase from the supplier requirements in excess of any limit on total orders under this contract.
- e. If the Postal Service urgently requires delivery or performance before the earliest date specified under this contract, and if the supplier will not accept an order providing for the accelerated delivery or performance, the Postal Service may purchase the urgently required supplies or services from another source.
- f. Any order issued during the effective period of this contract and not completed within that period must be completed by the supplier within the time specified in the order, and the rights and obligations of the supplier and the Postal Service with respect to the order will be the same as if the order were completed during the effective period of the contract.



*Alternate Paragraph c. (see 2.4.6)*

- c. The estimated quantities are not the total requirements of the activities specified in the *Ordering* clause or the Schedule, but are estimates of either specified portions of requirements or of requirements in excess of the quantities that the activities can themselves furnish within their own capabilities. Except as this contract otherwise provides, the Postal Service must order from the supplier either the portion of a designated activity's requirements for supplies and services specified in the Schedule or the requirements that exceed the quantities the activity can itself furnish within its own capabilities.

**Clause 2-44 Contract Definitization (January 1997)** (2.4.9)

- a. A \_\_\_\_\_ (*Contracting officer insert type of contract contemplated*) definitive contract is contemplated. The supplier agrees to submit a fixed-price or cost-reimbursement proposal as appropriate, and to negotiate with the contracting officer the terms of a definite contract that will include:
- (1) All clauses required by the USPS *Purchasing Manual* on the date of execution of this letter contract;
  - (2) All clauses required by law on the date of the execution of the definitive contract; and
  - (3) Other mutually agreeable clauses, terms, and conditions.
- b. The schedule for definitizing this contract is as follows:
- (1) Proposal submission date:\_\_\_\_\_.
  - (2) Beginning of negotiations:\_\_\_\_\_.
  - (3) Definitization target date:\_\_\_\_\_.
- c. If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph b above or any extension of that date by the contracting officer, the contracting officer may determine a reasonable price or fee in accordance with Chapter 5 of the USPS *Purchasing Manual* subject to appeal by the supplier as provided in the *Claims and Disputes* clause. In any event, the supplier must proceed with a completion of the contract, subject only to the *Limitation of Postal Service Liability* clause. After the date of the contracting officer's determination of price or fee, the contract will be governed by:
- (1) All clauses required by the USPS *Purchasing Manual* on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph c;
  - (2) All clauses required by law as of the date of the contracting officer's determination;
  - (3) Other clauses, terms, and conditions mutually agreed upon; and

- (4) To the extent consistent with c.1, 2, and 3 above, all other clauses, terms, and conditions included in this letter contract, except those that by their nature are applicable only to a letter contract.
- d. The price of the definitive contract resulting from this letter contract will in no event exceed \$\_\_\_\_\_. (See *Purchasing Manual* 2.4.9.d.2.(c) for applicability of this paragraph d.)

**Clause 2-45 Execution and Commencement of Work (January 1997)** (2.4.9)

The supplier must indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than \_\_\_\_\_ (*Contracting officer insert date*). Upon acceptance by both parties, the supplier must proceed with performance of the work, including purchase of necessary materials.

**Clause 2-46 Limitation of Postal Service Liability (January 1997)** (2.4.9)

- a. The supplier is not authorized to make expenditures or to incur obligations in performing this contract exceeding \$ \_\_\_\_\_ (*Contracting officer insert limit*).
- b. The maximum amount for which the Postal Service will be liable if this contract is terminated is \$ \_\_\_\_\_ (*Contracting officer insert maximum liability*).

**Clause 2-47 Payment of Allowable Costs Before Definitization (January 1997)** (2.4.9)

- a. Pending the definitization of this letter contract, the Postal Service will promptly reimburse the supplier for all allowable costs under the contract at the following rates:
  - (1) 100 percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts, but not exceeding 80 percent of the allowable costs of those subcontractors.
  - (2) 100 percent of approved costs representing cost reimbursement subcontracts, but not exceeding 85 percent of the allowable costs of those subcontractors.
  - (3) 85 percent of all other approved costs.
- b. To determine amounts payable to the supplier under this letter contract, allowable costs will be determined by the contracting officer in accordance with Chapter 5 of the *USPS Purchasing Manual* in effect on the date of this contract. The total reimbursement made under this clause may not exceed 85 percent of the maximum amount of the Postal Service liability stated in the *Limitation of Postal Service Liability* clause.

- c. Once each month (or more often if approved by the contracting officer), the supplier may submit to the contracting officer or an authorized representative, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of claimed allowable costs incurred by the supplier in performance of this contract.
- d. For the purpose of determining allowable costs, the term costs includes only:
  - (1) Those recorded costs that, at the time of the request for reimbursement, the supplier has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
  - (2) When the supplier is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (a) Materials issued from the supplier's inventory and placed in the production process for use on the contract;
    - (b) Direct labor;
    - (c) Direct travel;
    - (d) Other direct in-house costs; and
    - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the supplier for purposes of obtaining reimbursement under Postal Service contracts; and
  - (3) The amount of progress payments that have been paid to the supplier's subcontractors under similar cost standards.
- e. At any time or times before final payment, the contracting officer may have the supplier's invoices or vouchers and statements of cost audited. Any payment may be:
  - (1) Reduced by any amounts found by the contracting officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.

**Clause 2-48 Inspection and Acceptance — Services  
(June 1999)**

(2.2.1)

- a. The supplier must be able to demonstrate that the services being provided conform to contract requirements. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:
  - (1) Acquire replacement services from other sources at the supplier's expense; or
  - (2) Accept the services at a reduced price.

- b. The Postal Service, at its option, may at any stage in the performance of this contract, monitor the supplier's activities and efforts in performing the contract, to assure itself that contract requirements are being met. Such Postal Service oversight in no way relieves the supplier from its responsibility to perform in accordance with contract requirements.

#### **Clause 2-49 Quality Assurance - Services (June 1999)**

(2.2.1)

- a. The supplier must use a documented quality assurance system to monitor and measure its performance against contract requirements. As a minimum, that quality assurance system must include:
  - (1) A process management system that includes documented work processes, mechanisms to monitor and measure the processes being used to perform the contract, systematic approaches for corrective action where needed, and continuous improvement measurement of key metrics, regular quality reviews, and periodic customer reviews.
  - (2) A means of assessing customer satisfaction that includes elements such as:
    - (a) Periodic customer surveys, supplier/customer focus groups, or other means of securing regular customer feedback; and
    - (b) An actively maintained complaint log.
  - (3) Active supplier management that includes elements such as:
    - (a) Supplier selection, certification, and oversight practices and systematic supplier performance oversight or review; and
    - (b) An employee training and development program.
- b. The Postal Service has the right to evaluate the acceptability and effectiveness of the supplier's quality assurance system prior to award, and to periodically verify that it is in use and effective during contract performance.
- c. The supplier will maintain records and metrics pertaining to this quality system in accordance with the record retention requirements of the contract.
- d. A quality assurance system in compliance with ISO 9001 meets this requirement.
- e. The Postal Service may require correction of defects and nonconformance at no cost to the Postal Service. If the supplier fails or refuses to correct the defects or nonconformance the Postal Service may, in addition to any other remedies provided by this contract:
  - (1) Acquire replacement services from other sources at the supplier's expense; or
  - (2) Accept the services at a reduced price.

**Clause 3-1 Small, Minority, and Woman-owned Business Subcontracting Requirements (February 1999)** (3.2.3)

- a. All suppliers except small businesses must submit a subcontracting plan that is specific to this contract, and that separately addresses subcontracting with small, minority, and woman-owned businesses. A plan approved by the Postal Service must be included in and made a part of the contract. Lack of an approved plan may make the supplier ineligible for award. A subcontract is defined as any agreement (other than one involving an employer-employee relationship) entered into by a Postal Service supplier or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- b. The supplier's subcontracting plan must include the following:
  - (1) Goals, in terms of percentages of the total amount of this contract that the supplier will endeavor to subcontract to small, minority, and woman-owned businesses. The supplier must include all subcontracts that contribute to contract performance, and may include a proportionate share of supplies and services that are normally allocated as indirect costs.
  - (2) A statement of the:
    - (a) Total dollars planned to be subcontracted under this contract; and
    - (b) Total of that amount planned to be subcontracted to small, minority, and woman-owned businesses.
  - (3) A description of the principal types of supplies and services to be subcontracted under this contract, identifying the types planned for subcontracting to small, minority, and woman-owned businesses.
  - (4) A description of the method used to develop the subcontracting goals for this contract.
  - (5) A description of the method used to identify potential sources for solicitation purposes and a description of efforts the supplier will make to ensure that small, minority, and woman-owned businesses have an equitable opportunity to compete for subcontracts.
  - (6) A statement as to whether the offer included indirect costs in establishing subcontracting goals for this contract and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, minority, and woman-owned businesses.
  - (7) The name of the individual employed by the supplier who will administer the subcontracting program and a description of the individual's duties.
  - (8) Assurances that the supplier will require all subcontractors receiving subcontracts in excess of \$1,000,000 to adopt a plan similar to the plan agreed to by the supplier.

- (9) A description of the types of records the supplier will maintain to demonstrate compliance with the requirements and goals in the plan for this contract. The records must include at least the following:
  - (a) Source lists, guides, and other data identifying small, minority, and woman-owned businesses;
  - (b) Organizations contacted in an attempt to locate sources that are small, minority, and woman-owned businesses;
  - (c) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating whether small, minority, or woman-owned businesses were solicited and if not, why not; and
  - (d) Records to support subcontract award data, including the name, address, and business size of each subcontractor.
- c. *Reports.* The supplier must provide reports on subcontracting activity under this contract on a calendar-quarter basis. The report must be one of the types described in Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses*.

### **Clause 3-2 Participation of Small, Minority, and Woman-owned Businesses (February 1999)**

(3.2.3)

- a. The policy of the Postal Service is to encourage the participation of small, minority, and woman-owned business in its purchases of supplies and services to the maximum extent practicable consistent with efficient contract performance. The supplier agrees to follow the same policy in performing this contract.
- b. Subject to the agreement of the supplier and the Postal Service, the supplier will report subcontracting activity on one of the following bases:
  - (1) Showing direct subcontracting awards made;
  - (2) Showing subcontracting activity that is allocable to this contract using generally accepted accounting practices; or
  - (3) A combination of the methods listed above.
- c. The supplier will submit a report to the contracting officer within 15 calendar days after the end of each calendar-year quarter, describing all subcontract awards to small, minority, or woman-owned businesses. The contracting officer may require more frequent reports.

**Clause 4-1 General Terms and Conditions (January 2002)** (4.2.7)

- a. *Inspection and Acceptance.* The supplier will only tender for acceptance those items that conform to the requirements of this contract. The Postal Service reserves the right to inspect or test supplies or services that have been tendered for acceptance. The Postal Service may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Postal Service must exercise its post acceptance rights (1) within a reasonable period of time after the defect was discovered or should have been discovered and (2) before any substantial change occurs in the condition of the items, unless the change is due to the defect in the item.
- b. *Assignment.* If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:
  - (1) The contracting officer;
  - (2) The surety or sureties upon any bond; and
  - (3) The office, if any, designated to make payment, and the contracting officer has acknowledged the assignment in writing.
  - (4) Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.
- c. *Changes*
  - (1) The contracting officer may, in writing, without notice to any sureties, order changes within the general scope of this contract in the following:
    - (a) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for the Postal Service in accordance with them;
    - (b) Statement of work or description of services;
    - (c) Method of shipment or packing;
    - (d) Places of delivery of supplies or performance of services;
    - (e) Postal Service furnished property or facilities.

- (2) Any other written or oral order (including direction, instruction, interpretation, or determination) from the contracting officer that causes a change will be treated as a change order under this paragraph, provided that the supplier gives the contracting officer written notice stating (a) the date, circumstances, and source of the order and (b) that the supplier regards the order as a change order.
  - (3) If any such change affects the cost of performance or the delivery schedule, the contract will be modified to effect an equitable adjustment.
  - (4) The supplier's claim for equitable adjustment must be asserted within 30 days of receiving a written change order. A later claim may be acted upon – but not after final payment under this contract – if the contracting officer decides that the facts justify such action.
  - (5) Failure to agree to any adjustment is a dispute under Clause B-9, *Claims and Disputes*, which is incorporated into this contract by reference (see paragraph s). Nothing in that clause excuses the supplier from proceeding with the contract as changed.
- d. *Reserved*
  - e. *Reserved*
  - f. *Reserved*
  - g. *Invoices*
    - (1) The supplier's invoices must be submitted before payment can be made. The supplier agrees that submission of an invoice to the Postal Service for payment is a certification that:
      - (a) Any services being billed for have been performed in accordance with the contract requirements; and
      - (b) Any supplies for which the Postal Service is being billed have been shipped or delivered in accordance with the instructions issued by the contracting officer and that the supplies are in the quantity and of the quality designated in the contract.
    - (2) To ensure prompt payment, an original invoice (or electronic invoice, if authorized) must be submitted to the address designated in the contract to receive invoices for each destination and shipment. An invoice must contain:
      - (a) The supplier's name, remit to address (including ZIP+4) and phone number;
      - (b) Unique invoice number and invoice date;
      - (c) Any applicable task or delivery order number;
      - (d) A description of the supplies or services and the dates delivered or performed;
      - (e) The point of shipment or delivery;



- (f) Quantity, unit of measure, unit price(s) and extension(s) of the items delivered;
  - (g) Shipping and payment terms, including GBL number if applicable; and
  - (h) Any additional information required by the contract.
- h. *Patent Indemnity.* The supplier will indemnify the Postal Service and its officers, employees and agents against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the supplier is reasonably notified of such claims and proceedings.
- i. *Payment*
  - (1) Payment will be made for items accepted by the Postal Service that have been delivered to the delivery destinations set forth in this contract. The Postal Service will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR 1315. Payments under this contract may be made by the Postal Service either by check, electronic funds transfer or government credit card at the option of the Postal Service.
  - (2) In conjunction with any discount offered for early payment, time will be computed from the date of the invoice. For purposes of computing the discount earned, payment will be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.
- j. *Risk of Loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract will remain with the supplier until, and will pass to the Postal Service upon:
  - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin, or;
  - (2) Delivery of the supplies to the Postal Service at the destination specified in the contract, if transportation is f.o.b. destination.
- k. *Taxes.* The contract price includes all applicable federal, state, and local taxes and duties.
- l. *Termination for the Postal Service's Convenience.* The Postal Service reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the supplier must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the supplier will be paid a percentage of the work performed prior to the notice of termination, plus reasonable charges the supplier can demonstrate to the satisfaction of the Postal Service using its standard record keeping system, have resulted from the termination. The supplier will not be required to comply with the cost accounting standards and principles for this purpose. This paragraph does not give the Postal Service any right to audit the supplier's records. The supplier will not be paid for any work performed or costs incurred which reasonable could have been avoided.

- m. *Termination for Default.* The Postal Service may terminate this contract, or any part hereof, for default by the supplier, or if the supplier fails to provide the Postal Service, upon request, with adequate assurances of future performance. In the event of termination for default, the Postal Service will not be liable to the supplier for any amount for supplies or services not accepted, and the supplier will be liable to the Postal Service for any and all rights and remedies provided by law. If it is determined that the Postal Service improperly terminated this contract for default, such termination will be deemed a termination for convenience.
- n. *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract will pass to the Postal Service upon acceptance, regardless of when or where the Postal Service takes physical possession.
- o. *Warranty.* The supplier warrants and implies that the items delivered under this contract are merchantable and fit for the use for the particular purpose described in this contract.
- p. *Limitation of Liability.* Except as otherwise provided by an express or implied warranty, the supplier will not be liable to the Postal Service for consequential damages resulting from any defect or deficiencies in accepted items.
- q. *Other Compliance Requirements.* The supplier will comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract.
- r. *Order of Precedence.* Any inconsistencies in this solicitation or contract will be resolved by giving precedence in the following order; (1) the schedule of supplies and services; (2) the Assignment, Disputes, Payments, Invoice, Other Compliances and Compliance with Laws Unique to the Postal Service Contracts paragraphs of this clause; (3) the clause at 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) Form 8203; (8) other documents, exhibits, and attachments, and (9) the specifications.
- s. *Incorporation by Reference.* Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service's *Purchasing Manual*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the *Purchasing Manual*, accessible at [www.usps.com/business](http://www.usps.com/business). The following clauses are incorporated in this contract by reference:
  - (1) B-1, *Definitions* (January 1997)
  - (2) B-9, *Claims and Disputes* (January 1997)
  - (3) B-15, *Notice of Delay* (January 1997)
  - (4) B-16, *Suspensions and Delays* (January 1997)

- (5) B-19, *Excusable Delays* (January 1997)
- (6) B-30, *Permits and Responsibilities* (January 1997)
- t. *Shipping*. The supplier must deliver goods that meet the prescribed physical limitations of the current USPS *Domestic Mail Manual* either by its own personnel/equipment or by use of the United States Postal Service, unless the contracting officer grants a waiver of this requirement. The supplier is responsible for ensuring that the packing and packaging are sufficient to protect the goods and ensure useability upon receipt.

**Clause 4-2 Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders (January 2002)** (4.2.7)

- a. *Incorporation by Reference*
  - (1) Wherever in this solicitation or contract a standard provision or clause is incorporated by reference, the incorporated term is identified by its title, the provision or clause number assigned to it in the Postal Service's *Purchasing Manual*, and its date. The text of incorporated terms may be found in Appendix A (for provisions), or Appendix B (for clauses) of the *Purchasing Manual*, accessible at [www.usps.com/business](http://www.usps.com/business). The following clauses are incorporated in this contract by reference:
    - (1) Clause 1-5, *Gratuities or Gifts* (January 1997)
    - (2) Clause B-25, *Advertising of Contract Awards* (January 1997)
    - (3) Clause 9-1, *Convict Labor* (January 1997)
    - (4) Clause 9-5, *Contract Work Hours and Safety Standards Act — Safety Standards* (January 1997)
  - (2) If checked, the following additional clauses are also incorporated in this contract by reference:  
(Contracting officer will check as appropriate.)
    - (1) Clause 1-1, *Privacy Protection* (November 2001) \_\_\_\_
    - (2) Clause 1-6, *Contingent Fees* (January 1997) \_\_\_\_
    - (3) Clause 1-9, *Preference for Domestic Supplies* (January 1997) \_\_\_\_
    - (4) Clause 1-10, *Preference for Domestic Construction Materials* (January 1997) \_\_\_\_
    - (5) Clause 3-1, *Small, Minority, and Woman-owned Business Subcontracting Requirements* (February 1999) \_\_\_\_
    - (6) Clause 3-2, *Participation of Small, Minority, and Woman-owned Businesses* (February 1999) \_\_\_\_
    - (7) Clause 9-2, *Contract Work Hours and Safety Standards Act — Overtime Compensation* (January 1997) \_\_\_\_
    - (8) Clause 9-3, *Davis-Bacon Act* (January 1997) \_\_\_\_
    - (9) Clause 9-6, *Walsh-Healey Public Contracts Act* (January 1997) \_\_\_\_
    - (10) Clause 9-7, *Equal Opportunity* (January 1997) \_\_\_\_
    - (11) Clause 9-10, *Service Contract Act* (January 1997) \_\_\_\_
    - (12) Clause 9-11, *Service Contract Act – Short Form* (January 1997) \_\_\_\_

- (13) Clause 9-12, *Fair Labor Standards Acts and Services Contract Act — Price Adjustments* (January 1997) \_\_\_\_
  - (14) Clause 9-13, *Affirmative Action for Handicapped Workers* (January 1997) \_\_\_\_
  - (15) Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (January 1997) \_\_\_\_
- b. *Examination of Records.* The Postal Service or its authorized representative will have access to and right to examine any of the supplier's directly pertinent records involving transactions related to this contract. The supplier will make available at its offices at all reasonable times the records, materials and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified for particular records. If this contract is completely or partially terminated, the records relating to the work terminated will be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract will be made available until such appeals, litigation, or claims are finally resolved. As used in this clause, records includes books, documents, account procedures and practices, and other data, regardless of type and regardless of form. This does not require the supplier to create or maintain any record that the supplier does not maintain in the ordinary course of business or pursuant to a provision of law.
- (1) Clause 9-7, *Equal Opportunity* (January 1997)
  - (2) Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (January 1997)
  - (3) Clause 9-13, *Affirmative Action for Handicapped Workers* (January 1997)

### **Clause 4-3 (Reserved)**

### **Clause 4-4 Nondisclosure (Professional Services) (January 1997)**

(4.5.3)

The supplier acknowledges that confidential information might be generated or made available during the course of performance of this agreement. In addition to the restrictions on disclosure established under the supplier's code of ethics, the supplier specifically agrees not to disclose any information received or generated under this contract, unless its release is approved in writing by the contracting officer. The supplier further agrees to assert any privilege allowed by law and to defend vigorously Postal Service rights to confidentiality.

**Clause 4-5 Inspection of Professional Services (January 1997)** (4.5.3)

- a. The contracting officer may, at any time or place, inspect the services performed and the products, including documents and reports. No matter what type of contract is employed, and in addition to any specific standards of quality set out in this agreement, the contracting officer may reject any services or products that do not meet the highest standards of professionalism. No payment will be due for any services or products rejected under this clause.
- b. Acceptance of any product or service does not relieve the supplier of the duties imposed by supplier's code of professional ethics, and the supplier remains liable for the period allowed under federal law for claims by the United States, for any errors or omissions occurring during performance. All partners or principals agree that they will be jointly and severable liable for such errors and omissions.

**Clause 4-6 Invoices (Professional Services) (January 1997)** (4.5.3)

- a. In addition to the information required elsewhere in this agreement, all invoices for services under this agreement must indicate in detail the following:
  - (1) Person performing service each day by hour and part of an hour.
  - (2) Services performed each day by hour and part of an hour.
  - (3) Rates and charges for each service so detailed.
  - (4) Individual expenses charged, if allowed under this agreement.
- b. Minimum charges for portions of an hour may be allowed, if such a charging practice has been disclosed before award of this agreement.

**Clause 4-7 Records Ownership (January 1997)** (4.5.3)

Notwithstanding any state law providing for retention of rights in the records, the supplier agrees that the Postal Service may, at its option, demand and take without additional compensation all records relating to the services provided under this agreement. The supplier must turn over all such records upon request but may retain copies of documents produced by the supplier.

**Clause 4-8 Key Personnel (January 1997)** (4.5.3)

- a. To the extent that the statement of work provides for services to be performed by key personnel, those services must be performed by the personnel identified in the supplier's proposal to perform them unless substitutes have been approved in writing by the contracting officer. Use of junior personnel, even under key personnel supervision (for example, associates or student workers), is not authorized unless they are identified in the supplier's proposal by name or position, with a description of their duties.

- b. This agreement may be terminated if the key personnel named in the supplier's proposal become unavailable for any reason. If the unavailability of key personnel is not the fault of the supplier, the contracting officer may terminate by giving notice of termination. The supplier will be paid for service performed up to the date of termination. If the contracting officer finds that the supplier is at fault for the unavailability of key personnel, the agreement may be terminated for default.

#### **Clause 4-9 Inspection and Acceptance — Systems (January 1997)**

(4.5.5)

- a. *System Acceptance Performance Criteria — Postal Service Testing.* The proposed system will be considered acceptable to the Postal Service when the Postal Service's personnel have verified that the system has been installed and made ready for use and the performance test has been conducted in accordance with the acceptance performance criteria specified. No system will be certified as ready for use until all equipment and software for that site, as specified on the delivery order, are ready for use.
- b. *Standard of Performance and Acceptance of System.* A standard of performance must be met before any system (equipment, software, or other material) is accepted by the Postal Service. These procedures also apply to replacement of substituted equipment, and software, or other material added or field modified after a successful performance trial has been completed on the system.
  - (1) The performance period begins when the supplier has certified that the system and software are ready for use and ends when the system has met the standard of performance period of 30 consecutive calendar days by operating at an effectiveness level of 95 percent or more.
  - (2) In the event the system does not meet the standard of performance during the initial 30 days, the test must continue on a day-by-day basis until the standard of performance is met for a total of 30 consecutive calendar days.
  - (3) If the system hardware or software fails to meet the standard of performance after 90 calendar days from the installation date, the Postal Service may, at its option, request a replacement or terminate the contract.
  - (4) The effectiveness level for a system (as a percentage) is computed by dividing the operational use time by the sum of that time plus system failure downtime and multiplying by 100.
  - (5) The effectiveness level for an added, field-modified, substituted, or replacement machine is a percentage figure. This figure is determined by dividing the operational use time of the machine by the sum of that time plus downtime resulting from equipment or software failure of the machine being tested and multiplying by 100.

- (6) Operational use time for performance testing of a system is defined as the accumulated time during which the system is in actual operation in accordance with the acceptance test plan.
  - (7) Operational use time for performance testing of a machine added, field-modified, substituted, or replaced is defined as the accumulated time during which the machine is in actual use in accordance with the acceptance test plan.
  - (8) System failure downtime is that period of time when any machine in the system is inoperable because of equipment or software failure.
  - (9) During a period of system downtime, the Postal Service may use operable equipment when such action does not interfere with maintenance of the inoperable equipment. The entire system will be considered down during such periods.
  - (10) Downtime for each incident begins at the time the Postal Service makes a bona fide attempt to contact the supplier's designated representative, at the prearranged contact point, and ends when the system or machine is again operating. Downtime excludes actual travel time required by the supplier's maintenance personnel in excess of two hours on the day the service was requested.
  - (11) As a basis for computing the effectiveness level, a minimum of 100 hours of operation use time for a system with productive or Postal Service-provided simulated work will be required during the performance period. However, in computing the effectiveness level, the actual number of operational hours must be used when in excess of the minimum of 100 hours.
  - (12) The Postal Service maintains appropriate daily records to satisfy the performance requirements and will notify the supplier, in writing, the date of the first day of a successful performance period.
  - (13) Equipment, software, or other material will not be accepted and payment will not be made until the standard of performance is met. The date of acceptance and payment begins the first day of a successful performance period.
  - (14) Operational use time and downtime will be measured in hours and whole minutes.
- c. *Acceptance Test Plan.* The offeror's proposal must provide a preliminary version (detailed outline) of an acceptance test plan. A completed plan must be submitted 5 working days after contract award. The Postal Service will review the plan within 10 working days after submission. The Postal Service reserves the right to disapprove the plan, and the offeror must correct unacceptable areas before resubmission. The approved acceptance test plan will form the basis for testing during the performance period. The supplier-furnished plan must include rerunning those portions of the test demonstration applicable to the configuration. The plan must provide for running actual Postal Service work as it is available during the performance period. The execution of the test plan must meet the performance criteria specified in this contract.

- d. *Inspection and Acceptance of Maintenance*
- (1) All services (includes services performed, materials furnished or used in performance or service, and workmanship in the performance of services) is subject to inspection and test by the Postal Service, to the extent practicable at all times and places during the term of the contract. The Postal Service must conduct inspections in such a manner as not to delay work.
  - (2) If any services performed do not conform to the requirements of this contract, the Postal Service may require the supplier to perform the services again in conformity with the contract requirements at no additional increase in total contract price. When the services to be performed are such that the defect cannot be corrected by reperformance, the Postal Service may:
    - (a) Require the supplier to immediately take all necessary steps to ensure future performance of the services in conformity with the contract requirements;
    - (b) Reduce the contract price to reflect the reduced value of the services performed; or
    - (c) Terminate this part of the contract
  - (3) In the event the supplier fails to promptly perform the services again or to take the necessary steps to ensure future performance of the services in conformity with the contract requirements, the Postal Service may terminate this contract for default as provided in the Default clause.
  - (4) The supplier must provide and maintain an inspection system acceptable to the Postal Service covering the services to be performed. The supplier's records of all inspection work must be kept complete and must be available to the Postal Service during the term of this contract and for such longer period as may be specified elsewhere in this contract.

**Clause 4-10 Liquidated Damages — Industrial Supply or Service Items Not Ready for Use (January 1997)**

(4.5.5)

If individual supply or service items are not ready for use or not delivered but the total system is operational, the supplier will be assessed liquidated damages for each individual item of \$ \_\_\_\_\_ (*Contracting officer insert amount*) for each day's delay or \_\_\_\_\_ (*Contracting officer insert fraction*) of the total monthly charges for that item, whichever is greater.



**Clause 4-11 Use of Hardware or Software Monitors (January 1997)** (4.5.5)

- a. The supplier must permit inclusion or attachment of such devices as the Postal Service may choose to employ for the purpose of examining or measuring the activity within the computer system. These devices include hardware monitors physically connected to the computer system and software monitors that may require portions of the computer system's control software to be displaced.
- b. The supplier may not prohibit the installation of these devices unless the particular device will cause significant or permanent damage to the computer system. The supplier must assist the Postal Service in identifying and locating device connections when requested by the Postal Service if the supplier provides the services to other customers. If attachments cause equipment failure, the Postal Service is liable for any damage, and any maintenance credit provisions contained in this contract do not apply.

**Clause 4-12 Site Preparation (January 1997)** (4.5.5)

- a. The supplier must furnish in writing site preparation specifications, including communications requirements, as part of the systems proposal. These specifications must be in such detail as to ensure that the system to be installed will operate in accordance with the requirements of this contract.
- b. At the request of the Postal Service and within one week after notification, the supplier must prepare, in cooperation with the Postal Service, a detailed site plan tailored to the Postal Service's facility. The detailed site plan supplements the general specifications furnished as part of the systems proposal.
- c. The Postal Service will prepare the site as its own expense in accordance with the supplier's specifications and will maintain these site requirements throughout the contract term.
- d. If any alterations or modifications in site preparation are required involving additional expense to the Postal Service and are due to incomplete or erroneous specifications of the detailed site plan provided by the supplier, those expenses will be assessed to the supplier.
- e. Unless specified otherwise in the supplier's proposal, the Postal Service will be responsible for purchasing, installation, and maintenance of nonsupplier communication media necessary for the remote transmission of data.
- f. The supplier must inspect the site and furnish the Postal Service an inspection report 15 days before the scheduled installation.

**Clause 4-13 Software License Warranty and Indemnification (January 1997)** (4.5.5)

- a. The supplier warrants that it has full power and authority to grant the rights contained in this contract with respect to the software without the consent of any other person. Neither the performance of the services by the supplier nor the license to and use by the Postal Service of the software and documentation (including copying) will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party.
- b. The supplier indemnifies and holds harmless (including reasonable attorney's fees) the Postal Service and its employees or agents against all liability to third parties arising from the negligence of the supplier or its agents and the license to or use by the Postal Service of the software, including but not limited to the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with the licensing of the software. The Postal Service may, at this option, conduct the defense in any third-party action, and the supplier promises fully to cooperate with this defense. This indemnification is limited to the software delivered to the Postal Service or as modified by the supplier, and does not cover third-party claims arising from modifications by the Postal Service not authorized by the supplier.
- c. If a third-party claim causes the Postal Service's quiet enjoyment and use of the software to be seriously endangered or disrupted, the supplier must either:
  - (1) Replace the software, without additional charge, by a compatible, functionally equivalent, and noninfringing product;
  - (2) Modify the software to avoid the infringement;
  - (3) Obtain a license for the Postal Service to continue use of the software for the term of this contract, and pay for any additional fee required for the license; or
  - (4) If none of these alternatives is possible even after the supplier's best efforts, return a pro rata portion of the license, or ten years, whichever is less.

**Clause 4-14 Software Development Warranty (January 1997)** (4.5.5)

If at any time during the 12-month period immediately following acceptance, the supplier or the Postal Service discovers defects or errors in the software or any other respect in which the software fails to conform to the provisions of any warranty contained in this contract, the supplier must, entirely at its own expense, promptly correct the defects, errors, or nonconformity by, among other things, supplying the Postal Service with corrective codes and making additions, modification, or adjustments to the package as may be necessary to keep the software in operating order in conformity with the warranties in this contract.

**Clause 4-15 Warranty Exclusion and Limitation of Damages (January 1997)** (4.5.5)

- a. Except as specifically provided in this contract, there are no warranties express or implied. In no event will the supplier be liable to the Postal Service for consequential damages, which are defined as:
  - (1) Any loss resulting from general or particular requirements and needs known to the supplier at the time of contracting that could not reasonably be prevented by cover or otherwise; and
  - (2) Injury to person or property in proximity resulting from any breach of warranty.
- b. The provisions of this clause do not apply to the supplier's obligation to indemnify the Postal Service from third-party claims.

**Clause 4-16 Substitution of Information Technology (January 1997)** (4.5.5)

This clause acknowledges that some of the contracted for equipment may not be readily available or may permanently go out of production. Based on the authority of this clause, the supplier may request a one-time or permanent substitution of one or more contract line items. Such requests must be made in writing to the contracting officer, with a copy to the COR.

The following conditions must be met:

- a. The replacement item(s) must meet or exceed all contract specifications that were applicable to the items being replaced.
- b. The replacement item(s) must be priced equal to, or less than, the item(s) being replaced
- c. The replacement item(s) must be reviewed, and be determined to be acceptable by the Postal Service technical representative.
- d. The replacement item(s) must be approved in writing by the contracting officer and incorporated into the contract.

The supplier's request for a replacement may not exceed the required delivery time of any items. Upon formal acceptance of a replacement, the contracting officer may grant a day-to-day extension to the delivery schedule for the time the Postal Service took to approve the replacement. No extension may be granted in the case of unaccepted proposed replacements.

**Clause 4-17 Technology Enhancement (January 1997)** (4.5.5)

- a. *Definitions*
  - (1) Enhancement, replacement and upgrade are used interchangeably throughout this clause.

- (2) Cost to performance ration is a form of comparative measurement and means the contracts costs of a given item or configuration per a quantifiable unit of performance or capability, such as (but not limited to) storage capacity (in megabytes), speed (in megahertz), energy consumption efficiency, etc.
- b. The supplier must propose technology enhancement of information technology equipment, firmware, or software configurations being provided under this contract whenever product lines of newer technology become available that may save money, improve performance, or save energy. All proposed upgrades must meet the following requirements:
- (1) All mandatory requirements of the contract must continue to be met.
  - (2) Overall contract life cycle costs may not increase as a result of the upgrade.
  - (3) The proposed upgrade or enhancement will: (1) either afford a better cost to performance ration compared to existing contract offerings/configurations; or (2) at minimum, must result in at least equal operability, maintainability, reliability, and overall system performance while providing some additional benefit or advantage to the Postal Service.
  - (4) The replacement configuration proposal must be acceptable to the COR.
- c. As a minimum, the following information must be submitted by the supplier with each proposal:
- (1) A description of the difference between the existing contract requirement and the proposed change along with the comparative advantages and disadvantages of each.
  - (2) Suggested contract requirements which should be changed if the proposed technology enhancement is adopted.
  - (3) A complete pricing proposal that evidences the commerciality of the pricing. (The price for the upgraded product, or configuration, can be no greater than the standard commercial price of the replacement product less a discount factor equal at least to the discount afforded the Postal Service in the supplier's final proposal for the original, taking into account the age of the original product in its life cycle.
  - (4) An evaluation of the proposed change's effect on collateral costs, costs of related items, and costs of maintenance and operation.
  - (5) Timing as to when the modification adopting the technology enhancement must be issued to ensure the maximum benefit to the Postal Service.
  - (6) Identify any effect on the contract completion or delivery schedule.
  - (7) Any other information that may be required by the contracting officer.
- d. Technology enhancements, as contemplated by this clause, will not be added to the contract except by written, bilateral modification to the contract.

- e. The decision by the contracting officer to accept or reject any proposal under this contract is final and not subject to the *Disputes* clause.

**Clause 4-18 Information Technology Accessibility Standards (June 2001)** (4.5.5)

- a. Information technology purchased under this contract or order must conform to the applicable provisions of the Architectural and Transportation Barriers Compliance Board's Electronic and Information Technology Accessibility Standards (36 CFR part 1194) at the time of delivery, except when the contracting officer has advised that compliance is not required.
- b. At the time of delivery, the supplier must provide documentation of the commercial availability of accessibility features incorporating the standards of the applicable provisions of 36 CFR part 1194 for the commercial off-the-shelf products ordered under this contract.

**Clause 5-1 Price Reduction for Defective Cost or Pricing Data (January 1997)** (5.1.2)

- a. If any price, including profit or fee, negotiated in connection with this contract, or modification to this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
  - (1) The supplier or subcontractor furnished cost or pricing data that were not complete, accurate, and current as of the date of the final agreement on price;
  - (2) A subcontractor or prospective subcontractor furnished the supplier cost or pricing data that were not complete, accurate, and current as of the date of final agreement on price; or
  - (3) Any of these parties furnished data of any description that were not accurate — then the price or cost will be reduced accordingly and the contract will be modified to reflect the reduction.
- b. Any reduction in the contract price under paragraph a above due to defective data from a prospective subcontractor that was not awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the supplier if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the supplier (provided that the actual subcontract price was not itself affected by defective cost or pricing data).

**Clause 5-2 Subcontractor Cost or Pricing Data (January 1997)** (5.1.2)

- a. Before awarding any subcontract or pricing any subcontract modification, the supplier must require the subcontractor to submit cost or pricing data whenever cost or pricing data are required by Chapter 5 of the USPS *Purchasing Manual*.
- b. If the subcontractor is required to submit cost or pricing data under paragraph a above, then the supplier must insert the substance of this clause, including this paragraph b, in the subcontract.

**Clause 5-3 Predetermined Indirect Cost Rates (January 1997)** (5.2.12)

- a. Notwithstanding the *Allowable Cost and Payment* clause of this contract, allowable indirect costs under this contract will be determined by applying predetermined indirect cost rates established in accordance with Chapter 5 of the USPS *Purchasing Manual*.
- b. Predetermined rate agreements must be incorporated into the contract Schedule and must specify:
  - (1) The predetermined indirect cost rates;
  - (2) The bases to which the rates apply;
  - (3) The fiscal year (or other period) for which the rates apply; and
  - (4) The specific terms treated as direct costs or any changes in the items previously treated as direct costs.
- c. The predetermined indirect cost rate agreement may not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.
- d. Allowable indirect costs for the period from the beginning of performance until the end of the supplier's fiscal year must be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

**Clause 6-1 Contracting Officer's Representative (January 1997)** (6.1.1)

The contracting officer will appoint a contracting officer's representative (COR), responsible for the day-to-day administration of the contract, who will serve as the Postal Service's point of contact with the supplier on all routine matters. A copy of the notice of appointment defining the COR's authority will be furnished to the supplier upon award of the contract.

**Clause 7-1 Patent Infringement Bond Requirements (January 1997)** (7.1.4)

The supplier may be required to submit a patent infringement bond in a penal amount set by the contracting officer and in a form acceptable to the Postal Service. Failure to submit an acceptable bond may be cause for termination of the contract for default.

**Clause 7-2 Additional Bond Security (January 1997)** (7.1.9)

If any surety furnishing a bond in connection with this contract becomes unacceptable to the Postal Service or fails to furnish reports on its financial condition as requested by the contracting officer, or if the contract price increases to the point where the security furnished becomes inadequate in the contracting officer's opinion, the supplier must promptly furnish additional security as required to protect the interests of the Postal Service and of persons supplying labor or materials in performance of this contract.

**Clause 7-3 Deposit of Assets Instead of Surety Bonds (January 1997)** (7.1.9)

- a. If the supplier has deposited assets instead of furnishing sureties for any bond required under this contract and the assets are in the form of checks, currency, or drafts, the contracting officer will hold the assets in an account for the supplier's benefit.
- b. Upon contract completion, the supplier's funds will be returned as soon as possible, unless the contracting officer determines that part or all of the account is required to compensate the Postal Service for costs it incurs as a result of the supplier's delay, default, or failure to perform. In such a case, the entire account will be available to compensate the Postal Service.

**Clause 7-4 Insurance (January 2002)** (7.2.2)

- a. During the term of this contract and any extension, the supplier must maintain at its own expense the insurance required by this clause. Insurance companies must be acceptable to the Postal Service. Policies must include all terms and provisions required by the Postal Service.
- b. The supplier must maintain and furnish evidence of workers' compensation, employers' liability insurance, and the following general public liability and automobile liability insurance:

	<b>Bodily Injury</b>	<b>Property Damage</b>
<b>General Liability</b>	\$100,000 per person* \$500,000 per accident*	Per occurrence (as set forth in the Schedule) Aggregate (as set forth in the Schedule)
<b>Automobile Liability</b>	\$100,000 per person* \$500,000 per accident*	\$100,000 per occurrence \$100,000 aggregate*

\*Unless modified in the Schedule

- c. Each policy must include substantially the following provision:  
“It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy.”
- d. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.
- e. The maintenance of insurance coverage as required by this clause is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be ground for termination for default.

**Clause 7-5 Errors and Omissions (January 1997)** (7.2.4)

- a. The supplier warrants that it is insured for \$200,000 (unless amount is set forth in the Schedule) for errors and omissions per claim in an amount in excess of the minimum set forth in the Schedule in the performance of this contract.
- b. Unless the supplier’s policy is prepaid, noncancelable, and issued for a period at least equal to the term of this contract on an occurrence basis, the supplier must have the policy amended to include substantially the following provision:  
“It is a condition of this policy that the company furnish written notice to the U.S. Postal Service 30 days in advance of the effective date of any reduction in or cancellation of this policy.”
- c. The supplier must furnish a certificate of insurance or, if required by the contracting officer, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished, before beginning performance under this contract. Evidence of renewal must be furnished not later than 5 days before a policy expires.

**Clause 7-6 Federal, State, and Local Taxes (January 1997)** (7.3.4)

- a. *Definitions*
  - (1) *Contract Date.* The effective date of this contract or modification.



- (2) *All Applicable Federal, State, and Local Taxes and Duties.* All taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
  - (3) *After-imposed Federal Tax.* Any new or increased federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption is revoked or reduced during the contract period, on the transactions or property covered by this contract that the supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.
  - (4) *After-relieved Federal Tax.* Any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
  - (5) *Local Taxes.* Includes taxes imposed by a possession of the United States or by Puerto Rico.
- b. The contract price includes all applicable federal, state, and local taxes and duties.
  - c. The contract price will be increased by the amount of any after-imposed federal tax, provided the supplier warrants in writing that no amount for a newly imposed federal excise tax or duty or rate increase was included in the contract price as contingency reserve or otherwise.
  - d. The contract price will be decreased by the amount of any after-relieved federal tax.
  - e. The contract price will be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
  - f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
  - g. The supplier must promptly notify the contracting officer of all matters relating to any federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and must take appropriate action as the contracting officer directs.
  - h. The Postal Service will, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests such evidence and a reasonable basis exists to sustain the exemption.

**Clause 7-7 Federal, State, and Local Taxes (Short Form)  
(January 1997)** (7.3.4)

Except as this contract may otherwise provide, the contract price includes all applicable federal, state, and local taxes and duties in effect on the contract date but does not include any taxes from which the Postal Service, the supplier, or this transaction is exempt. Upon request of the supplier, the Postal Service must furnish a tax exemption certificate or similar evidence of exemption from any tax not included in the contract price. Contract date means the date of the supplier's proposal or quotation, or, if no proposal or quotation, the date of this purchase order.

**Clause 7-8 Federal, State, and Local Taxes (Noncompetitive  
Contract) (January 1997)** (7.3.4)

a. *Definitions*

- (1) *Contract Date.* The effective date of this contract or modification.
- (2) *All Applicable Federal, State, and Local Taxes and Duties.* All taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
- (3) *After-imposed Tax.* Any new or increased federal, state or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (4) *After-relieved Tax.* Any amount of federal, state, or local tax or duty, other than excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the supplier is not required to pay or bear, or for which the supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (5) *Excepted Tax.* Social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. Excepted tax does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the supplier's possession of, interest in, or use of property to which the Postal Service has title.
- (6) *Local Taxes.* Includes taxes imposed by a possession of the United States or by Puerto Rico.

- b. Unless otherwise provided in this contract, the contract price includes all applicable federal, state, and local taxes and duties.

- c. The contract price will be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract, that the supplier is required to pay or bear, including any interest or penalty, if the supplier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
- d. The contract price will be decreased by the amount of any after-relieved tax. The Postal Service will be entitled to interest received by the supplier incident to a refund of taxes, to the extent that such interest was earned after the supplier was paid by the Postal Service for such taxes. The Postal Service will be entitled to repayment of any penalty refunded to the supplier, to the extent that the penalty was paid by the Postal Service.
- e. The contract price will be decreased by the amount of any federal, state, or local tax, other than exempted tax, that was included in the contract price and that the supplier is required to pay or bear, or does not obtain a refund of, through the supplier's fault, negligence, or failure to follow instructions of the contracting officer.
- f. No adjustment will be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.
- g. The supplier must promptly notify the contracting officer of all matters relating to any federal, state, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price, and the supplier must take appropriate action as the contracting officer directs. The contract price will be equitably adjusted to cover the costs of action taken by the supplier at the direction of the contracting officer, including any interest, penalty, and reasonable attorney's fees.
- h. The Postal Service will furnish evidence appropriate to establish exemption from any federal, state, or local tax when the supplier requests an exemption and states in writing that it applies to a tax excluded from the contract price, and a reasonable basis for the exemption exists.

**Clause 7-9 State and Local Taxes (Indefinite Delivery Equipment Rental) (January 1997)** (7.3.4)

Notwithstanding the terms of the *Federal, State, and Local Taxes* clause of this contract, the contract price excludes all state and local taxes levied on or measured by the supplier or rental price of leased equipment furnished under this contract. The supplier will state separately on its invoices any such taxes levied and paid, and the Postal Service agrees either to reimburse the supplier for the amounts of taxes paid or provide evidence necessary to sustain an exemption.

**Clause 8-1 Patent Rights (January 1997)** (8.2.2)

- a. *Definitions Used in This Clause*
- (1) *Subject Invention.* Any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term includes, but is not limited to, any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, that is or may be patentable under the patent laws of the United States of America or any foreign country.
  - (2) *Postal Service Purposes.* The right of the Postal Service to practice and have practiced (make or have made, use or have used, sell or have sold) any subject invention throughout the world by or on behalf of the U.S. Postal Service.
  - (3) *Contract.* Any contract, agreement, or other agreement or subcontract entered into, with, or for the benefit of the Postal Service.
  - (4) *Subcontract and Subcontractor.* Any subcontract or subcontractor of the supplier under this contract and any lower-tier subcontract or subcontractor under the contract.
  - (5) *To Bring the Invention to the Point of Practical Application.* To manufacture (in the case of a composition or product), practice (in the case of a process), or operate (in the case of a machine or system) under such conditions as to establish that the invention works and that its benefits are reasonably accessible to the public.
- b. *Rights Granted to the Postal Service.* The supplier agrees to grant the Postal Service title in and to each subject invention. Nothing contained in this *Patent Rights* clause grants any rights with respect to any invention other than a subject invention.
- c. *Subject Invention Disclosure and Reports*
- (1) With respect to subject inventions, the supplier must furnish the contracting officer the items described in (a) through (b) below:
    - (a) A written disclosure of each invention promptly after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete in technical detail to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and (to the extent known) the physical, chemical, or electrical characteristics of the invention. When unable to submit a complete disclosure, the supplier must, within three months, submit a disclosure that includes all such technical detail then known; and unless the contracting officer authorizes a different period, submit all other technical detail necessary to complete the disclosure within three additional months.

- (b) Before final settlement of this contract, a final report listing each invention, including all those previously listed, or certifying that there are no unreported inventions. (This final report and any interim report under (a) above must be submitted on Form 7398, *Report of Inventions and Subcontracts*, or other format acceptable to the contracting officer.)
  - (c) Information in writing, as soon as practicable, of the date and identity of any (1) public use, sale, or publication of the invention made by or known to the supplier or (2) contemplated publication by the supplier.
  - (d) Upon request, any duly executed instruments and other papers (prepared by the Postal Service) necessary to (1) vest in the Postal Service the rights granted it under this clause and (2) enable the Postal Service to apply for and prosecute any patent application, in any country covering the invention, where the Postal Service has the right under this clause to file such an application.
  - (e) Upon request, an irrevocable power of attorney to inspect and make copies of each United States patent application filed by, or on behalf of, the supplier covering the invention.
- (2) With respect to each subject invention in which the supplier has been granted rights, under license or otherwise, the supplier agrees to provide written reports at reasonable intervals, when requested by the Postal Service, as to:
- (a) The commercial use being or intended to be made of the invention;
  - (b) Royalties payable to the Postal Service; and
  - (c) The steps taken by the supplier to bring the invention to the point of practical application, or to make the invention available for licensing.
- d. *Subcontracts*
- (1) The supplier must, unless otherwise authorized or directed by the contracting officer, include a patent rights clause containing all the provisions of this *Patent Rights* clause except paragraph g below in any subcontract where a purpose of the subcontract is the conduct of experimental, developmental, research, or engineering work. If a subcontractor refused to accept this clause, the supplier:
    - (a) Must promptly submit a written report to the contracting officer setting forth the subcontractor's reasons for the refusal and any other pertinent information that may expedite disposition of the matter; and
    - (b) May not proceed with the subcontract without the written authorization of the contracting officer. The supplier may not, in any subcontract, or by using subcontract as consideration thereof, acquire any rights to subject inventions for its own use (as distinguished from rights

required to fulfill its contract obligations to the Postal Service in the performance of this contract). Reports, instruments, and other information required to be furnished by a subcontractor to the contracting officer under a patent rights clause in a subcontract may, upon mutual consent of the supplier and the subcontractor (or by direction of the contracting officer), be furnished to the supplier for transmission to the contracting officer.

- (2) The supplier, at the earliest practicable date, must notify the contracting officer in writing of any subcontract containing a patent rights clause, furnish to the contracting officer a copy of the subcontract, and notify the contracting officer when the subcontract is completed. The Postal Service is a third-party beneficiary of any subcontract granting rights to the Postal Service in subject inventions, and the supplier hereby assigns to the Postal Service all the rights that the supplier would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. The supplier is not obligated to enforce the agreements of any subcontractor relating to the obligation of the subcontractor to the Postal Service regarding subject inventions.

e. *Domestic Filing of Patent Applications by Supplier*

- (1) If, pursuant to paragraph h below, greater rights are granted in a subject invention to the extent that the supplier may claim the invention, the supplier must file in due form and within six months of the granting of these rights a United States patent application claiming the invention and furnish, as soon as practicable, the serial number and filing date of the application and the patent number of any resulting patent. As to each invention in which the supplier has been given greater rights, the supplier must notify the contracting officer at the end of six-month period if it has failed to file or cause to be filed a patent application covering the invention. If the supplier has filed or caused to be filed such an application within the six-month period, but elects not to continue prosecution of the application, it must notify the contracting officer not less than 60 days before the expiration of the response period. In either of these situations, the supplier forfeits all rights previously granted.
- (2) The following statement must be included in the first paragraph of any patent application filed or patent issued on an invention made under a Postal Service contract or a subcontract under a Postal Service contract: "The invention herein described was made in the course of or under a contract or subcontract thereunder with the United States Postal Service."

- f. *Foreign Filing of Patent Applications*
- (1) If the supplier acquires greater rights in a subject invention and has filed a United States patent application claiming the invention, the supplier, or any party other than the Postal Service deriving rights from the supplier, has the exclusive rights, subject to the rights of the Postal Service, to file applications on the inventions in each foreign country within:
    - (a) Six months from the date a corresponding United States patent application is filed; or
    - (b) Such longer period as the contracting officer may approve.
  - (2) The supplier must notify the contracting officer of each foreign application filed and, upon written request of the contracting officer, furnish an English translation of the application and convey to the Postal Service the entire right title and interest in the invention in each foreign country in which an application has not been filed within the time specified in subparagraph f.1. preceding.
- g. *Withholding Payment*
- (1) Final payment under this contract will not be made until the supplier delivers to the contracting officer the reports required by paragraph c above and all information as to subcontracts required by paragraph d above.
  - (2) If action is deemed warranted because of the supplier's performance under the *Patent Rights* clause of this contract or of other Postal Service contracts, the contracting officer may withhold from payment such sum as considered appropriate, not exceeding \$50,000, or ten percent of the amount of this contract, whichever is less, to be held as a reserve until the supplier delivers all the reports, disclosures, and information specified in paragraph c above.
- h. *Supplier's Request for Greater Rights.* The supplier, at the time of first disclosing a subject invention pursuant to paragraph c.1(a) above, but not later than three months thereafter, may submit in writing to the contracting officer a request for rights by license or otherwise in any invention. The contracting officer will review the supplier's request for rights and will notify the supplier whether it is granted in whole or in part. Any rights granted the supplier will be subject to, but not necessarily limited to, the provisions of paragraph i following.
- i. *Reservation of Rights to the Postal Service*
- (1) If rights in any subject invention are vested in or granted to the supplier, such rights will, as a minimum, be subject to an irrevocable, nonexclusive, and royalty-free license to practice and have practiced the invention throughout the world for Postal Service purposes, including its practice:
    - (a) In the manufacture, use, and disposition of any article or material;
    - (b) In the use of any method; or

- (c) In the performance of any service, acquired by or for the Postal Service or with funds otherwise derived through the Postal Service.
  - (2) If rights are vested in the supplier, the supplier agrees to, and grants to the Postal Service the rights to, require the granting of a license to an applicant under any such invention:
    - (a) On a nonexclusive basis, unless the supplier, a licensee, or an assignee demonstrates to the Postal Service, at its request, that (1) effective steps have been taken within 3 years after a patent issues on the invention to bring the invention to the point of practical application or (2) the invention has been made available for licensing on terms that are reasonable in the circumstances, or can show cause why the title should be retained for a further period of time; or
    - (b) On terms that are reasonable in the circumstances to the extent that the invention is required for public use by Postal Service regulations or as may be necessary to fulfill health needs, or for other public purposes stipulated in the Schedule of this contract.
- j. *Right to Disclose Subject Inventions.* The Postal Service may duplicate and disclose reports and disclosures of subject inventions required to be furnished by the supplier pursuant to this *Patent Rights* clause.
- k. *Forfeiture of Rights in Unreported Subject Inventions.* The supplier forfeits to the Postal Service all rights in any subject invention that it fails to report to the contracting officer when or before it:
  - (1) Files or causes to be filed a United States or foreign application thereon; or
  - (2) Submits the final report required by c.1(b) above, whichever occurs later, provided, that the supplier will not forfeit rights in a subject invention if:
    - (a) Contending that the invention is not a subject invention, it nevertheless reports the invention and the facts pertinent to its contention to the contracting officer within the time specified in k.1 or k.2 above; or
    - (b) It establishes that failure to report was due entirely to causes beyond its control and without its fault or negligence. The supplier is deemed to hold any such forfeited subject invention, and the patent applications and patents pertaining to it, in trust for the Postal Service pending written assignment of the invention. The rights accruing to the Postal Service under this paragraph k are in addition to, and do not supersede, any other rights the Postal Service may have in relation to unreported subject inventions. Nothing contained in this clause may be construed to require the supplier to report any invention that is not in fact a subject invention.



- I. *Examination of Records Relating to Inventions.* The contracting officer, or an authorized representative, until the expiration of 3 years after final payment under this contract, has the right to examine any books, records, documents, and other supporting data of the supplier that the contracting officer or authorized representative reasonably deems directly pertinent to the discovery or identification of subject inventions or to compliance by the supplier with the requirements of this clause.

**Clause 8-2 Authorization and Consent (January 1997)** (8.2.3)

- a. *Research and Development Work.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in the performance of research, development, or experimental work called for, or performed as a necessary activity, in the performance of this contract or any subcontract, at any tier.
- b. *Supplies and Construction.* The Postal Service authorizes and consents to all use and manufacture of any invention covered by a U.S. patent in performing this contract or subcontract, at any tier, that is:
  - (1) Embodied in the structure or composition of any article, the delivery of which is accepted by the Postal Service under this contract; or
  - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the supplier or subcontractor with (a) specifications or written provisions forming a part of this contract or (b) specific written instructions given by the contracting officer directing the manner of performance.
- c. *Determination of Liability.* The liability of the Postal Service for patent infringement or for the unauthorized use of any patent will be determined by the provisions of any patent indemnity clause included in this contract or in any subcontract under this contract (at any tier) and by any indemnification or warranty (express or implied) otherwise provided by the supplier or subcontractor for similar products or services when supplied to commercial buyers.
- d. *Flowdown.* The supplier must include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts under this contract at any tier that are expected to exceed \$50,000.

**Clause 8-3 Notice and Assistance Regarding Patent and Copyright Infringement (January 1997)** (8.2.3)

- a. The supplier must report to the contracting officer, in writing, promptly and in reasonable detail, any notice, claim, or suit regarding patent or copyright infringement (or unauthorized use of a patent or copyright) based on performance of this contract.

- b. At the contracting officer's request, the supplier must furnish all evidence and information in its possession pertaining to the suit or claim. The evidence and information will be furnished at the expense of the Postal Service except when the supplier has agreed to indemnify the Postal Service.
- c. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-4 Patent Indemnity (January 1997)** (8.2.4)

- a. Except as provided in paragraph d below, the supplier indemnifies the Postal Service, its employees, and its agents against liability, including costs and fees, for patent infringement (or unauthorized use) arising from the manufacture, use, or delivery of supplies, the performance of service, the construction or alteration of real property, or the disposal of property by or for the Postal Service, if the supplies, service, or property (with or without relatively minor modifications) have been or are being offered for sale or use in the commercial marketplace by the supplier.
- b. The Postal Service must promptly notify the supplier of any claim or suit subject to the indemnity of paragraph a above alleging patent infringement or unauthorized use of a patent.
- c. To the extent allowed by law, the supplier may participate in the defense of any suit to which this clause applies.
- d. This indemnification does not apply to:
  - (1) Infringements for the unauthorized use of a private patent covered by this indemnity resulting from the contracting officer's specific written direction, compliance with which requires an infringement; or
  - (2) Infringement or unauthorized use claims that are unreasonably settled without the supplier's consent before litigation.
- e. This clause must be included in all subcontracts under this contract, at any tier, over \$50,000.

**Clause 8-5 Waiver of Indemnity (January 1997)** (8.2.4)

- a. The Postal Service authorized the making and use, solely in performing the contract, of any invention covered by the below listed patents and waives indemnification by the supplier solely with respect to these patents.
- b. The specific patents to which this waiver applies are as follows:  
*(Contracting officer list each patent.)*

**Clause 8-6 Rights in Technical Data (January 1997)** (8.3.5)a. *Definitions*

- (1) *Data*. Recorded information, regardless of the form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (2) *Form, Fit, and Function Data*. Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
- (3) *Limited Rights Data*. Data other than computer software developed at private expense, including minor modifications of these data.
- (4) *Technical Data*. Data other than computer software, of a scientific or technical nature.
- (5) *Unlimited Rights*. The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. *Allocation of Rights*

- (1) Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
  - (a) Technical data first produced in the performance of this contract (except to the extent that they constitute minor modifications of data that are limited rights data);
  - (b) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
  - (c) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
  - (d) All other technical data delivered under this contract, unless provided otherwise in paragraph g below.
- (2) The allocation of rights in any computer programs, data bases, and documentation will be determined by the *Rights in Computer Software* clause, except that limited rights data formatted as computer data bases for delivery to the Postal Service are to be treated as limited rights data under this *Rights in Technical Data* clause.

c. *Copyright*

- (1) Unless provided otherwise in paragraph d below, the supplier may establish, without prior approval of the contracting officer, claim to copyright in scientific and technical articles based on, or containing, technical data first produced in the performance of this contract and published in academic, technical, or professional journals, symposia proceedings, or similar works. The prior, express written permission of the contracting officer is required to establish claim to copyright in all other technical data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401 or 402. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
- (2) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in subparagraph c.1 above.
- (3) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this paragraph c, and to include such notices on all reproductions of the data.

d. *Release, Publication, and Use of Technical Data*

- (1) The supplier has the right to use, release to others, reproduce, distribute, or publish any technical data first produced by the supplier in the performance of this contract, except to the extent these data may be subject to the federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph d.2 following or expressly set forth in this contract.
- (2) The supplier agrees that if it receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.

e. *Unauthorized Marking of Data*

- (1) If any technical data delivered under this contract are marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the data bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the

- markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
- (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of a final disposition of the matter by a court of competent jurisdiction.
- f. *Omitted or Incorrect Markings*
- (1) Technical data delivered to the Postal Service without limited rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data, permission to have notices placed on qualifying technical data at the supplier's expense, and the contracting officer may agree to do so if the supplier:
- (a) Indemnifies the technical data to which the omitted notice is to be applied;
  - (b) Demonstrates that the omission of the notice was inadvertent;
  - (c) Establishes that the use of the proposed notice is authorized; and
  - (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data made before the addition of the notice or resulting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction at the supplier's expense of incorrect notices if the supplier identifies the technical data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Limited Rights Data.* When technical data other than data listed in b.1(a), (b), and (c) above are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs e and f above, in accordance with the Notice:

## LIMITED RIGHTS NOTICE

These technical data are submitted with limited rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

- (1) Use (except for manufacture) by support service suppliers.
- (2) Evaluation by Postal Service evaluators.
- (3) Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.
- (4) Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part.

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the supplier's obligations under the contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

**Clause 8-7 Withholding Payment (Technical Data and Computer Software) (January 1997)** (8.3.5)

- a. Final payment under this contract will not be made until the supplier delivers all data (technical data and computer software) required by the contract.
- b. If the contracting officer determines at any time that the supplier is not in full compliance with contract requirements for the delivery or, and rights in, any technical data or computer software, the contracting officer may withhold from payment up to \$50,000 as security for the supplier's performance. Withholding may not be made if the failure to make timely delivery or the deficiencies relating to delivered data arise out of causes beyond the control of the supplier and without fault or negligence of the supplier.

- c. Any amount withheld under this clause not finally paid to the supplier is mitigation of damages and in no way affects the right of the Postal Service to collect actual damages for breach of this contract, including profits from exploitation of any rights in data.
- d. Nonperformance by a subcontractor does not excuse any failure to comply with this clause.

**Clause 8-8 Additional Data Requirements (January 1997)** (8.3.5)

- a. In addition to the data specified elsewhere in this contract to be delivered, the contracting officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any first generated or produced in the performance of this contract.
- b. The *Rights in Technical Data* and the *Rights in Computer Software* clauses, or other equivalent data clauses if included in this contract, apply to all data ordered under this *Additional Data Requirements* clause. Nothing in this clause requires the supplier to deliver any data specifically identified in this contract as not subject to this clause.
- c. When data are to be delivered under this clause, the supplier will be compensated for converting the data into the prescribed form for reproduction and delivery.
- d. The contracting officer may release the supplier from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph a above.

**Clause 8-9 Rights in Computer Software (January 1997)** (8.3.6)

- a. *Definitions*
  - (1) *Computer Software*. Computer programs, computer data bases, and their documentation.
  - (2) *Form, Fit, and Function Data*. Data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.
  - (3) *Restricted Computer Software*. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
  - (4) *Restricted Rights*. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph g below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

- (5) *Unlimited Rights.* The rights of the Postal Service in computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- b. *Allocation of Rights.* Except as provided in paragraph c below regarding copyright, the Postal Service has unlimited rights in:
- (1) Computer software first produced in the performance of this contract (except to the extent that it constitutes minor modifications of computer software that is restricted computer software);
  - (2) Form, fit, and function data delivered under this contract; except that all form, fit, and function data describing limited rights data must be delivered with unlimited rights;
  - (3) All other computer software delivered under this contract, except for restricted computer software provided in accordance with paragraph g below.
- c. *Copyright*
- (1)
    - (a) The prior, express written permission of the contracting officer is required to establish claim to copyright in all computer software or other data first produced in the performance of this contract. When making claim to copyright, the supplier must affix the applicable copyright notice of 17 U.S.C. 401. The supplier grants to the Postal Service and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform and display the computer software and other data publicly.
    - (b) If the Postal Service desires to obtain copyright in the computer software first produced in the performance of the contract and permission has not been granted pursuant to c.1(a) above, the contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the computer software and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
  - (2) The supplier may not, without prior written permission of the contracting officer, incorporate in computer software delivered under this contract any computer software not first produced in the performance of this contract containing the copyright notice of 17 U.S.C. 401, unless the supplier identifies the computer software and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a license of the same scope as set forth in c.1.(a) above or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.



- (3) The Postal Service agrees not to remove the supplier's copyright notice placed on computer software pursuant to this paragraph c, and to include such notices on all reproduction of the computer software.
- d. *Release, Publication, and Use of Computer Software*
- (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any computer software first produced by the supplier in the performance of the contract.
  - (2) The supplier agrees that to the extent it receives or is given access to computer software necessary for the performance of this contract that contains restrictive markings, the supplier will treat the computer software in accordance with these markings unless otherwise specifically authorized in writing by the contracting officer.
- e. *Unauthorized Marking of Computer Software*
- (1) If any computer software delivered under this contract is marked with the notice specified in paragraph g below and the use of such a notice is not authorized by this clause, or if the computer software bears any other unauthorized restrictive markings, the contracting officer may at any time either return the computer software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on computer software, unless this action occurs as a result of a final disposition of the matter by a court of competent jurisdiction.
- f. *Omitted or Incorrect Markings*
- (1) Computer software delivered to the Postal Service without the restricted rights notice authorized by paragraph g below, or the copyright notice required by paragraph c above, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclose, use or reproduction of such computer software. However, the extent the computer software has not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the computer

software, permission to have notices placed on qualifying computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:

- (a) Identifies the computer software involved;
  - (b) Demonstrates that the omission of the notice was inadvertent;
  - (c) Establishes that the use of the proposed notice is authorized; and
  - (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such computer software made before the addition of the notice or relisting from the omission of the notice.
- (2) The contracting officer may also (a) permit correction, at the supplier's expense, of incorrect notices if the supplier identifies the computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- g. *Protection of Restricted Computer Software*
- (1) When computer software other than that listed in subparagraphs b.1 and b.2 above is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, subject to paragraphs e and f above, in accordance with the Notice:

**RESTRICTED RIGHTS NOTICE**

- (a) This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- (b) This computer software may be:
  - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation at which the computer or computers may be transferred;
  - (ii) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup purposes;
  - (iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;

- (v) Disclosed to and reproduced for use by support service suppliers in accordance with i through iv above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  - (vi) Used or copied for use in or transferred to a replacement computer.
  - (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.
  - (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - (e) This Notice must be marked on any reproduction of this computer software, in whole or in part.
- (2) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service's rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

#### RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with \_\_\_\_\_  
*(Name of supplier and subcontractor).*"

- h. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and rights in it necessary to fulfill the supplier's obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- i. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.

**Clause 8-10 Rights in Data — Special Works (January 1997)** (8.3.7)

- a. *Definition.* Works means literary works, including technical reports, studies, and similar documents; musical and dramatic works; and recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- b. *Rights*
  - (1) All works first produced in the performance of this contract are the sole property of the Postal Service. The supplier agrees not to assert or authorize others to assert any rights or establish any claim of copyright in these works.
  - (2) The supplier assigns all right, title, and interest to the Postal Service in all works first produced in performance of this contract that are not otherwise “works for hire” for the Postal Service under Section 201(b) of Title 17, United States Code. The supplier, unless directed otherwise by the contracting officer, must place on all such works delivered under this contract the following notice:

“Copyright (year of delivery) United States Postal Service”
  - (3) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of a work that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the work finished under this contract, and to authorize others to do so for Postal Service purposes.
  - (4) Unless the contracting officer’s written approval is obtained, the supplier may not include in any works prepared for or delivered to the Postal Service under this contract any works of authorship in which copyright is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.3 above.
  - (5) Except as otherwise specifically provided for in this contract, the supplier may not use for purposes other than the performance of this contract, or release, reproduce, distribute, or publish, any work first produced in the performance of this contract, or authorize others to do so.
- c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. These provision do not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.

**Clause 8-11 Rights in Data — Existing Works (January 1997)** (8.3.6)

- a. Except as otherwise provided in this contract, the supplier grants to the Postal Service, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, and perform and display publicly all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.
- b. The supplier indemnifies the Postal Service, its employees, and its agents against any liability, including costs and fees, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. This paragraph b does not apply unless the Postal Service notifies the supplier as soon as practicable of any claim or suit, affords the supplier an opportunity under applicable laws or regulations to participate in the defense of it, and obtains the supplier's consent to its settlement (which consent may not be unreasonably withheld). These provisions do not apply to material furnished to the supplier by the Postal Service and incorporated in data to which this clause applies.

**Clause 8-12 Refund of Royalties (January 1997)** (8.3.9)

If for any reason before final payment is made on this contract, the supplier does not have to pay part or all of the royalties anticipated, or receives a refund of any royalties paid, the Postal Service must be given a credit equal to the amount not paid or refunded, if the contract price was based on a contingency that the royalties would be payable or if the Postal Service, in fact, reimbursed the supplier for royalties. The credit must be applied to the first invoice submitted to the Postal Service after the supplier learns that the royalty is not payable or is refunded.

**Clause 8-13 Intellectual Property Rights (January 1997)** (8.3.10)

All intellectual property rights evolving from studies, reports, or other data delivered under this contract are the sole property of the Postal Service. The supplier agrees to make, execute, and deliver to the Postal Service any papers or other instruments in such terms and contents as may be required for the filing of any required instrument necessary for preserving an intellectual property right and does hereby assign and transfer to the Postal Service the entire right, title, and interest in and to the intellectual property rights. Before final settlement of this contract, a final report must be submitted on Form 7398, *Report of Inventions and Subcontracts*, or other format acceptable to the contracting officer.

**Clause 8-14 Acquisition of Additional Rights in Data  
(January 1997)**

(8.3.2)

- a. *Unlimited Rights.* The supplier grants the Postal Service unlimited rights in all data (technical data and computer software) listed in the Schedule as falling within this clause's unlimited rights provisions. The rights of the parties to these data are governed by the *Rights in Technical Data* clause of this contract with regard to technical data, and the *Rights in Computer Software* clause of this contract with regard to computer software.
- b. *Directed License Rights*
  - (1) At the contracting officer's direction, the supplier must license other firms or organizations to use all data (technical data and computer software) listed in the Schedule as falling within this clause's directed license rights provisions, for the purpose of performing Postal Service contracts. If necessary, the supplier will provide a reasonable amount of technical assistance to these firms or organizations to enable them to use the data to perform Postal Service contracts. The contracting officer will direct that licenses and technical assistance agreements be given under this clause only to firms and organizations competent to perform the specific Postal Service contracts to which the direction applies.
  - (2) Upon entering into licenses under this clause, the supplier may restrict the use of the data for all other purposes, and may include any other provisions for trade secret or copyrighted material restrictions that are normally found in commercial licenses. Subject to the contracting officer's approval, the license may provide for payment of reasonable amounts for use of the data, in the form of a lump-sum payment, royalties, or both. The contracting officer will withhold approval of the payment only if it is at variance with normal commercial practice.
  - (3) Subject to the contracting officer's approval, any technical assistance agreement under this clause will provide for full compensation of the supplier's costs of providing the assistance, plus a reasonable profit. The contracting officer will withhold approval of the profit only if it is at variance with normal commercial practice.
- c. *Other Rights.* Any specific rights other than the unlimited rights or directed license rights treated in paragraphs a and b above are as set forth in the Schedule.

**Clause 8-15 Patent Rights — Supplier Retention (January 1997)** (8.2.2)a. *Definitions*

- (1) “Subject Invention” means any invention or discovery of the supplier conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States of America or any foreign country.
- (2) “Contract” means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Postal Service where a purpose of the contract is the conduct of experimental, developmental, or research work.
- (3) “States and Domestic Municipal Governments” means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.
- (4) “To Bring to the Point of Practical Application” means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

b. *Allocation of Principal Rights*

- (1) The supplier may retain the entire right, title, and interest throughout the world or any country thereof in and to each subject invention disclosed pursuant to paragraph e.2.(a) of this clause, subject to the rights obtained by the Postal Service in paragraph c of this clause. The supplier must include with each subject invention disclosure an election as to whether he will retain the entire right, title, and interest in the invention throughout the world or any country thereof.
- (2) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire domestic right, title, and interest in any subject invention when the supplier:
  - (a) Does not elect under paragraph b.1 of this clause to retain such rights; or
  - (b) Fails to have a United States patent application filed on the invention in accordance with paragraph j of this clause, or decides not to continue prosecution of such application; or
  - (c) At any time, no longer desires to retain title.

- (3) Subject to the license specified in paragraph d of this clause, the supplier agrees to convey to the Postal Service, upon request, the entire right, title, and interest in any subject invention in any foreign country when the supplier:
    - (a) Does not elect under paragraph b.1 of this clause to retain such rights in the country; or
    - (b) Fails to have a patent application filed in the country on the invention in accordance with paragraph k of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the supplier must notify the contracting officer not less than 60 days before the expiration period for any action required by the foreign patent office.
  - (4) A conveyance, requested pursuant to paragraph b.2 or b.3 of this clause, must be made by delivering to the contracting officer duly executed instruments (prepared by the Postal Service) and such other papers as are deemed necessary to vest in the Postal Service the entire right, title and interest to enable the Postal Service to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of such invention.
- c. *Minimum Rights Acquired by the Postal Service.* With respect to each subject invention to which the supplier retains principal or exclusive rights, the supplier:
- (1) Hereby grants to the Postal Service a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by or on behalf of the Postal Service;
  - (2) Agrees to grant to responsible applicants, upon request of the Postal Service, a license on terms that are reasonable under the circumstances;
    - (a) Unless the supplier, his licensee, or his assignee, demonstrates to the Postal Service that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time, or
    - (b) To the extent that the invention is required for public use by governmental regulations or for other public purposes stipulated in this contract.
  - (3) Must submit written reports at reasonable intervals, upon request of the Postal Service during the term of the patent on the subject invention regarding:



- (a) The commercial use that is being made or is intended to be made of such invention; and
    - (b) The steps taken by the supplier or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing.
  - (4) Agrees to arrange, when licensing any subject inventions, to avoid royalty charges on purchases involving the Postal Service and to refund any amounts received as royalty charges on any subject invention in purchases for, or on behalf of, the Postal Service and to provide for such refund in any instrument transferring rights in such invention to any party; and
  - (5) Agrees to provide for the Postal Service's paid-up license pursuant to paragraph c.1 of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by c.2 of this clause, and for the reporting of utilization information as required by paragraph c.3 of this clause whenever the instrument transfers principal or exclusive rights in any subject invention.
    - (a) Nothing contained in this paragraph c will be deemed to grant to the Postal Service any rights with respect to any invention other than a subject invention.
- d. *Minimum Rights to the Supplier*
- (1) The supplier reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Postal Service acquires title. The license must extend to the supplier's domestic subsidiaries and affiliates, if any, within the corporate structure of which the supplier is a part and must include the right to grant sublicenses of the same scope to the extent the supplier was legally obligated to do so at the time the contract was awarded. The license must be transferable only with approval of the contracting officer, except when transferred to the successor of that part of the supplier's business to which the invention pertains.
  - (2) The supplier's domestic nonexclusive license retained pursuant to paragraph d.1 of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The license will not be revoked in that field of use and/or the geographical areas in which the supplier has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The supplier's nonexclusive license in any foreign country reserved pursuant to paragraph d.1 of this clause may be revoked or modified at the discretion of the contracting officer to the extent the supplier or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

- (3) Before modification or revocation of the license, pursuant to paragraph d.2 of this clause, the supplier will be given written notice of the intent to modify or revoke the license and will be allowed 30 days or such longer period as may be authorized by the contracting officer for good cause shown in writing by the supplier after such notice to show cause why the license should not be modified or revoked. The supplier will have the right to contest any decision concerning the modification or revocation of the license in accordance with the *Claims and Disputes* clause of this contract.
- e. *Invention Identification, Disclosures and Reports*
- (1) The supplier must establish and maintain active and effective procedures to assure that subject inventions are promptly identified and timely disclosed. These procedures must include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, suppliers must furnish contracting officers a description of such procedures so that they may evaluate and determine their effectiveness.
  - (2) The supplier must furnish the contracting officer:
    - (a) A complete technical disclosure for each subject invention, within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the supplier. The disclosure must identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
    - (b) Interim reports, preferably on PS Form 882, at least every twelve months from the date of the contract listing subject inventions during that period and certifying that:
      - (i) The supplier's procedures for identifying and disclosing subject inventions as required by this paragraph e have been followed throughout the reporting period; and
      - (ii) All subject inventions have been disclosed or that there are no such inventions; and
    - (c) A final report, preferably on PS Form 882, within three months after completion of the contract work, listing all subject inventions or certifying that there were no such inventions.

- (3) The supplier must obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.
  - (4) The supplier agrees that the Postal Service may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- f. *Forfeiture of Rights in Unreported Subject Inventions*
- (1) The supplier must forfeit to the Postal Service all rights in any subject invention which he fails to disclose to the contracting officer within six months after the time he:
    - (a) Files or causes to be filed a United States or foreign application thereon, or
    - (b) Submits the final report required by paragraph e.2.(c) of this clause.
  - (2) However, the supplier must not forfeit rights in a subject invention if, within the time specified in 1.(a) or 1.(b) of this paragraph f, the supplier:
    - (a) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or
    - (b) Contending that the invention is not a subject invention, he nevertheless discloses the invention and all facts pertinent to his contention to the contracting officer; or
    - (c) Establishes that the failure to disclose did not result from his fault or negligence.
  - (3) Pending written assignment of the patent applications and patents on a subject invention determined by the contracting officer to be forfeited (such determination to be a final decision under the *Claims and Disputes* clause), the supplier will be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Postal Service. The forfeiture provision of this paragraph f will be in addition to and must not supersede other rights and remedies which the Postal Service may have with respect to subject inventions.
- g. *Examination of Records Relating to Inventions*
- (1) The contracting officer or his authorized representative will, until the expiration of 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the supplier which the contracting officer reasonably deems pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.

- (2) The contracting officer or his authorized representative will have the right to examine all books (including laboratory notebooks), records, and documents of the supplier relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are subject inventions if the supplier refuses or fails to:
  - (a) Establish the procedures of paragraph e.1 of this clause; or
  - (b) Maintain and follow such procedures; or
  - (c) Correct or eliminate any material deficiency in the procedures within 30 days after the contracting officer notifies the supplier of such a deficiency.
- h. *Withholding of Payment (Not Applicable to Subcontracts)*
  - (1) Any time before final payment of the amount of this contract, the contracting officer may, if he deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or five percent of the amount of this contract, whichever is less, will have been set aside if in his opinion the supplier fails to:
    - (a) Establish, maintain and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph e.1 of this clause; or
    - (b) Disclose any subject invention pursuant to paragraph e.2.(a) of this clause; or
    - (c) Deliver acceptable interim reports pursuant to paragraph e.2.(b) of this clause; or
    - (d) Provide the information regarding subcontracts pursuant to paragraph i.5 of this clause.
  - (2) Such reserve or balance will be withheld until the contracting officer has determined that the supplier has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
  - (3) Final payment under this contract will not be made before the supplier delivers to the contracting officer all disclosures of subject inventions required by paragraph e.2.(a) of this clause, an acceptable final report pursuant to e.2.(c) of this clause and all past due confirmatory instruments.
  - (4) The contracting officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the supplier is a nonprofit organization, the maximum amount that may be withheld under this paragraph will not exceed \$50,000 or one percent of the amount of this contract, whichever is less. No amount will be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof will not be construed as a waiver of any rights accruing to the government under this contract.

i. *Subcontracts*

- (1) For the purpose of this paragraph, the term “supplier” means the party awarding a subcontract and the term “subcontractor” means the party being awarded a subcontract, regardless of tier.
- (2) The supplier must include this patent rights clause in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless directed by the contracting officer to include another particular clause. In the event of a refusal by a subcontractor to accept such clause, the supplier:
  - (a) Must promptly submit a written notice to the contracting officer setting forth the subcontractor’s reasons for such refusal and other pertinent information which may expedite disposition of the matter; and
  - (b) Must not proceed with the subcontract without the written authorization of the contracting officer.
- (3) The supplier must not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor’s subject invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Postal Service in the performance of this contract).
- (4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the contracting officer under the provisions of a patent rights clause in any subcontract hereunder may, at the discretion of the contracting officer, be furnished to the supplier for transmission to the contracting officer.
- (5) The supplier must promptly notify the contracting officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the contracting officer, the supplier must furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report must be included in the final report submitted pursuant to paragraph e.2.(c) of this clause.
- (6) The supplier must identify all subject inventions of the subcontractor of which he acquires knowledge in the performance of this contract and must notify the contracting officer promptly upon the identification of the inventions.

- (7) It is understood that the Postal Service is a third party beneficiary of any subcontract clause granting rights to the Postal Service subject inventions, and the supplier hereby assigns to the Postal Service all rights that he would have to enforce the subcontractor's obligations for the benefit of the Postal Service with respect to subject inventions. The supplier will not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Postal Service in regard to subject inventions.
- j. *Filing of Domestic Patent Applications*
- (1) With respect to each subject invention in which the supplier elects to retain domestic rights pursuant to paragraph b of this clause, the supplier must have a domestic patent application filed within six months after submission of the invention disclosure pursuant to paragraph e.2.(a) of this clause, or such longer period as may be approved in writing by the contracting officer for good cause shown in writing by the supplier. With respect to such invention, the supplier must promptly notify the contracting officer of any decision not to file an application.
- (2) For each subject invention on which a patent application is filed by or on behalf of the supplier, the supplier must:
- (a) Within two months after such filing, or within two months after submission of the invention disclosure if the patent application previously has been filed, deliver to the contracting officer a copy of the application as filed, including the filing date and serial number;
  - (b) Include the following statement in the second paragraph of the specification of the application and any patents issued on the subject invention:  
"The U.S. Postal Service has rights in this invention pursuant to Contract No. \_\_\_\_\_"
  - (c) Within six months after filing the application, or within six months after submitting the invention disclosure if the application has been filed previously, deliver to the contracting officer a duly executed and approved instrument on a form specified by the contracting officer fully confirmatory of all rights to which the Postal Service is entitled, and provide the Postal Service an irrevocable power to inspect and make copies of the patent application file;
  - (d) Provide the contracting officer with a copy of the patent within two months after a patent issues on the application; and
  - (e) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the contracting officer of any decision not to continue prosecution of the application and deliver to the contracting officer executed instruments granting the government a power of attorney.

- (3) For each subject invention in which the supplier initially elects not to retain principal domestic rights, the supplier must inform the contracting officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the supplier, or any contemplated action of this nature.
- k. *Filing of Foreign Patent Applications*
- (1) With respect to each subject invention in which the supplier elects to retain principal rights in a foreign country pursuant to paragraph b.1 of this clause, the supplier must have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:
    - (a) Eight months from the date of a corresponding United States application filed by or on behalf of the supplier, or if such an application is not filed, six months from the date the invention is submitted in a disclosure pursuant to paragraph e.2.(a) of this clause;
    - (b) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or
    - (c) Such longer period as may be approved in writing by the contracting officer.
  - (2) The supplier must notify the contracting officer promptly of each foreign application filed and, upon written request, must furnish an English version of such foreign application without additional compensation.

**Clause 8-16 Postal Service Title in Technical Data and Computer Software (January 1997)** (8.2.2)

- a. *Definitions*
- (1) *Data*. Data means technical data including drawings, technical reports, studies, and similar documents; computer software and computer software documentation, including but not limited to source code, object code, algorithms, formulas, and, other data that describe design, function, operation, or capabilities, and other recorded information, regardless of the form or the medium on which it may be recorded. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
  - (2) *Form, Fit, and Function Data*. Data relating to an item or process that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional

characteristics, and performance requirements; except that for computer software, it means data identifying origin, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulas, and machine-level flow charts of the computer software.

- (3) *Limited Rights Data*. Data other than computer software developed at private expense, including minor modifications of these data.
- (4) *Technical Data*. Data other than computer software, of a scientific or technical nature.
- (5) *Restricted Computer Software*. Computer software developed at private expense that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of this computer software.
- (6) *Restricted Rights*. The rights of the Postal Service in restricted computer software, as set forth in a Restricted Rights Notice as provided in paragraph h below, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.
- (7) *Unlimited Rights*. The rights of the Postal Service in technical data and computer software to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. *Rights*

- (1) The Postal Service has title to all data first produced in the performance of this contract. Accordingly, the supplier assigns all rights, title, and interest to the Postal Service in all data first produced in performance of this contract. The supplier, unless directed otherwise by the contracting officer, must place on all such data delivered under this contract the following notice:

“This data is the confidential property of the U.S. Postal Service and may not be used, released, reproduced, distributed or published without the express written permission of the U.S. Postal Service.”
- (2) The supplier grants to the Postal Service a royalty-free, nonexclusive, irrevocable license throughout the world to publish, translate, deliver, perform, use, and dispose of in any manner any portion of data that is not first produced in the performance of this contract but in which copyright is owned by the supplier and that is incorporated in the data furnished under this contract, and to authorize others to do so for Postal Service purposes.
- (3) Unless the contracting officer’s written approval is obtained, the supplier may not include in any data prepared for or delivered to the Postal Service under this contract any data which is not owned by the supplier or the Postal Service without acquiring for the Postal Service any right necessary to perfect a license of the scope set forth in subparagraph b.2.



- c. *Indemnity.* The supplier indemnifies the Postal Service (and its officers, agents, and employees acting for the Postal Service) against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in these works. This provision does not apply to material furnished by the Postal Service and incorporated in the works to which this clause applies.
- d. *Additional Rights in Technical Data*
  - (1) Except as provided in paragraph b, the Postal Service has unlimited rights in:
    - (a) Form fit, and function data, including such data developed at private expense, delivered under this contract, and
    - (b) Technical data delivered under this contract that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract.
  - (2) *Copyright*
    - (a) The contracting officer may direct the supplier to establish, or authorize the establishment of, claim to copyright in the technical data and to assign, or obtain the written assignment of, the copyright to the Postal Service or its designated assignee.
    - (b) The supplier may not, without prior written permission of the contracting officer, incorporate in technical data delivered under this contract any data not first produced in the performance of this contract containing the copyright notice of 176 U.S.C. 401 or 402, unless the supplier identifies the data and grants to the Postal Service, or acquires on its behalf at no cost to the Postal Service, a paid-up, nonexclusive, irrevocable worldwide license in such copyright data to reproduce, prepare derivative works, distribute copies to the public, and perform and display the data publicly.
    - (c) The Postal Service agrees not to remove any copyright notices placed on data pursuant to this section d, and to include such notices on all reproductions of the data.
- e. *Release, Publication, and Use of Technical Data and Computer Software*
  - (1) Unless prior written permission is obtained from the contracting officer or to the extent expressly set forth in this contract, the supplier will not use, release to others, reproduce, distribute, or publish any technical data or computer software first produced by the supplier in the performance of the contract.

- (2) The supplier agrees that if it receives or is given access to data or software necessary for the performance of this contract that contain restrictive markings, the supplier will treat the data or software in accordance with the markings unless otherwise specifically authorized in writing by the contracting officer.
- f. *Unauthorized Marking of Data or Computer Software*
- (1) If any technical data or computer software delivered under this contract are marked with the notice specified in paragraph h and the use of such a notice is not authorized by this clause, or if the data or computer software bear any other unauthorized restrictive markings, the contracting officer may at any time either return the data or software or cancel the markings. The contracting officer must afford the supplier at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the supplier to timely respond, or to provide written justification, may result in the cancellation of the markings. The contracting officer must consider any written justification by the supplier and notify the supplier if the markings are determined to be authorized.
  - (2) The foregoing procedures may be modified in accordance with Postal Service regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the supplier is not precluded from bringing a claim in connection with any dispute that may arise as the result of the Postal Service's action to remove any markings on data or computer software, unless this action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.
- g. *Omitted or Incorrect Markings*
- (1) Technical data or computer software delivered to the Postal Service without the limited rights notice or restricted notice authorized by paragraph h, or the data rights notice required by paragraph b, will be deemed to have been furnished with unlimited rights, and the Postal Service assumes no liability for the disclosure, use, or reproduction of such data or computer software. However, to the extent the data or software have not been disclosed outside the Postal Service, the supplier may request, within six months (or a longer time approved by the contracting officer) after delivery of the data or software, permission to have notices placed on qualifying technical data or computer software at the supplier's expense, and the contracting officer may agree to do so if the supplier:
    - (a) Identifies the technical data or computer software to which the omitted notice is to be applied;
    - (b) Demonstrates that the omission of the notice was inadvertent;
    - (c) Establishes that the use of the proposed notice is authorized; and

- (d) Acknowledges that the Postal Service has no liability with respect to the disclosure, use, or reproduction of any such data or software made before the addition of the notice or resulting from the omission of the notice.
  - (2) The contracting officer may also (a) permit correction of incorrect notices, at the supplier's expense, if the supplier identifies the technical data or computer software on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (b) correct any incorrect notices.
- h. *Protection of Rights*

- (1) *Protection of Limited Rights Data.* When technical data other than data listed in section d, above, are specified to be delivered under this contract and qualify as limited rights data, if the supplier desires to continue protection of such data, the supplier must affix the following "Limited Rights Notice" to the data, and the Postal Service will thereafter treat the data, subject to paragraphs f and g above, in accordance with the Notice:

**"LIMITED RIGHTS NOTICE**

These technical data are submitted with limited rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Postal Service with the express limitation that they will not, without written permission of the supplier, be used for purposes of manufacture or disclosed outside the Postal Service; except that the Postal Service may disclose these data outside the Postal Service for the following purposes, provided that the Postal Service makes such disclosure subject to prohibition against further use and disclosure:

1. Use (except for manufacture) by support service suppliers.
2. Evaluation by Postal Service evaluators.
3. Use (except for manufacture) by other suppliers participating in the Postal Service's program of which the specific contract is a part, for information and in connection with the work performed under each contract.
4. Emergency repair or overhaul work.

This Notice must be marked on any reproduction of these data, in whole or in part."

(2) *Protection of Restricted Computer Software*

- (a) When computer software is specified to be delivered under this contract and qualifies as restricted computer software, if the supplier desires to continue protection of such computer software, the supplier must affix the following "Restricted Rights Notice" to the computer software, and the Postal Service will thereafter treat the computer software, subject to paragraphs f and g above, in accordance with the Notice:

"RESTRICTED RIGHTS NOTICE

- a. This computer software is submitted with restricted rights under Postal Service Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Postal Service except as provided below or as otherwise stated in the contract.
- b. This computer software may be:
1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Postal Service installation to which the computer or computers may be transferred;
  2. Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  3. Reproduced for safekeeping (archives) or backup purposes;
  4. Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;
  5. Disclosed to and reproduced for use by support service suppliers in accordance with 1 through 4 above, provided the Postal Service makes such disclosure or reproduction subject to these restricted rights; and
  6. Used or copied for use in or transferred to a replacement computer.
- c. Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Postal Service, without disclosure prohibitions, with the minimum rights set forth in the preceding paragraph.

- d. Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
  - e. This Notice must be marked on any reproduction of this computer software, in whole or in part.”
- (b) When it is impracticable to include the above Notice on restricted computer software, the following short-form Notice may be used instead, on condition that the Postal Service’s rights with respect to such computer software will be as specified in the above Notice unless otherwise expressly stated in the contract.

“RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) with \_\_\_\_\_ (name of supplier and subcontractor).”

- i. *Subcontracting.* The supplier has the responsibility to obtain from its subcontractors all computer software and technical data and the rights therein necessary to fulfill the supplier’s obligations under this contract. If a subcontractor refuses to accept terms affording the Postal Service such rights, the supplier must promptly bring such refusal to the attention of the contracting officer and may not proceed with subcontract award without further authorization.
- j. *Standard Commercial License or Lease Agreements.* The supplier unconditionally accepts the terms and conditions of this clause unless expressly provided otherwise in this contract or in a collateral agreement incorporated in and made part of this contract. Thus the supplier agrees that, notwithstanding any provisions to the contrary contained in the supplier’s standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed before or after issuance of this contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Postal Service has the rights set forth in this clause to use, duplicate, or disclose any restricted computer software delivered under this contract.
- k. *Relationship to Patents.* Nothing contained in this clause implies a license to the Postal Service under any patent or may be construed as affecting the scope of any license or other right otherwise granted to the Postal Service.

**Clause 8-17 Delivery of Limited Rights and Restricted Computer Software (January 1997)** (8.3.2)

To the extent that the supplier has, in its proposal, identified pre-existing proprietary data or restricted computer software pursuant to the "Representation of Rights in Data" of the solicitation, the contracting officer, or a duly authorized representative, until the expiration of 3 years after final payment of this contract, will have the right to examine any books, records, documents or other data supporting the supplier's claim(s) hereunder. Notwithstanding the supplier's rights and claims of, and the Postal Service's agreement to protect, pre-existing proprietary data or software, the Postal Service will have unlimited or unrestricted rights without additional supplier compensation, to any data or software identified above, that is:

- (1) Obtained independent of this contract;
- (2) In the public domain; or
- (3) Determined, subsequent to the effective date of this contract, to not have qualified as pre-existing data or software or a derivative of pre-existing data or software to which the supplier would have such proprietary rights.

**Clause 8-18 Manufacture of Repair Parts (January 1997)** (8.3.2)

In addition to the Postal Service rights specified in the "Limited Rights Notice" of the clause entitled "Rights in Technical Data" paragraph g, the Postal Service has the unilateral right to use competitive procedures to procure repair parts or assemblies for the equipment or supply items being developed under this contract. If the repair parts or assemblies have been identified as being subject to protection under "Limited Data Rights" or "Restricted Computer Software" provisions of this contract, the Postal Service will obtain a nondisclosure agreement from interested offerors prior to releasing any drawings, specifications or other descriptive documentation suitable for manufacturing or reproducing such repair parts of assemblies.

**Clause 9-1 Convict Labor (January 1997)** (9.2.2)

In connection with the work under this contract, the supplier agrees not to employ any person undergoing sentence of imprisonment, except as provided by E.O. 11755, December 28, 1973, as amended and 18 USC 3621 and 3622.

**Clause 9-2 Contract Work Hours and Safety Standards Act — Overtime Compensation (January 1997)** (9.3.3)

- a. *Overtime Requirements.* No supplier or subcontractor contracting for any part of the contract work may require or permit any laborer or mechanic to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer's or mechanic's basic rate of pay for all such hours worked in excess of 40 hours.
- b. *Violation, Liability for Unpaid Wages, and Liquidated Damages.* In the event of any violation of paragraph a above, the supplier and any subcontractor responsible for the violation are liable to any affected employee for unpaid wages. The supplier and subcontractor are also liable to the Postal Service for liquidated damages, which will be computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of paragraph a above.
- c. *Withholding for Unpaid Wages and Liquidated Damages.* The contracting officer may withhold from the supplier, from any moneys payable to the supplier or subcontractor under this or any other contract with the same supplier, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act held by the same supplier, sums as may administratively be determined necessary to satisfy any liabilities of the supplier or subcontractor for unpaid wages and liquidated damages pursuant to paragraph b above.
- d. *Records.* The supplier or subcontractor must maintain for 3 years from the completion of the contract for each laborer and mechanic (including watchmen and guards) working on the contract payroll records which contain the name, address, social security number, and classification(s) of each such employee, hourly rates of wages paid, number of daily and weekly hours worked, deductions made, and actual wages paid. The supplier or subcontractor must make these records available for inspection, copying, or transcription by authorized representatives of the contracting officer and the Department of Labor, and must permit such representatives to interview employees during working hours on the job. (The Department of Labor information collection and record keeping requirements in this paragraph d have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)
- e. *Subcontracts.* The supplier must insert paragraphs a through d of this clause in all subcontracts, and must require their inclusion in all subcontracts at any tier.

**Clause 9-3 Davis-Bacon Act (January 1997)**

(9.4.4)

a. *Minimum Wages*

- (1) All mechanics and laborers employed in the contract work (other than maintenance work of a recurring, routine nature necessary to keep the building or space in condition to be continuously used at an established capacity and efficiency for its intended purpose) must be paid unconditionally, and not less than once a week, without deduction or rebate (except for deductions permitted by the Copeland Regulations (29 CFR Part 3)), the amounts due at the time of payment computed at rates not less than the aggregate of the basic hourly rates and rates of payments, contributions, or costs for any fringe benefits contained in the wage-determination decision of the Secretary of Labor, attached hereto, regardless of any contractual relationship alleged to exist between the lessor (for construction contracts, use "supplier" instead of "lessor"), or subcontractor and these laborers and mechanics. A copy of the wage-determination decision must be kept posted by the lessor at the site of the work in a prominent place where it can easily be seen by the workers.
- (2) The lessor may discharge its obligation under this clause to workers in any classification for which the wage-determination decision contains:
  - (a) Only a basic hourly rate of pay, by making payment at not less than that rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or
  - (b) Both a basic hourly rate of pay and fringe-benefit payments, by paying in cash, by irrevocably contributing to a fund, plan, or program for, or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by 40 U.S.C. 276a, or by a combination of these.
- (3) Contributions made, or costs assumed, on other than a weekly basis (but not less often than quarterly) are considered as having been constructively made for a weekly period. When a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the lessor pays a cash equivalent or provides an alternative fringe benefit, the lessor must furnish information with the lessor's payrolls showing how the lessor determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage-determination fringe benefits. When the lessor provides a fringe benefit different from that contained in the wage determination, the lessor must show how the hourly rate was arrived at. In the event of disagreement as to an equivalent of any fringe benefit, the contracting officer must submit the question, together with the contracting officer's recommendation, to the Secretary of Labor for final determination.



- (4) If the supplier does not make payments to a trustee or other third person, the supplier may consider as payment of wages the costs reasonably anticipated in providing bona fide fringe benefits, but only with the approval of the Secretary of Labor pursuant to a written request by the lessor. The Secretary of Labor may require the lessor to set aside assets in a separate account, to meet the lessor's obligations under any unfunded plan or program.
- (5) The contracting officer will require that any class of laborers or mechanics not listed in the wage-determination but to be employed under the contract will be classified in conformance with the wage determination and report the action taken to the  
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION  
EMPLOYMENT STANDARDS ADMINISTRATION  
US DEPARTMENT OF LABOR  
WASHINGTON DC 20210-0001

for approval. The contracting officer will approve an additional classification and wage rate and fringe benefits therefor only if:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (b) The classification is utilized in the area by the construction industry; and
- (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (6) If the lessor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate and fringe benefits therefore, the contracting officer must submit the question, together with the views of the interested parties and the contracting officer's recommendation, to the Wage and Hour Administrator for final determination. The Administrator or an authorized representative will, within 30 days of receipt, approve, modify, or disapprove every proposed additional classification action, or issue a final determination if the parties disagree, and so advise the contracting officer or advise that additional time is necessary. The finally approved wage rate (and fringe benefits if appropriate) must be paid to all workers performing work in the classification under the contract from the first day work is performed in the classification. The lessor must post a copy of the final determination of the conformance action with the wage determination at the site of the work. (The Department of Labor information collection and reporting requirements contained in subparagraph a.5 above and in this subparagraph a.6 have been approved by the Office of Management and Budget under OMB control number 1215-0140.)

b. *Apprentices and Trainees*

- (1) Apprentices may be permitted to work only when
  - (a) Registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, or, if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training; or
  - (b) If not individually registered in the program, certified by the Bureau of Apprenticeship and Training or state agency (as appropriate) to be eligible for probationary employment as an apprentice. Trainees may be permitted to work only if individually registered in a program approved by the Employment and Training Administration, U.S. Department of Labor.
- (2) The ratio of apprentices to journeymen or trainees to journeymen in any craft classification must not be greater than that permitted for the lessor's entire work force under the registered apprenticeship or trainee program. Apprentices and trainees must be paid at least the applicable wage rates and fringe benefits specified in the approved apprenticeship or trainee program for the particular apprentice's or trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. If the apprenticeship or trainee program does not specify fringe benefits, apprentices or trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification unless the Administrator of the Wage and Hour Division determines that a different practice prevails. Any employee listed on a payroll at an apprentice or trainee wage rate but not registered, or performing work on the job site in excess of the ratio permitted under the registered program, must be paid the wage rate on the wage determination for the classification or work actually performed.
- (3) If the Bureau of Apprenticeship and Training or the state agency recognized by the Bureau (as appropriate) withdraws approval of an apprenticeship program, or if the Employment and Training Administration withdraws approval of a trainee program, the supplier will no longer be permitted to utilize apprentices or trainees (as appropriate) at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (See 29 CFR 5.16 for special provisions that apply to training plans approved or recognized by the Department of Labor prior to August 20, 1975.)
- (4) The utilization of apprentices, trainees, and journeymen must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

c. *Overtime Compensation*

- (1) The lessor may not require or permit any laborer or mechanic employed on any work under this contract to work more than 40 hours in any workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), unless the laborer or mechanic receives compensation at a rate not less than one-and-one-half times the laborer's or mechanic's basic rate of pay for all such hours worked in excess of 40 hours.
- (2) For violations for subparagraph c.1 above, the lessor is liable for liquidated damages, which will be computed for each laborer or mechanic at \$10 for each day on which the employee was required or permitted to work in violation of subparagraph c.1 above.
- (3) The contracting officer may withhold from the lessor sums as may administratively be determined necessary to satisfy any liabilities of the lessor for unpaid wages and liquidated damages pursuant to subparagraph c.2 above.

d. *Payroll and Other Records*

- (1) For all laborers and mechanics employed in the work covered by this clause, the lessor must maintain payrolls and related basic records and preserve them for a period of 3 years after contract completion. The records must contain the name, address, and social security number of each employee, the employee's correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), the daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the lessor has obtained approval from the Secretary of Labor to assume a commitment to bear the cost of fringe benefits under subparagraph a.4 above, the lessor must maintain records showing the commitment and its approval, communication of the plan or program to the employees affected, and the costs anticipated or incurred under the plan or program. Lessors employing apprentices or trainees under approved programs must maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (The Department of Labor information collection and record keeping requirements in this subparagraph d.1 have been approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017).
- (2) The lessor must submit weekly, for each week in which any work covered by this clause is performed, a copy of all payrolls to the contracting officer. The lessor is responsible for the submission of copies of payrolls of all subcontractors. The copy must be accompanied by a statement signed by the lessor indicating that the payrolls are correct and complete, that the wage rates contained in them are not less than those determined by the

- Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Submission of the Weekly Statement of Compliance (see 29 CFR 5.5(a)(3)(ii)) required under this agreement satisfies this requirement. As required by this clause, the lessor must submit a copy of any approval by the Secretary of Labor. (The Department of Labor information collection and reporting requirements in this subparagraph d.2 have been approved by the Office of Management and Budget under OMB control number 1215-0149.)
- (3) The lessor's records required under this clause must be available for inspection by authorized representatives of the contracting officer and the Department of Labor, and the lessor must permit the representative to interview employees during working hours on the job.
  - (4) The lessor must comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3), which are hereby incorporated in this contract by reference.
- e. *Withholding of Funds.* The contracting officer may withhold from the lessor under this or any other contract with the lessor so much of the accrued payments or advances as is considered necessary to pay all laborers and mechanics the full amount of wages required by this contract or any other contract subject to the Davis-Bacon prevailing wage requirements that is held by the lessor.
- f. *Subcontracts*
- (1) If the lessor or any subcontractor fails to pay any laborer or mechanic employed on the site of the work any of the wages required by the contract, the contracting officer may, after written notice to the lessor, suspend further payments or advances to the lessor until violations have ceased.
  - (2) The lessor agrees to insert this clause, including this paragraph f, in all subcontracts hereunder. The term "lessor" as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.
- g. *Compliance with Davis-Bacon and Related Acts Requirements.* All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.
- h. *Certification of Eligibility*
- (1) By entering into this contract, the lessor certifies that neither it or any person or firm having an interest in the lessor is ineligible to be awarded contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (2) No part of this contract will be subcontracted to any person or firm ineligible for contract award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- i. *Contract Termination and Debarment.* A breach of this Davis-Bacon Act clause may be grounds for termination of the contract and debarment as a supplier and subcontractor as provided in 29 CFR 5.12.
- j. *Disputes Concerning Labor Standards.* Disputes arising out of the labor standards provisions of this contract are not subject to the Claims and Disputes clause. They will be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5,6, and 7. Disputes within the meaning of this clause include disputes between the lessor (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.

**Clause 9-4 Compliance by States with Labor Standards (January 1997)** (9.4.4)

- a. The supplier agrees to comply with the *Contract Work Hours and Safety Standards Act — Overtime Compensation* and *Davis-Bacon Act* clauses of this contract, to provide for similar compliance in subcontracts with states or political subdivisions thereof, and to insert the clauses in all subcontracts with private persons or firms.

**Clause 9-5 Contract Work Hours and Safety Standards Act — Safety Standards (January 1997)** (9.4.4)

- a. To the extent that the work includes construction, alteration, repair, painting, or decorating, the lessor (for construction contracts, use “supplier” instead of “lessor”) may not require any laborer or mechanic to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to the laborer’s or mechanic’s health or safety, as provided under standards promulgated by the Secretary of Labor under the authority of 40 U.S.C. 333 (see 29 CFR 1910 and 1926).
- b. If the lessor fails to comply with this clause, the Postal Service, at its discretion, may cancel this contract, contract for the balance of the work or term, and charge to the lessor any additional costs incurred.
- c. The lessor agrees to insert this clause, including this paragraph c, in all subcontracts and to require its inclusion in all subcontracts at any tier. The term “lessor,” as used in this clause in any subcontract, is deemed to refer to the lower-tier subcontractor.

**Clause 9-6 Walsh-Healey Public Contracts Act (January 1997)** (9.5.2)

- a. All representations and stipulations required by the Act and related regulations issued by the Secretary of Labor (41 CFR Chapter 50) are hereby incorporated in this contract by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor.
- b. All employees whose work relates to this contract must be paid at least the minimum wage prescribed by the Secretary of Labor (41 CFR 50-202.2), except that learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent as permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**Clause 9-7 Equal Opportunity (January 1997)** (9.7.10)

- a. The supplier may not discriminate against employees or applicants because of race, color, religion, sex, or national origin. The supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. This action must include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The supplier agrees to post in conspicuous places, available to employees and applicants, notices provided by the contracting officer setting forth the provisions of this clause.
- b. The supplier must, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will be considered for employment without regard to race, color, religion, sex, or national origin.
- c. The supplier must send to each union or workers' representative with which the supplier has a collective bargaining agreement or other understanding, a notice, provided by the contracting officer, advising the union or workers' representative of the supplier's commitments under this clause, and must post copies of the notice in conspicuous places available to employees and applicants.
- d. The supplier must comply with all provisions of Executive Order (EO) 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The supplier must furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary, and must permit access to the supplier's books, records, and accounts by the Postal Service and the Secretary for purposes of investigation to ascertain compliance with these rules, regulations, and orders.

- f. If the supplier fails to comply with this clause or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part; the supplier may be declared ineligible for further contracts in accordance with the Executive Order; and other sanctions may be imposed and remedies invoked under the Executive Order, or by rule, regulation, or order of the Secretary, or as otherwise provided by law.
- g. The supplier must insert this clause, including this paragraph g, in all subcontracts or purchase orders under this contract unless exempted by Secretary of Labor rules, regulations, or orders issued under the Executive Order. The supplier must take such action with respect to any such subcontract or purchase order as the Postal Service may direct as a means of enforcing the terms and conditions of this clause (including sanctions for noncompliance), provided, however, that if the supplier becomes involved in, or is threatened with, litigation as a result, the supplier may request the Postal Service to enter into the litigation to protect the interest of the Postal Service.
- h. Disputes under this clause will be governed by the procedures in 41 CFR 60-1.1.

**Clause 9-8 Affirmative Action Compliance Requirements for Construction (January 1997)**

(9.7.10)

- a. *Definitions*
  - (1) *Covered Area.* The geographical area described in the solicitation for this contract.
  - (2) *Director.* Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
  - (3) *Employer Identification Number.* The federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
  - (4) *Minority* means:
    - (a) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
    - (b) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
    - (c) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and
    - (d) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

- b. If the supplier, or subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 must include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this.
- c. If the supplier is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) must comply with the plan for those trades that have unions participating in the plan. Suppliers must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each supplier or subcontractor participating in an approved plan is also required to comply with its obligations under the *Equal Opportunity* clause, and to make a good-faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other suppliers or subcontractors toward a goal in an approved plan does not excuse any supplier's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- d. The supplier must implement the affirmative action procedures set forth in paragraph g below. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the supplier should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the supplier performs construction work in a geographical area located outside of the covered area, it must apply the goals established for the geographical area where that work is actually performed. The supplier is expected to make substantially uniform progress toward its goals in each craft.
- e. Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the supplier has a collective bargaining agreement, to refer minorities or women will excuse the supplier's obligations under this clause, Executive Order (EO) 11246, as amended, or the regulations under the Executive Order.
- f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the supplier during the training period, and the supplier must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- g. The supplier must take affirmative action to ensure equal employment opportunity. The evaluation of the supplier's compliance with this clause will be based upon its effort to achieve maximum results from its actions. The supplier must document these efforts fully and implement affirmative action steps at least as extensive as the following:



- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the supplier's employees are assigned to work. The supplier, if possible, will assign two or more women to each construction project. The supplier must ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the supplier's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the supplier or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and was not referred back to the supplier by the union or, if referred back, not employed by the supplier, this fact must be documented in the file, along with whatever additional actions the supplier may have taken.
- (4) Immediately notify the Director when the union or unions with which the supplier has a collective bargaining agreement have not referred back to the supplier a minority or woman sent by the supplier, or when the supplier has other information that the union referral process has impeded the supplier's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the supplier's employment needs, especially those programs funded or approved by the Department of Labor. The supplier must provide notice of these programs to the sources complied under subparagraph 2 above.
- (6) Disseminate the supplier's equal employment policy by:
  - (a) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the supplier in meeting its contract obligations;
  - (b) Including the policy in any policy manual and in collective bargaining agreements;
  - (c) Publicizing the policy in such publications as the company newspaper and annual report;

- (d) Reviewing the policy with all management personnel and with all minority and female employees at least one a year; and
  - (e) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the supplier's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - (8) Disseminate the supplier's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other suppliers and subcontractors which with the supplier does or anticipates doing business.
  - (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the supplier's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - (10) Encourage present minority and female employees to recruit minority persons and women. When feasible, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the supplier's workforce.
  - (11) Validate all tests and other selection requirements when required under 41 CFR 60-3.
  - (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training and other activities, opportunities for promotion.
  - (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the supplier's obligations under this contract are being carried out.

- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Maintain a record of solicitations for subcontracts for minority and female construction suppliers and suppliers, including circulation of solicitations to minority and female supplier associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the supplier's equal employment policy and affirmative action obligations.
- h. The supplier is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraph g above. The efforts of a supplier association, joint supplier-union, supplier-community, or similar group of which the supplier is a member and participant may be asserted as fulfilling one or more of its obligations under paragraph g above, provided the supplier:
- (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the supplier's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the supplier. The obligation to comply is the supplier's, and failure of such a group to fulfill an obligation will not be a defense for the supplier's noncompliance.
- i. A single goal for minorities and a separate single goal for women must be established. The supplier is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the supplier may be in violation of EO 11246, if a particular group is employed in a substantially disparate manner.
- j. The supplier may not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- k. The supplier may not enter into any subcontract with any person or firm debarred from government contracts under EO 11246.
- l. The supplier must carry out such sanctions and penalties for violation of this clause and of the *Equal Opportunity* clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under EO 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered will be a violation of this clause and EO 11246.

- m. The supplier in fulfilling its obligations under this clause must implement affirmative action procedures at least as extensive as those prescribed in paragraph g above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the supplier fails to comply with the requirements of EO 11246, the implementing regulations, or this clause, the contracting officer will take action as prescribed in 41 CFR 60-4.8.
- n. The supplier must designate a responsible official to:
  - (1) Monitor all employment-related activity to ensure that the supplier's equal employment policy is being carried out;
  - (2) Submit reports as may be required; and
  - (3) Keep records that at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- o. Nothing contained in this clause may be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (for example, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**Clause 9-9 Equal Opportunity Preward Compliance of Subcontracts (January 1997)** (9.7.10)

The supplier may not enter into a first-tier subcontract for an estimated or actual amount of \$10 million or more without obtaining in writing from the contracting officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore eligible for award.

**Clause 9-10 Service Contract Act (January 1997)** (9.8.3)

- a. This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.), and to the following provisions and all other applicable provisions of the Act and regulations of the Secretary of Labor issued under the Act (29 CFR Part 4).

- b.
- (1) Each service employee employed in the performance of this contract by the supplier or any subcontractor must be (a) paid not less than the minimum monetary wages and (b) furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any wage determination attached to this contract.
  - (2)
    - (a) If a wage determination is attached to this contract, the contracting officer must require that any class of service employees not listed in it and to be employed under the contract (that is, the work to be performed is not performed by any classification listed in the wage determination) be classified by the supplier so as to provide a reasonable relationship (that is, appropriate level of skill comparison) between the unlisted classifications and the classifications in the wage determination. The conformed class of employees must be paid the monetary wages and furnished the fringe benefits determined under this clause. (The information collection requirements contained in this paragraph b have been approved by the Office of Management and Budget under OMB control number 1215-0150.)
    - (b) The conforming procedure must be initiated by the supplier before the performance of contract work by the unlisted class of employees. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, if there is no authorized representative, the employees themselves, must be submitted by the supplier to the contracting officer no later than 30 days after the unlisted class of employees performs any contract work. The contracting officer must review the proposed action and promptly submit a report of it, together with the agency's recommendation and all pertinent information, including the position of the supplier and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. Within 30 days of receipt, the Wage and Hour Division will approve, modify, or disapprove the action, render a final determination in the event of disagreement, or notify the contracting officer that additional time is necessary.

- (c) The final determination of the conformance action by the Wage and Hour Division will be transmitted to the contracting officer, who must promptly notify the supplier of the action taken. The supplier must give each affected employee a written copy of this determination, or it must be posted as a part of the wage determination.
- (d)
  - (i) The process of establishing wage and fringe benefit rates bearing a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from determination to determination, depending on the circumstances. Standard wage and salary administration practices ranking various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way various jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of conformable wage rates is the concept that a pay relationship should be maintained between job classifications on the basis of the skill required and the duties performed.
  - (ii) If a contract is modified or extended or an option is exercised, or if a contract succeeds a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (that is, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase change in the wages and fringe benefits specified for all classifications to be used on the contract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. If these conforming actions are accomplished before the performance of contract work by the unlisted class of employees, the supplier must advise the contracting officer of the action taken, but the other procedures in b.2(c) above need not be followed.
  - (iii) No employee engaged in performing work on this contract may be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

- (e) The wage rate and fringe benefits finally determined pursuant to b.2(a) and (b) above must be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date the class of employees began contract work is a violation of the Service Contract Act and this contract.
        - (f) Upon discovery of failure to comply with b.2(a) through (e) above, the Wage and Hour Division will make a final determination of conformed classification, wage rate, and/or fringe benefits that will be retroactive to the date the class of employees commenced contract work.
- (3) If, as authorized pursuant to section 4(d) of the Service Contract Act, the term of this contract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished to service employees will be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor.
- c. The supplier or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably to it by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.
- d.
  - (1) In the absence of a minimum-wage attachment for this contract, neither the supplier nor any subcontractor under this contract may pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision relieves the supplier or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.
  - (2)
    - (a) If this contract succeeds a contract subject to the Service Contract Act, under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth collectively bargained wage rates and fringe benefits, neither the supplier nor any subcontractor under this contract may pay any service employee performing any of

- the contract work (regardless of whether or not the employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in the agreement, to which the employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under the agreement.
- (b) No supplier or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of section 4.1(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or an authorized representative finds, after a hearing as provided in section 4.10 of 29 CFR Part 4, that the wages and/or fringe benefits provided for in the agreement vary substantially from those prevailing for services of a similar character in the locality, or determines, as provided in section 4.11 of 29 CFR Part 4, that the agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations.
  - (c) If it is found in accordance with the review procedures in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that wages and/or fringe benefits in a predecessor supplier's collective bargaining agreement vary substantially from those prevailing for services of a similar character in the locality, and/or that the agreement applicable to service employees under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. This determination will be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether its issuance occurs before or after award (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, it will be effective as of the date of the final administrative decision.
- e. The supplier and any subcontractor under this contract must notify each service employee starting work on the contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to the contract, or must post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) must be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)



- f. The supplier or subcontractor may not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the supplier or subcontractor that are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the supplier or subcontractor must comply with the safety and health standards applied under 29 CFR Part 1925.
- g.
  - (1) The supplier and each subcontractor performing work subject to the Act must maintain for 3 years from the completion of the work records containing the information specified in (a) through (f) following for each employee subject to the Service Contract Act and must make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor (approved by the Office of Management and Budget under OMB control numbers 1215-0017 and 1215-0150):
    - (a) Name, address, and social security number of each employee.
    - (b) The correct work classification, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
    - (c) The number of daily and weekly hours so worked by each employee.
    - (d) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
    - (e) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for whom wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph b above. A copy of the report required by b.2(b) above is such a list.
    - (f) Any list of the predecessor supplier's employees furnished to the supplier pursuant to section 4.6(1)(2) of 29 CFR Part 4.
  - (2) The supplier must also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
  - (3) Failure to make and maintain or to make available the records specified in this paragraph g for inspection and transcription is a violation of the regulations and this contract, and in the case of failure to produce these records, the contracting officer, upon direction of the Department of Labor and notification of the supplier, must take action to suspend any further payment or advance of funds until the violation ceases.

- (4) The supplier must permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- h. The supplier must unconditionally pay to each employee subject to the Service Contract Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Payments must be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under the Act may not be of any duration longer than semimonthly.
- i. The contracting officer must withhold or cause to be withheld from the Postal Service supplier under this or any other contract with the supplier such sums as an appropriate official of the Department of Labor requests or the contracting officer decides may be necessary to pay underpaid employees employed by the supplier or subcontractor. In the event of failure to pay employees subject to the Act wages or fringe benefits due under the Act, the Postal Service may, after authorization or by direction of the Department of Labor and written notification to the supplier, suspend any further payment or advance of funds until the violations cease. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In this event, the Postal Service may enter into other contracts or arrangements for completion of the work, charging the supplier in default with any additional cost.
- j. The supplier agrees to insert this clause in all subcontracts subject to the Act. The term "supplier," as used in this clause in any subcontract, is deemed to refer to the subcontractor, except in the term "supplier."
- k. Service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as of July 30, 1976, and any subsequent revision of those regulations. The term includes all such persons regardless of any contractual relationship that may be alleged to exist between a supplier or subcontractor and them.
- l.
  - (1) If wages to be paid or fringe benefits to be furnished service employees employed by the supplier or a subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the supplier must report this fact to the contracting officer, together with full information as to the application and accrual of these wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and furnish a copy of the agreement. The report must be made upon starting performance of the contract, in the case of collective bargaining agreements effective at the time. In the case of agreements or provisions or

- amendments thereof effective at a later time during the period of contract performance, they must be reported promptly after their negotiation. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
- (2) Not less than 10 days before completion of any contract being performed at a Postal facility where service employees may be retained in the performance of a succeeding contract and subject to a wage determination containing vacation or other benefit provisions based upon length of service with a supplier (predecessor) or successor (section 4.173 of Regulations, 29 CFR Part 4), the incumbent supplier must furnish to the contracting officer a certified list of the names of all service employees on the supplier's or subcontractor's payroll during the last month of contract performance. The list must also contain anniversary dates of employment on the contract, either with the current or predecessor suppliers of each such service employee. The contracting officer must turn over this list to the successor supplier at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)
- m. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.
  - n.
    - (1) By entering into this contract, the supplier and its officials certify that neither they nor any person or firm with a substantial interest in the supplier's firm are ineligible to be awarded government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
    - (2) No part of this contract may be subcontracted to any person or firm ineligible for award of a government contract pursuant to section 5 of the Act.
    - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
  - o. Notwithstanding any of the other provisions of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act before its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of government business:

- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, or physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
  - (2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
  - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.
- p. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency recognized by the U.S. Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee not registered as an apprentice in an approved program must be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices may not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification may not be greater than the ratio permitted to the supplier for its entire workforce under the registered program.

- q. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of this credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:
  - (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1214-0017); and
  - (4) The use of tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- a. Disputes arising out of the labor standards provisions of this contract are not subject to the *Claims and Disputes* clause but must be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the supplier (or any of its subcontractors) and the Postal Service, the U.S. Department of Labor, or the employees or their representatives.

**Clause 9-11 Service Contract Act — Short Form (January 1997) (9.8.3)**

Except to the extent that an exemption, variation, or tolerance would apply if this contract were more than \$2,500, the supplier and any subcontractor must pay employees engaged in performing work on the contract at least the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

**Clause 9-12 Fair Labor Standards Act and Service Contract Act — Price Adjustment (January 1997) (9.8.3)**

- a. The supplier warrants that the contract prices do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

- b. The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 by the Department of Labor, current at the beginning of each renewal period, applies to any renewal of this contract. When no such determination has been made as applied to this contract, the minimum wage established in accordance with the *Service Contract Act* clause applies to any renewal of this contract.
- c. When, as a result of the determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or when an increased or decreased wage determination is otherwise applied to this contract, or when as a result of any amendment to the Fair Labor Standards Act enacted after award that affects minimum wage, and whenever such a determination becomes applicable to this contract under law, the supplier increases or decreases wages or fringe benefits of employees working on the contract to comply, the contract price or unit price labor rates will be adjusted accordingly. This adjustment is limited to increases or decreases in wages or fringe benefits, and the concomitant increases or decreases in Social Security, unemployment taxes, and workers' compensation insurance, but may not otherwise include any amount for general and administrative costs, overhead, or profit.
- d. The supplier must notify the contracting officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless the contracting officer extends this period in writing. In the case of any decrease under this clause, the supplier must promptly notify the contracting officer of the decrease, but nothing herein precludes the Postal Service from asserting a claim within the period permitted by law. The notice must state the amount claimed and give any relevant supporting data that the contracting officer may reasonably require. Upon agreement of the parties, the contract price or unit price labor rates will be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the supplier must continue performance.
- e. The contracting officer or the contracting officer's authorized representative must, for 3 years after final payment under the contract, be given access to and the right to examine any directly pertinent books, papers, and records of the supplier.

**Clause 9-13 Affirmative Action for Handicapped Workers  
(January 1997)**

(9.9.2)

- a. The supplier may not discriminate against any employee or applicant because of physical or mental handicap, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).
- b. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.
- c. In the event of the supplier's noncompliance with this clause, action may be taken in accordance with the rules and regulations and relevant orders of the Secretary of Labor.
- d. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants, and the rights of applicants and employees.
- e. The supplier must notify each union or worker's representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of section 503 of the Act and is committed to taking affirmative action to employ, and advance in employment, handicapped individuals.
- f. The supplier must include this clause in every subcontract or purchase order over \$2,500 under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.

**Clause 9-14 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (January 1997)** (9.10.2)

- a. The supplier may not discriminate against any employee or applicant because that employee or applicant is a disabled veteran or veteran of the Vietnam era, in regard to any position for which the employee or applicant is qualified. The supplier agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination in all employment practices, such as employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship).
- b. The supplier agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the supplier other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local office of the state employment service where the opening occurs. State and local government agencies holding Postal Service contracts of \$10,000 or more will also list their openings with the appropriate office of the state employment service.
- c. Listing of employment openings with the employment service system will be made at least concurrently with the use of any recruitment source or effort and will involve the normal obligations attaching to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular applicant or hiring from any particular group of applicants, and nothing herein is intended to relieve the supplier from any other requirements regarding nondiscrimination in employment.
- d. Whenever the supplier becomes contractually bound to the listing provisions of this clause, it must advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state. The supplier may advise the state system when it is no longer bound by this clause.
- e. Paragraphs b, c, and d above do not apply to openings the supplier proposes to fill from within its own organization or under a customary and traditional employer/union hiring arrangement. But this exclusion does not apply to a particular opening once the supplier decides to consider applicants outside its own organization or employer/union arrangements for that opening.
- f. *Definitions*
  - (1) *All Employment Openings.* This includes all positions except executive and top management, those positions that will be filled from within the supplier's organization, and positions lasting 3 days or less. This also includes full-time employment, temporary employment of more than 3 days duration, and part-time employment. Under the most compelling circumstances, an



- employment opening may not be suitable for listing, including situations in which the needs of the Postal Service cannot reasonably be otherwise supplied, when listing would be contrary to national security. or when listing would not be in the best interest of the Postal Service.
- (2) *Appropriate Office of the State Employment Service.* This means the local office of the federal/state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.
  - (3) *Positions That Will Be Filled From Within the Supplier's Own Organization.* This means employment openings for which no consideration will be given to persons outside the supplier's organization (including any affiliates, subsidiaries and parent companies) and includes any openings which the supplier proposes to fill from regularly established recall lists.
  - (4) *Openings the Supplier Proposes to Fill Under a Customary and Traditional Employer/Union Hiring Arrangement.* Employment openings the supplier proposes to fill from union halls as part of the customary and traditional hiring relationship existing between it and representatives of its employees.
- g. The supplier agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended.
  - h. In the event of the supplier's noncompliance with this clause, action may be taken in accordance with the rules, regulations, and relevant orders of the Secretary.
  - i. The supplier agrees to post in conspicuous places, available to employees and applicants, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. These notices state the supplier's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and the rights of applicants and employees.
  - j. The supplier must notify each union or workers' representative with which it has a collective bargaining agreement or other understanding that the supplier is bound by the terms of the Act and is committed to taking affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
  - k. The supplier must include this clause in every subcontract or purchase order of \$10,000 or more under this contract unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so its provisions will be binding upon each subcontractor or vendor. The supplier must take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce these provisions, including action for noncompliance.

## Appendix C

# Contract Format

## C.1 General

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The Postal Service uses a streamlined solicitation/contract format based on those used in the private sector. The format is intended to promote a clear understanding of Postal Service requirements and expectations.

## C.2 Format

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**Part 1 — Cover Sheet and Schedule**

**Part 2 — Solicitation Provisions**

**Part 3 — Contract Clauses**

**Part 4 — Attachments**

## Appendix D

# Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting

## (Reprint of 39 CFR 957)

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These rules of practice have been issued by the Judicial Officer as 39 CFR 957, under the authority of 39 U.S.C. 204, 401. They are reprinted here for the convenience of users of the *Purchasing Manual*. References to the *Postal Contracting Manual* have been changed to refer to Chapter 3, section 7, of the *Purchasing Manual*.

957.1	Authority for Rules
957.2	Scope of Rules
957.3	Definitions
957.4	Initiation of Debarment Proceedings
957.5	The Request for a Hearing
957.6	Order Relative to Hearing
957.7	Reply
957.8	Service and Filing Documents for the Record
957.9	Respondent's Failure to Appear at the Hearing
957.10	Respondent Already Debarred by Another Government Agency
957.11	Amendment of Pleadings
957.12	Continuances and Extensions
957.13	Hearings
957.14	Appearances
957.15	Conduct of the Hearing
957.16	Evidence
957.17	Witness Fees
957.18	Depositions
957.19	Transcript
957.20	Proposed Findings and Conclusions
957.21	Decision
957.22	Motion for Reconsideration
957.23	Modification or Revocation of Orders
957.24	Computation of Time
957.25	Official Record
957.26	Public Information
957.27	Suspension
957.28	Ex Parte Communications

**957.1 Authority for rules.**

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. 204, 401; chapter 3, section 7, of the USPS *Purchasing Manual*).

**957.2 Scope of rules.**

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to hearings initiated under chapter 3, section 7, of the USPS *Procurement Manual*.

**957.3 Definitions.**

- (a) The term “Vice President” means a Vice President with purchasing authority in the Postal Service or the Vice President’s representative for the purpose of carrying out the provisions of chapter NO TAG, section 7, of the USPS *Purchasing Manual*.
- (b) The term “General Counsel” includes the General Counsel’s authorized representative.
- (c) The term “Judicial Officer” includes the acting Judicial Officer.
- (d) “Debarment” means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.
- (e) “Suspension” means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected, upon adequate evidence, of engaging in criminal, fraudulent, or seriously improper conduct.
- (f) “Respondent” means any individual, firm, or other entity, which has been served a written notice of proposed debarment pursuant to chapter 3, section 7, of the USPS *Purchasing Manual*.
- (g) “The Recorder” means the  
RECORDER OF THE UNITED STATES POSTAL SERVICE  
475 LENFANT PLAZA SW  
WASHINGTON DC 20260-6100

**957.4 Initiation of debarment proceedings.**

- (a) A Vice President initiates a debarment proceeding by serving upon the proposed respondent a written notice of proposed debarment in the manner hereinafter (see 957.8(d)) provided for the service of all other papers.
- (b) The notice shall state:
  - (1) That debarment is being considered;
  - (2) The reasons for the proposed debarment;
  - (3) The period of debarment and the proposed effective date thereof;

- (4) That the debarment will not become effective until after a hearing, if such hearing is requested within 20 days following the receipt of the notice; and
  - (5) That the request for a hearing is to be submitted in the manner prescribed by the rules in this part, a copy of which shall be enclosed with the notice.
- (c) If no hearing is requested within 20 days following the receipt of the notice, the action of the Vice President set forth in the notice shall become the final Postal Service determination without further notice to the respondent.
- (d) The party against which a final Postal Service determination has been entered pursuant to paragraph (c) of this section shall, however, at any time have the privilege of reopening a case for the limited purpose of contesting the issue of service. Such party's contentions on that issue shall be addressed to the Judicial Officer in the same manner as a request for a hearing (see 957.5). The Judicial Officer may require such additional showings or proof as the Judicial Officer may deem necessary on the issue of service and shall reopen any debarment proceeding previously closed pursuant to paragraph (c) of this section if the Judicial Officer shall find that service was incomplete or otherwise failed to adequately advise of the pendency of the proposed debarment.

#### 957.5 **The request for a hearing.**

A respondent may, within 20 days following the receipt of a written notice of proposed debarment, file a request for a hearing before the Judicial Officer. The request shall be addressed to the Judicial Officer through the Vice President who initiated the debarment proceeding and shall be accompanied by a concise statement admitting, denying, or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired.

#### 957.6 **Order relative to hearing.**

- (a) The Judicial Officer shall issue an order granting the respondent's request for a hearing, establishing the time and place thereof, and advising the respondent of the consequences of a failure to appear at the hearing (see 957.9). Whenever practicable, the hearing date shall be within 30 days of the date of the Judicial Officer's order relative to hearing.
- (b) The notice of proposed debarment and the request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Judicial Officer orders a hearing to be held.

**957.7 Reply.**

Not more than 15 days from the service of the request for a hearing, the General Counsel may submit a reply on behalf of the Vice President who initiated the debarment proceeding.

**957.8 Service and filing documents for the record.**

- (a) Each party shall file with the Recorder pleadings, motions, orders, and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the Judicial Officer.
- (b) The parties shall submit four copies of all documents unless otherwise ordered by the Judicial Officer. One copy shall be signed as the original.
- (c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the Judicial Officer to be filed by a specified date shall be served upon the Recorder on or before such date. The date of such service shall be the filing date and shall be entered thereon by the Recorder.
- (d) Service of all papers shall be effected by mailing the same, postage prepaid, registered or certified mail, return receipt requested or by causing said notice to be personally served on the proposed respondent by an authorized representative of the department. In the case of personal service, the person making service shall secure from the proposed respondent, or respondent's agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. Said acknowledgment (or the return receipt, where service is effected by mail) shall be made a part of the record by the Vice President initiating the debarment proceeding. The date of delivery, as shown by the acknowledgment of personal service or the return receipt, shall be the date of service.

**957.9 Respondent's failure to appear at the hearing.**

If the respondent shall fail to appear at the hearing, the Judicial Officer shall receive the Vice President's evidence and render a Postal Service decision without requirement of further notice to the respondent.

**957.10 Respondent already debarred by another government agency.**

- (a) When a Vice President proposes to debar a firm or individual already debarred by another Government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from such other agency, or upon such facts and additional other facts. In such cases, the facts obtained from the other agency shall be considered as established, but the party to be debarred shall have the opportunity to

present information to the Judicial Officer and to explain why debarment by the Postal Service should not be imposed.

- (b) Where the Vice President initiating the debarment proceeding relies:
  - (1) Upon the provisions of paragraph (a) of this section, or
  - (2) (Upon all or part of the record of the proposed respondent's previous debarment by another Government agency, in initiating such proceeding, the notice of proposed debarment shall contain a statement so stating in sufficient detail to apprise the respondent of the extent of such reliance.
- (c) The Vice President's reliance upon provisions of paragraph (a) of this section, stated in conformity with the directions set forth in paragraph (b) of this section, does not deprive the respondent of the right to request the Judicial Officer to grant a hearing pursuant to these rules, nor the Judicial Officer the full discretion to grant or deny such request.

#### 957.11 **Amendment of pleadings.**

- (a) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time before the close of the hearing, provided that the proposed amendment is reasonably within the scope of the proceeding.
- (b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed debarment are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.
- (c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues framed by the pleadings, but fails to satisfy the Judicial Officer that an amendment of the pleadings would prejudice the objecting party on the merits, the Judicial Officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.
- (d) The Judicial Officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

#### 957.12 **Continuances and extensions.**

Continuances and extensions will not be granted by the Judicial Officer except for good cause shown.

**957.13 Hearings.**

- (a) Hearings are held at:  
US POSTAL SERVICE HEADQUARTERS  
475 LENFANT PLAZA SW  
WASHINGTON DC 20260-6100  
or other locations designated by the Judicial Officer.
- (b) A party may, not later than 7 days before the scheduled date of hearing, file a request that such hearing be held at a place other than that designated in the Judicial Officer's order relative to hearing. The party shall support the request with a statement outlining:
  - (1) The evidence to be offered in such place;
  - (2) The names and addresses of the witnesses who will testify;
  - (3) The reasons such evidence cannot be produced at Washington, D.C. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

**957.14 Appearances.**

- (a) A respondent may appear and be heard in person or by attorney.
- (b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer.
- (c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed department shall be mailed to the attorney.
- (d) All counsel shall promptly file notices of appearance. Changes of respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the respondent.
- (e) After a request for a hearing has been filed pursuant to the rules in this part, the General Counsel shall represent the vice president in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such office who has been assigned to handle the case on its behalf.

**957.15 Conduct of the hearing.**

The Judicial Officer shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Examine witnesses;
- (c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;
- (d) Order any pleading amended upon motion of a party at any time before the close of the hearing;
- (e) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;



- (f) Require the filing of briefs or memoranda of law on any matter upon which the Judicial Officer is required to rule;
- (g) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;
- (h) Order the proceeding reopened at any time before the Judicial Officer's decision for the receipt of additional evidence;
- (i) Render a final Postal Service decision;
- (j) Take such other further action as may be necessary to properly preside over the debarment proceeding and render decision therein.

957.16 **Evidence.**

- (a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern. However, such rules may be relaxed to the extent that the Judicial Officer deems proper to ensure a fair hearing.
- (b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.
- (c) Agreed statements of fact may be received in evidence.
- (d) Official notice or knowledge may be taken of the types of matter of which judicial notice or knowledge may be taken.
- (e) The written statement of a competent witness may be received in evidence, provided that such statement is relevant to the issues; that the witness shall testify under oath at the hearing that the statement is in all respects true; and in the case of expert witnesses, that the statement correctly states the witness' opinion or knowledge concerning the matters in question.

957.17 **Witness fees.**

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

957.18 **Depositions.**

- (a) Not later than 7 days before the scheduled date of the hearing, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation a statement setting out the reasons such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.
- (b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the

- person before whom the deposition is to be taken, and any other necessary information.
- (c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing, and (unless waived by stipulation of the parties) shall be read to and subscribed by the witness in the presence of the deposition officer, who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.
  - (d) At the hearing, any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.
  - (e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer; shall provide an original and one copy of the deposition for the official record; and shall serve one copy upon the opposing party.
  - (f) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul, or consular agent of the United States, or any other person designated in the order for the taking of a deposition.
  - (g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

**957.19 Transcript.**

- (a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial Officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript may be obtained by the respondent from the reporter upon the payment to the reporter of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Recorder.
- (b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript or any part thereof, the party may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of opposing counsel's concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall, by order, specify the corrections to be made in the transcript. The Judicial Officer, on the Judicial Officer's own initiative, may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the Judicial Officer other than by the agreement of the parties shall be subject to objection and exception.

**957.20 Proposed findings and conclusions.**

- (a) Each party to a proceeding, except one who fails to appear at the hearing may (unless, at the discretion of the Judicial Officer, such is not appropriate) submit proposed findings of fact, conclusions of law, and supporting reasons either in oral or written form at the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally, the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.
- (b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record, with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

**957.21 Decision.**

The Judicial Officer shall issue a final Postal Service decision. Such decision shall include findings and conclusions, with the reason therefor, upon all the material issues of fact or law presented on the record, and the appropriate order.

**957.22 Motion for reconsideration.**

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final Postal Service decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

**957.23 Modification or revocation of orders.**

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

**957.24 Computation of time.**

A designated period of time under the rules in this part excludes the day the period begins and includes the last day of the period, unless the last day is a Saturday, a Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

**957.25 Official record.**

The transcript of testimony, together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding, shall constitute the official record of the proceeding.

**957.26 Public information.**

The Law Librarian of the Postal Service shall maintain for public inspection in the Law Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

**957.27 Suspension.**

- (a) Any firm or individual suspended under Chapter 3, section 7, of the *USPS Purchasing Manual*, who believes that the suspension has not been in accordance with the provisions thereof or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

- (b) Any such appeal shall be addressed to the Judicial Officer through the vice president who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspensions. Such appeal shall concisely and in the manner of the pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.
- (c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the respondent's appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing, the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.
- (d) The decision of the Judicial Officer in any appeal shall constitute the final Postal Service determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of 957.22.

957.28 **Ex parte communications.**

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to the proceedings under these rules of practice.

## Appendix E

# Rules of Practice Before the Postal Service Board of Contract Appeals

## (Reprint of 39 CFR 955)

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These rules of practice have been issued by the Judicial Officer as 39 CFR 955, under the authority of 39 U.S.C. 204, 401 and 41 U.S.C. 607, 608. They are reprinted here for the convenience of users of the *Purchasing Manual*.

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- 955.36 Effective Date and Applicability

### 955.1 **Jurisdiction, procedure, representation of parties.**

- (a) *Jurisdiction for considering appeals*. The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General.
- (b) *Organization and location of the board*.
  - (1) The Board is located in Washington, DC, and its mailing address is 475 L'Enfant Plaza, SW, Washington, DC, 20260-6100.
  - (2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state,

commonwealth, territory, or the District of Columbia. In general the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

- (c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes Clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.
- (d) *Board of contract appeals procedure.*
- (1) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.
  - (2) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.
  - (3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.
  - (4) *Time, computation, and extensions*
    - (i) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.
    - (ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.
    - (iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.



- (5) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its offices in the

UNITED STATES POSTAL SERVICE HEADQUARTERS BUILDING  
475 LENFANT PLAZA SW  
WASHINGTON DC 20260-6120

- (e) *Representation of parties.* Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

## PRELIMINARY PROCEDURES

### 955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

### 955.3 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in ¶955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

### 955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

### 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

- (a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Ser-

vice counsel an appeal file consisting of all documents pertinent to the appeal, including:

- (1) the decision and findings of fact from which appeal is taken;
- (2) the contract including specifications and pertinent amendments, plans and drawings;
- (3) all correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;
- (4) transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
- (5) any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraph (a)(2) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in paragraph (d) below.

- (b) *Duties of the Appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, furnishing two copies of such documents to the Government trial attorney.
- (c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.
- (d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.
- (e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the

event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with ¶955.14 and ¶955.21.

#### 955.6 **Dismissal for lack of jurisdiction.**

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

#### 955.7 **Pleadings.**

- (a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.
- (b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

#### 955.8 **Amendments of pleadings or record.**

- (a) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.
- (b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon condi-

tions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in ¶955.5, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the documentation required pursuant to ¶955.5 (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

955.9 **Hearing election.**

Upon receipt of respondent's answer or the notice referred to in the last sentence of ¶955.7(b), appellant shall advise whether he desires a hearing as prescribed in ¶955.18 through ¶955.26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in ¶955.12. In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or the accelerated procedure prescribed in ¶955.13.

955.10 **Prehearing briefs.**

Based on an examination of the documentation described in ¶955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to ¶955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

955.11 **Prehearing or presubmission conference.**

Whether the case is to be submitted pursuant to ¶955.12, or heard pursuant to ¶955.18 through 955.26, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before a Board Member for a conference to consider:

- (a) the simplification or clarification of the issues;
- (b) the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

- (c) the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (d) the possibility of agreement disposing of all or any of the issues in dispute; and
- (e) such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board Member and this writing shall thereafter constitute part of the record.

955.12 **Submission without a hearing.**

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to ¶955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with ¶955.24.

## OPTIONAL SMALL CLAIMS (EXPEDITED) AND ACCELERATED PROCEDURES

955.13 **Optional small claims (expedited) and accelerated procedures.**

- (a) These procedures are available solely at the election of the appellant.
- (b) Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
  - (1) In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.
  - (2) In appeals where the amount in dispute is \$100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board

receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

- (3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in his notice of appeal or by other written notice at any time thereafter.
  - (4) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.
- (c) The SMALL CLAIMS (EXPEDITED) Procedure.
- (1) This procedure shall apply only to appeals where the amount in dispute is \$50,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.
  - (2) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (2) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under ¶955.18. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under ¶955.12 without a hearing.
  - (3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the

appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

- (4) Written decisions by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under ¶955.30.
  - (5) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.
- (d) The ACCELERATED Procedure.
- (1) This procedure shall apply only to appeals where the amount in dispute is \$100,000 or less as to which the appellant has made the requisite election.
  - (2) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.
  - (3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is \$50,000 or less as to which the ACCELERATED procedure has been elected and in which there has

been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under ¶955.30.

- (e) Motions for Reconsideration in Cases Arising Under ¶955.13. Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time periods prescribed by this ¶955.13 for the initial decisions of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.
- (f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

#### 955.14 **Settling the record.**

- (a) The record upon which the Board's decision will be rendered consists of the appeal file described in ¶955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.
- (b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.
- (c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

#### 955.15 **Discovery—depositions.**

- (a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or per-



son from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

- (b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.
- (c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.
- (d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.
- (e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

#### 955.16 **Interrogatories to parties, admission of facts, and production and inspection of documents.**

- (a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by ¶955.15.
- (b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

- (c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

955.17 **Service of papers.**

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

## HEARINGS

955.18 **Where and when held.**

Hearings will ordinarily be held in the Washington, D.C. area, except that upon request reasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

955.19 **Notice of hearings.**

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

955.20 **Unexcused absence of a party.**

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in ¶955.12.

955.21 **Nature of hearings.**

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the

merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

955.22 **Examination of witnesses.**

Witnesses before the Board will be examined orally under oath or affirmation unless the facts are stipulated, or the presiding officer shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

955.23 **Copies of papers.**

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

955.24 **Posthearing briefs.**

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding officer at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

955.25 **Transcript of proceedings.**

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Reporter and the U.S. Postal Service.

955.26 **Withdrawal of exhibits.**

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original

exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

## REPRESENTATION

### 955.27 **The appellant.**

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

### 955.28 **The respondent.**

Postal Service counsel, designated by the General Counsel, will represent the interest of the government before the Board. Counsel shall file a notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Postal Service Counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however*, that if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

## DECISIONS

### 955.29 **Decisions.**

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in ¶955.14.

## MOTION FOR RECONSIDERATION

### 955.30 **Motion for reconsideration.**

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

## DISMISSALS

### 955.31 **Dismissal without prejudice.**

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

### 955.32 **Dismissal for failure to prosecute.**

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause when the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

## EX PARTE COMMUNICATIONS

### 955.33 **Ex parte communications.**

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

## SANCTIONS

### 955.34 **Sanctions.**

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

## SUBPOENAS

### 955.35 Subpoenas.

- (a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:
- (1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;
  - (2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and
  - (3) *Production of books and papers.* In addition to (1) and (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.
- (b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third party books, papers, documents, or tangible things whenever possible.
- (c) *Requests for subpoenas.*
- (1) A request for a subpoena shall normally be filed at least:
    - (i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;
    - (ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.
  - (2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.
- (d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may

act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.*

- (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.
- (2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.*

- (1) The party requesting issuance of subpoena shall arrange for service.
- (2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.
- (3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

- (g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, if found, or transacts business within the jurisdiction of a United States District Court, the board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

## EFFECTIVE DATE AND APPLICABILITY

### 955.36 **Effective date and applicability.**

- (a) The provisions of ¶955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), ¶955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.



Appendix F

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Under Construction