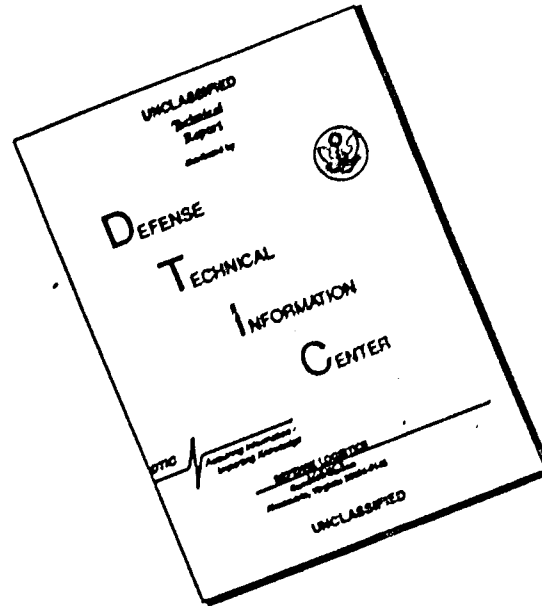


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REPORT DOCUMENTATION PAGE		READ INSTRUCTIONS BEFORE COMPLETING FORM
1. REPORT NUMBER	2. GOVT ACCESSION NO. 2	3. RECIPIENT'S CATALOG NUMBER
4. TITLE (and Subtitle) THE PROJECT ENGINEER PREPARES THE DETERMINATION AND FINDINGS.		5. TYPE OF REPORT & PERIOD COVERED Student Project Report, 76-2
7. AUTHOR(s) William H. Schwend		6. PERFORMING ORG. REPORT NUMBER
9. PERFORMING ORGANIZATION NAME AND ADDRESS DEFENSE SYSTEMS MANAGEMENT COLLEGE FT. BELVOIR, VA 22060		8. CONTRACT OR GRANT NUMBER(s) 11 Nov 76 12 44p.
11. CONTROLLING OFFICE NAME AND ADDRESS DEFENSE SYSTEMS MANAGEMENT COLLEGE FT. BELVOIR, VA 22060		10. PROGRAM ELEMENT PROJECT TASK AREA & WORK UNIT NUMBERS
14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office)		12. REPORT DATE 76-2
		13. NUMBER OF PAGES 41
		15. SECURITY CLASS. (of this report) UNCLASSIFIED
		15a. DECLASSIFICATION/DOWNGRADING SCHEDULE
16. DISTRIBUTION STATEMENT (of this Report) UNLIMITED		
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> DISTRIBUTION STATEMENT A Approved for public release; Distribution Unlimited </div>		
17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report)		
18. SUPPLEMENTARY NOTES SEE ATTACHED SHEET		
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DEFENSE SYSTEMS MANAGEMENT COLLEGE

STUDY TITLE: THE PROJECT ENGINEER PREPARES THE DETERMINATION AND FINDINGS

STUDY PROJECT GOALS:

To analyze the purpose, requirements, format and content, and the approval cycle of the Determinations and Findings and its supporting documentation as it applies to Experimental, Development and Research Work.

To provide an information and procedural document to Army Project Engineers which will assist them in preparing and staffing a D&F.

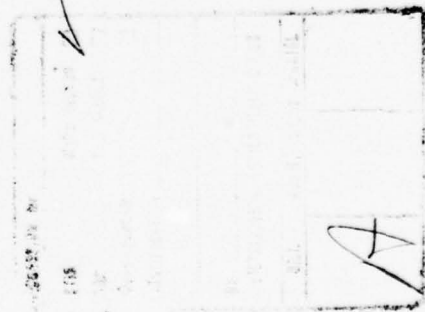
STUDY REPORT ABSTRACT:

The purpose of this study and paper is four-fold: (1) To investigate and analyze the purpose, requirement, format and content, and the approval staffing process as it applies to Determination and Findings documentation for Experimental, Development and Research Work, (2) To provide a description and understanding of the requirements for the D&F process, (3) To establish the responsibility for initiating and preparing the D&F and for following it through the staffing to approval, (4) Provide a procedural document for the format and content of the D&F and its supporting documentation.

This study project was accomplished by researching the procurement regulations and directives to determine the established policies and procedures. Interviews were conducted with Project Engineers to determine their understanding of the D&F process and need for a procedural paper. Interviews were also conducted with procurement specialists and staffers to obtain information about the preparation and staffing of the D&F for approval.

This information paper will be useful to Project Engineers in Army PMOs, Labs and Engineering Functions who find themselves involved in a project which will result in a procurement action by negotiation in lieu of formal advertising.

KEYWORDS -- DETERMINATION AND FINDINGS.



NAME, RANK, SERVICE

CLASS

DATE

WILLIAM H. SCHMEND, Major Army

PNC 75-2

15 October 1976

DEFENSE SYSTEMS MANAGEMENT COLLEGE



PROGRAM MANAGEMENT COURSE INDIVIDUAL STUDY PROGRAM

THE PROJECT ENGINEER PREPARES
THE DETERMINATION AND FINDINGS

STUDY PROJECT REPORT
PMC 76-2

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THE PROJECT ENGINEER
PREPARES
THE DETERMINATION AND FINDINGS

Study Project Report
Individual Study Program

Defense Systems Management College
Program Management Course
Class 76-2

by

William H. Schwend
Major USA

November 1976

Study Project Advisor
Dr. J. Hood

This study project report represents the views, conclusions and recommendations of the author and does not necessarily reflect the official opinion of the Defense Systems Management College or the Department of Defense.

EXECUTIVE SUMMARY

As a Project Engineer within an Army Project Management Office (PMO) you may find yourself faced with the formidable responsibility of initiating the Determinations and Findings (D&F) and preparing the supporting documentation to gain approval to enter into contract negotiation for your proposed project. Many of the actions required will cross functional lines within the PMO, or will fall under the support you receive from the functional elements within the supporting command. To be responsive to the requirement you must understand the purpose of the required documentation, its preparation and approval cycle and take the action to lead the way. Thus it is the objective of this information paper to provide the Army Project Engineer with an understanding of the documentation and process required to obtain the authority to negotiate a procurement for Experimental, Development, or Research Work under statute 10 U.S.C. 2304, Exception #11.

A Determination and Findings constitutes a prescribed form of approval as required by regulations and is a prerequisite to obtaining the authority to enter into a procurement contract by negotiations in lieu of formal advertising. For efforts over \$100,000 this approval is granted by the Assistant Secretary of the Army for Research and Development. The determination to formally advertise or to negotiate a procurement is normally governed by the specific facts of the proposed procurement and should be established early in the procurement strategy. The contents and format for the D&F as established in the Armed Service Procurement Regulations (ASPR) and the Army Procurement Procedure (APP) Regulation are defined in this paper for the

Project Engineer with case examples to illustrate structure and substance in actual documentation.

The key to the Project Engineers success lies in starting early and in understanding his direct responsibilities in the procedural process of the preparation phase and approval cycle. Direct interface and team work must be established with the procuring activity and lines of communication must be opened and followed up on to each approving headquarters. The Project Engineer must be able to communicate the requirement and take the initiative to lead the way.

The information and data in this paper have been extracted from the ASPR and the APP along with inputs obtained from interviews with Project Engineers and from procurement personnel from the functional element at the command level through HQ, US Army Materiel Development and Readiness Command (DARCOM) to HQ, Department of the Army (HQ, DA).

It is not the purpose of this paper to be used as a replacement for procurement regulations or directives, rather it is to be used as an information or reference text by Army project personnel involved in the D&F process.

ACKNOWLEDGEMENTS

The basic purpose of this paper was supported by Project Engineers within the Project Management Office for Aircraft Survivability Equipment, Aviation Systems Command, St. Louis, Missouri, and Research Engineers at the US Army Air Mobility R&D Laboratory, Fort Eustis, Virginia. I am most appreciative of their support.

Personnel at the Army Mobility Equipment R&D Command, Fort Belvoir, Virginia, The Army Materiel Development and Readiness Command, Washington, DC, and HQ's, Department of the Army were most cooperative in providing interviews and general information required to prepare this information paper. I am most grateful for their cooperation and assistance.

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SECTION I
INTRODUCTION

SCOPE: Why did I choose to write this information paper? What purpose can it serve? Why? Because I feel that: (1) there is real substance in requesting approval to enter into a contract negotiation, and (2) most often the requirement to initiate the action to generate the documentation for the Determination and Findings (D&F) approval starts with the Project Engineer who misconceives the importance and urgency of the requirement. How well I know as it seems that I have been there. What? I believe that this paper can provide you with useful information which will assist you in your involvement in the D&F process.

Technical problems are milk and honey to the Project Engineer (PE) who lives within his project. Thus an administrative requirement to initiate a D&F, which really should be done by personnel in procurement, continues to be pushed aside day after day. However, only too often after the PE has spent several months in getting support and approval for his R&D project, working at his desk through lunch hours, sweating over specifications and drafting the scope of work into its final form for insertion into the Request For Proposal (RFP); someone bursts his bubble by saying, "You're going to need D&F approval before you can put that RFP out for solicitation." Where did the system break down? Who was at fault?

If your project office is overstaffed and underworked, or if your support from the functional elements of the command are always a step ahead of you in knowing what you will need and providing it on time, you should never get into this position of overlooking the D&F. However, if you work in the real

world like most of us you will likely have already been there once and may well be headed back again.

Don't let it happen! Take heed and push the ball yourself if you want it to roll and continue rolling. Many actions require you, the Project Engineer, to lead the way to assure a timely award of your contract. Many of these actions will cross functional lines of responsibility within your project office, or will fall under the type support you receive from the functional organizations within the command supporting your office. However, to be responsive to the requirement (your project), you will most often find yourself rolling the ball and preparing a large portion of the contractual documentation which supports your proposed effort.

OBJECTIVE: It is the objective of this paper to provide the Project Engineer in an Army Project Office with:

(1) A description and understanding of the purpose and requirements for the Determination and Findings documentation required to grant approval to enter into contract negotiations under the Armed Services Procurement Regulation (ASPR) for Experimental, Developmental or Research Work (Exception #11 of 10 U.S.C. 2304).

(2) An understanding of the responsibility for the preparation and coordination in the approval cycle of the D&F documentation.

(3) An understanding of the required format and content of the Letter of Transmittal, the Justification for Authority to Negotiate (JAN), and the Determination and Findings as per the appropriate regulations with case examples to illustrate actual documentation and to serve as a basis for checking completeness and correlation of content.

It is important that the reader understand that this paper is not meant to be a replacement for any procurement regulation or directive. It is rather an information paper or reference text, for Army project personnel who may become involved in the Determination and Findings process. Its use as a standard or checklist to determine the adequacy or course of deirection for any particular contracting action requiring negotiation authority, while useful, may be limited accordingly.

SECTION II

THE D&F

PURPOSE: A Determination and Findings constitutes a prescribed form of approval as required by statute or regulation and is a prerequisite to the use of this approval authority to:

- Enter into contracts by negotiation.
- Make advance payments under negotiated contracts.
- Determine the type of contract to be used.
- To waive a requirement for submission of cost or pricing and certification thereof.

In establishing the need to take a particular course of action on a given single procurement or class of procurements it then provides the vehicle for obtaining the approval and granted authority to pursue that course of action. This authority is normally granted at one point in time or for a limited period generally not to exceed one year from the date of the signing by the final approving authority. The determination is a conclusion based upon the findings which must be in conformity with the format in the statute or regulations. The findings are statements of fact or reasoning which are essential to support the determination. The findings must cover each factor judged necessary as per the statute or regulation to support the determination and must be consistent with the determination. Thus, the D&F is a very formal, well defined and formatted document which allows only for minimum changes or modifications to meet the specifics of the required action as it varies between an individual procurement and the class procurement.

When entering into contracts by negotiations the D&F to support an individual procurement provides for just that; authority to negotiate a single contract. The class D&F allows for the negotiation of two or more procurements. Use of the class D&F is appropriate when the proposed procurements are for supplies or services of the same or related type and all would require essentially the same justification under the same negotiation exception. However, the class D&F procedure does not preclude the preparation and submitting of separate individual contract D&F's for the same or related type efforts as a particular situation may required.

REQUIREMENT: The requirement for a D&F to support a negotiated procurement in lieu of formal contract advertising is established in the ASPER 3-302 and 3-303 respectively and is further defined for use by the Army in the Army Procurement Procedures (APP) Section 3, part 3. The determination to formally advertise or to negotiate a procurement is normally governed by the specific facts of the proposed procurement and should be established early in your procurement strategy.

Authority to enter into a procurement through the negotiation process for property or services which are determined to be for Experimental, Development or Research Work as required by ASPR 3-211 must be signed by the appropriate approving official, the ultimate goal of the D&F, prior to the issuance of a Request for Proposal (RFP). This statutory negotiation authority, referred to as Exception #11, is only but one of seventeen exceptions from formal advertising as provided for in 10 U.S.C. 2304, and is the only exception for which this paper addresses.

APPROVAL: The approval authority to negotiate granted by a D&F is limited to a single contract procurement or class of contract procurements which are reasonably and fairly described in the D&F as approved by: (1) The Secretary of the Army, or (2) The Head of a Procuring Activity (HPA), based on the scope of the procurement. The approval to negotiate under Exception #11 may be made below the level of the Secretary of the Army, by the Head of a Procuring Activity, signing as the chief officer responsible for procurements, when the basic contract(s) or any single modification thereto does not obligate the government to pay more than \$100,000. The total estimated cost to include incrementally funding is used to establish the basis for determining the level of approving authority. (Currently, Legislation to change the authority criteria in the ASPR from \$100K to \$1m with \$500K as an alternate is being considered.) The approval of the D&F provides the authority to negotiate the procurement up to the dollar value as stated and approved in the D&F. Should the stated dollar value be exceeded during final contract negotiation the D&F must be revised and resubmitted for re-approval prior to the contract award.

The preparation of a D&F for secretarial approval should start as soon as there is reasonable assurance of program approval and the availability of funds. The process starts with the preparation of the supporting documentation within the project office. Direct communications and interface with the contracting officer within the procuring activity must be established early as policies and procedures may vary between different commands. With this interface, team work can be established toward common goals. As the supporting documentation and the D&F takes on its final form it will

normally be staffed through the Project Office, Procurement and Contracting Office and the Legal Office within the supporting command as a minimum for coordination and concurrence prior to being forwarded under the signature of the HPA to high headquarters.

As the interface and team action developed between the project office and the procurement office was the key asset in the timely preparation stage, so is the interface and communication with higher approving headquarters a must during the final approval state. Time spent communicating, (greasing the skids), with action officers at each approving headquarters as to the purpose and urgency of your D&F action will pay dividends toward reducing the time element for final approval. While time is always important, it is most important that your requirement is known and understood throughout the approval process. It may be the difference in obtaining a timely approval or missing major milestones.

Within the Army all secretarial D&F's under Exception #11 are submitted thru HQ, US Army Materiel Development and Readiness Command, ATTN: Directorate of Procurement and Production, DRCPP-SP, to the Assistant Secretary of the Army, Research and Development for approval. Within HQ, DARCOM the D&F is staffed for coordination and concurrence through the Directorate Research and Development Engineering (Technical Division, Engineering Division and Budget Division), the Legal Branch and the Directorate of Procurement and Production prior to being signed and indorsed to HQ, DA by the Acting Associate Director for Procurement. This staffing action based on 224 D&F's processed during July, August, and September 1976, averaged 10.3 calendar days from receipt of the D&F to dispatch to HQ, DA.

Within HQ, DA the original copy of the D&F is received by the Office of the Assistant Secretary for Research and Development and is staffed thru the General Council. A copy is also sent to DCSRDA Plans, Policy and Test Division and to the Army DASO, Project Liaison Office for the project area, for coordination and concurrence prior to being approved and signed by the Assistant Secretary. In accordance with the APP a minimum of 20 working days should be allowed within HQ, DA for staffing and approval. However, current data based on the 224 D&F's as mentioned above averaged 33.3 working days or 36.0 calendar days from receipt to approval. Dispatch time after secretarial approval until arrival back at HQ, DARCOM was averaging 8.3 calendar days.

The times stated above for staffing and approval of a D&F can be used as planning guides for program scheduling. However, it should be remembered that clarity, understanding, urgency and interface with higher headquarters are the determining factors in minimizing the time element in the approval cycle.

The authority to act under the D&F becomes effective on the day that the approving authority grants his approval. This authority expires when it is exercised as granted or on the specific expiration date as stated in the D&F. An exception is provided for when the negotiation process has been initiated with the Request for Proposal being furnished to the prospective contractor prior to the stated expiration date in the D&F. This exception allows for the authority to negotiate until the award of the contract(s) is made as related to that specific solicitation.

RESPONSIBILITY: Procurement people - I identify them as the professionals, the "Keepers of the Keys" for the D&F, - have the responsibility for the final preparation of the D&F and its supporting documentation. While the Keepers of the Keys have the final functional responsibility for the D&F, the Project Engineer must recognize that the D&F is not solely a procurement responsibility. The D&F represents the individual and collective interest of both the project office and the procurement activity participating in the acquisition process. As procurement personnel are responsible for preparing and submitting the D&F for approval, the program and technical personnel in the project office are responsible for the input and accuracy of the factual information supporting the findings. This supporting information, in the format of the Justification for Authority to Negotiate, must be provided to procurement. This puts the ball in the PMO and you must push it to expedite the required actions pending the urgency of your program. With a thorough understanding of your responsibilities and the D&F process you will be better prepared to roll the ball and lead the action.

Your input in the JAN must be well thought out, accurate, clear and concise to your requirement as haste or misjudgment may cause major delays in the approval cycle and in the final contract award. Prior to a contract award, it is the responsibility of the contracting officer to ascertain that the D&F is consistent with the facts presented at the conclusions of the contract negotiations, and if it is not so actions must be taken to obtain a revised D&F. A delay of this type in re-staffing for approval could be fatal to a project.

SUPPORTING DOCUMENTATION: When the decision has been made to negotiate

a procurement in lieu of formal advertising, and secretarial approval is required, a Justification for Authority to Negotiate should be initiated as the document to support your requirement. The JAN sets forth the basic facts, not just the conclusions, which will support the findings and it must clearly and convincingly establish that the use of a form of formal advertising would not be feasible nor practical. It is not the purpose of the JAN to rejustify approval of a program, but rather it serves as the document to support the findings. Information should be provided as specific or factual data in a comprehensive and brief language.

An Advanced Procurement Plan which has Department of the Army approval may be used in lieu of a JAN to support a D&F. The plan serves as the principle long-range procurement planning document for major programs laying out the course of action for acquisition. It will normally provide most of the required information to support the D&F, however, it must be reviewed and updated with any changes that may have occurred since it was approved.

SECTION III
FORMAT AND CONTENT

GENERAL: The structured format as established and provided for in the ASPR, Appendix J, may be modified to better serve the individual needs of the Service Departments, and has been so modified in Appendix J to the APP. The format as set forth in the APP should be followed while using the ASPR as a backup reference to provide additional information of meaning and clarity.

Each request for secretarial determination under Exception #11 shall contain the following:

- (1) A Letter of Transmittal in the format established in APP 3-306.51, recommending approval of the D&F.
- (2) The Justification for Authority to Negotiate in the format prescribed in APP J-201.
- (3) The Determination and Findings in the appropriate format as prescribed in APP J-502.

LETTER OF TRANSMITTAL: In all cases of submitting a D&F for secretarial approval a Letter of Transmittal to the Secretary will be used in the prescribed format in lieu of a cover sheet as called for in the ASPR. The letter will be prepared by the procuring or requesting activity and addressed thru the Commander, US Army Materiel Development and Readiness Command, ATTN: DRCPP-SP to the Assistant Secretary of the Army, Research and Development.

The format and content (see Figure 1 and Appendix A) is very formal and brief. Its function is to address the D&F documentation to the final

DEPARTMENT OF THE ARMY
(Procuring or Requiring Activity)

SUBJECT: Request for Approval of Determination and Findings

THRU: Commander
US Army Material Development and Readiness Command
ATTN: DRCPP-SP
5001 Eisenhower Avenue
Alexandria, VA 22333

TO: Assistant Secretary of the Army
Research and Development
Washington, DC 20310

1. Inclosed is a Justification for Secretarial Authorization to Negotiate recommending approval of a Determination and Findings to perform the work by contract under authority in 10 U.S.C. 2304(a)(11), in the estimated amount of \$_____.

2. Cognizant requirements and technical authorities have certified that the facts and representations under their cognizance included in the D&F are accurate to the best of their knowledge and belief. It is recommended that the Assistant Secretary of the Army (Research & Development) authorize procurement by negotiation and approve and sign the attached D&F.

Inclosure
as

(Signature)

Figure 1

approving authority and requests that he authorize procurement by negotiation under the authority of the statute exception as stated.

JUSTIFICATION FOR AUTHORITY TO NEGOTIATE (JAN): The format as set forth in Figure 2 shall be followed during the preparation of the supporting data. The amount or degree of detailed information determined necessary to be included under each of the subject paragraph headings in the final JAN is a matter of the judgment and experience of the contracting officer. The final review of the supporting documentation and the D&F prior to the submission to HQ, DA is the responsibility of HQ, DARCOM. Thus if policy or procedural questions arise during the preparation stage they should be resolved through HQ's, DARCOM prior to finalizing the documentation. Examples of the JAN are provided in Appendix B to illustrate its structural and substance content.

The JAN must provide the same information for a class procurement as required for the individual procurement. The information must fully support the proposed negotiation authority as to the class of procurements as a whole or as to each individual procurement.

The content of each paragraph in the JAN is based on the requirements as established in the APP J-201. In preparing the JAN you should condition yourself to state the pertinent information in a concise factual manner. The information provided must be responsible to the paragraph heading and will not be repetitive of information contained in other paragraphs. If it becomes apparent that all or any part of a paragraph heading or sub-heading in the established format is inapplicable to your procurement, the paragraph heading or sub-heading will be stated and followed by the statement, "Not Applicable."

JUSTIFICATION FOR AUTHORITY TO NEGOTIATE
(an Individual Contract)
(a Class of Contracts)
Under Authority of 10 U.S.C. 2304(a)(11)

1. PROJECT IDENTIFICATION, FUNDS AND GOVERNMENT Estimate.

The total estimated cost of (this) (these) procurement(s) is \$ _____ chargeable to _____. The Project Number is _____.

2. URGENCY OF REQUIREMENTS.

The basis for establishing the completion date(s) of the scope(s) of work of the proposed contract(s) is _____.

3. BACKGROUND AND HISTORY OF PROCUREMENT.

Previous contractual efforts relating to this procurement are as follows:

<u>Amount Obligated</u>	<u>Type Funds</u>	<u>Name of Contractor</u>	<u>Type of Contract</u>	<u>Competition/ Sole Source</u>
-------------------------	-------------------	---------------------------	-------------------------	---------------------------------

4. TECH DATA REQUIREMENTS.

Describe the current status of pertinent technical data for (this) (these) procurement(s) with the primary objective of effecting competition at the earliest possible date in the procurement cycle.

5. PROCUREMENT PLAN FOR ACTION UNDER (AN INDIVIDUAL CONTRACT) (A CLASS OF CONTRACTS).

a. It is proposed to negotiate the following contract(s):

<u>Competition/ Sole Source</u>	<u>Type of Contract Contemplated</u>	<u>Period of Performance (months)</u>	<u>Planned Award Date</u>
---------------------------------	--------------------------------------	---------------------------------------	---------------------------

b. Justification for sole source is _____.

6. JUSTIFICATION FOR NEGOTIATION.

Procurement by negotiation under 10 U.S.C. 2304(a)(11) and ADPR 3-211.1 is justified because --

a. The proposed procurement(s) (_____).

b. Details showing why the justification(s) set forth in a. above (apply)(applies) are _____.

7. EXPLANATION OF THE CLASS TO WHICH DETERMINATION AND FINDINGS WILL APPLY.

The justification for negotiation of each of the proposed procurements is based upon essentially the same facts; the same exception under 10 U.S.C. 2304(a) is applicable to each of the proposed procurements; and the (supplies) (services) to be procured are related in the following manner:_____.

8. REMARKS.

(Discuss pertinent factors not elsewhere required by this format and those situations applicable only to this procurement. Include data required by J-201.51.)

Figure 2 (Cont)

The information to be contained in the JAN (Figure 2) must be related to each of the following subject headings:

- (1) Project Identification, Funds and Government Estimate: The requirement here is very straightforward: (a) provide the total cost of the individual proposed contract or the sum of the total class of contracts, (b) identify the funds to which the effort will be chargeable to (i.e., RDT&E), if incrementally funded, show amount applicable for each fiscal year, (c) provide the project number under which you are funded.
- (2) Urgency of Requirements: Provide a brief statement of the requirement for the procurement (why is it needed and when). Show the relationship of the delivery requirements to the lead time necessary to accomplish the specific phase of the effort. Identify supporting documentation which justifies and supports the procurement to be responsive to the need.
- (3) Background and History of Procurement: Provide a listing of all previous contractual efforts in sequence order of award dates, (oldest to most recent) which relate to events leading up to and supporting the proposed procurement.
- (4) Technical Data Requirement: Provide the current status of technical data which is pertinent to this procurement (i.e., its availability). When the absence of the required technical data becomes a factor in contractor selection, the question of technical data for your procurement must be given consideration with the primary objective of effecting competition at the earliest possible data. As there are many variables

which may apply a review of ASPR Appendix J-201(f)(6) for further information and explanation may be helpful.

(5) Procurement Plan For Action Under (An Individual Contract) (A Class of Contracts): List the required information for the individual procurement as called for in 5(a). For a class D&F provide the subparagraphs to 5(a) and list the designated information for each procurement to include a short name of the work to be performed and the estimated value for each procurement. In paragraph 5(b) provide a brief statement as to why this procurement(s) can only be accomplished by sole source, i.e., only known source which possess the unique design knowledge, experience equipment, equipment and/or technical expertise essential to perform the proposed effect.

(6) Justification for Negotiation: Enter here under 6(a) the circumstances justifying the negotiation(s) as provided in ASPR 3-211.2. In 6(b) provide a brief statement explaining why the justification for negotiation applies, (i.e., adequate specifications, suitable for formal advertising, are not available and cannot be developed for the procurement(s)).

(7) Explanation of the Class to Which Determination and Findings Will Apply: Paragraph 7 is to be used only in support of a class D&F. It should provide a brief explanation of the relationship between the proposed procurements which justifies their being grouped into a class D&F, (i.e., what does the procurements have in common or their interdependence which justifies their grouping).

(8) Remarks: Includes supporting information as required by APP J-201.51 as it is deemed to be pertinent information that has not

already been provided such as: (a) D&F supersedes a previously D&F, (b) contains an option clause, (c) potential conflict of interest, (d) unusual action on a prior contract, (e) approval for less than a \$100,000 procurement, (f) whether in-house capability exists, (g) required prior approval for a study related effort.

DETERMINATION AND FINDINGS: The D&F is a very formal document to which only minor modifications as appropriate may be made. The findings will provide the minimum facts and circumstances necessary to clearly justify the specific determination to be made. It must conform to the format established in the APP J-502 as shown in Figure 3, and normally will not exceed one and one half pages in length. Examples are provided in Appendix C.

The function of the Findings is to clearly identify the property or services to be procured, and to convincingly establish that the use of a form of formal advertising would NOT be feasible NOR practical. It thus provides this information to the approving authority so as to fully apprise him of the procurement action(s) to which his approval would apply.

The Content of the Findings is based upon the Footnotes provided with the format in the APP: (Figure 3)

*1 - procuring or contracting activity.

*2 - discription of the effort(s) should be concise, specific, and definite. It should be in non-technical language and of sufficient length so that clarity is NOT sacrificed.

*3 - provide a clear, concise summary of the function of the item(s) being procured, the technical concept, specific objectives sought, general application, and the relationship to the whole or other parts of the project. If the procurement is for services, tests, or

DEPARTMENT OF THE ARMY
Determination and Findings
Authority to Negotiate an Individual Contract
(Authority to Negotiate a Class of Contracts)

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed procurement described below may be negotiated without formal advertising for a period of _____ months from the date hereof pursuant to the authority of 10 U.S.C. 2304(a) (11), subject to the availability of funds, and provided that the services and property herein described have otherwise been authorized for procurement.

FINDINGS

1. Description of the proposed procurement(s).
 - a. The *1 proposes to procure by negotiation experimental, developmental, or research work for *2. The Project Number is _____.
 - b. Additional information. *3.
 - c. The proposed procurement will not call for quantity production within the meaning of ASPR 3-211.3.
2. Procurement by negotiation of the above described service and/or property is necessary because *4.
3. Use of formal advertising for procurement of the above described services and/or property is impracticable because *5.

DETERMINATION

The proposed contract is for property or services for experimental, developmental, or research work, or for the marking or furnishing property for experiment, test, development, or research.

(Date)

(Signature)

Figure 3

reports, provide illustrative examples of the purpose or need. Contractors names nor the fact that the procurement may be sole source will not be mentioned.

*4 - provide a meaningful justification for negotiation relating specifically to the particular project.

*5 - must be convincing statement explaining why formal advertising, including two-step formal advertising, is not feasible nor practical.

A premature disclosure of the information contained in a determination and findings and its supporting data could provide an unfair advantage to one prospective contractor over another, or it could create an impression of unfair treatment. Thus D&F's and supporting data which are not classified will be marked "For Official Use Only." Markings and removal of markings will be in accordance with AR-340-16.

The retention of the original copy of the approved D&F and all supporting documents is the responsibility of the cognizant procuring activity concerned for six years. This will provide an invaluable source of reference material to you as you begin your efforts to prepare a D&F. Don't hesitate to investigate this source of information.

SECTION IV

CONCLUSION

In summary the task of preparing the D&F and its supporting documentation can be a formidable one. The key to success lies in starting early and understanding your responsibilities in the procedural process of the preparation phase and approval cycle. Direct communications and interface with the procuring activity must be developed early to establish the team work to prepare the documentation. Lines of communication must be opened early with each approving headquarters with follow-up to grease the skids for approval.

Though it is the responsibility of the "Key holders", per the regulations, to prepare and submit the documentation for approval, it is the responsibility of the Project Office to initiate the requirement and get the ball rolling. There will always be the problems of too much to do with too little time and too few people, however, success for your project lies in communicating your requirements and taking the initiative to lead and push the way.

APPENDIX A

A-1 Letter Transmittal
(Individual Contract)

A-2 Letter Transmittal
(Class Contracts)

DEPARTMENT OF THE ARMY

SUBJECT: Request for Approval of Determination and Findings for a
1500 GPH Reverse Osmosis Water Purification Unit

THRU: Commander
US Army Materiel Development
and Readiness Command
ATTN: DRCPP-SP
5001 Eisenhower Avenue
Alexandria, VA 22333

TO: Assistant Secretary of the Army
Research and Development
Washington, DC 20310

1. Inclosed is a Justification for Secretarial Authorization to Negotiate recommending approval of a Determination and Findings (D&F) to perform the work by contract under authority in 10 U.S.C. 2304(a)(11) in the estimated amount of \$115,000.
2. Cognizant requirements and technical authorities have certified that the facts and representations under their cognizance included in the D&F are accurate to the best of their knowledge and belief. It is recommended that the Assistant Secretary of the Army, Research and Development authorize procurement by negotiation and approve and sign the attached D&F.

Incl
as

Principal Assistant
Responsible for Procurement

DEPARTMENT OF THE ARMY

SUBJECT: Request for Approval of Class Determination and Findings to
Provide Final Design, Fabrication and Test of Previously
Identified Vulnerability Reduction (VR) Concepts

THRU: Commander
US Army Materiel Development & Readiness Command
ATTN: DRCPP-SP

TO: Assistant Secretary of the Army
(Research & Development)
Washington, DC 20310

1. Inclosed is Justification for Secretarial Authorization to Negotiate recommending approval of a Class Determination and Findings (D&F) to perform the work by contract under authority of 10 U.S.C. 2304(a)(11) in the estimated amount of \$1,550,000.

2. Cognizant requirements and technical authorities have certified that the facts and representations under their cognizance included in the D&F are accurate to the best of their knowledge and belief. It is recommended that the Assistant Secretary of the Army (Research & Development) authorize procurement by negotiation and approve and sign the attached D&F.

FOR THE COMMANDER:

1 Incl

Deputy Principal Assistant
Responsible for Procurement

APPENDIX B

B-1 Justification for Authority
To Negotiate (Individual
Contract)

B-2 Justification for Authority
To Negotiate (Class of
Contracts)

JUSTIFICATION FOR AUTHORITY TO NEGOTIATE
an Individual Contract
Under Authority of 10 U.S.C. 2304(a)(11)

1. PROJECT IDENTIFICATION, FUNDS AND GOVERNMENT ESTIMATE.

The total estimated cost of this procurement is \$115,000, chargeable to Army RDTE FY 77 funds. The Project Number is 1FxxxxxD139.

2. URGENCY OF REQUIREMENTS.

The basis for establishing the completion date of the scope of work of the proposed contract is an estimate of a reasonable amount of time to perform the necessary work consistent with milestones established for development.

3. BACKGROUND AND HISTORY OF PROCUREMENT.

Previous contractual efforts relating to this procurement are as follows:

<u>Amount Obligated</u>	<u>Type Funds</u>	<u>Name of Contractor</u>	<u>Type of Contract</u>	<u>Compet/SS</u>
\$ 50,000	RDTE	Chemical Systems	FFP	SS
\$ 33,000	RDTE	UOP	FFP	SS
\$104,000	RDTE	Rev-o-Pak	FFP	Compet
\$179,000	RDTE	Value Engineering	FFP	Compet

4. TECH DATA REQUIREMENTS.

a. Technical data in the form of engineering drawings level 2, specifications type B form 3 and operating and maintenance manuals will be obtained from the proposed contract.

b. The requirement of ASPR 9-107 concerning Patent Rights under research and development contracts has been complied with to the extent that this can be done prior to negotiation with one or more specific contractors. It has been determined, through the use of the Pre-Award Patent Rights Documentation Checklist, that the Patent Rights (Acquisition by the Government) Clause (ASPR 7-302.23(a)) is not required to be used in the proposed contract. The procedure set forth in ASPR 9-107.4(a) for use where it has been determined that the Patent Rights (Acquisition by the Government) Clause is not applicable will be followed during negotiation of the proposed contract.

5. PROCUREMENT PLAN FOR ACTION UNDER AN INDIVIDUAL CONTRACT.

a. It is proposed to negotiate the following contract:

<u>Compet/ SS</u>	<u>Type of Contract Contemplated</u>	<u>Period of Performance (months)</u>	<u>Planned Award Date</u>	<u>Work To be Performed</u>	<u>Estimated Value</u>
Compet	FFP	6	Mar 77	Reverse Osmosis Water Purification Unit	\$115,000

b. Justification for sole source: Not Applicable.

6. JUSTIFICATION FOR NEGOTIATION.

Procurement by negotiation under 10 U.S.C. 2304(a)(11) and ASPR 3-211.1 is justified because - -

a. The proposed procurement calls for the practical application of investigative findings and theories of a scientific or technical nature; and for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research, or test.

b. Details showing why the justification set forth in paragraph a. above apply are that the contemplated contract will require the validation of the design for reverse osmosis water purification equipment having specific actual components fabricated, interfaced with each other and tested to insure that all military performance specifications have been met. There is no conventional reverse osmosis water purification equipment which will satisfy performance requirements of the Army.

7. EXPLANATION OF THE CLASS TO WHICH DETERMINATIONS AND FINDINGS WILL APPLY.

Not Applicable.

8. REMARKS.

None

JUSTIFICATION FOR AUTHORITY TO NEGOTIATE
A CLASS OF CONTRACTS
UNDER AUTHORITY OF 10 U.S.C 2304(a)(11)

1. PROJECT IDENTIFICATION, FUNDS AND GOVERNMENT ESTIMATE.

The total estimated cost of these procurements is \$1,550,000 chargeable to RDT&E funds. The project numbers are 1F000000DB52-02 and 1F000000DC52-04. Funding by Fiscal Year is as follows:

<u>PROJECT</u>	<u>FY 77</u>	<u>FY78</u>
1F000000DB-52-02	\$250,000	----
1F000000DC-52-02	\$510,000	\$790,000

2. URGENCY OF REQUIREMENTS.

The basis for establishing the completion dates of the scopes of work of the proposed procurements are that vulnerability reduction features are required on Army aircraft to enhance their combat effectiveness in terms of survivability and reduction in attrition during combat missions. The requirements supporting the proposed procurements are set forth in the Aircraft Survivability Equipment Required Operational Capability (ROC) approved by the Department of the Army on 17 May 1974, CARDS reference #0545, which stated the need for improved survivability for the current fleet during the FY 77-80 timeframe.

3. BACKGROUND AND HISTORY OF PROCUREMENT.

Previous contractual efforts relating to these procurements are as follows:

<u>AMOUNT OBLIGATED</u>	<u>TYPE FUNDS</u>	<u>NAME OF CONTRACTOR</u>	<u>TYPE OF CONTRACT</u>	<u>COMPET/SS</u>
\$123,260.	RDT&E	Bell Helicopter	CPFF	SS
53,650	RDT&E	Bell Helicopter	CPFF	SS
125,000	RDT&E	Bell Helicopter	CPFF	SS
75,000	RDT&E	Bell Helicopter	CPFF	SS

4. TECH DATA REQUIREMENTS.

a. Technical data sufficient for competitive procurement is not available for the proposed procurements. The necessary data was not generated under prior contracts as they were feasibility and preliminary design actions. The Government's rights in technical data will be predetermined in accordance with ASPR 9-202.2(d). Where the proposed procurements require qualification of an aircraft modification, technical data sufficient for competitive follow-on procurements will be obtained, if determined appropriate.

b. It is proposed to include both the "Patent Rights - Retention By the Contractor (Long Form) (1975 AUG)" clause contained in ASPR 7-302.23(b) and the "Patent Rights - Deferred (Long Form) (1975 AUG)" clause contained in ASPR 7-302.23(c) in any solicitation that will result in a separate contractor for the effort listed below in view of the policy set forth in ASPR 9-107.2(a) (See Attachment A). In those instances when award is made using an existing Basic Ordering Agreement (BOA), the "Patent Rights - Retention by the Contractor (Long Form) (1975 AUG)" clause will be used because the clause is contained in the existing BOA for Research and Development Tasks with Bell Helicopter.

5. PROCUREMENT PLAN FOR ACTION UNDER A CLASS OF CONTRACTS.

a. It is proposed to negotiate the following contracts:

<u>COMPET/ SS</u>	<u>TYPE OF CONTRACT CONTEMPLATED</u>	<u>PERIOD OF PERFORMANCE</u>	<u>PLANNED AWARD DATE</u>
(1) SS	CPIF	18 Months	1 Oct 76

Complete the design, development, fabrication, and test of the AH/UH VR high survivable transmission.

ESTIMATED COST: \$680,000

(2) SS	CPIF	16 Months	1 Nov 76
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SHORT NAME OF WORK TO BE PERFORMED. Complete the design, development, fabrication, and test of the ballistic hardened AH-1 tailboom modification.

ESTIMATED COST: \$870,000

b. Justification for sole source is: Bell Helicopter, the airframe manufacturer of the UH-1, and AH-1. Because of their experience with the aircraft are the only source having the personnel, equipment, facilities, design data and technical expertise required to accomplish the proposed procurements within the time frame and dollar limitation required. The components and systems developed must be compatible with the aircraft to assure the requisite, safe, dependable and effective operation of the aircraft. Bell Helicopter because they are the prime manufacturer, is the only source that can assure this compatibility.

6. JUSTIFICATION FOR NEGOTIATION.

Procurement by negotiation under 10 U.S.C. 2304(a)(11) and ASPR 3-211.1 is justified because:

a. The proposed procurements are for development contracts calling for the practical application of investigative findings and theories of a scientific or technical nature; contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for developmental or test.

b. Details showing why the justification set forth in a. above apply are that the proposed procurements require design, development, and fabrication of prototype systems of a type and nature that are not currently available and cannot be developed for these procurements. Two step formal advertising is not feasible or practicable because the conditions of ASPR 2-502(a) are not present.

7. EXPLANATION OF THE CLASS TO WHICH THE DETERMINATION AND FINDINGS WILL APPLY.

The Justification for negotiation of each of the proposed procurements is based on essentially the same facts; the same exception under 10 U.S.C. 2304(a) is applicable to each of the proposed procurements; and the supplies to be procured are related in the following manner: The requirements were all generated by the Aircraft Survivability Equipment Project Manager's Office and each requirement deals with vulnerability reduction (effect of ballistic hits on an aircraft) on an aircraft system currently in the Army inventory.

8. REMARKS.

a. The procurement of personal services is not involved. In-house capability to perform the requirements does not exist, nor can it be made available.

b. The provisions of AR 5-5 are not applicable.

APPENDIX C

C-1 Determinations and Findings
(Individual Contract)

C-2 Determinations and Findings
(Class of Contracts)

Department of the Army
Determination and Findings
Authority to Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed procurement described below may be negotiated without formal advertising for a period of twelve (12) months from the date hereof pursuant to the authority of 10 U.S.C. 2304(a)(11), subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for procurement.

FINDINGS

1. Description of proposed procurement.

a. The U.S. Army Mobility Equipment Research and Development Command, Fort Belvoir, Virginia proposes to procure by negotiation experimental, developmental, or research work for an Engineer Design Test (EDT) Model of a 1500 GPH Reverse Osmosis Water Purification Unit (ROWPU). The Project Number is 1FxxxxxxDL39.

b. The purpose of this procurement is to provide the Army with the most advanced capability and equipment for water purification. Specific objectives being sought are transportable multipurpose water purification equipment to:

(1) Remove Chemical, Bacteriological and Radiological (CBR) contaminants from water.

(2) Produce potable water from any fresh, brackish or seawater source.

(3) Have a production capacity (based on fresh water at 77°F) of 1450 to 1550 per hour and

(4) Be air transportable.

c. The proposed procurement will not call for quantity production within the meaning of ASPR 3-211.3.

2. Procurement by negotiation of the above described service and/or property is necessary because it is impossible to describe in precise detail or by definite drawings and specifications the work to be done. The proposed procurement relates to the practical application of investigative findings and theories of a scientific or technical nature; and for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research or test. The effort requires a background of proven success in water purification principles.

3. Use of formal advertising, including two-step formal advertising, for procurement of the above described services and/or property is impractical because it is impossible to describe the work to be done in sufficient detail to permit evaluation of bids under the criteria applicable to formal advertising. A contractor with specialized facilities and personnel highly trained in water clarification and reverse osmosis technical fields covered by this procurement is necessary and negotiation better enables the obtaining of such a contractor with a full understanding of the scope of work to be accomplished.

DETERMINATION

The proposed contract is for property or services for experimental, developmental, or research work.

Assistant Secretary of the Army
(Research and Development)

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS

Authority to Negotiate a Class of Contracts

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed procurements described below may be negotiated without formal advertising for a period of twelve (12) months from the date hereof pursuant to the authority of 10 U.S.C. 2304(a)(11), subject to the availability of funds, and provided that the supplies and services herein described have otherwise been authorized for procurement.

FINDINGS

1. Description of the proposed procurements:

a. The United States Army Aviation Systems Command proposes to procure by negotiation developmental work necessary or incidental to:

(1) Design, development, fabrication and testing of the AH/UH high survivable transmission, individually or in combination.

(2) Design, development, fabrication and test of the ballistic hardened AH-IG/Q, and AH-IS tailboom modification, individually or in combination.

The Project Number is 1FxxxxxxDB52-02 and 1FxxxxxxDC-52-04.

b. The specific objectives of the proposed procurements are to obtain final design, prototype fabrication, qualification, data preparation and testing of various Vulnerability Reduction (VR) concepts previously determined by the Army to be necessary for increased survival capability for the current fleet of Army aircraft. Advances in hostile air defense threat capabilities have dictated a crucial need for improving Army aircraft capability to withstand ballistic hits from these threats. The proposed procurements will integrate existing technologies as well as Army and aircraft manufacturer conceptual studies in the area of vulnerability reduction.

The specific functions of the proposed procurements are:

(1) The AH/UH high survivable transmission is designed to increase the capability of the aircraft to withstand ballistic hits in the transmission primary oil system by allowing thirty minutes of operation after loss of oil.

(2) The ballistic hardened AH-1 tailboom modification is designed to increase the aircraft's capability to withstand hits from ballistic projectiles including High Explosive Incendiary (HEI) rounds.

c. The proposed procurement will not call for quantity production within the meaning of ASPR 3-211.3.

2. Procurement by negotiation of the above described services and/or property is necessary because it is impossible to describe in precise detail or by definite drawings or specifications the nature of the work to be performed. Because of the nature and uncertainty of the development effort to be performed, only the ultimate objectives and the scope of work can be defined.

3. Use of formal advertising for procurement of the above described services and/or property is impracticable because it is impossible to describe in precise detail the specific work required, only the nature of the work to be done, the desired objective, and general scope of work can be outlined. Two step formal advertising is not feasible or practicable because the conditions of ASPR 2-502(a) are not present.

DETERMINATION

The proposed contracts are for property and services for developmental work.

SECTION V
REFERENCES

1. ARMED SERVICES PROCUREMENT REGULATIONS (ASPR).
2. ARMY PROCUREMENT PROCEDURES (APP)
3 May 1976.
3. DA Cir 715-2-41, dated 11 June 1976 posting changes to
the APP.