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There is widely expressed need for flexible contracting methods to acquire complex services in an increasingly rigid contracting environment. Flexible contracting methods are particularly important when Engineering/Professional Services must be procured. "Task Order" contracts are being used to fulfill this need for flexibility. However, their use creates an atmosphere for potential abuse due to an absence of regulatory guidelines.

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CONCLUSIONS. The procurement system cannot adequately respond to needs for expeditious contract placement of unanticipated requirements for Engineering/ Professional Services. The present method by which these needs are sometimes fulfilled is the task order contract. There is inadequate guidance for the use of these contracts. The applications of task order contracts should be limited and new methods and procedures must be implemented.

AMSAA

ARMY PROCUREMENT RESEARCH OFFICE

APRO 82-10

FINAL

FLEXIBLE METHODS OF CONTRACTING FOR ENGINEERING/PROFESSIONAL SERVICES

JUNE 1983

U. S. ARMY MATERIEL SYSTEMS ANALYSIS ACTIVITY
ARMY PROCUREMENT RESEARCH OFFICE
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FINAL

FLEXIBLE METHODS OF CONTRACTING FOR ENGINEERING/PROFESSIONAL SERVICES

JUNE 1983

by

Arthur J. Mandler

The pronouns "he," "his," and "him," when used in this publication, represent both the masculine and feminine genders unless otherwise specifically stated.

Information and data contained in this document are based on input available at time of preparation. Because the results may be subject to change, this document should not be construed to represent the official position of the United States Army.

US Army Procurement Research Office
US Army Materiel Systems Analysis Activity
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EXECUTIVE SUMMARY

A. BACKGROUND AND PROBLEM STATEMENT. There is widely expressed need for flexible contracting methods to acquire complex services in an increasingly rigid contracting environment. Flexible contracting methods are particularly important when Engineering/Professional Services must be procured. "Task Order" contracts are being used to fulfill this need for flexibility. However, their use creates an atmosphere for potential abuse due to an absence of regulatory guidelines.

B. OBJECTIVES. The primary objective of this research is to identify and/or develop appropriate methods of quick reaction contracting for Engineering/Professional Services. A secondary objective is to develop guidance and procedures for the application of those methods.

C. RESEARCH DESIGN. Research consisted of a review of current literature related to the many varied aspects of acquiring Engineering/Professional Services. Additionally, field interviews were conducted with knowledgeable and experienced personnel within both the contracting and technical fields.

D. CONCLUSIONS. The procurement system cannot adequately respond to needs for expeditious contract placement of unanticipated requirements for Engineering/Professional Services. The present method by which these needs are sometimes fulfilled is the task order contract. There is inadequate guidance for the use of these contracts. The applications of task order contracts should be limited and new methods and procedures must be implemented.

E. RECOMMENDATIONS. Short term solutions include the development of adequate procedures for the use of task order contracts and the implementation of a quick reaction contracting method known as Multiple Basic Ordering Agreements. Long term solutions include changing regulations and developing a DARCOM-wide quick reaction contracting system that allows the flexibility necessary for mission accomplishment.

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CHAPTER I

INTRODUCTION

A. BACKGROUND AND PROBLEM STATEMENT.

During recent years, those persons familiar with the Department of Defense (DOD) acquisition process have witnessed the contracting environment becoming increasingly rigid. Emphasis upon expanded competition and implementation of programs for achieving national socioeconomic objectives, although well-intentioned, have contributed to the rigidity.

The technical complexity of DOD acquisitions coupled with contracting out policies, personnel ceilings, and increasing workloads have led to decreases in in-house ability to provide white-collar technical services* that are necessary to support various programs. There is a widely expressed need for flexible contracting methods to acquire these services. At the same time this need is being expressed, more controls and restrictions are being implemented. Needless to say, some degree of control is necessary to minimize possible abuses, particularly in the area of acquiring white-collar services; however, contracting methods flexible enough to meet valid requirements must exist. Flexible contracting methods are especially important when unanticipated engineering services in support of Research and Development (R&D) are required. In the R&D contracting environment it is not always possible to foresee a specific need early enough to allow standard procurement practices to prevail. Standard practices require an average of three to five months from the time a need is recognized until a contract for the required services is placed with industry. Unanticipated requirements which demand

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* NOTE: For the purposes of this report engineering/professional services, white-collar technical services and related terms are used interchangeably. The terms are broadly defined as referring to intellectual labor rather than physical labor.

expeditious action frequently arise. Even in those cases where the general nature of a requirement (or sets of requirements) can be predicted, the specific amount of work and the specific scope of the work cannot be defined until the actual need materializes.

Major Subordinate Commands (MSC's) of the US Army Materiel Development and Readiness Command (DARCOM) respond to these unanticipated needs in varying ways. A somewhat common approach is utilization of a variation of the Cost-Plus-Fixed-Fee (CPFF) level of effort term contract in which the contractual statement of work is described in very general terms. Specific work assignments (Task Orders) are placed with the contractor as defined needs materialize. Flexibility is the prime reason for the use of task order contracting; however, this required flexibility creates an atmosphere for potential misuse due to an apparent absence of specific guidelines. Significant problems relative to this form of contracting have been noted. Those problems include the avoidance of competition and the absence of proper funding controls. There is a need for an examination of the contractual methods used for acquiring white-collar technical services in cases where urgency is a critical factor.

B. OBJECTIVES

As stated under Section A above, DARCOM MSC's use varying methods to procure unanticipated specific requirements for services. Consequently, the differing methods must be examined for their applicability to various contracting situations. Therefore, the objectives of this study were to:

1. Identify and/or develop appropriate contracting methods for the type of services described in Section C, SCOPE, which follows.

2. Ascertain the relative effectiveness of the various contracting methods for various sets of circumstances.

3. Develop guidance and recommend procedures for proper application of contracting methods.

4. Attempt to identify and resolve funding issues related to the various contracting methods.

C. SCOPE.

This effort focuses upon methods for contractually acquiring various types of Engineering/Professional Services in support of R&D when the need is urgent and the requirement is either unanticipated or anticipated in only a general sense. Engineering Services in Support of Production (ESP) were not a part of this study. The primary focus of this research is on those contractual methods that allow quick reactions to various problem situations where it is extremely difficult or even impossible to develop specifications or estimate the extent of work with any degree of confidence prior to the actual need arising.

It should be emphasized that the flexible procedures discussed in the report are not intended to substitute for good acquisition planning by technical elements. Standard procurement practices will suffice for the majority of contractual actions for normal development programs.

D. REPORT RATIONALE.

1. Report Theory.

Both contracting and technical personnel must be familiar with the regulations governing the acquisition of Engineering/Professional Services. In order to deal with perceived inadequacies and to combat potential abuse, various regulations have been issued. Most notable are recent changes to DAR Section XXII (Service Contracts) and the issuance of Army Regulation 5-14, Managing Analytical Support Services (15 Oct 81).

It would not be feasible for one report to cover everything. The main concern of this report is to explore contracting methods appropriate for acquiring Engineering/Professional Services. Therefore, the main focus of this report will be on those methods.

2. Research Design.

Research began with a thorough review of recent literature on the many varied aspects of Engineering/Professional Services contracting. The literature included previous research work, regulatory and policy guidance, decisions of the Comptroller General, and reports and data issued by various Government agencies. A very broad perspective was obtained from field interviews with knowledgeable and experienced personnel within both the contracting and technical fields. Due to the nature of the problem, all research was operationally oriented.

3. Report Organization.

Chapter II examines the types of situations that support the need for quick reaction contracting methods. Chapter III documents existing and/or emerging contractual solutions and explores various aspects of the different methods including criteria for their application. Chapter IV sets out conclusions and recommendations oriented toward successful accomplishment of quick reaction contracting.

CHAPTER II

TECHNICAL NEEDS AND SYSTEM CONSTRAINTS

A. STANDARD VERSUS NONSTANDARD REQUIREMENTS.

For the purpose of this discussion it is necessary to separate requirements for Engineering/Professional Services into standard and nonstandard categories. The purpose of this separation is to contrast these categories. However, this study concentrates on nonstandard requirements.

1. Standard Requirements.

Standard requirements are defined as those needs that can be readily accommodated by the structure of the procurement system within DARCOM. The structure of this system is based primarily upon law and policy.

Standard requirements are specific needs for services recognized and planned for early enough to allow the procurement system adequate leadtime for contract placement and contractor performance. Depending upon certain variables such as the value of the contract and competition considerations and negotiations, the purchasing office may have to initiate action on a standard requirement as early as six months prior to the point at which a contract must be awarded.

Those familiar with the procurement system are aware that compliance with laws and regulations (also good business practice) sometimes requires what would seem to be an inordinately long time for contract placement. As the system presently exists, these leadtimes are necessary. Because of extended procurement leadtimes, the system is primarily oriented toward satisfying what has been defined as a standard requirement.

2. Nonstandard Requirements.

Nonstandard requirements are those needs that are not only unanticipated but also require immediate action. Mission accomplishment would mean need fulfillment occurring in quick response to need recognition. A classic example

would be an unanticipated problem "popping up" at an inopportune time in a development program. The occurrence of that problem at that time could cause delays in the program unless the solution was immediately available. Because the procurement system is primarily oriented toward standard requirements there are problems that tend to arise when the system tries to fulfill a nonstandard requirement. Due to that orientation, there is a general system deficiency when nonstandard requirements must be handled. Methods for dealing with nonstandard requirements are examined in Chapter III.

B. TECHNICAL NEEDS VERSUS PROCUREMENT SYSTEM REQUIREMENTS.

In some instances the needs of technical personnel are found to be in opposition to the obligations of contracting personnel. The opposition becomes very noticeable when one queries project engineers involved with in-house R&D efforts. Engineers seem to have a common vision of the ideal procurement method. Each time a task arises which cannot be satisfied in-house, the engineer selects a well qualified contractor and simply tells him to go to work. The contracting officer merely ratifies actions, does the paperwork and does not impede the engineer's mission. Actually, few engineers would seriously argue for such a naive arrangement; but when faced with apparent interminable delays, many would come close.

An examination of the reasoning behind that vision of the ideal procurement method is crucial if one is to gain an understanding of a serious weakness in the procurement system. This weakness is the inability of the procurement system to adequately respond when the Government must expeditiously acquire Engineering/Professional Services. Chapter III documents the various contractual methods presently utilized or proposed to acquire those services. The stated weakness will become more apparent upon completion of that chapter. However, the purpose of this chapter is to substantiate the need for quick reaction contracting

methods. To do so, it is necessary to develop a composite of reality at DARCOM Major Subordinate Commands and present that composite as an example.

C. NEED FOR QUICK REACTION CONTRACTING--EXAMPLE.

1. Background Scenario.

A project engineer is assigned responsibility for the development of an improved gas mask air filter element to replace filters currently in use. The improved filter is necessary because a hostile country is developing a new nerve gas that penetrates the ex[illegible] [illegible] data has not only confirmed the nerve gas development efforts but also has surmised that in 24 months the hostile country's armed forces will have the capability to release this gas on US forces. It is critical that improved replacement filters which adequately protect against the new gas be in the hands of US field troops within 24 months.

2. Urgency Consideration.

In-house development efforts begin immediately because it is known that combined leadtimes for purchase, manufacture and distribution of the filters total 12 months. Since the hostile country will have this new gas available for use in a tactical situation in 24 months, the project engineer must have all development efforts completed in 12 months. Figure 1 shows the planned program schedule.

As time passes, in-house development progresses according to schedule. Preliminary test results on the new filters are promising. They adequately remove all traces of the new gas. Nine months of the 12 month development cycle have elapsed and final testing has begun. Unexpectedly, some filters are failing to perform. The project engineer has attributed those failures to a set of circumstances in which a particular humidity-temperature index and bright sunlight cause a breakdown of the chemically treated fibers which comprise the new filter. This means that if hostile forces used the new nerve gas on US troops during a sunny

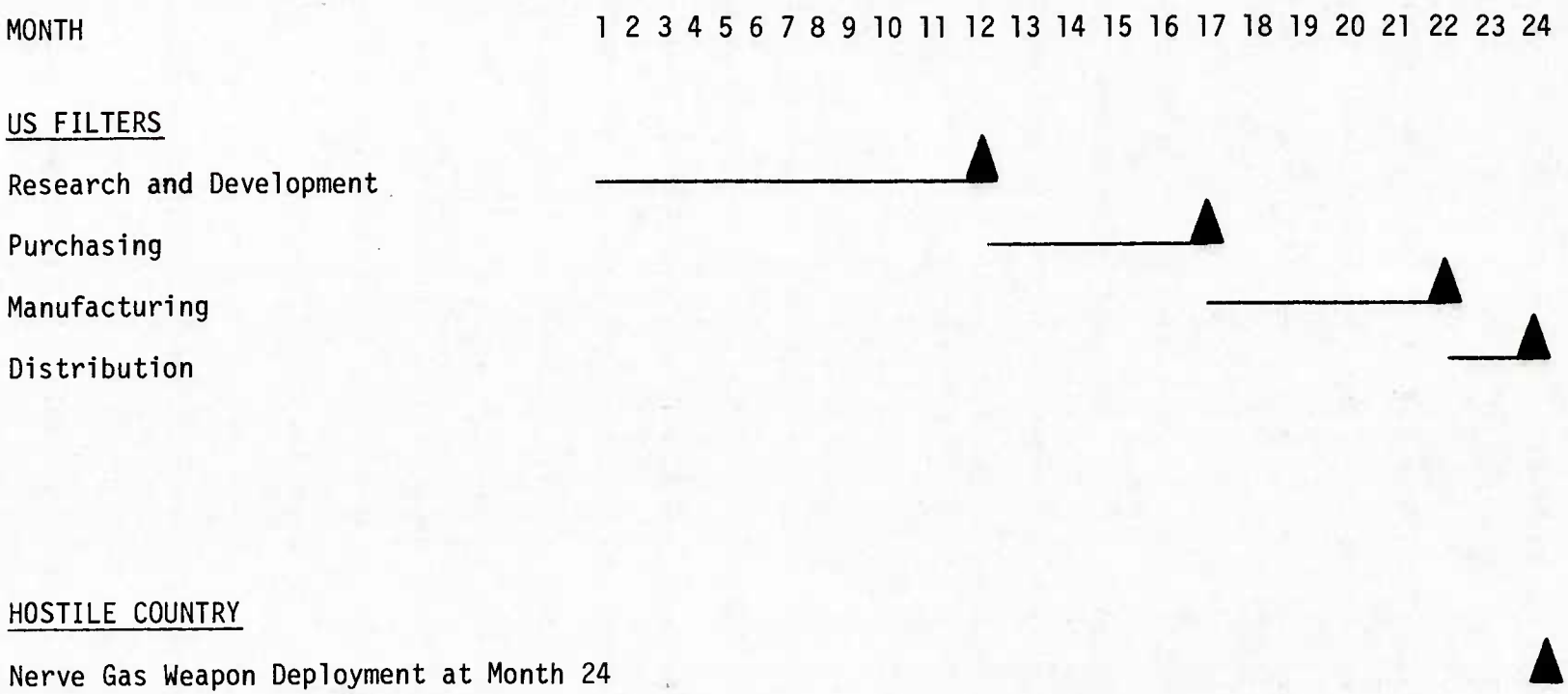

FIGURE 1. PLANNED PROGRAM

day when the temperature was between 60-80 degrees Fahrenheit and the relative humidity was between 87-92 percent, the filters would fail to protect the troops. The project engineer sets out to solve the problem but discovers in-house resources are inadequate. The necessary facilities and personnel are not available. He concludes that the assistance of XYZ company, which has the expertise in this field, is urgently needed.

3. Procurement Considerations.

During the next few days, the engineer performs the administrative steps required to complete a procurement package. A Scope of Work (SOW) is written; a cost estimate is developed; funding is made available and all other documents, including a justification for sole source, are prepared. The entire package is then hand-carried to the purchasing office with a request that a contract be placed expeditiously with XYZ company.

The purchasing office performs a review of the requirement and concludes that a noncompetitive action is inappropriate since it is not positively known XYZ company is the only firm qualified to do the study. The sole soure justification emphasized the importance of timeliness and stated that XYZ company was the only firm that could perform within the required time. But the contracting officer, from long experience, was confident that competitors who could meet the delivery schedule were available.

Urgency and the necessity for sole source actions are troublesome terms for contracting personnel who work in R & D activities. Technical personnel, who are mission driven, find it difficult to understand and appreciate the strong statutory and regulatory mandates for competition in Government procurement. The perception of many engineers is that, too often, the procurement function is unnecessarily inflexible.

The contracting officer also noted that XYZ company was classified as a large business and he had seen numerous instances where small business performed

well despite the objections of technical personnel desiring sole source awards. Because his command had been cited for a high proportion of sole source awards and a low proportion of Small Business set-asides, he saw this procurement as a possible opportunity to correct the imbalance. In a recent staff meeting all contracting officers were told to make special efforts to adhere to the DOD policies that call for maximizing competition and Small Business participation. The contracting officers knew that their job performance ratings were at least partially based upon how well they implemented and followed procurement policies.

The contracting officer held discussions with the project engineer and concluded that minimum requirements for facilities and education and experience of personnel could be developed and be used for evaluation criteria in a competitive Request for Proposal (RFP). After reviewing the minimum requirements with the local Small Business advisor, the contracting officer deemed it necessary, over the protests of the project engineer, to make the fiber breakdown study a 100% Small Business Set-Aside.

Additionally, since the Government cost estimate was based upon 500 hours of a "Senior Physical Scientist" at a cost of $37,500, the contracting officer further concluded that a fixed price level of effort contract would be most appropriate for this R & D study. It would be a good idea to use that contract type since his command had recently been criticized for using too many cost-type contracts for efforts under $100,000. It was believed that the flexibility value of cost-type contracts was outweighed by the administrative cost (audits, etc.) associated with those contracts if the value was under $100,000.

The project engineer was told he could expect a contract award in only three months because of the high priority of the requirement.

4. Mission Analysis.

At this point it is important to pause and briefly examine the various motivators, goals and pressures that affect the decision process of both the

engineer and the contracting officer. The engineer perceives his mission as overcoming the fiber breakdown problem quickly enough to assure that the improved filters can be distributed to the troops prior to the hostile country gaining the capability to use the new nerve gas. The contracting officer, while sympathetic to the goal being pursued by the project engineer, must fulfill obligations that the project engineer sees as nonmission oriented. These obligations include the contracting officer's requirement to comply with applicable laws, procurement regulations, and both written and unwritten procedures and policies. It may be very difficult for the contracting officer to place primary emphasis on the engineer's mission if the contracting officer considers the contracting mission regulatory constraints of equal importance. As can be gleaned from the example above, it is possible for the engineering and contracting missions to have some degree of conflict between them.

5. Possible Outcomes.

For the purposes of discussion, three possible outcomes based upon the example are presented below. Obviously other outcomes are possible and other options could have been considered, but they will not be explored because they are not germane to the topic at hand which is the need for quick reaction contracting.

a. Outcome 1.

If it is assumed that a competitively negotiated contract for a three-month study was placed with an adequately qualified small business (since the requirement was set aside for small business) in three months time and, if it is further assumed that performance was acceptable and no other problems occurred, US forces would be vulnerable for a three month period. This outcome is depicted in Figure 2. Note that in this outcome the period of vulnerability (three months) is equal to the time required to place a contract. If the contract could have been placed immediately, then theoretically, there would not have been a period of

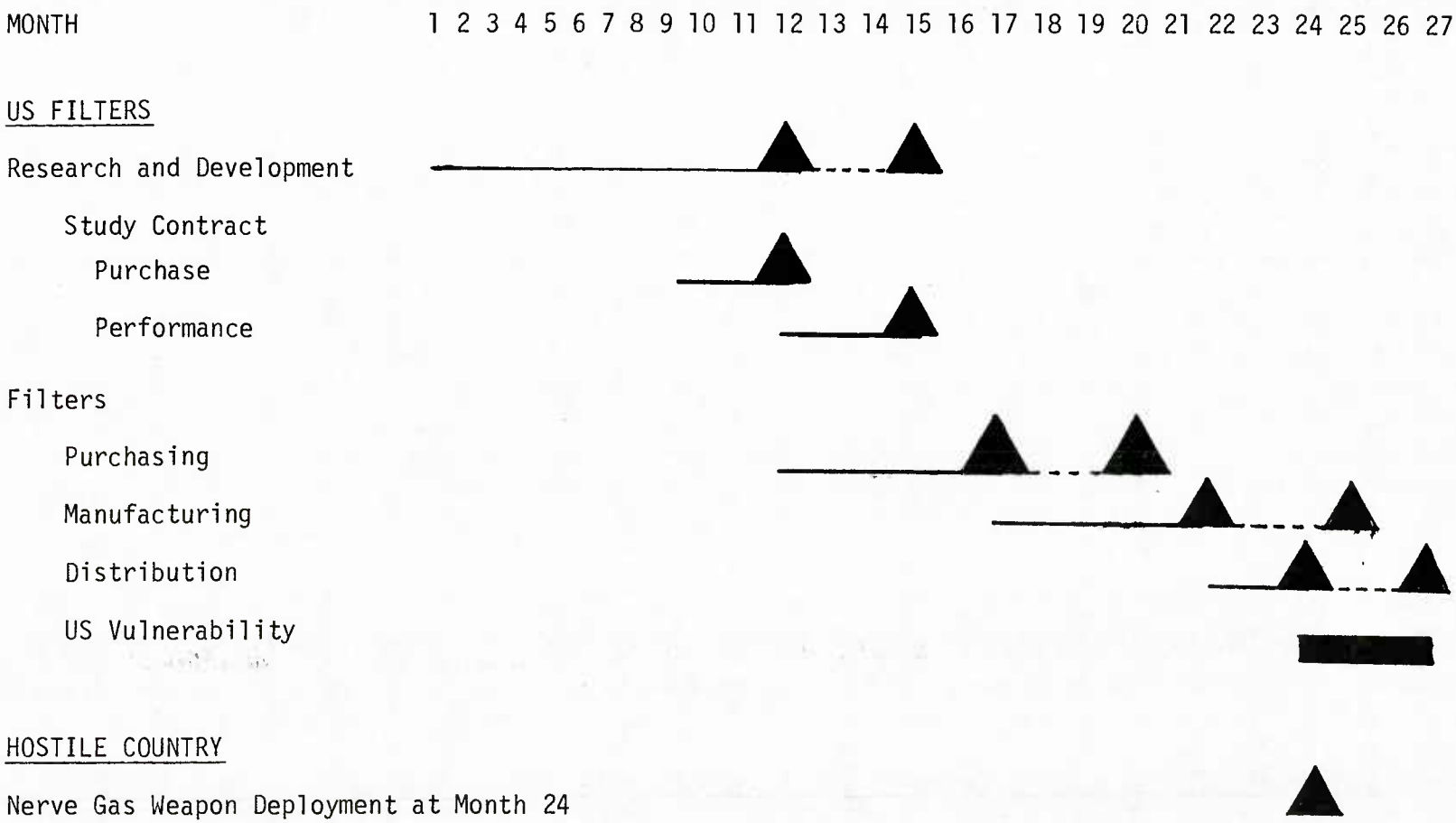

FIGURE 2. ACTUAL PROGRAM

vulnerability. The net result of this outcome is that the requirement is fulfilled late.

b. Outcome 2.

This outcome is similar to Outcome 1 in that an apparently qualified firm received the contract award but failed to perform adequately. How could a qualified firm fail to perform? The fixed price level of effort contract for the R&D study required that a "Senior Physical Scientist" expend 500 hours investigating and trying to solve the fiber breakdown problem. The delivered product is a final technical report and the acceptance criteria for that product is not as objective as would be the case for an item of hardware. If 500 hours were expended on the fiber breakdown study by a Senior Physical Scientist with the required specific education and experience, contractually it does not matter that the problem be resolved. As long as the hours were expended and the report was delivered the contractor had fulfilled his part of the bargain. This outcome is partially due to using a term-type contract versus a completion type contract. It is normally not feasible to use a completion type fixed-price contract when trying to acquire R&D services. By its very nature, R&D deals with many unknowns and it is not reasonable to expect a contractor to agree to complete a task for a set price if there are many unknowns that may drive cost upward. However, if emphasis is placed on utilizing fixed-price level of effort contracts for R&D services, it must be assured that a term contract will suffice. It would be necessary to believe that a predetermined level of effort would produce a desired result.

The net result of this outcome is that the requirement is either unfulfilled or completed later than under Outcome 1 above.

c. Outcome 3.

The project engineer cancelled the contractual action for the study because he could not let this program experience any delays. The new filters would

be manufactured and distributed as originally planned. Hopefully, the conditions under which the filters would fail would not present themselves prior to the problem being corrected through future contractual action. In the meantime the fiber breakdown problem would present a potential risk.

6. Summary.

Under any of the above outcomes it is apparent that the fiber breakdown problem would not be resolved prior to weapon deployment by the hostile country. Under Outcome 1 there would be a delay of three months; however, under Outcomes 2 and 3 the situation could be more serious.

The important point made by this plausible example is that the procurement system will not always allow the flexibility necessary for successful mission accomplishment. In this example, mission accomplishment relates to the defense of the United States and protection for the lives of US troops.

Our concerns with competition, socioeconomic considerations and contract types seem unimportant when US defenses are compromised and the lives of US troops are endangered.

Although many differing policies, procedures, laws, etc. are of concern to the project engineer, the three concepts central to this discussion are the requirements affecting competition, small business considerations and fixed price contracting. Those requirements, and situations in which their application may be counterproductive, are discussed below.

D. COMPETITION.

It appears that most studies on competition have been oriented toward major program applications with emphasis on hardware production. APRO 905, Guidelines for the Application of Competition, states that the benefits of competition in the private sector, in most instances, give lower prices and better quality. The study goes on to state that through the years Congress has stressed the need for promoting

and extending competition in Government buying. The DOD has implemented Congressional policy in a number of ways. Competition statistics are compiled and areas of weakness are identified and corrective measures are thoroughly explored. [1]

However, competition is not always a panacea. APRO 905 states that although DOD policy discourages the use of noncompetitive contracts, sole source contracts are not always objectionable and, in specific acquisitions, forcing competition on a program that should be sole source may lead to serious consequences.

E. SMALL BUSINESS.

For the purpose of this discussion, small business considerations are the prime concern. However, the reader is cautioned to bear in mind the vast array of laws that form the umbrella known as socioeconomic programs which impact the DOD procurement system. Over the years, socioeconomic legislation has been used as a tool to carry out either valid national goals, goals of a particular administration or goals of strong interest groups. It is not the purpose of this project to discuss the advantages and/or disadvantages of the use of federal contracting as that kind of tool. But, it has been noted that procurement system has an, as yet, unmeasured level of degradation due to the impact of these programs. [2] Degradation includes increases in costs, which are measured in terms of time, dollars and quality. (Perhaps those additional costs, whatever they may be, are well spent; but again, we are getting away from the point which is, sometimes certain defense procurements may not be able to absorb any degree of degradation.)

F. FIXED PRICE CONTRACTING.

The purpose of this brief discussion of fixed price contracting is simply to point out that, for certain types of even relatively low cost Engineering/Professional Services, fixed-price contracting may not be the method by which the best product is received. DAR 3-401 (a)(1) states in part "When the

risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred." Firm Fixed-Price level of effort term contract description found in DAR 3-404.7 states that:

> "The...contract describes the scope of work in general terms, usually calling for investigation or study in a specific research and development area. It obligates the contractor to devote a specified level of effort over a stated period of time for a fixed dollar amount. Normally the contract requires submission by the contractor of reports which show the results achieved through application of the required level of effort; however, payment is based on effort expended rather than results achieved. This kind of contract can be a useful tool, particularly in the Research and Exploratory Development categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance."

The above DAR citation also states that the contract price cannot exceed $100,000 without specific approval.

If the work cannot be clearly defined and if the scope is written in general terms, it is difficult to conceptualize how a desired level of effort can be identified and agreed upon in advance of performance when the purpose of the effort is to solve a problem. Furthermore, since payment is based upon effort expended rather than results achieved, it may be less costly to the Goverment to use a cost-reimbursement contract of the fixed-fee completion type. The rationale is that although it is possible that a fixed-price level of effort contract may appear to be less costly initially, if the desired results aren't achieved, either recontracting, modifying the existing contract or taking a calculated risk and foregoing the completed study may all be more costly than using a cost type contract.

One main advantage of the CPFF completion type contract for Engineering/Professional Services in which an objective must be met is that, per DAR 3-405.6 (d)(1) "in the event the work cannot be completed within the estimated cost, the Government can elect to require more work and effort from the contractor without increase in fee provided it increases the estimated cost."

G. SUMMARY.

This chapter hypothesizes that the current structure of the procurement system, with its emphasis upon competition, socioeconomic factors and fixed price contracts, is not adapted to satisfying nonstandard requirements for Engineering/Professional Services. Due to the lack of an adequate data base, it was not possible for this research to identify the number of yearly actions that fall into the nonstandard category.

If special acquisition methods were developed and made applicable only to that class of requirements which are not adequately accommodated by the present procurement system, a significant problem would be solved. As can be deduced from the example, it would be necessary for that class of requirements to be treated somewhat differently from standard requirements which are compatible with the DOD procurement system.

CHAPTER III

CONTRACTUAL SOLUTIONS

A. INTRODUCTION.

As explained in the previous chapter, trying to contract for nonstandard requirements using methods developed for standard requirements causes problems. Technical personnel, primarily within R & D organizations, view this system deficiency as the inability of procurement personnel to quickly respond to mission requirements.

This chapter is intended to explain existing or emerging techniques which may be appropriate for quick reaction contractual coverage for nonstandard requirements. The techniques include the following:

1. Task Order (T.O.) Contracts
2. Time and Material (T&M)/Labor Hour (LH) Contracts
3. Basic Ordering Agreements (BOA)/Multiple BOA's
4. Letter Contracts
5. Quick Reaction Work Order (QRWO) Contracts

The purpose of this chapter is to analyze the characteristics of these methods and provide general guidance for their application to various contracting situations. However, it is necessary to be aware of the present operational status within DARCOM of the various methods. Task order contracts are not explicitly provided for in the DAR, although they have been in use for a number of years. The Multiple BOA method is about to be used on a limited test basis. New Concept BOA's and QRWO's have not been used and cannot be used unless regulatory changes are made.

It is with the expectation that DARCOM will act to implement the contractual alternatives described herein that this analysis is presented. If these specific alternatives are not adopted, it is hoped that the descriptions and analyses will be used as a basis for development of other methods which would fulfill the needs noted

in Chapter II. The reader who is knowledgeable in procurement matters must keep an open mind because current regulations (particularly local regulations) may impede implementation of the methods discussed. It is important to recognize that if the needs of the procurement system change, the regulations that may block need fulfillment must change. DOD Directive 5000.35, paragraph D.1.a supports this by stating in part, "The DARS shall be managed as a system of integrated coordinated policies and regulations, responsive to the needs of the Department of Defense..." [3]

It should be noted that these methods are not intended to circumvent valid regulatory reguirements that are consistent with good business practices and the needs of DOD. For that reason the use of expedited methods for requirements that were defined as standard requirements in Chapter II shall not be permitted. To reiterate, standard requirements are those needs that could be satisfied through existing contracting methods without significantly impacting mission accomplishment.

B. ALTERNATIVE METHOD CONSIDERATIONS.

The aspects that follow are general in nature and applicable to all the alternative methods to be discussed.

1. Criteria for Use.

As noted, these methods are intended for use only in situations where normal existing procedures would not suffice. Therefore, task placement through exceptional methods should require that the technical need could not be adequately satisfied through normal contracting procedures. Additionally, the value of the order should be small [4]; the length of the effort should not exceed six months; the work must be urgent but the urgency should be beyond the control of the requiring activity; and in-house personnel and/or facilities are not able to fulfill the requirement.

2. Contractual Vehicle.

With the exception of Time and Material, Labor Hour and Letter Contracts, which receive minimum treatment, the methods described contemplate the existence of a contract or BOA on which individual orders can be placed. None of the proposed methods would allow an individual requirement to be placed by any quick reaction procedure unless a prepositioned contractual vehicle existed. Since this vehicle must be in existence prior to any orders being placed [5], it is necessary to project future needs before a choice of the best contractual vehicle can be made. The basic contract or BOA must be structured to fulfill unanticipated needs that may or will occur in a specific support area. The support area must be somewhat defined. This is necessary to add some specificity to the proposed scope and to have a technical basis upon which to evaluate potential contractors.

A support area can provide for a laboratory, an element within a laboratory, a project manager's office or any other requiring activity that anticipates recurring nonstandard (defined in Chapter II) requirements. It should be the responsibility of the technical elements [6] to alert their cognizant procurement office, on a continuing basis, of the areas [7] in which they may require quick reaction contracting. This information would include expected nature of tasks, estimated number and dollar value of tasks, urgency, potential for competition, potential for small business participation or small business set-asides, etc. Essentially, this information would be predictions of general anticipated needs. These predictions should not be concerned with every imaginable possibility, but only those general requirements which can be reasonably expected. Because the procurement office uses this information to determine support areas and develop appropriate contractual vehicles it would be an unnecessary waste of resources to develop a number of these vehicles for support needs that are unlikely to occur. The defined support areas (which will be stated in the applicable SOW's) should not

be so general as to encompass everything, but, while remaining somewhat general, they should have a degree of specificity. Prior to the considerations of any alternative methods, the probable quick reaction contracting needs of the requiring activities serviced by a particular procurement office must be examined. It is not necessary to have different contractual vehicles for the different requiring activities if related support areas can be consolidated to allow one contractual vehicle (or sets of vehicles as in the case of Multiple BOA's or QRWO's) to serve the needs of more than one requiring activity. Once the needs of the requiring activity have been defined, the procurement office can then determine the best alternative method for satisfying those needs.

C. ALTERNATIVE METHODS OF CONTRACTING.

1. Time and Material and Labor Hour Contracts.

As DAR 3-406.1 states, the T&M type contract provides for the procurement of supplies and/or services on the basis of direct labor hours at specific fixed hourly rates (which include wages, overhead, general and administrative expense and profit) and material at cost, and when appropriate, material handling cost. [8] A Labor Hour contract is simply a T&M contract under which the contractor does not supply materials. [9]

Additionally, a T&M pricing arrangement can be incorporated into a task order contract. However, these contracts are the least preferred of all types since the contractor has no incentive to manage his labor force effectively. They are normally more appropriate for acquisitions with less technological complexity than those being discussed. For those reasons, no further attention will be focused on them.

2. Letter Contracts.

DAR 3-408(a) defines a letter contract as a written preliminary contractual instrument which authorizes immediate commencement of work. A letter contract is

meant to be an exception. [10] Letter contracts should not be used repetitively when expeditious contract placement is desired. It is plausible that in rare situations (such as when the interests of national defense are at stake) a letter contract could be the best option when contracting for unanticipated Engineering/Professional Services. It is only for that reason that letter contracts have been included in this section.

3. Task Order Contracts.

a. General.

During preliminary research on this project it became apparent that certain classes of requirements for Engineering/Professional Services could not be adequately satisfied through existing acquisition mechanisms. A classic, yet somewhat dramatic, example of one of those requirements is the gas mask air filter example found in Chapter II. The most salient features of that class of requirements include:

- o An urgent need for performance
- o A requirement that cannot be satisfied in-house
- o A specific requirement that is unanticipated
- o A relatively short period of performance
- o Relatively low dollar value
- o More than one source is available (but urgency constraints deem unrestricted competition impractical)

At first glance, it would appear that letter contracts may be appropriate, but, as stated earlier, they are meant to be exceptions and are not encouraged except in the most unusual circumstances. Additionally, letter contracts shall not be entered into without competition when competition is practicable. [11]

An unpriced order could be expeditiously placed against a BOA in a sole source situation but a BOA would have to be in place. Additionally, since

regulations state the BOA shall not be used in any manner to restrict competition [12], it might be difficult to justify noncompetitive procurement on the grounds that a firm has an existing BOA and an order can be placed quickly. However, if routine contracting procedures were to be utilized, the urgent need for performance would probably not be met.

Task order contracting evolved as a procurement method to fulfill quick reaction contracting needs. This research was not able to pinpoint the circumstances under which the task order contract was created but it is now in use at most MSC's, particularly those with a research and development mission. It is very important to note that DAR, ADARS, and the DARCOM PI do not specifically mention task order contracts. Since task order contracting methods are not prescribed, different MSC's have dealt with implementation in varying ways.

The only regulatory argument for the existence of task order contracts states,

> "Pursuant to the Authority of 10 U.S.C. 2306, a contract negotiated under this Section III may be of any type or combination of types described herein which will promote the best interests of the Government subject to the restrictions described below. Types of contracts not described herein shall not be used unless pursuant to a deviation under 1-109." [13]

A valid question must be raised. Is a task order contract a combination of types of contracts described in DAR Section III or is a deviation required for its use? However, it is beyond the scope of this research to answer that question. It may not even be possible to answer without more specific details of the mechanisms of task order contracts. But the specifics vary because the number of combinations that encompass the generic term task order contract is very large. Nonetheless, it has been noted that most task order contracts have a number of common characteristics.

b. Characteristics.

A task order contract is defined as a contract which establishes a relationship between the Government and a contractor for the purpose of acquiring an amount of effort for a specific period of time. A level of effort term-type contract more aptly describes the basic task order contract.

The amount of effort is usually stipulated in terms of direct hours either in various categories of labor or as a composite of those labor categories. A task order contract can be awarded either competitively or noncompetitively. The SOW describes an effort to be performed (in general terms) but does not include specific duties or work to be performed. After the contract is awarded, the individual task orders detail the work to be performed and when, where and how the effort is to be delivered. Individual task orders are then placed against the task order contract without further competition.

Subject to normal regulatory limitations any authorized contract pricing arrangements can be used. However, when applying award or incentive fee techniques, particular care must be taken to assure that those techniques are not counter-productive. For example, a contract may provide an incentive to control costs. If the objective of the contract is an investigative study, too much emphasis on cost reduction by the contractor to increase his fee might impact the quality of the study.

Task order contracts reviewed combine some or all of the characteristics of the following contractual arrangements:

- o Basic Ordering Agreements
- o CPFF (Level of Effort)
- o T&M (Labor Hour)
- o Indefinite Delivery Contracts

Because the contract types have differing applications and limitations, it is very difficult to delineate the proper (and reasonable)

requirements which would apply to task order contracts. [14] MSC's use them in varying ways and even within the individual MSC's, different contracting officers have their own procedures and methods.

Even differing mechanisms are used to place the actual task orders. Among those presently in use are:

- o Contract Modifications
- o Letters from Contracting Officers
- o Letters from Contracting Officers' Technical Representatives
- o DD Form 1155

The task orders are either bilateral or unilateral. Price (cost) is either Government estimated, negotiated with contractors, or simply based upon contractor estimates. In sum, there is no meaningful guidance provided by DARCOM. In those cases where guidance exists it is provided locally.

c. Applicability of Task Order Contracts.

Even though serious questions have been raised about the use of task order contracting, there is, nonetheless, a place for that method. Even when more appropriate contracting methods for nonstandard requirements are developed and sanctioned for use, the task order method will still have a role. The suggestions that follow, which would limit the use of task order contracts, should not become policy until alternate methods are in place. To severely restrict the use of the task order method at this time would further impede the responsiveness of the procurement system.

Task order contracting is beneficial when a series of essentially repetitive tasks may be required. The type of funds, negotiation authority and the Contracting Officer's Representative ((COR) if required) should remain the same for all tasks.

An excellent example of task order method applicability would be for anticipated, intermittent requirements to test various materials to discover their

level of resistance to chemical agents. This would be an essentially repetitive requirement with the significant variable being the material to be tested. During a specific period of time it would be known that various materials must be tested, but the specific materials would not be identified until the exact need becomes known. Once the need becomes known, expeditious testing must take place. The contractor would essentially be providing the same service for each task.

In relation to initial competition for the contract, the scope must be very narrow so it can be assured that the contractor selected as the most qualified to perform the work is, in fact, the most qualified [15] for the particular task. If a broad scope is necessary, perhaps a two-tier competitive method such as Multiple BOA's or QRWO's should be used. Additionally, the term of the contract should be limited [16] because personnel changes with the incumbent contractor and/or the entrance of a new firm into the field could mean that the Government's needs may be better met with a different contractor. Of course, the administrative expense along with other factors must be considered when deciding upon a term for the contract.

4. Basic Ordering Agreements.

a. General.

A BOA, as described in DAR 3-410.2, is not a contract; rather it is an agreement to furnish specific types of supplies and/or services when ordered by the Government. Because it is not a contract, the parties are under no obligation to each other. Only with the issuance of delivery orders are contractual obligations incurred. Authorized ordering activities issue individual delivery orders which, as in the case of task orders, specify the work to be performed and when, where and how the effort is to be delivered. Orders under BOA's are adaptable to any contract type authorized by DAR. [17]

Presently, aside from a multiple BOA concept (discussed below) a BOA is not an authorized method to procure quick reaction Engineering/Professional

Services unless the contractor with whom the BOA is placed is the only source that can provide the specified supplies and/or services. This is due to regulatory controls restricting placement of noncompetitive delivery orders. However, if rigidity in the noncompetitive controls were removed, a new concept in the use of BOA's could be implemented.

b. Multiple Basic Ordering Agreements.

The multiple BOA concept utilizes a two-tier competitive system. First, there is competition for placement of the BOA's and then secondly, there is competition among BOA holders for particular tasks. Rather than restricting task competition to a limited number of offerors, this concept actually enhances competition if properly applied. This enhancement of competition has been recognized by the Comptroller General. Use of a multiple BOA type method for pre-qualifying firms to compete for requirements for studies, research and evaluation in situations where exigency would demand a sole source award has been supported by GAO. [18] It should be noted that the above case did not involve DOD but a civilian agency, the Department of Health, Education and Welfare.

(1) DOD Version.

Although the Comptroller General has termed the Multiple BOA concept "not legally objectionable" under certain circumstances, it appears that DAR coverage would make it difficult for DOD purchasing activities to utilize the Multiple BOA concept to its full potential. [19] Nonetheless, the Defense System Management College (DSMC), as the user, in conjunction with Defense System Supply, Washington (DSSW), as the purchasing office, seems to have developed and successfully field tested a multiple BOA concept within DOD. See Appendix B. An overview of their procedure follows.

(a) The requiring activity determines the support areas in which quick reactions support will most likely be needed during the next few years. Then,

in accordance with DAR 1-1003.9(f) a "sources sought" type synopsis is placed in the Commerce Business Daily. The synopsis requires contractors to furnish qualification statements for the support areas in which they wish to be considered.

(b) The user then evaluates all qualification statements received based upon previously established criteria. All contractors deemed to be in the competitive range enter into BOA's with the Government. It should be noted that each support area has its own competitive range which is determined solely by technical and managerial factors. Cost is not considered at this time. [20]

(c) Once the BOA's are in place, competitive delivery orders can be awarded. The steps involved in competitive delivery order placement are as follows:

1) A Request for Quotation (RFQ) is issued to each contractor who holds a BOA for that support area. The RFQ states the proposed length of the effort, scope of work, background and objectives. It also specifies the requirements for data and/or other deliverables. A schedule for performance is also provided. Additionally, the evaluation factors for award are listed.

2) The contractor must expeditiously submit a proposal, the technical part of which is limited to between 5 and 10 pages. The technical proposal basically addresses understanding of requirements, technical approach, schedules, staffing requirements (with resumes of key personnel) and travel and material needs. The cost part of the proposal is relatively simple.

3) The user (DSMC) evaluates the technical proposal. The purchasing office (DSSW) evaluates the cost portion and combines the result of the cost and technical evaluations. Negotiations are conducted when required. A bilateral delivery order is then placed with the successful contractor. [21]

The technical evaluation of the contractor's proposal is based solely on his responses to the RFQ. Technical evaluation factors vary from

task to task as does the technical to cost ratio. These BOA's are set up to allow placement of CPFF and CPAF delivery orders. If circumstances warrant, the BOA's can provide for other types of contractual arrangements.

The first time DSSW used this procedure it took 7 months to place 11 BOA's from 33 responding firms. Of the 11 successful firms, 9 were small businesses. There were 5 support areas and each area had between 3 and 6 qualified contractors. Some firms were qualified in more that 1 support area. Due to learning curve considerations the second BOA placement took about 4 months. The BOA's are written for a period of 1 year and are renewable, at the option of the Government, for 3 additional 1-year periods. However, DSMC had chosen to recompete the BOA's after 2 years to both allow other contractors who have acquired the requisite skills to participate and to prune those contractors who may have lost some skills.

The average time for placing a task order has been 84 days; however, it is decreasing. DSMC believes that the award of one competitive task order in 37 days shows the potential of the Multiple BOA concept. [22]

(2) Civilian Agency Version.

Salient features of the Department of Health, Education and Welfare (HEW) procedure were:

(a) The number of firms with which HEW would enter into BOA type agreements was not limited. HEW would enter into BOA's with all firms deemed to be in the competitive range.

(b) Use of this procedure was limited to an area where, in all likelihood, award on a sole source basis would otherwise be made.

Based upon the above, the Comptroller General stated "In this context HEW's prequalification procedure which will assure a source of competent offerors from whom proposals can be elicited in a short time frame should in fact

enhance competition. For this reason we agree with HEW's view that its proposed use of a BOA type procedure in a situation where it might otherwise make award on a sole source basis is not legally objectionable." [23]

Although one would assume that the above method, sanctioned for use in a civilian agency, would be adaptable for use within DOD, there may be some impediments. DAR 3-410 may present a problem if interpreted too narrowly. The cited paragraph states in part "...nor shall the agreements (BOA's) be used in any manner to restrict competition." If the procedure was being used to enhance competition as stated in the above Comptroller General opinion, the preceeding DAR citation would not be a problem. However, a minor impediment to DOD implementation of a multiple BOA concept exists in DAR, which states that unless it is impracticable to obtain competition, "... the choice of firms to be solicited shall be made in accordance with normal procedures without regard to which firms hold basic ordering agreements; firms not holding a basic ordering agreement shall not be precluded by the solicitation from proposing or quoting; and the existence of a basic ordering agreement shall not be a consideration in source selection." [24]

c. New Concept Basic Ordering Agreements.

Adoption of a new concept in BOA usage has been proposed. [25] Because this concept requires a change in DAR as well as a change in thinking, it is unlikely that this specific method is currently used. It is submitted that this method, in most instances, would be more responsive to the acquisition of Engineering/Professional Services than task order contracting. However, they are similar since both task order contracts and New Concept BOA's have a SOW that describes an effort to be performed in general terms. Both methods require that orders be issues which specify the work to be performed and when, where and how the effort is to be delivered. Individual orders are placed noncompetitively without the necessity of noncompetitive determinations. [26]

The intent of the proposed new concept is to place a BOA through competitive procedures, then award noncompetitive orders. The salient features of this proposed method are:

(1) A determination by requiring activities that defines the general areas in which quick reaction support will most likely be required.

(2) A technical and price competition based on categories and qualifications of labor, and the labor mix costs would be used to select a contractor for each general area in which the quick reaction support will be needed. As requirements occur they are placed noncompetitively with the selected contractor.

(3) The BOA would normally not exceed a one-year period and could accommodate fixed-price or cost-reimbursable type orders.

(4) Orders would normally be bilateral; however, provisions can be made for unilateral and unpriced orders if deemed necessary.

(5) There would be a ceiling on the number of orders and/or the total dollar value of the BOA. The ceiling would limit the use of the BOA as a catchall and not present the BOA as an open-ended contractual instrument.

d. Application of BOA.

(1) Multiple BOA.

In many cases, the Multiple BOA method would prove to be an excellent tool. BOA's lend themselves to situations in which requirements cannot be anticipated with any realistic degree of accuracy. Since a BOA is not a contract, the Government does not assume any obligation until an order is actually placed. If none of the predicted requirements materialize, the Government has assumed no obligation. If requirements do materialize, the advantages of separate delivery orders become apparent. Different orders can cite different negotiation authorities, different funding (which is kept separate from order to order) different periods of performance and different COR's. The two-tier competitive

feature would allow SOW's that are more broad than those suited to task order contracts. Competition for individual orders (unlike the noncompetitive placement of tasks on task order contracts) should assure that each order is performed by the contractor who can do the best job on that particular order.

The streamlined competitive process for order placement gives the Goverment the benefits of competition while minimizing the procurement leadtime. It is anticipated that the average time for task placement will be approximately 60 days and requirements placed through this method must be capable of absorbing that 60 day leadtime. Additionally, when contemplating the Multiple BOA method one must consider the amount of administrative work associated with preparing and negotiating a number of BOA's. Setting up this procedure requires quite a bit of administrative effort and the anticipated usage should justify the effort involved. Also the term of the BOA's should be at least one year but no more than two years. In cases where the expected number of orders is very low but the other conditions which justify the use of this procedure are present it may be in the Government's best interest to utilize the New Concept BOA method, the subject of the next section.

(2) New Concept BOA's.

New Concept BOA's and Multiple BOA's are very similar. The main difference is that after the initial competition for New Concept BOA placement, only one contractor is chosen for a support area. Instead of competition for individual orders, orders are placed noncompetitively. Because of this absence of competition, the basic scope must be narrower to assure that the selected contractor is likely the best for all tasks that materialize. If unpriced orders are authorized, the procurement leadtime can be less than one week.

A close examination of the BOA provisions of DAR (DAR 3-410) leads one to surmise that BOA's were originally intended to be a method to purchase spare

parts or services from a contractor who was the developer or producer of a specific system. Current regulations impede BOA usage for requirements that deviate from those original intentions. These regulations are obviously an attempt to curb misuse. If a BOA is placed competitively and it is contemplated at the outset that the BOA will have limited use, [27] the New Concept BOA method could prove to be a valuable tool. When the anticipated number of orders are minimal, of short duration and low cost, this method is likely to be more efficient and less administratively burdensome than Multiple BOA's. Although important in all the methods discussed in this section, meeting the order placement criteria suggested earlier is especially important with this method. A requirement that could fit within a New Concept BOA should only be placed by this method if the potential order cannot be placed in any other competitive manner to meet the Government's needs. With the institution of proper controls to protect abuse, the New Concept BOA's have valuable potential.

5. Quick Reaction Work Order Contracts.

a. General.

The QRWO Contract was developed by the Department of Energy to cope with very short procurement leadtime situations. It should be noted that the QRWO method is not presently authorized in DOD. The DOE Contract Specialist's Guide give a brief overview of the system.

> "The DOE QRWO Procurement System is a special contracting method for acquiring off-site program/mission support in situations in which the requirement meets predetermined criteria in order to respond to needs that arise with little or no notice. Master QRWO contracts are awarded as the result of a competitive solicitation to an appropriate number of contractors who are found to be capable of performing orders within one or more of the areas of work. As specific requirements arise that fall within a definition of a work order and are within the scope of the Master Contracts, proposals are generally solicited from at least three QRWO contractors. After receipt, proposals are evaluated, negotiations are conducted, if necessary, and the work order is awarded to the selected

> contractor in the form of a modification to that contractor's master QRWO contract. Work orders are subject to the terms and conditions of the Master Contract. A work order is a discrete item of work which is closed out upon delivery and acceptance of the end product or deliverable and subsequent final payment. Each work order stands alone." [28]

To some degree this is a limited competition procedure similar to Multiple BOA's. The Comptroller General made the following observations.

> "This type of contracting (QRWO) tends to limit competition for work in certain areas to a relatively small number of contractors for a long period of time. A quick-reaction work order master contract contains a general statement of work. Similar master contracts are awarded to a number of firms. Specific work orders (for some type of end item, rather than for staff days, as in task order contracts) are formulated by program personnel, and proposals are solicited from at least three of the firms holding master contracts. The proposals submitted are evaluated and the work order is awarded to the best offeror, price and other factors considered. Department officials (DOE) informed us that these contracts are used only for work orders of great urgency which cost $250,000 or less and require performance periods of six months or less." [29]

DOE policy states that the QRWO procurement system is neither meant as a substitute for the normal procurement process nor is it intended as a mere procurement expedient. It is a system intended to both enhance competition and efficiency in certain kinds of requirements in which the probabilities of inefficiencies of performance or sole source procurement are high, and the need of the Department, from a program perspective, is urgent.

b. Contractual Procedures.

(1) Award of QRWO.

As stated above, DOE did not intend the QRWO system to be a substitute for the normal procurement process. Therefore, all the following circumstances must exist before a QRWO procurement can be considered.

(a) The individual orders must be for $250,000 or less and the effort should be less than six months duration.

(b) The individual orders must fall into specific areas of work identified in the Master Contracts and result in discrete end item deliverables.

(c) Each individual work order action must be urgent; yet the cause of the urgency must be beyond the control of the requesting activity.

Master QRWO RFP's are dealt with in a manner similar to regular procurements. A contemplated SOW and the areas or categories of work are listed. Contractors may propose on one or more of the areas or categories of work contemplated. Each selected contractor is awarded two master contracts, one for FFP acquisitions and one for CPFF acquisitions. The contracts each carry a minimum that the Government is obligated to award. Usually this is $2,500. Provisions in the Master QRWO contracts include the following: [30]

1) Term of the Master Contract and option terms

2) A ceiling on indirect cost to be charged to the Government on individual QRWO's

3) Ceilings on profit or fee percentages which may be proposed on individual QRWO's

4) Ceiling value on cumulative awards placed under the Master Contract.

5) A provision authorizing the contracting officer to direct a QRWO Contractor to start work under a QRWO at a cost or price determined by the contracting officer in cases in which the parties are unable to negotiate a price or cost. This authority is subject to the contractor's rights under the Disputes clause of the Master Contract.

(2) QRWO Placement.

The program office recommends a number of contractors to be solicited from those that hold Master Contracts. The contracting officer can add to the source list recommended by the program office; however, the added sources must have Master QRWO Contracts.

Award of the order is usually made on the basis of lowest price or cost of the acceptable proposals and other factors such as time or delivery or performance. Where technical proposals are to be comparatively evaluated, the evaluation criteria must be stated in the individual QRWO solicitation. When appropriate, noncompetitive QRWO procurements are permitted and they must be fully justified. DOE requires the same legal, technical and administrative reviews and approvals of QRWO's commensurate with regulations applicable to the type of contract used, scope of work and contemplated value.

c. Application of Quick Reaction Work Order System.

The QRWO system would be applicable to most situations that demand expeditious contracting for urgent requirements. If properly structured for DARCOM use, this system should provide the long term solution necessary to provide a flexible contracting method for acquisition of Engineering/Professional Services.

This system has all the advantages of Multiple BOA's plus the following:

(1) Since a BOA is not a contract, a BOA holder has no obligation to provide a bona fide offer when solicited for a specific task. However, a Master Contract awarded through the QRWO procedure requires a contractor to submit timely bona fide offers when solicited.

(2) Of the firms holding Master Contracts in a particular support area the requiring activity recommends soliciting those best qualified to perform a particular task. Not every contractor is solicited for every task. The advantages of this procedure includes minimizing administration and incentivizing contractors to perform well lest they be excluded from future solicitation requests.

(3) Chapter IV, paragraph C.2.b., which discusses a conceptual framework for DAROCM adaptation of the QRWO, should be of interest to those requiring further examiniation of this method.

D. PREQUALIFICATION.

The preceding discussion revealed that the Comptroller General (CG) has supported the use of prequalification in the use of the contractual alternatives covered in this chapter. Additionally, competition is a feature of most of the quick reaction methods. Nevertheless, the CG views prequalification as a derogation of the principle of seeking the maximum competition consistent with the requirement (54 Comptroller General 606, 41 USC 253). For this reason both technical and procurement personnel should be aware of the following prequalification principles which have evolved from a study of CG decisions.

1. It must serve a valid purpose, not mere administrative expedience.

2. A detailed procedure governing the system must be developed prior to implementation.

3. If the system is used as the normal procurement system, as opposed to being utilized only in certain situations such as urgency, the qualification procedure must remain open.

4. If the qualification determination considers responsibility factors, a negative determination on a small business must be referred to SBA.

5. Pursuant to 15 USC 637 (e), the individual procurements must be synopsized because a BOA is not a contract (60 Comp. Gen. 104) and therefore an order placed thereunder does not qualify for the exception that orders placed on existing contracts need not be synopsized.

6. All qualified offerors and/or firms in the competitive range must be awarded BOA's. Also the maximum feasible number of offerors having a BOA shall be solicited on the individual procurements.

E. CONCLUSIONS.

The previously described solutions to the apparent weakness in the procurement system all have a degree of commonality. Although carrying different names, QRWO's

are very much like Multiple BOA's and New Concept BOA's resemble task order contracts. Under the QRWO/Multiple BOA procedures, competition is used to preselect or prequalify a group of contractors that will later compete only against each other for specific work assignments. With the task order contract/New Concept BOA procedures, competition (generally) is used to select a contractor and thereafter for a fixed period of time, all orders falling within certain parameters [31] are placed with the selected contractor. Used judiciously the procedures provide flexibility and responsiveness to what is often perceived as an unresponsive, rigid procurement system. These methods place primary emphasis upon the use of the acquisition system to satisfy special technical needs in a businesslike manner.

The alternatives addressed in this chapter have the potential to fill an identified void in DOD procurement procedures; that is, quick reaction (contract placement) for truly urgent R & D needs. Used judiciously, the methods appear to provide the flexibility and responsiveness to what is often perceived as an unresponsive, rigid procurement system. In the following chapter specific recommendations pertaining to short term and long term implementation are proposed.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION.

The main conclusion of this research is that the procurement system does not provide for the expeditious and orderly acquisition of unanticipated requirements for Engineering/Professional Services. For the most part, those requirements are dealt with in one of the following manners:

1. They are fulfilled through manipulation of the system such as "beefed up" sole source justifications, work added onto existing contracts [32] (as either new work, change orders or simply through unauthorized direction to the contractor) or through any other expeditious, yet generally indefensible means that shortcut some regulatory requirements which are viewed as impediments. [33]

2. Those requirements not placed through manipulative methods (shortcuts) are usually fulfilled through some form of a task order contract. The haphazard development of task order contracts has led to very problem prone solutions to the expeditious contracting need.

3. Generally, those urgent requirements not placed through shortcut methods cannot be fulfilled in a timely manner. Some of the possible consequences of untimeliness are related in the example presented in Chapter II.

It is necessary to develop alternate methods for acquiring nonstandard requirements. All existing laws and regulations would apply as far as the setting up of the alternate methods. However, individual procurement actions that fall within specific criteria would be subject to the special procedures of the selected alternate method. In this way it will be possible to increase the responsiveness of the procurement system yet comply with law and regulation.

It must be noted that research objective 4, which related to funding issues, was not sufficiently relevant to this project. When appropriate acquisition methods are implemented, funding aspects will not be a problem.

B. CONCLUSIONS.

The conclusions of this research, and the reasons for reaching those conclusions, should now be readily apparent. In summation the conclusions are stated below:

1. The rigid structure of the procurement system does not provide a viable means by which urgently needed unanticipated Engineering/Professional Services can be acquired.

2. The use of the procurement system as a policy tool for achieving certain goals contributes to its lack of flexibility. That flexibility is necessary when nonstandard requirements must be met.

3. The task order contracting method, as used up to now, is as much a problem as it is a solution. It not only lends itself to abuse, but it also masks the real problem, lack of responsiveness.

4. The Multiple BOA concept, as presently used by DSMC, shows promise for DARCOM adaptation.

5. Viable alternatives to task order contracting must be developed.

C. RECOMMENDATIONS.

1. Short Term Solutions.

a. Task Order Contracts.

As an interim measure, it is recommended that guidelines for task order contracts be issued by DARCOM. Attached as Appendix A is a task order SOP developed by one of the MSC's. Information identifying the MSC has been removed. This SOP could serve as a model from which DARCOM guidance could be developed.

It is important that the use of task order contracting not be severely limited at this time because of the present lack of alternatives. However, the DARCOM SOP should be revised when other means of quick reaction contracting are in place. At that time, the use of task order contracting should be limited as suggested in paragraph C.3.c. of Chapter III.

b. Multiple Basic Ordering Agreements.

As an additional interim measure it is recommended that information regarding Multiple BOA's be disseminated to the MSC's and if the concept is adaptable to their needs, implementation should be urged. For those readers interested in greater detail on the Multiple BOA procedure, a paper presented at the 1982 Federal Acquisition Research Symposium entitled "Basic Ordering Agreements: An Innovative Acquisition Tool" is attached as Appendix B.

2. Long Term Solutions.

a. New Concept BOA's.

It is recommended that consideration be given to obtaining a DAR deviation to allow for a two-year test of New Concept BOA's. With the potential for shorter procurement leadtimes, this method would be particularly useful for activities which experience many unanticipated requirements and are responsible for some of DARCOM's more critical missions. During this two-year test DARCOM would retain the authority to authorize specific activities to utilize this method.

b. Quick Reaction Work Order System.

Steps should be taken to begin implementation of a DARCOM adaptation of the Department of Energy QRWO system explained in Chapter III. A conceptual framework for DARCOM usage is provided below.

This conceptual framework for a DARCOM wide adaptation of the DOE QRWO System is not meant to provide specific guidance, policy or procedure but merely a foundation upon which they may later be built. The development of any detailed guidance or policy would require a coordinated effort between the DARCOM MSC's and Headquarters.

This concept provides one system for DARCOM wide usage. The system would be responsive to most needs for unanticipated requirements for Engineering/Professional Services. Rather than every MSC developing its own

independent QRWO system, efficiency can best be served by having one DARCOM-wide system. Even though the MSC's purchase different commodities, there is overlap in the area of services. A contractor performing studies on missiles could conceivably provide some required services on larger rounds of ammunition. Additionally, many firms that do business with DOD specialize in multiple areas. Because of overlap and multiple specialization, the number of support areas could be reduced if they were consolidated through use of a single DARCOM system. This consolidation could be accomplished in the following manner:

(1) All DARCOM purchasing offices would query their requiring elements as to the general areas in which quick reaction contractor support would most likely be required during the next few years. The requiring activities should attempt to estimate the number of actions and the average value of the actions that may be needed during a particular period. This can be accomplished through a review of past experiences and future projections.

(2) The support areas noted by the requiring elements (along with estimates of yearly actions and value) would be consolidated by the purchasing office and transmitted to DARCOM Headquarters.

(3) DARCOM would further consolidate the data and ultimately derive the specific support areas needed and estimates of yearly actions.

(4) DARCOM would then appoint an MSC to place the master contracts.

(5) Once all master contracts were awarded, any designated DARCOM purchasing office could place orders. Since each order is separate and can stand alone, the orders could be placed without any further coordination between DARCOM and the purchasing office.

APPENDIX A

STANDING OPERATING PROCEDURES

PROCUREMENT DIRECTORATE

SUBJECT: Task Order Contracts

1. SCOPE: This SOP applies to

2. GENERAL: The task order contract is one in which the statement of work (SOW) describes an effort to be performed in general terms and allows for further definition of the SOW by post award assignment of specific tasks. The basic task order contract contains a specified or estimated level of effort and a specific period of performance. The task assignments specify when, where, and how this effort is to be delivered. The task order contract is most often utilized to obtain RDT&E or engineering services.

3. CONTRACT TYPES:

a. The task order contract may be effected by a composite of contract types. The following combinations may be used:

(1) Cost Plus Fixed Fee Term (DAR 3-405.6(d)(2))/Indefinite Delivery Type Contract (DAR 3-409).

(2) Time and Materials (DAR 3-406.1)/Indefinite Delivery Type Contract (DAR 3-409).

(3) Labor Hour (DAR 3-406.2)/Indefinite Delivery Type Contract (DAR 3-409).

The first portion of the composite description expresses the pricing arrangement; the second portion, the delivery arrangement.

b. The following guidance is presented concerning selection of contract type:

(1) Pricing Arrangement:

(a) Cost Plus Fixed Fee (CPFF) (Term): (DAR 3-405.6(d)(2)). This is most often appropriate for R&D services, and may be used after a determination that use is likely to be less costly than use of another type.

(b) Time and Materials: (DAR 3-406.1) This type is used primarily for other than R&D services, and may be used only after a determination that no other contract type will suitably serve. See SOP for further guidance.

(c) Labor Hour: (DAR 3-406.2) Guidance is the same as in (b) above, except used when no materials (or direct charges other than labor) are anticipated.

(2) Delivery Arrangement (Form of Indefinite Delivery):

(a) Definite Quantity (DAR 3-409.1): Definite Quantity (Indefinite Delivery) contracts are fully funded upon contract award unless it is R&D funded which

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may be incrementally funded. The entire level of effort is contracted for, and only the time, place and method of furnishing the effort (specific task order SOW) are indefinite. For this reason, there must be firm assurance that the entire level of effort will be consumed. Task orders (delivery orders) are placed by Form 55X which does not obligate funds. The basic contract must contain the clauses in DAR 7-1102.1.

(b) Requirements: (DAR 3-409.2) Requirements contracts are funded by task order (delivery order). The level of effort set forth in the contract is estimated only; however, the Government is bound to order those requirements that fit the SOW for the particular Procurement Initiator (requesting activity) identified in ordering clause of the contract cited in the SOW. For this reason, caution must be exercised in ensuring that the SOW is insufficiently precise in scope and that the contractor is carefully selected. Task orders (delivery orders) are placed by Form 55X which obligates funds for each task. the basic contract must contain the clauses in DAR 7-1102.2. Also include the optional clause which eliminates in-house work from obligation to contract.

(c) Indefinite Quantity (DAR 3-409.3): Indefinite Quantity contracts are funded by task order (delivery order). The level of effort is estimated only; however, the Government is bound to order a stated minimum quantity (which may not merely be a nominal amount) which is set forth in the contract. Usually, the first funded task order (delivery order) is negotiated and awarded with the basic contract Task orders are placed by Form 55X which obligates funds for each task. The basic contract must contain the clauses in DAR 7-1102.3.

(3) Fixed Price Delivery Orders. None of the foregoing precludes awarding a fixed price indefinite delivery contract with fixed labor rates and negotiating firm fixed price delivery orders thereunder. Such an arrangement may be more appropriate than the pricing arrangements described above for simpler efforts which can be fixed price upon definition of the task.

(4) Procurement Instructions: All task order contracts described above shall carry a "D" in the ninth position of the basic PIIN and shall utilize Form 55X for ordering. If no funds are obligated on the basic award, an SF 26 may be used as the award document in lieu of the automated SMUAP Form 67.

(5) Identification of Contract Type: The specific composite type proposed/ negotiated shall be clearly stated in the solicitation/contract. For example:

"Type of Contract: A cost plus fixed fee term form/definite quantity contract is contemplated pursuant to DAR 3-405.6(d)(2) and DAR 3-409.1. This form of contract obligates the contractor to devote a specified level of effort for a stated period of time as required by delivery orders placed hereunder...etc." The Definite Quantity contracted for will be set forth in the schedule of the contract.

When the CPFF contract is combined with a Definite Quantity (Indefinite Delivery) (DAR 3-409.1), fixed fee is negotiated and obligated on the basic contract. A portion of that fixed fee is assigned to each delivery order. When the CPFF contract

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is combined with a requirements (DAR 3-409.2) or Indefinite Quantity (DAR 3-409.3) contract, fee is negotiated and obligated by each delivery order.

4. CONDITIONS FOR USE: Task order contracts may be appropriate to support an in-house effort with disciplines and capabilities not available in-house. They may also be appropriate to support several programs or laboratory/PM activities which require similar services that are not available in-house. However, the following restrictions apply:

a. Firm Requirements: The Government must have reasonable assurance that anticipated tasks will materialize. The task order contract shall not be used for uncertain eventualities. Further, it is appropriate only when the general nature of the tasks (such as model or prototype fabrication) is known but the specific details of the anticipated tasks are yet to be defined. Use of the definite quantity type of indefinite delivery contract requires a high assurance that the entire level of effort will materialize; use of the requirements or indefinite quantity types requires less certainty of the precise level of effort to be consumed.

b. Prohibitions on use of Task Type Contracts: Task order contracts shall be solicited only when more than one individual task of a similar nature which cannot be well defined at contract on-set is required and anticipated. The task order contract shall not be used to defer definition of a single major effort, nor merely as a device to avoid the need for preparation of detailed individual Statements of Work. Neither shall task order contracts be used to accomplish all of the "goals" or "milestones" within an exploratory, advanced or engineering development program. Task Order Definitive Quantity Contracts shall not be used solely to obligate expiring funds at year's end for uncertain task requirements or to fund next year's requests with prior year funds.

c. Subcontracting: Statement of Work (SOW) for task order contracts shall be such that more than one contractor (except in the case of valid sole source requirements) will be able to compete for the effort and perform the anticipated tasks; task order contracts shall be neither a substitute for in-house program or item management, nor shall they be used to circumvent conventioanl procurement procedures. Minimum subcontracting efforts shall be contemplated for Time and Material and Labor Hour Contracting and such contracting requires prior approval of the contracting officers.

d. Period of Performance is to be commensurate with the program mission and subject to the "bona fide" needs principle applicable to all Government contracts. Severable efforts of work shall be limited to yearly contracts.

e. Small Business Participation: Task order SOW's shall be prepared in such a manner as to permit maximum feasible participation by small business firms.

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5. FUNDING:

a. Method of Funding: Definite Quantity (Indefinite Delivery) contracts are funded "up front" (or incrementally funded in the case of R&D funded effort.) Requirements and Indefinite Quantity contracts are funded by task order (delivery order). PAA and O&MA monies may not be incrementally funded; therefore, if the Definite Quantity type is chosen for this type of money, all funding must be obligated with the basic contract. Placement of separate orders under requirements and Indefinite Quantity contracts do not constitute incremental funding; however, each individual task must be fully funded if PAA or O&MA monies are used.

b. Appropriateness of Funding: Contracting Officers shall ensure that the type of funding applied to a task order contract is appropriate vis a vis the authority used to negotiate the contract. For example, O&MA funding shall not be used to fund a task under an R&D contract negotiated under 10 USC 2304(a)(11).

c. Control of Funding: Task order contracts shall include a provision requiring the contractor to segregate, voucher and account for costs separately for each assigned task. Further, each task order shall specifically cite the supporting PRON No.

6. SOLICITATION REQUIREMENTS:

a. Sample or Actual Tasks: Solicitations for actions in which a technical merit rating is to be determined (primarily CPFF R&D actions) shall include one or more sample or actual proposed tasks, which shall encompass the range of technical capabilities required. Quoters will be required by Section L to include a technical discussion and cost quotation of this task or tasks in their proposal. Section M shall indicate that response to the task shall be evaluated as part of the technical approach (or appropriate subfactors) and cost. In order to preclude bestowing a competition advantage on previous contractors, sample tasks used shall not be tasks that have been performed on previous contracts.

b. Level-of-Effort, Material & Travel Requirements. Solicitation shall state the level-of-effort desired/estimated by general category and/or technological discipline, e.g., senior engineer, engineer, engineering technician, draftsman, model maker. In cases where minimum (special) standards or responsibility are used (primarily T&M/labor hour non-R&D efforts), experience/educational requirements shall be developed for each category. Solicitations shall also contain an estimate of materials and travel to be used in proposal preparation. Level-of-effort and material and travel estimates shall be set forth in the discussion of cost quotation preparation set forth in Section L. Special standards of responsibility shall not be so structured or strict as to deny effective competition.

c. Geographical Restriction: Solicitation shall not be limited geographically unless it can be clearly demonstrated that proximity is essential and that the geographical restriction will not preclude adequate competition.

d. SOW: The SOW shall specifically indicate that tasks can only be issued by the Contracting Officer by delivery order and that no work is to commence without a

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properly issued delivery order.

e. Reporting/Data Requirements: Progress Reports may be periodic (e.g., monthly) or by individual task, as appropriate. Data requirements may be set forth in the basic solicitation/contract, or defined in subsequent task assignments.

7. TASK REQUIREMENTS:

a. Preparation of Tasks:

(1) Individual task assignments shall be prepared by the COR. In no case shall the contractor participate in task order development, preparation or cost estimating. In no case shall the COR or other technical personnel "pre-negotiate" the task order with the contractor. Each proposed task must be clearly within the technical requirements of the statement of work and shall not change any other terms or conditions of the contract such as the level-of-effort, period of performance or costs. While subcontracting by the prime contractor is permitted with the approval of the Contracting Officer in Time & Material and Labor hour contracts, the bulk of the work on any individual task must be performed by the prime unless the prime's initial proposal contemplated and communicated a plan for extraordinary subcontracting. In no case shall a task be issued where it appears that the prime contractor is merely acting as a purchasing office. The type of effort and pricing arrangement of the task shall be in agreement with the basic contract; i.e., requirements which are conducive to fixed price contracting shall not be placed on a CPFF contract, nor shall supplies or non-R&D services be obtained through a contract calling for R&D services. Proposed tasks which do not meet these criteria or which are determined by the Procuring Contracting Officer (PCO) to be outside the scope of the contractual statement of work, will be returned with instructions to submit a Procurement Request for a separate contract,
Whenever there is doubt as to whether a requirement should be satisfied by the execution of a task order under an existing contract, or by the execution of a new contract, the doubt shall be resolved in favor of the latter.

(2) The task order shall be accompanied by the following:

(a) A transmittal DF signed by the COR including a Statement of Applicability which clearly demonstrates that the Task Order falls under the scope of the basic contract. The statement shall specifically relate the Task Order to the corresponding portion of the basic contract Statement of Work (SOW). Further, the statement will demonstrate that the task order fits the circumstances of the negotiation authority used on the basic contract. E.g., when a task is being placed under a basic RDT&E contract negotiated under a Determination and Findings, citing 10 USC 2304(a)(11), the statement of applicability will demonstrate that the task falls within the scope of the Determination and Findings. E.g., when a task is being placed under a basic contract negotiated under a determination & findings citing supplies or services for which it is impracticable to secure competition for formal advertising (10 USC 2304(a)(10)), the statement will demonstrate that the task order carries the same exception. The same requirement also applies to other negotiation authorities (i.e., 10 USC 2304(a)(2)). Further, the DF will contain a

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statement that the Task Order was not developed with the assistance of the contractor and has not been discussed with the contractor.

(b) An IGCE for the task order.

(c) Any required safety, security, surety, or PAD input (see para b below).

(d) DD Form 1423 or 254 if not set forth in basic contract.

(e) Concurrence Sheet

(f) A funding document or identification of the supporting PRON if already obligated.

(g) Personal Services Checklist .

(h) if appropriate Patent Rights Checklist .

b. Coordination of Tasks: The COR shall coordinate individual tasks with all elements required to concur in the basic Procurement Request. Concurring elements shall provide input as appropriate.

c. Review Requirements: All task orders, accompanied by the basic task order contract, shall be submitted for policy and legal review prior to being submitted to the contractor for negotiation (Method 1) or performance (Method 2). All documentation related to the new task order shall be contained in a manila folder placed within the basic contract folder.

d. Negotiation/Assignment of Tasks:

(1) Method 1: Generally, the Contracting Officer shall submit tasks to the contractor for a quotation and negotiations prior to assignment. The Government's estimate of level-of-effort will only be revealed if the task is not sufficiently definitive to permit independent estimate by the contractor (DAR 4-106.2(b)). Within 10 days of receipt of such proposed task order, the Contractor shall submit to the Contracting Officer, in writing, the estimated level-of-effort, material, travel requirements, estimated cost and period of performance or completion date. The Contracting Officer will initiate and conclude negotiations, as necessary, and authorize the Contractor to proceed with the task order by delivery order (Form 55X). The contractor may not exceed the level-of-effort of the task without prior approval of Contracting Officer.

(2) Method 2: Alternatively, in case of urgency, the Contracting Officer may assign tasks by means of an unnegotiated Form 55X which shall authorize the contractor to begin work immediately, subject, however, to his acceptance of the Government's estimated level-of-effort (broken down by labor category and grade), estimated cost and period of performance. If the contractor does not concur in the Government's estimates, negotiation and agreement shall take place before commencement of work. In either case, the Contractor shall provide the Contracting Officer

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with his written acceptance or alternate proposal within five (5) days of receipt of delivery order. A modification to the Form 55X shall be subsequently issued when an alternate estimate is negotiated. This procedure may be used only upon receipt of adequate written justification of urgency from the Procurement Initiator.

(3) Delivery Orders: Contractors' acceptance will be obtained on the reverse of the 55X (DD Form 1155R). All general provisions on the reverse of the form shall be deleted. Delivery orders shall contain estimated level-of-effort by category, labor rates if a T&M or labor hour contract is used, and other estimated costs, and a ceiling amount. Delivery orders under definite quantity contracts shall contain no obligation as the basic contract (or incremental funding modification) carries the funding.

8. CONTRACT ADMINISTRATION: a COR (or COR and alternate) shall be assigned to participate in the administration of each Task Order contract. The same COR shall administer all task orders; customers shall not be permitted to use different COR's on individual tasks. This is essential to ensure unified responsibility for the entire contract. In addition to the normal COR responsibility, the COR on a task order contract shall be required to maintain current and accurate record of tasks assigned, level-of-effort applied and remaining and funding status. The COR shall be required to report necessary adjustments to the level-of-effort as soon as the need becomes apparent. Further the COR shall be required to certify as to task completion.

APPENDIX B

BASIC ORDERING AGREEMENTS: AN INNOVATIVE ACQUISITION TOOL

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ABSTRACT

Within the research community there is a continuing need for research centers such as the Defense Systems Management College to conduct fact finding and analytical studies in an expeditious manner. Frequently, the scope of these studies requires resources and capabilities which are not resident in the research centers. Nevertheless, the urgency and time-sensitive need remain, as well as the need to maintain competition for as long as possible to obtain the benefits for the Government from competition.

The DMSC has approached the problem of being responsive to this need by issuing multiple basic ordering agreements (BOAs) to qualified firms through a competitive process. A BOA sets forth the contract clauses applicable to procurements entered into between the parties during the term of agreement. The formal contract for a specific task order is executed at a later date and incorporates the terms and conditions contained in the BOA. Task orders are competed among those firms qualified in the relevant research areas. The BOA has provided DSMC a powerful acquisition tool to expeditiously award task orders in a competitive environment.

This paper will focus on the mechanics and use of the BOA, observations and conclusion pertaining to the BOA as an effective acquisition management research tool, and the lessons learned. The latter is based on the two years of experience by the DSMC in using the BOA for issuing task orders in its contractual research program.

INTRODUCTION

An important part of the Defense Systems Management College's directed mission is to conduct research or special studies in defense program management and defense systems acquisition management concepts and methods.

The need for acquisition research is more apparent than ever. New basic policy direction, including legislation, and the constant search within the Department of Defense to improve management capability and credibility, mandates the need for a vigorous acquisition research program. Indeed, such a program is necessary to adequately assess the impact of current DOD practices.

Today's acquisition research program at the College has three major thrusts:

- o Correct and refine acquisition procedures on a continuing basis and cope with acquisition problems as they surface;
- o Design the optimum method of giving effect to new acquisition initiatives and policies and expose them to test and evaluation experiences; and
- o Achieve innovative improvements, develop training materials, and participate in research on a DOD-wide and government-wide basis.

Acquisition continues to expand. It daily becomes more complex, resulting in efforts to resolve problems by a patchwork of laws, methods, regulations, procedures and administrative requirements. Old problems remain unresolved as new ones continue to arise. This severely impacts upon the acquisition cycle by lengthening the time required to procure weapons systems; simultaneously, the United States requires that the most modern weapons be available for the nation's defense.

RESEARCH METHODOLOGY

In the latter part of 1978 and early 1979, the DSMC found itself attempting to implement a contractual research program.

The College had had several research efforts accomplished by contractors. These were as a result of unsolicited proposals and adding effort to other research contracts. As the efforts were expanding a contractual instrument that allowed quick response was desired. The College anticipated that $350,000 would be available to fund five projects over the next 12 months and this would expand in later years.

The search for this contractual research vehicle considered such instruments as Task Order Agreements, Indefinite Quantities Contracts, and Basic Ordering Agreements. Each had its pros and cons and allowed for a quick response, but tied DSMC to one contractor for the length of the contract. This consideration was especially critical because it was felt that no one contractor had the full breadth and depth required to fully support the DSMC research effort nor did any one contractor stand above the rest in ability to structure research efforts. DSMC was having to "train" contractors in acquisition issues and research methodologies.

The "research and studies" community is one of continually changing personnel and ideas. People, not companies, maintain the expertise. Companies staff up to accomplish what contracts they have been awarded, rather than maintain a work force based upon steady workload. Moreover, these "research and studies" companies are continually hiring and laying off personnel based upon what expertise is required for the next contractual effort. Recognizing this environment, DSMC and its contracting officers at the Defense Supply Service-Washington (DSS-W) worked on a new contractual instrument, contemplating the most effective means of meeting DSMC's needs. The challenge was to ensure that the College received quality products in an expeditious manner, while enhancing technical and cost competition to the maximum extent possible among potential offerors. The solution proposed was to issue multiple basic ordering agreements.

The "source sought" notice, published in the Aug. 14, 1979, edition of the Commerce Business Daily (see Figure 1) was the first step. It presented a detailed listing of the kind of support required by DSMC, to be obtained through award of task orders pursuant to a BDA. The specific areas of knowledge necessary to accomplish the research projects were delineated. The notice alerted potential respondents to the probable needs for a multidisciplinary team approach to the assigned tasks. Qualification statements were solicited, to be evaluated in the following areas: technical approach, problem perception, technical experience, personnel background, and organizational management.

The notice attracted small and large businesses from around the country. Within 30 days, responses were received from 33 firms. Qualification statements ranged from cover letter stapled to a contractor's standard, all-purpose brochure, to in-depth presentations geared to DSMC's specific areas of concern. All submissions were forwarded to DSMC for evaluation. DSMC technical review ranked the respondents by area of expertise as determined by the evaluation process. Eleven firms, including eight small business concerns, were rated superior and qualified for award of a BDA. Three to six contractors were designated in each of the five research areas, with seven qualifying in more than one area. Figure 2 illustrates the evaluation matrix of the five evaluation areas and five research areas. Debriefings were conducted for five unsuccessful participants, all of whom seemed impressed with the fairness of the operation. On Feb. 29, 1980, DSS-W, after 7 months, delivered the 11 BOAs.

SPECIAL FEATURES OF THE MULTIPLE BASIC ORDERING AGREEMENTS

Task orders issued under the BOA include those areas as listed in the Commerce Business Daily (CBD) announcement, Figure 1. The task orders are either in the form of Cost-Plus-Award-Fee (CPAF) or Cost-Plus-Fixed-Fee (CPFF) contracts. Full and complete criteria for the award fee portion of a CPAF contract are included as follows:

(1) Technical Accuracy

(a) Development of the study data base, including source materials, interviews, surveys and maintenance of a current data base throughout the study effort.

(b) Use of expert consultants, as appropriate, as research sources including, at no cost to the contract, Government personnel.

(c) Logical development of issues related to topic.

(d) Completeness of analyses.

(e) Timeliness of issues.

(f) Credibility of study tools, procedures and techniques.

(2) Technical Innovation

(a) Develops all alternatives with

FACT FINDING AND ANALYTICAL STUDIES RELATING TO ACQUISITION MANAGEMENT INCLUDING FINANCIAL, MANPOWER AND POLICY. Support as required by task orders issued pursuant to a basic ordering agreement to the Defense Systems Management College, to include: (1) studies, analyses, reports, fact-finding and/or training programs on methods and procedures to (a) reduce costs and increase effectiveness of military procurement and acquisition management, support activities to acquisition management process and relate areas, (b) appraise ability of Services to accomplish assigned acquisition management missions and the effects of Public Law, Presidential Orders, Federal regulations. DOD Directives and Circulars on this ability; (c) appraise ability of acquisition management system to meet foreign policy, NATO and ABCA Interoperability and international commitments; (2) development of mathematical models, ADP programs, etc. to evaluate system acquisiton management requirements, policies and procedures; (3) development of case studies to utilize results of (1) and (2) above for teaching aids. It is expected that a multidusciplianry team approach will normally be required to accomplish assigned tasks. Teams should contain personnel knowledgeable and experienced in the Defense environment, especially the OSD/Service interfaces, Congressional overviews, OMB interface with OSD, and Presidential/Presidental Staff interfaces. Specific subject areas of knowledge required to accomplish research tasks include: (1) data and data rights in Government contracting, (2) acquisition strategy and modeling, (3) subcontractor management, (4) competition in Government contracting, (5) Personnel resource requirements in acquisition, (6) risk assessment, (7) DSARC process and (8) issues relating to GFE v. CFE, independent operational testing, prototyping, second source effectiveness and effective front end management. Those firms wishing to be considered for qualification shall furnish information in accordance with Note 68 (first paragraph). Evaluation will focus on technical approach, problem perception, technical experience, personnel background and organization management. Five copies of the qualification statement are requested. Closing date for submission of qualification statement is 30 days from publication of this notice. Refer to BOA-9016. (222)

Figure 1. Commerce Business Daily Announcement (14 Aug 79)

RESEARCH AREAS / EVALUATION CRITERIA	Business/Financial Management	Acquisition/Program Management	International Management	Technical Management	Logistics/Support
Technical Approach					
Problem Perception					
Technical Experience					
Personnel Background					
Organizational Management					
Total Scores in Each Research Area					

- Business/Financial Management - DAR, PPBS, Economic Analysis, Competition, Second Source, CS^2, etc.
- Acquisition/Program Management Strategy, Resource allocation, Risk, Assessment Decision Making, Planning, Organizing, Control etc.
- International Management - Multinational Programs, NATO/RSI, FMS, etc.
- Technical Management - Design, Data, Analyses, DTC, Testing, Production, Research, etc.
- Logistics/Support - Training, Manpower, Spares, Support Equipment, O&S Cost, LCC, Depot Management, etc.

Figure 2. Matrix of Research Areas and Evaluation Criteria.

workable, practical recommendations and implementation instructions.

(b) Comments on the study illustrate the understanding of the task.

(c) Shows new processes, procedures and methods for making constructive changes.

(d) Credibility of the assumptions/conclusions.

(3) Management of the Study Effort

(a) Cost performance on task (cost reductions, improvements, economics and eliminating nonessential work).

(b) Timeliness of required reports and deliverables.

(c) Assures sound schedules and assures schedules are followed.

(d) Briefings and associated training aids are presented in a professional manner.

(e) Capability/reputation of study team/team members.

(f) Study makes a real contribution to the field.

(g) The quality of the report (errors, typos, etc.).

(h) Initiatives in accomplishing the tasks.

(i) Coordination of the report with principals.

(j) Adherence to overall staffing plan.

The Fee Oetermination Offical (FOO) is the Commandant of the Oefense Systems Management College. Fee determination on a CPAF task is a unilateral determination of the FOO and is not subject to the Disputes Clause of the Contract. The fee determination is made quarterly. Upon reviewing contractor appeals, if any, the FOO makes a final determination of award fee to be allocated the contractor. The FOO decision of final determination of the amount of award fee earned by the contractor is binding on both parties.

The task orders are issued for a completed effort as defined in the BOA, task order RFP and contractors response. A level of professional staff effort is designated on each task order for purposes of estimating costs and scoping the effort. Two types of orders may be issued, both priced and unpriced.

Oeliverables include:

(1) User's handbooks, reports, point papers and summarization of research efforts in written form.

(2) Computer tapes in the proper format for a specified automatic data processing system.

(3) Training programs and presentations at 000 facilities to include films, written case studies, oral presentations and other training aids.

(4) Briefings at 000 facilities to include films, viewgraphs, slides, other briefing aids and oral presentations by contractor personnel.

OSMC has 30 days after delivery of the final deliverable product for inspection and acceptance.

The BOA is written for a one-year term and is renewable, at the option of the Government for three additional years. Because of the business environment as discussed earlier, OSMC has chosen to recompete the BOAs after only two years to have a chance to look at new contractors as well as other contractors that may now possess the requisite skills.

Any software delivered under the contract is subject to OAR 7-2003.76. The "Rights in Technical Data and Computer Software" clause requires that the contractor inform the government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract. The offeror is required to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

Approval of key personnel assigned to the tasks issued under this Basic Ordering Agreement is reserved by the Contracting Officer's Technical Representative (COTR). The Contractor is required to notify the Contracting Officer prior to making any change in the personnel identified in the proposal as key individuals to be assigned for participation in the performance of the individual task order. The contractor must demonstrate that the qualifications of the prospective personnel are equal to or better

than the qualifications of the personnel being replaced. The Contracting Officer's Technical Representative (COTR) must also approve any consultant involved in any or an aggregrate of task orders involving payment of salary and expenses over $25,000 per annum.

Dissemination or publication, except within and between the contractors, of information under the tasks or in the reports is barred without prior written approval of the COTR or Contracting Office.

PROCEDURES FOR ESTABLISHING MULTIPLE BOA AND TASK ORDERS

The procedures for establishing multiple BOAs are relatively simple yet time consuming. Approximately four months are required for establishment of multiple BOAs. The seven basic steps in establishing a basic ordering agreement are shown below:

STEP 1 - User develops "sources sought" notice which describes supplies or services to be procured under the provision of DAR 3-410.2, and forwards it to contracting office.

STEP 2 - Contracting office publishes "sources sought" notice in Commerce Business Daily soliciting qualification statements from potential respondents.

STEP 3 - Potential respondents have 30 days to submit qualification statements.

STEP 4 - The user evaluates the qualification statements based on criteria established prior to solicitation.

STEP 5 - User ranks respondents by expertise as determined by the evaluation process. The user as referred to here is the party desiring the supplies or services.

STEP 6 - Contracting office notifies both qualified and non-qualified respondents of the results of the evaluations.

STEP 7 - Contracting office issues basic ordering agreements(s) to qualified respondents.

Upon completion of STEP 6 unsuccessful respondents may desire debriefings as to why they were considered not qualified. When this is the case, the debriefings should be coordinated among parties and the contracting office should require a formal written request for debriefing from the respondent.

Once the basic ordering agreements are issued to the qualified respondents, task orders may be issued under the basic ordering agreement on DD Form 1155 or Standard Form 26. In the case of multiple basic ordering agreements, task orders are issued through a competitive process.

The task orders are issued as Request for Quotation (RFQ). The task order contains the proposed length of the effort, scope of work, background, objectives of the research, a listing of applicable documents and the various tasks to be performed. In research, a literature survey is normally conducted initially to identify issues and previous work. Tasks may also include investigation, interviews, and other fact-finding techniques; documentation of the issues, findings and recommendations; investigation of related/affected areas and other aspects of the impact of recommended solutions; and integration of the documentation into a complete report. Review meetings, financial progress reports and a final deliverable report are called out. A schedule for conduct of the tasks is provided.

The technical proposals submitted by the contracters are required to address the following areas with a 5- to 10-page limitation on the proposal:

(a) Statement of personnel who will be assigned for direct participation in the project. Resumes that clearly present the qualifications relative to this particular work should be provided. Special mention should be made of the relevant experience of key personnel.

(b) Statement and discussion of the requirements of the scope of work as understood by the offeror. This section should contain as a minimum: A detailed description of how each task will be carried out, to include a sequence of activities (steps) to be undertaken; a description of the type of data and information (including sources) which will be collected in each task and how these data or information will be used to provide input to other tasks; and anticipated results related to the objectives.

(c) A detailed outline of the proposed technical approach for executing the requirements specified in the task order.

(d) Statement and discussion of any anticipated major difficulties and problem areas, together with potential or recommended approaches for their resolution.

(e) Statement of any interpretation, qualifications, or assumptions made by the offeror concerning the project to be

performed.

(f) Explanation of the study management plan and how the offeror's staff will be organized. Provide an overview of the measures to be taken to ensure a quality product, and the approach to be used to deliver the required product based on the schedule provided.

(g) Schedule describing task accomplishments.

(h) Table showing the number of man-hours to be spent on each task by each person to be assigned to the project.

(i) A table of travel, including number of travelers, destination, and duration of each trip.

The standard procedure used by DSMC for issuing task orders is shown below:

STEP 1 - DSMC forwards task order to DSS-W, accompanied by a commitment to fund the research effort.

STEP 2 - DSS-W incorporates task order into a request for quotation (RFQ) issued to those firms qualified in the relevant research area(s). The RFQ also contains a list of deliverables required, a delivery schedule, and the evaluation factors for award.

STEP 3 - Contractors have 14 days to submit a technical and cost proposal.

STEP 4 - DSMC evaluates technical proposal.

STEP 5 - DSS-W combines results of technical and cost evaluations and issues task order to the successful contractor.

The technical evaluation of the contractors proposal is based solely on his responses to the RFQ. Technical evaluation factors vary form one task to another tailored to the individual procurement but can be represented as shown below:

(1) Contractor's Technical Approach

(a) Well-organized, clear, concise proposal

(b) Understanding of the problem, tasks, and study apporach

(c) Responsiveness to scope, concept, conditions, and time for performance.

(d) Study approach and methodology

(2) Program Management Personnel

(a) Availability

(b) Educational Background

(c) Exerience in Program Management

(3) Background and Experience

(a) Experience in Financial, Technical, International and Logistics/Support related areas

(b) Familiarity with Army/Navy/Air Force/Marine Corps organizations and missions

(c) Acquisition Research Experience in related areas

(4) Past Performance and Cost Realism

(a) Job understanding as reflected by allocation of time and resources

(b) Past Performance under the BOA

Evaluation of technical proposals received from the RFQ's are in accordance with 10 U. S. C. 2304(a). Proposals are reviewed and evaluated by at least five DSMC personnel who are familiar with the task to be performed. Evaluation procedures are documented by the project officer in the form of evaluation criteria to assure that each evaluator is using the same ground rules. The evaluation criteria are grounded on the analysis of each proposal based upon:

(1) Evidence of understanding of the scope and objectives of the proposed contract

(2) Other evidence of knowledge and understanding of the job to be done, such as anticipation of problems which may be encountered in performance;

(3) Originality of thought and grasp of objectives as indicated by samples, technical approaches, or other ideas presented which indicate understanding of the problem;

(4) Managerial ability indicated by work-flow charts, proposed organization for contract performance, statements of intended approach, or other data submitted.

After each evaluator has completely analyzed all proposals in the manner described thus far, each proposal is given a relative standing in the group. At this point, a proven method is to consolidate all ratings into a single rating for each offeror by averaging-out the ratings of the

various evaluators. After this has been done, the evaluators can usually agree on the elimination of those proposals which obviously do not merit further consideration because of their inadequacy, and, thus, recommend further evaluation only of those proposals which have been rated high enough to deserve further attention. These scores are forwarded to the contracting officer, who adds in the score for the cost proposals. Cost is normally weighted anywhere from one-third to one-half of the total score Proposed prices or costs are assigned numerical weights and added to the numerical weights assigned to the technical evaluation. The lowest proposed price or cost is assigned the maximum numerical weight. Award is made to that responsible and responsive offeror whose proposal is considered to be most advantageous to the Government, price and other factors considered.

LIMITATIONS: DAR 3-410.2

The user of multiple BOAs should be familiar with the limitations placed on the use of this method of procurement by the Defense Acquisition Regulation. Basic ordering agreements shall not obligate the Government to place future orders or contracts with qualified participants in the agreements, nor shall the agreements be used in any manner to restrict competition. Supplies or services may be ordered under BOAs under either of the following circumstances:

(1) It is determined that it is impractical to obtain competition by formal advertising or negotiation for such supplies or services: or

(2) After a competitive solicitation of quotations on proposals from the maximum number of qualified sources, other than a solicitation accomplished by using SF33, it is determined that the successful responsive offeror holds a basic ordering agreement, the terms of which are identical to those of the solicitation or so similiar as to have no impact on price, quality or delivery, and if a determination is made that issuance of a task order against the basic ordering agreement would not be prejudical to the other offerors. However, the choice of firms to be solicited shall be made in accordance with normal procedures. Firms not holding a basic ordering agreement shall not be precluded by the solicitation from submitting a proposal or quote. The existence of a basic ordering agreement shall not be a consideration in source solution.

The Government shall not make any final commitment nor authorize any work by the contractor pursuant to an order under the basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either:

(1) The order is subject to the pricing procedures contained in the basic ordering agreement, or

(2) There is a compelling need of unusual urgency for the supplies or services, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and delay for establishment of process would preclude the contractor from achieving the required delivery date.

The basic ordering agreement shall cite the applicable negotiation authority and shall be subject to such reviews, approvals, determinations and findings, and other requirements, including synopses of the proposed procurement and contract awards, as specified in the DAR. Modification to the basic ordering agreement shall be by review and not by individual orders issued thereunder.

In a recompetition of the BOAs conducted this fiscal year using the same "sources sought" procedure, 33 firms submitted qualification statements. A source selection panel evaluated all qualification statements based on predetermined criteria in the following areas, technical approach, problem perception, technical experience, personnel background, and organization management. The results of this evaluation process were that 11 firms were selected as being qualified superior in the relevant acquisition management areas of business/financial management, international management, technical management, acquisition/program management, and logistics/support management. Interestingly, six of the eleven were firms that had not previously been qualified. Those BOAs previously awarded were terminated prior to the competition. Five firms requalified and were awarded new BOAs. This confirmed our perception of the migrating expertise in the "research and studies" business environment. The BOA source selection criteria remained unchanged from the previous 1979 competition.

OBSERVATIONS

As of Sept. 30, 1981, DSS-W had issued task orders encompassing all five research areas to five different firms, including four small business concerns. At least

three offerors have been in the competitive range for each solicitation. The time elapsed from step one through step five for issuing a task order has averaged 84 days. This indicates that many delays inherent in the competitive process are still present with the multiple BOAs. However, the award of one competitive task order in 37 days encourages us regarding the benefits of this process.

Based on two years of experience in using multiple basic ordering agreements the following are the observations and lessons learned by the DSMC:

o By having the contractor propose a refinement of the statement of work and plan his technical approach under competition, DSMC no longer has to pay to get the contractor smart, and when the tasking contract is awarded, the contractor is ready and well prepared to start out on the issues.

o Contractor's qualifications do change as personnel with differing expertise and background move around in the research community.

o Contractors qualified under the BOA are responsive and highly motivated due to the competitive environment and pride most firms have in producing a quality product.

o The use of the multiple BOAs involves a substantial investment in time on the part of government and contractor. However, the reduction in time to award a contract for a research effort more than offsets this investment.

o The limitation of the size (5 to 10 pages) of proposals submitted by contractors simplifies the source selection. Contractors can't generalize but must be very specific in their proposals.

o Increasing the weight assigned technical cost aspects of proposal evaluation increases the quality of the product.

o In evaluating proposals the background and experience of contractor personnel assigned to perform the task should be a weighted criteria.

CONCLUSIONS

The multiple BOAs established for the contracted research program at DSMC uses competition to the maximum extent. Contractors compete for the BOAs and task orders. They are aware that past performance is an evaluation criterion for future taskings. In the event of consistently poor performance, their standing under the BOA would terminate at the annual review of the BOA. Based upon two years of experience on seven task orders, DSMC has experienced no cost overruns and has had quality products delivered in a timely manner.

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John S. W. Fargher, Jr., "Acquistion Research: A Management Tool," Program Managers Newsletter, Vol VIII, No 3, May-Jun 1979, pp 4-5

Douglas M. Pollock, "Multiple BOAs: An Acquisition Tool", Program Manager Newsletter, Vol IX, No 6, Nov-Dec 1980, pp 15-16

FOOTNOTES

1. William B. Williams, Guidelines for the Application of Competition, APRO 905 (Fort Lee, VA: Army Procurement Research Office, May 1982).

2. D.E. McNabb, K.A. Olmstead, and W.E. Smith, "On the Utilization and Degradation of the DOD Acquisition System for Socio-Economic Policy Implementation," National Contract Management Journal, Winter 1982, pp. 21-36.

3. DOD Directive 5000.35, Subject: Defense Acquisition Regulatory System, 8 March 1978.

4. The definition of small should be variable according to the nature of the work and the commodity involved (e.g., $100,000 - $250,000).

5. Although with task order contracts, sometimes the first order is placed simultaneously with the issuance of that contract.

6. Technical elements, as used here, includes all types of requiring elements, Project Manager's Offices, etc.

7. These would be general areas such as "Material Analysis," "Analytical Management Services to Support X Weapon System," etc.

8. DAR 3-406.1.

9. DAR 3-406.2.

10. DAR 3-408(a).

11. DAR 3-408(c)(2).

12. DAR 3-410.2(c)(2).

13. DAR 3-401(a)(2).

14. When using a task order contract that combines characteristics of CPFF and indefinite delivery contracts and orders placed under a BOA, would it be necessary to apply all the limitations applicable to the use of all those contract types or would only selected limitations be applicable? Would competition for each order, as required by DAR 3-410.2(c)(2) be necessary? Is the CPFF contract actually one effort with the task orders simply being different aspects of that effort?

15. A current problem with broad work statements in task order contracts is that the contractor who wins the initial competition may not be the most qualified to perform tasks that are very varied.

16. Generally, one year is a good guideline.

17. DAR 3-410.2.

FOOTNOTES (CONT'D)

18. 54 C.G. 1096.

19. This is because a firm not holding a BOA could demand that it be permitted to quote and possibly protest the procedure if the firm feels it was discriminated against because it did not hold a BOA.

20. Cost is only considered when orders are being placed and it is not a basis for the placement of the BOA's.

21. A.E. Morrow and J.S.W. Fargher, Basic Ordering Agreements: An Innovative Acquisition Tool, paper presented at 1982 Federal Acquisition Research Symposium, May 1982.

22. D.M. Pollock, "Multiple BOA's: An Acquisition Tool," Program Manager, November 1980 - February 1981.

23. 54 C.G. 1096.

24. DAR 3.410.2(c)(2).

25. Interview with Kenneth Griffiths, Acquisition Management Review Agency, Department of the Army, 18 May 1982.

26. As presently written, DAR 3-410 would not allow this use of BOA's because placement of noncompetitive orders must be fully justified.

27. Only for quick reaction contracting needs that fall within the suggested criteria listed earlier in this chapter for a term not to exceed one year.

28. US Department of Energy, Procurement and Contracts Management Directorate, Contract Specialist's Guide, Topic No. 17-1, 3 December 1979.

29. Comptroller General of the United States, The Department of Energy Practices for Awarding and Administering Contracts, EMD 80-2 (Washington, DC: General Accounting Office, 2 November 1979).

30. All the procedural and policy information is extracted from the US Department of Energy Order DOE 4200.2.

31. Those parameters can include applicability to the original SOW, urgency, value of order, period of performance, etc.

32. Sole source contract placement can generally be done more expeditiously than competitive placement. Work added onto existing contracts can also be done expeditiously.

33. Many procurement personnel express animosity toward what they view as the nonmission aspects of acquisition which they see as adding unnecessary expenses (in both time and money) to the cost of DOD procurement.

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