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**AN ANALYSIS OF CONTRACTING TERMS:
EXPANDING THE BODY OF KNOWLEDGE WITHIN
THE CONTRACT MANAGEMENT PROFESSION**

THESIS

Marilyn J. Bayless, Captain, USAF
John H. Padgett, GM-13

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AN ANALYSIS OF CONTRACTING TERMS:
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THE CONTRACT MANAGEMENT PROFESSION

THESIS

Presented to the Faculty of the School of Systems and
Logistics of the Air Force Institute of Technology

Air University

In Partial Fulfillment of the
Requirements for the Degree of
Master of Science in Contracting Management

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September 1992

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Marilyn Bayless
John Padgett

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Abstract

This thesis establishes definitions for 50 contracting terms through the use of a detailed methodology comparable to that utilized on past theses of similar intent. Through a thorough review of current literature, existing definitions were examined. Based upon the results of this analysis, proposed definitions were assimilated. Through the use of a mailed questionnaire/survey, the proposed definitions were presented to randomly selected Certified Professional Contract Managers (CPCMs) for feedback. Based upon this feedback, the proposed definitions were then revised to reflect actual current usage of the terminology as indicated by the survey results. These revised definitions are the "final" definitions presented herein. While the questionnaire itself utilized a standard Likert scale-type format (respondents were asked to rate each proposed definition on a scale of 1 - 5, corresponding to "strongly disagree" through "strongly agree"), a section for written comments was provided. These comments proved most beneficial in that the respondents could clearly indicate their concerns, make suggestions, request clarifications, etc., instead of simply selecting a numerical indicator of their opinion.

AN ANALYSIS OF CONTRACTING TERMS:
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THE CONTRACT MANAGEMENT PROFESSION

I. Problem Statement

Introduction

The purpose of this thesis is to contribute to an on-going research project seeking to establish a universally accepted set of definitions for contract management-related terminologies. Such a set of definitions does not currently exist. This work has received the support of the National Contract Management Association (NCMA), and has been contributed to in the recent past by students at both the Naval Postgraduate School (NPS) and the Air Force Institute of Technology (AFIT).

The methodology for compiling such definitions was initiated by Daniel F. Ryan, a graduate student at NPS, in 1988. It was Ryan who first identified the lack of such definitions, stating in effect that since certain words and phrases are utilized to form the basis of all contracting activities, users of these words must have a common understanding of their meanings if the resulting agreements are to be effective (1988:1-3). This lack of common understanding fosters situations where the potential for miscommunication between contracting parties is greatly increased, thereby impeding the efficiency of the entire

contracting process. It is apparent that a "dictionary" needs to be developed which contains universally accepted definitions which have been established through a thorough review of existing literature, as well as consideration of inputs received from senior professionals working within contract management-related fields.

The contract management field, as with many other professions, represents almost an entire language unto itself. The vast amount of terminology, acronyms, and "slang" is difficult for an experienced contracts manager to fully comprehend; it can be simply overwhelming to a novice just entering the field. As a result, differing levels of experience often lead to differing interpretations of what each of these terms is actually intended to mean. Miscommunication and misunderstanding often result from these variances. While many other professions have well established, generally agreed upon definitions unique to their field, the body of knowledge inherent within the contract management field does not presently include such data.

Ryan was the first to establish the methodology of collecting several established definitions for a particular word or phrase, and then combining this into a "single synthesized definition" (1988:9). These proposed definitions were then submitted to a random sample of people currently working within the contract management community,

both within the private and public sectors, for their review and comment. Based upon these comments, he then revised the original definitions to reflect the input received from his respondents. The goal was to establish a set of definitions which depicted the actual usage of the words and phrases within a contract management context; not to establish definitions based solely upon their academic meanings.

A "Master List" of contracting terms which appeared to require such definitions was established by William J. Hauf in his 1990 thesis. Each of the fifty (50) words and terms defined herein were cited in the "Complete Master Listing of Terms", identified as Appendix F of Hauf's thesis.

Specific Problem

The purpose of this research is to contribute to the establishment of a set of universally acceptable contracting-related definitions which reflect their actual usage within the profession today; not to create an academic document which will never change. As with any dictionary, these definitions will need revision in the future as their meanings and actual usage evolve (Shelley, 1991:2).

Investigative Objectives

The objective of this research is to establish a single universally accepted definition for fifty (50) contracting terms, based upon their actual usage within the contracting management community today. It is recognized that some of

these terms may encompass more than one legitimate meaning, reflecting that its meaning must be taken in the context within which it is used. These cases will be clearly identified.

The research questions pertinent to this thesis can be summarized into three general concerns:

- 1) What definitions are currently provided by existing literature?
- 2) Are these existing definitions consistent with one another?
- 3) How are these terms actually used within the contracting management profession today?

It is hoped that by performing a thorough search of existing literature, developing a synthesized definition for each of the terms based upon the findings of this search, submitting these definitions to a representative sample of contracting professionals, then revising the initial definition as appropriate, a valid final definition can be established for each term. A significant part of this overall objective is to create universal definitions which deal effectively with the various subtleties and nuances inherent within each term. Where existing definitions are found to be divergent, every attempt will be made to explain the basis for these differences, and further, to include each of these differences in a single, relatively concise definition.

Overview of Thesis

Chapter one has provided a general discussion of the overall research problem, as well as the background and rationale for performing the research itself.

Chapter two, entitled "Literature Review," reflects the results of research into the existing definitions for each of these contracting terms. In this chapter, the initial ("proposed") synthesized definitions are generated. These fifty definitions then form the basis for surveys submitted to members of the contract management community for review and comment.

Chapter three, entitled "Methodology," discusses in detail the selection of the sample population which received the survey, as well as the rationale for utilizing a survey format in the first place. Further, the actual content of the survey and its specific format are discussed.

Chapter four, entitled "Data Analysis," addresses responses received as a result of the survey. A discussion of how these comments were subsequently integrated into the originally proposed definitions to form the "final" definitions is included.

Chapter five, entitled "Conclusions and Recommendations," provides a complete summary of this research, reaches various conclusions as a direct result of this research, and also provides advice and suggestions regarding future related research which will be necessary in

order to complete the overall goal: the establishment of a comprehensive dictionary of contracting terms.

Also included are five appendices, four of which contain copies of various documents sent to prospective respondents during this study. The final appendix presents a master listing of the final version of each definition, reflecting comments as received from respondents. These appendices are listed below:

- Appendix A: Survey Transmittal Letter
- Appendix B: Follow-Up Letter
- Appendix C: Survey Questionnaires
- Appendix D: Demographic Data
- Appendix E: Final Definitions

II. Literature Review

Introduction

This thesis contains a thorough review of existing literature concerning the following contract management-related words and terminology:

Abstract of Bids	Memorandum of Agreement
Appropriated Funds	Memorandum of Understanding
Bid Rejection	Modification
Bidders Mailing List	Notice of Award
Bilateral Agreement	Payment Bond
Brand Name or Equal	Post Award
Breach of Contract	Pre-Proposal Conference
Commerce Business Daily	Quality Assurance
Competitive Proposals	Quality Control
Competitive Sealed Bidding	Quote
Configuration	Request for Equitable
Contract, Fixed Price,	Adjustment
Award Fee	Responsibility
Contract Data Requirements	Responsiveness
List (CDRL)	Special Test Equipment
Contract Management	Standard Commercial Item
Definitization	Subcontract
Delivery Order	Supplemental Agreement
Determination of	Termination for Convenience
Responsibility	Termination for Default
Federal Acquisition	Terms and Conditions
Regulation (FAR)	Truth in Negotiations Act
General Scope	Undefinitized Contract
Government Furnished	Action (UCA)
Equipment (GFE)	Unilateral Modification
Incentive Arrangement	Unlimited Rights
Integration	Value Engineering Change
Letter of Agreement (LOA)	Proposal (VECP)
Limited Rights	Withholding (payment)

As stated previously in Chapter 1, this thesis continues an effort previously initiated by other Master's Degree candidates at the Air Force Institute of Technology (AFIT) and the Naval Postgraduate School (NPS). As was the goal of these predecessors, the intention here is to eventually

compile a complete list of definitions and publish them for the general use of contract management professionals employed within both the public and private sectors.

This chapter discusses information found within existing literature regarding the above list of words and terminology. In each case, an overview of the existing documentation is described first, followed by a "synthesized" definition that is based upon the results of this literature review.

Abstract of Bids

In the Government Contract Guidebook, "abstract of bids" is defined as "a list of the bidders for a particular sealed bid procurement showing the significant portions of their bids" (1987:GL-1). Black's Law Dictionary defines an "abstract" as:

A lesser quantity containing the virtue and force of a greater quantity; summary or epitome, or that which comprises or concentrates in itself the essential qualities of a larger thing or of several things.
(1990:10)

According to the Compendium of Authenticated Systems and Logistics Terms, Definitions and Acronyms, an "abstract" is:

A brief and factual summary of a document. An indicative abstract tells what the author wrote about; it refers to the purpose, the method, the results, and the conclusions. (1981:1)

Each of the above definitions express the same idea: that an "abstract" is a summary. Based on the above

information, the synthesized definition is proposed as follows:

A summary of the bidders and their bids for a specific procurement.

Appropriated Funds

Moyle (1990:Appendix B-2) has defined appropriation as, in part:

An act of Congress which permits Federal agencies to expend designated amounts of public funds (incur obligations) and to make payments out of the Treasury for specified purposes. An appropriation is the most common means of providing budget authority and usually follows the passage of an authorization.

Keyes further states in the Encyclopedic Dictionary of Contract and Procurement Law that "public funds may not be used for procurement without authorization from and appropriation by Congress" (1987:46). Black's Law Dictionary adds that an appropriation is "the legislative designation of a certain amount of money as being set apart, allotted, or assigned for a specific amount, purpose, and time" (1990:101-102). It is apparent that the key constant running through each of these respective definitions is that an appropriation (1) comes from Congress and (2) is specific as to its intended use. The word "fund" is generally conceded to mean either "available money" (American Heritage Dictionary, 1982:539) or "a (specific) sum of money or other liquid asset" (Black's Law Dictionary, 1990:673).

Based on the above information, a synthesized definition is proposed as follows:

Monies which are provided by an act of Congress, thereby permitting Federal agencies to expend designated amounts for specified purposes within a specified timeframe.

Bid Rejection

A specific definition of the term "bid rejection" was not found. However, the term "rejected bid" was defined by the Compendium as:

Unaccepted because: acceptance of one bid constitutes rejection of all others; absence of competition invalidates all bids; readvertisement is equivalent to rejection of all bids. (1981:96)

This will serve as the synthesized definition since it represents the only definition existing within current literature.

Bidders Mailing List

The Dictionary of Purchasing Terms refers to a bidders mailing list as:

A list of names and addresses of suppliers from whom bids, proposals and quotations might be expected; the list, maintained by the purchasing office, should include all suppliers who have expressed interest in doing business with the government. (1986:3)

The Government Contracting Guidebook gives a very simple definition which closely agrees with that provided above: "A government list of contractors to whom invitations

for bids for particular procurements should be sent"
(1987:GL-3).

Although both definitions convey the same meaning, the one given by the Dictionary of Purchasing Terms is much more informative. Therefore, the proposed synthesized definition is:

A list maintained by the purchasing office which contains the names and addresses of contractors who are interested in doing business with the government, and to whom invitations for bids, or requests for proposals and quotes, should be sent.

Bilateral Agreement

A specific definition of the term "bilateral agreement" was not found. However, William W. Thybony, author of the Government Contract Guidebook, defines the term "bilateral" as follows:

A bilateral modification (supplemental agreement) is a contract modification signed by the contractor and the contracting officer. Bilateral modifications are used to: (1) make negotiated equitable adjustments resulting from the issuance of a change order, (2) definitize letter contracts, and (3) reflect other agreements of the parties modifying the terms of contracts. (1987:48)

Black's Law Dictionary contained a definition for the term "bilateral contract" as shown below:

A term, used originally in the civil law, but now generally adopted, denoting a contract in which both the contracting parties are bound to fulfill obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it. A contract executory on both sides, and one which includes both rights and duties on each side. Contract formed by the exchange of promises in which the promise of one party is consideration supporting the promise of

the other as contrasted with a unilateral contract which is formed by the exchange of a promise for an act. (1990:163)

Both definitions seem to agree that a bilateral agreement (contract) is two-sided and concerns the key idea that promises are made by each of the parties. Both parties are bound to perform. Based on the above evaluation, the synthesized definition is as shown below:

A contract modification signed by the contractor and the contracting officer; a contract in which both parties are bound to perform.

Brand Name or Equal

According to Arnavas, brand name or equal refers to:

A type of purchase description which identifies one or more commercial products by brand name or other appropriate nomenclature, and which sets forth those physical, functional, or other characteristics of the named product that are essential to the government's needs. (1987:GL-3)

A brand name or equal specification is defined in the

Dictionary of Purchasing Terms as:

A specification that uses one or more manufacturers brand names or catalogue numbers to describe the standards of quality, performance, and other characteristics needed to meet requirements of a solicitation, and which provides for the submission of equivalent products. (1986:4)

William W. Thybony further expands on this definition with the following explanation:

Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only when an adequate specification or more detailed description cannot feasibly be made available by means other than inspection and analysis

in time for the acquisition under consideration. Brand name or equal purchase descriptions are last resorts and are used only under specified circumstances. They come close to being restrictive specifications, which are prohibited. Brand name or equal purchase descriptions reference all brand name products known to be acceptable and of current manufacture. Also, the descriptions must list the salient characteristics of the brand name item(s), i.e., the physical, functional or other characteristics of the referenced brand name products that are essential to the intended end use. (1987:110)

According to Government Contract Law, brand name or equal is defined as: "The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words 'or equal'" (1988:8-2).

All of these definitions agree, but Government Contract Law says it most clearly and succinctly; therefore, based on the above, the following was selected as the basis for the synthesized definition:

The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words "or equal" (Government Contract Law, 1988:8-2).

Breach of Contract

The Dictionary of Purchasing Terms defines this term as "the breaking of a contract; failure to fulfill a contract wholly or in part" (1986:4). Black follows similar logic, stating that a breach of contract is "failure, without legal excuse, to perform any promise which forms the whole or part of a contract" (1990:188). Keyes has provided a more lengthy definition, although the common themes are evident:

When performance of a duty under a contract is due, any non-performance is a breach. A breach may be total or partial and may take place by failure to perform acts promised, by prevention or hinderance, or by repudiation. (1987:32)

An additional factor, that of actual injury to one of the parties, is added by Sherman, who states "a breach of contract occurs when one party fails to perform duties imposed by the contract without excuse, thereby injuring the other party" (1987:389).

Based upon the statements of the authors as noted above, a synthesized definition is proposed as follows:

The breaking of a contract, either in full or in part, as a result of failure to perform acts promised (or by prevention, hinderance, or repudiation), to the extent that the other party is injured by this failure to act.

Commerce Business Daily

The glossary of the Government Contract Handbook describes the Commerce Business Daily as:

A United States Department of Commerce publication which is issued every business day to provide information on government contract opportunities and awards. (1987:GL-5)

Further, the following definition is found within the main text of the aforementioned book:

The Commerce Business Daily is a daily list of United States Government procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities. (Government Contract Guidebook, 1987:2-21)

In addition, Thybony states:

The Commerce Business Daily (CBD) is the public notification media by which U.S. government agencies identify proposed contract actions and contract award. (1987:154)

All three agree as to the essential nature of the Commerce Business Daily, but use slightly different wording. Based on the above the synthesized definition is proposed as follows:

The Commerce Business Daily (CBD) is a United States Department of Commerce publication, issued every business day, which notifies the public of procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities. (Government Contract Handbook, 1987:2-21)

Competitive Proposals

The phrase "competitive negotiation" is generally recognized within the profession as being equivalent to the phrase "competitive proposals". Much of the existing literature uses the former terminology in lieu of the latter. As such, The Dictionary of Purchasing Terms provides the following definition for competitive negotiation:

The method of procurement used whenever competitive sealed bidding is not practicable. The process of publicizing government needs, requesting proposals (RFPs), evaluating proposals received (evaluation criteria must be included in the RFP), negotiating (discussing) proposals with acceptable or potentially acceptable offerors, and awarding the contract after consideration of evaluation factors in the RFP and the price offered. (1986:19)

The Dictionary of Cost Estimating Terms and Phrases defines competitive negotiation as:

(a) Initiated by a request for proposals, which sets out the customer requirements and the criteria for evaluation of offers; (b) contemplates the submission of timely proposals by the maximum number of possible offerors; (c) usually provides for discussion with those offerors found to be within the competitive range; and (d) concludes with the award of a contract to the one offeror whose offer, price and other factors considered, is most advantageous to the customer. (1986:29)

FAR 6.401(b)(1) reflects the policy that "competitive proposals may be requested only if sealed bids are not appropriate", and further indicates that discussions may occur under this approach (although they are not mandatory). The concept of discussions is further amplified by Sherman, who states that competitive proposals are used with the expectation that discussions will be held with each offeror, after receipt of proposals, in the process of arriving at an agreement prior to the award of the contract. However, the right to award a contract without discussions is reserved (1985:110).

As such, a synthesized definition for the phrase "competitive proposals" is proposed as shown below:

The method of procurement generally favored where use of the sealed bid approach is considered inappropriate. It is a process of publicizing a purchaser's needs, requesting proposals via a request for proposal (RFP), evaluating the resulting proposals in accordance with specified evaluation criteria included within the RFP, and holding discussions with every acceptable or potentially acceptable offeror prior to award, if it is determined necessary by the purchaser.

Competitive Sealed Bidding

A specific definition of the term competitive sealed bidding was not found in this literature search. In Government Contracting Based on the Federal Acquisition Regulation (FAR), sealed bidding is defined thusly: "A method of contracting that employs competitive bids, public opening of bids, and awards" (1987:51).

Later in this same text Thybony refers to sealed bidding as:

the method of government contracting that employs competitive sealed bids, public opening of bids, and contract awards under rigid rules. Its procedures are virtually identical to formal advertising authorized prior to the effective date of the Competition in Contracting Act of 1984. (1987:163)

The Dictionary of Purchasing Terms agrees by stating it as:

The process of publicizing government needs, inviting bids (IFBs), conducting public bid openings, and awarding a contract to the lowest responsive and responsible bidder; the preferred method of procurement. (1986:6)

The term "sealed bid" can also be found in Black's Law Dictionary as:

One submitted under seal, and which is not to be opened until a specified time at which all bids are to be opened and compared. Commonly required on construction contracts, to assure independence of bidding. (1990:162)

The Glossary: Acquisition Management Acronyms and Terms states that sealed bidding "replaces formal advertising in contracting process in title only. Process remains same" (1989:121).

The definition of competitive bidding found in Black's Law Dictionary agrees, stating "bids which are submitted as the result of public notice and advertising of an intended sale or purchase" (1990:162).

Thybonny's definition best covers the essential characteristics of competitive sealed bidding, which are: sealed bids, public openings, and rigid rules. It also differentiates the term from formal advertising. Based on the above, the synthesized definition is:

A method of contracting which uses sealed bids, public opening of bids at a specified time, and awards made to the lowest responsive and responsible bidder. Prior to the Competition in Contracting Act of 1984 this method was called formal advertising.

Configuration

This term refers to "the functional and physical characteristics of hardware or software" (Sherman, 1985:312) as described in various technical data. It is a total depiction of all parts which, when fitted together, form the totality of an end item or assembly (AFIT, 1981: 151). More specifically, the Glossary defines configuration as:

A collection of an item's descriptive and governing characteristics, which can be expressed (a) in functional terms, i.e., what performance the item is expected to achieve; and (b) in physical terms, i.e., what the item should look like and consist of when it is built. (1989:21)

A more encompassing definition is provided by the Dictionary of Cost Estimating Terms and Phrases:

The complete technical description required to fabricate, test, accept, operate, maintain, and logistically support systems/equipment. (1986:30)

Based upon the common themes found within each of these definitions, a synthesized form is proposed as follows:

A complete technical description of both the functional (i.e., performance) and physical (i.e., appearance) characteristics of an item, describing both hardware and software to the level of detail required for fabrication, testing, acceptance, operation, maintenance, and logistical supportability of the item.

Contract, Fixed Price, Award Fee

This term consists of two independent ideas: (a) fixed price contracts and (b) contracts containing an award fee. As such, these terms will be addressed separately, and later combined again in the formation of a synthesized definition.

FAR 16.201 states that fixed price contracts "provide for a firm price or, in appropriate cases, an adjustable price." The FAR definition goes on to address those areas where adjustment may be appropriate: ceiling price, target price (including target cost), or both. This type of contract would then be best described as a fixed price incentive contract, and could further be defined as a subset of the more encompassing term "fixed price contract." Keyes has described fixed price contracts in a very similar manner (1987:17), as does the Compendium (1981:296). A more specific definition of a fixed price contract is provided by the Dictionary of Contracting Terms and Phrases:

A type of contract which generally provides for a firm price, or under appropriate circumstances such as changes, economic price adjustments, etc., may provide for an adjustable price, for the supplies or services which are being procured. Fixed price contracts are of several types so designed to facilitate proper pricing under varying circumstances. Some of the various types are firm-fixed price contracts; fixed-price-with-escalation contracts; fixed-price contracts providing for the redetermination of price; and fixed-price-incentive contracts. (1986:66)

The Dictionary of Contracting Terms and Phrases defines award fee simply as a contractual provision which "the customer determines the fee paid to the contractor on the basis of performance during the contract" (1986:18). A more detailed definition can be found under FAR 16.404-2(a), which describes an award fee as:

A fee consisting of (1) a base amount fixed at inception of the contract and (2) an award amount that the contractor may earn in whole or in part during performance and this is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost effective management. The amount of the award fee to be paid is determined by the government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination is made unilaterally by the government and is not subject to the disputes clause.

After meshing these two concepts into one all-encompassing definition, the following is proposed:

A contract which provides for a firm price, or under appropriate circumstances provides for potential adjustments to the price (as found within fixed price incentive (FPI) contracts or fixed price contracts with economic price adjustment (EPA) features), also containing provisions for an award fee which may be earned by the seller through achievement of certain performance goals specified within the contract. These goals may relate to technical performance, timeliness, product quality, or other characteristics as designated within the contract. The amount of the award fee to be

paid is determined by the purchaser's judgmental evaluation of performance in terms of the criteria specified within the contract. In government contracting, this determination is made unilaterally by the government and is not subject to the "Disputes" clause found within all government contracts.

Contract Data Requirements List (CDRL)

The Compendium describes a CDRL as "a listing (on DD Form 1423) of all technical data and information required by the contract" (1981:164). While this appears to be a relatively clear definition, the Dictionary of Cost Estimating Terms and Phrases adds that such a list must be physically made a part of the contract (1986:33). Sherman has further indicated that "the CDRL...imposes on contractors numerous requirements for submitting data and reports during contract performance" (1987:146). The Glossary provides a more complete definition, stating that the CDRL is a:

Document used to order ("buy") and require delivery of data. Tells contractor what data to deliver, when and how it will be accepted, where to look for instructions, etc. (1989:24)

Therefore, taken as a whole, a synthesized definition of the term "Contract Data Requirements List (CDRL)" is proposed as follows:

A listing found within the contract which identifies all data, reports, and/or other documentation required from the seller, stating exactly what to deliver, when to deliver it and how it will be accepted, as well as where to look for any further instructions.

Contract Management

It was very interesting to these researchers that this term could not be located anywhere within the existing literature. Certainly, the word "contract" was found, as well as the word "management." However, nowhere were they found as a pair as such.

Therefore, the term will be broken down into its component parts ("contract" and "management") and a synthesized definition will be formed by effectively adding the two individual definitions together.

Daniel F. Ryan, in a previous study into the meanings of acquisition and contracting terms, has provided the following definition of the word "contract":

A mutually binding relationship enforceable by law, expressing the mutual assent of two or more legally competent parties to do something they are not otherwise required to do, or not to do something they would otherwise have a right to do, for legal consideration. (1988:36)

The Glossary contains a similar definition, but adds the concept that the contract must be in the proper form, deal with a legal subject matter, and be for a legal consideration (1989:23). Keyes' definition relates more specifically to government procurement in stating that the term "includes all types of commitments which obligate the government to an expenditure of funds and which, except as otherwise authorized, are in writing" (1987:78).

The term "management" is much broader in meaning and could be defined in many ways depending upon the exact

application. The Dictionary of Purchasing Terms states that management is "the act or practice of controlling, directing, and administering a business, institution, office, etc." (1986:18). The Compendium provides a much more detailed explanation as follows:

A process of establishing and obtaining objectives to carry out responsibilities. Management consists of those continuing actions of planning, organizing, directing, coordinating, controlling, and evaluating the use of men, money, materials, and facilities to accomplish missions and tasks. (1981:422)

Combining these two distinct words into one phrase which takes on a somewhat different meaning yields the following definition:

The process of taking all actions necessary to obtain a mutually binding agreement between two or more legally competent parties, in the proper form and regarding a legal subject matter, for a legal consideration. This agreement is then administered through a series of ongoing actions designed to organize, direct, coordinate, and control the process, with the goal of successfully accomplishing all tasks specified within the agreement.

Definitization

Black has defined the word "definitive" as "that which finally and completely ends and settles a controversy" (1990:423). The American Heritage Dictionary defines this same word variously as "explicit", "decisive", or "authoritative and complete" (1982:375).

In the field of contract management, definitization is used to describe the process of finalizing a contract action which has been initiated but not completed. As an example,

a change order or letter contract may set forth a delivery schedule, work statement, specification, as well as the other facets of a contract, but not contain a specific price for the effort. A not-to-exceed (NTE) price is included in such documents.

Negotiating a firm price and issuing a supplemental agreement which replaces the NTE price with the firm price is referred to as the definitization process. As with Black's definition above, definitization implies "a final and complete ending which settles" an open issue.

Based on these facts, the proposed synthesized definition for this term is stated as follows:

The process of finalizing a contract action (typically a change order or letter contract) which originally contained at least one open issue (usually a firm price), through the issuance of a supplemental agreement which finally and completely settles the issue(s).

Delivery Order

Noel Keyes, author of Dictionary of Terms in Federal Acquisition Regulation (FAR), defines delivery order as "an order for supplies or services placed against an established contract or with government sources of supply" (1985:51).

The Desktop Guide to Basic Contracting Terms defines it as:

A written order to a contractor pursuant to an indefinite delivery type contract which then becomes the basic obligating document for the transaction; consummation of an originally partial contractual agreement between the contractor and the government. (1990:25)

Black's Law Dictionary agrees, calling it:

A written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading. The primary function of the delivery order is to aid in the breaking down into smaller lots of one large lot of goods (whether fungible or otherwise) which is represented by one bill of lading. (1990:429)

The key idea seems to be that a delivery order is a written order to a contractor for supplies or services placed against an established contract. Based on the above evaluation the synthesized definition is:

A delivery order is a written order used to purchase supplies or services from an already existing contract or government supply source.

Determination of Responsibility

A simple definition of determination of responsibility can be found in the Desktop Guide: "The process by which a contractor is determined to be a responsible bidder/offeror" (1990:25).

Arnavas' definition explains the concept in more depth:

To be eligible for award, a bidder must be responsible. In fact, the FAR requires the Contracting Officer to make an affirmative finding of responsibility and not merely a finding that there is no evidence of nonresponsibility. The process of determining bidder responsibility permits the Contracting Officer to use his subjective analysis of the bidder's potential. Responsibility may be defined as the apparent ability to successfully complete the requirements of the contract. (1987:3-26)

Key concepts seem to be that it is a process, undertaken by the contracting officer, to determine

responsibility and ability of the contractor to complete a contract. Therefore, the synthesized definition is:

The process undertaken by the contracting officer to make an affirmative finding of responsibility concerning a prospective contractor. In this case responsibility means the apparent ability to successfully complete a contract.

Federal Acquisition Regulation

FAR 1.101 states that the Federal Acquisition Regulation has been established "for the codification and publication of uniform policies and procedures for acquisition by all executive agencies." In essence, the FAR governs government contracting methods, requirements, and procedures (Black, 1990:610). The Dictionary of Cost Estimating Terms and Phrases adds further that the FAR has governed "the conducting of business with any federal agency since April 12, 1984" (1986:64). A more specific, detailed definition was found within the Glossary:

The FAR is the primary regulation for use by federal executive agencies for acquisition of supplies and services with appropriated funds. The FAR is broader than just contracting and applies to all goods and services. It directs the program manager in many ways, including contract award procedures, acquisition planning, warranties and establishing guidelines for competition. (1989:48)

By combining the most critical aspects of each of these existing definitions, a proposed definition is generated as follows:

The primary government regulation for the codification and publication of uniform policies and procedures regarding acquisition. Established on April 12, 1984,

it contains direction applicable to all executive agencies and addresses all aspects of the government's acquisition process.

General Scope

According to Government Contract Law:

The general scope of the contract has been defined as including whatever performance should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into. The determination of what is within the "general scope" is a difficult one, dependent on the circumstances of the individual contract.

Since this was the only specific definition located during the literature review, a portion of it will be proposed as the synthesized definition:

It includes whatever performance should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into. (Government Contract Law, 1988:10-3)

Government Furnished Equipment

In Glossary, government furnished equipment is defined as "items in the possession of, or acquired by, the government and delivered to or otherwise made available to the contractor" (1989:55).

The National Estimating Society Dictionary of Cost

Estimating Terms and Phrases contains a similar definition:

Material or equipment provided by the Government to a contractor, to be incorporated or attached to an end product to be delivered to the Government (1986:72).

The key concepts seem to be that government furnished equipment can be described as items or material owned by the

government but made available to the contractor. Based on the above evaluation the synthesized definition is simply:

Government material or equipment made available to a contractor.

Incentive Arrangement

The Compendium (1981:339) and the Glossary (1989:58) contain identical definitions of the word "incentive". This is provided below:

Motivating the contractor in calculable monetary terms (1) to turn out a product that meets significantly advanced performance goals, (2) to improve on the contract schedule up to and including final delivery, (3) to substantially reduce costs of work, or (4) to complete the project under a weighted combination of some or all of these objectives.

Note that the above definition is for the word "incentive" as opposed to "incentive arrangement." The latter implies a negotiated methodology which, through the contract itself, provides the contractor with an opportunity for the specified incentives if certain goals are obtained.

The Dictionary of Cost Estimating Terms and Phrases

describes such a situation as follows:

A negotiated arrangement that structures a series of relationships designed to motivate and reward the contractor for superior performance in accordance with the contract specification. (1986:77).

For purposes of this thesis, it is interpreted that the reference to the contract "specification" above was meant to address all areas specified within the contract as opposed to the literal interpretation of specification itself.

Rationale for this interpretation stems from terms such as "fixed price incentive" contracts, in which the incentive relates to cost control as opposed to exceeding the specification requirements. This is further supported by FAR 16.401(a)(2), which indicates that incentive arrangements are "designed to (i) motivate contractor efforts that might not otherwise be emphasized and (ii) discourage contractor inefficiency and waste," neither of which limits such an arrangement solely to the specification placed on contract. Thus, the following definition is proposed for the term "incentive arrangement":

A contract structure which financially motivates the seller to emphasize particular aspects of the overall contract (i.e., cost control or accelerated delivery) while discouraging inefficiency and waste.

Integration

Black's Law Dictionary refers to this terms as "the act or process of making whole or entire" (1990:809). The Glossary is somewhat more specific, identifying it as the "act of putting together as the final end item various components of a system" (1989:64). Both of these definitions seem to view this term as a physical act; an assembly activity. The Dictionary of Cost Estimating Terms and Phrases takes a more holistic view, describing integration as an ongoing process as opposed to a specific act. It states that integration is "the technical and functional activities and interfaces required to accumulate

the many facets of a complex weapon system" (1986:81).

Taken in this context, the proposed synthesized definition is:

Those technical and functional activities, and interfaces, required to create a complex system. This includes the physical mating of hardware subassemblies from the lowest to the highest levels, as well as ensuring that all software within the system is capable of functioning as a single entity.

Letter of Agreement (LOA)

The Glossary states that the term "letter of agreement" is:

Obsolete. An Army document in which the combat and materiel developers outline the agreements for further investigation of a potential material system. Replaced by initial required operational capability (ROC) document. (1989:70)

The Compendium agrees, calling a letter of agreement:

A jointly prepared and authenticated document in which the combat developer and materiel developer outline the basic agreements for further investigation of a potential materiel system. (1981:387)

Based on the above information the synthesized definition is:

An obsolete term for an Army document in which a combat developer and materiel developer outline agreements for a potential materiel system. Replaced by the term initial required operational capability (ROC). (Glossary, 1989:70)

Limited Rights

This term refers to rights of the purchasing party regarding technical data and computer software which

describes or is imbedded within items purchased under a contract. Under a somewhat more general topic of "rights in data", the Dictionary of Cost Estimating Terms and Phrases provides the following definition:

Those rights including title, possession, use or proprietary interest in data which, although not necessarily patentable or copyrightable, give the holder of such rights a competitive advantage or a special consideration. (1986:128)

FAR 27.401 defines limited rights data as "data developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged." The Glossary provides a definition for limited rights which is almost identical to that found within Compendium:

Rights to use, duplicate, or disclose technical data in whole or in part, by or for the government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the government, (b) used in whole or in part by the government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a party other than the government. (1981:392)

The definition above goes on to list several specific exceptions to these rights, but they are not relevant to this discussion. Clearly, it can be shown that this term encompasses any situation in which the government (or other purchasing party) does not have full or unlimited rights (see the definition for this term later in this thesis). A much shorter definition which seems to cut to the core of the issue is provided by Sherman, who states that limited rights provides "only the rights to make specified uses"

(1987:177) of the data, thereby protecting the seller's proprietary interests in the data. Combining this approach with that specified in FAR 27.401, a synthesized definition is proposed as shown below:

As it applies to technical data and computer software, this refers to the purchaser's legal restriction to use the data only in the manner explicitly specified within the contract. Such data has been developed at private expense or may embody trade secrets or other confidential information.

Memorandum of Agreement (MOA)

The Compendium considers the terms "Memorandum of Agreement" (MOA) and "Memorandum of Understanding" (MOU) to have identical meanings. It provides the following joint definition:

The documentation of mutually agreed to statements of facts, intentions, procedures and parameters for future actions and matters of coordination. (1981:441)

However, all other documentation located during this research considers these two terms to have different meanings. Regarding MOAs, the Glossary considers these to be "any written agreement in principle as to how (a) program will be administered" (1989:80). MOUs, by comparison, were limited in scope to foreign affairs, with several specific references to agreements between North Atlantic Treaty Organization (NATO) countries. MOUs are addressed elsewhere in this research. Further recognition of the term "MOA" can be found using the component parts of this expression. Black defines the word "memorandum" as meaning "something

less than a complete contract" (1990:984). Further, he provides the following thoughts on the word "agreement":

In law, (agreement is) a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties of certain past or future facts or performances. Although often used as synonymous with "contract", agreement is a broader term that may lack an essential element of a contract. (1990:67)

Based upon these statements, a synthesized definition of the term "MOA" is proposed as follows:

A document of mutually agreed to statements of fact, intentions, procedures, parameters or understandings regarding past, present, or future rights or duties of two or more parties. This document is not a contract, and may be lacking one or more essential elements of a contract.

Memorandum of Understanding (MOU)

Although sometimes used synonymously with the term "Memorandum of Agreement" (MOA) (see definition of MOA presented earlier within this research), a Memorandum of Understanding officially refers to international agreements, typically between members of the NATO alliance. Keyes has defined MOU in this manner:

An international agreement between two or more parties. When used in the context of NATO programs, it usually refers to government-to-government agreements negotiated between allied defense agencies and signed by officials of the executive branch governments, usually at (or below) the ministerial level. (1987:18)

The Glossary provides a similar account, differing only in its reference to the legal standing of such agreements. It concludes that MOUs are:

Official agreements concluded between the defense ministries of NATO nations and ranking below government-level international treaties. Defacto, such agreements are generally recognized by all parties as binding even if no legal claim could be based on the rights and obligations laid down in them. (1989:80)

By utilizing the most salient features of each of the above quotations, a synthesized definition can be formed as shown below:

An official international agreement between two or more parties, typically between the defense ministries of the NATO nations. While ranking below government-to-government international treaties, these agreements are generally recognized as legally binding even if no legal claims could be based upon their contents.

Modification - (Contract Modification)

One of the most concise definitions of the term "modification" can be found in the Dictionary of Purchasing Terms: "A formal alteration or change to a contract" (1986:19).

The Glossary calls it "a configuration change to a produced configuration item" (1989:84).

The National Estimator NES Certification Program NES Dictionary goes into great detail, defining a contract modification as:

Any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes bilateral actions such as supplemental agreements and amendments, and unilateral actions such as change orders, notices of termination, notices of the exercise

of a contract option, and change in payment office or administrative responsibility. (1982:24)

The Desktop Guide echoes a similar idea with the following definition:

Any written alteration in the specification; delivery point, rate of delivery, contract period, price, quantity, or other provision of an existing contract, accomplished in accordance with a contract clause; may be unilateral or bilateral. (1990:21)

The National Estimating Society Dictionary of Cost

Estimating Terms and Phrases states it as:

Changes to an end item or an item of supply for any stated purpose. A change in an airframe, component, or equipment that affects performance, ability to perform intended mission, flight safety, production, or maintenance. A block change to upgrade a system in the field or in ships or aircraft. In proposals, a customer's request to change a proposal. (1986:97)

The key idea seems to be that a modification is a formal change to a contract. Based on the above information the synthesized definition is:

A formal written change to a contract which affects the specifications, delivery, contract period, price, quantity, or other provisions.

Notice of Award

A specific definition of this term was not found.

However, Arnavas explains the process as follows:

An award is made either by written notice of award or by furnishing the successful bidder with an executed award document (the contract). Unsuccessful bidders must be notified promptly (either orally or in writing) that their bids were rejected, unless the procurement is classified. (1987:3-36)

The key idea seems to be that the notice of award is a formal announcement or communication. It is the act of notification. Based on the above evaluation the synthesized definition is:

The formal announcement that a contract has been awarded. The successful bidder receives notice of award either by receipt of the award document (the contract) or by a written notice. Unsuccessful bidders are notified of rejection either orally or in writing.

Payment Bond

According to the Government Contract Guidebook a payment bond is "a bond required of government construction contractors which secures their obligation to pay their laborers and materialmen" (1987:GL-14).

The NES Dictionary agrees, stating that a payment bond is "a guarantee of the payment by persons supplying material or services in the prosecution of work provided for in a contract" (1986:106).

A similar definition is provided by the Compendium, which defines payment bond as:

A bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract. (1981:515)

Verification can also be found in the Desktop Guide definition, which states:

A bond which assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract. A payment bond is required only when a performance bond is

required, and if the use of a payment bond is in the government's interest. (1990:37)

Based on the above information the synthesized definition is:

A bond required of government construction contractors which secures their obligation to pay their laborers and materialmen (Government Contract Guidebook, 1987:GL-14).

Post Award

According to Black's Law Dictionary the word "post" means after (1990:1166). The same reference defines "award" as:

a verb meaning to grant concede or adjudge to; to give or assign by sentence or judicial determination or after careful weighing of evidence; one awards a contract to a bidder. To confer as being deserved or merited; a noun meaning the decision or determination rendered by arbitrators or commissioners, or other private or extra-judicial deciders, upon a controversy submitted to them; also the writing or document embodying such decision. (1990:137)

Based on the above the proposed definition is:

Any time after contract award.

Pre-Proposal Conference

A pre-proposal conference, as can be readily derived from its name, is a conference which occurs prior to submission of a proposal. It is not synonymous with the related term "pre-solicitation conference", which implies an action prior to issuance of the solicitation (as opposed to after release of the solicitation but prior to submission of

proposals). Shelley, in previous research of a similar nature, developed the following definition for the term "pre-bid conference":

A conference held with prospective bidders prior to the submission of a bid to clarify any ambiguous situations, answer bidder questions, and ensure that all bidders have a common basis of understanding regarding the supplies or services required; called (a) pre-proposal conference in a negotiated procurement. (1991:103)

Since Shelley made note of the fact that the terms "pre-bid conference" and "pre-proposal conference" represent essentially the same type of activity, the only substantive difference being that the former is utilized under sealed bid procedures while the latter is used in procurements relying upon negotiation, no attempt will be made here to revise her previous work other than to correct for terminology differences between the sealed bid and negotiated procurement techniques. As such, the synthesized definition for the phrase "pre-proposal conference" is set forth as follows:

A group meeting held with prospective offerors prior to submission of their proposals, intended to clarify ambiguous situations, answer questions, and generally ensure that all potential offerors have a common basis of understanding regarding the supplies or services required. Referred to as a pre-bid conference on a sealed bid procurement.

Quality Assurance

The National Estimating Society Dictionary of Cost Estimating Terms and Phrases defines quality assurance as:

That function of management relative to all planning procedures, inspections, examinations, and tests required during procurement, production, receipt, storage, and issue that are necessary to provide the user with an item of the required quality. In current usage often includes quality control functions. (1986:121)

According to the Desktop Guide, quality assurance is:

A planned and systematic pattern of actions necessary to provide adequate confidence that materiel, data, supplies, and services conform to established technical requirements and to achieve satisfactory performance. (1990:41).

The Dictionary of Purchasing Terms has a similar definition:

A planned and systematic pattern of all actions necessary to provide adequate confidence that products and services conform to established technical requirements and satisfactory performance is achieved. (1986:25)

The Compendium goes into great detail, describing quality assurance as:

A broad program of planned and systematic controls for maintaining established standards; measuring and evaluating performance to these standards; and reporting and taking necessary action when standards or performance are not maintained. Comprises a planned and systematic pattern of all actions necessary to provide adequate confidence that the product will perform satisfactorily in service. A planned and systematic pattern of all actions necessary to provide adequate confidence that material, data, supplies, and services conforms to established technical requirements and achieves satisfactory performance. A planned and systematic pattern of all actions necessary to provide adequate confidence that the item or product conforms to established technical requirements. That function of management by which conformance of materiel to contract and specification requirements is assured. This assurance is obtained by evaluation or production quality controls and inspections exercised by procedures, supplemented by direct verification inspection of product. (1981:563)

The key ideas expressed in the definitions above seem to be that quality assurance is a management function based on planned and systematic action, whose goal is to ensure quality and satisfactory performance. Based on the above information the synthesized definition is:

A management function whose goal is to ensure quality, satisfactory performance and confidence that material, data, supplies, and services conform to technical requirements.

Quality Control

The Glossary defines the term "quality control" as "the system or procedure used to check product quality throughout the acquisition process" (1989:112).

The Dictionary of Purchasing Terms describes quality control in a similar manner, calling it those "practices and procedures followed to ensure appropriate quality and performance of goods produced or received" (1986:25).

Verification of this same concept can be found in the National Estimating Society Dictionary of Cost Estimating Terms and Phrases:

The inspection efforts for manufacturing, shops, receiving and shipping, and records necessary to assure that hardware, end items, parts, components, processes, and tests are being fabricated assembled, and tested in accordance with engineering drawings and specifications. (1986:121)

The definition found in the Compendium agrees, also:

A management method which exercises such influence as to assure that information and the method of producing information measure up to the prescribed standards. All actions directly related to measuring conformance

of the items, including surveillance of the production process and assessing the changes thereto, for the purpose of detecting and preventing defects (1981:564).

The key ideas expressed involve concern for practices and procedures to ensure quality and satisfactory performance, conformance to technical requirements, and to detect and prevent defects. Based on the above evaluation the synthesized definition is:

Practices and procedures used to ensure quality, satisfactory performance, conformance to requirements and to detect and prevent defects.

Quote

A specific definition of the term "quote" was not found. However, the term "quotation" was defined by the Dictionary of Purchasing Terms as "a statement of price, terms of sale, and description of goods or services offered by a seller to a prospective buyer" (1986:25).

The term "quotation" was also defined in the NES Dictionary as "an expression of price and contractual terms under which a supplier would be willing to supply items or services" (1986:121).

Black's Law Dictionary defines a quotation as:

A statement of the market price of one or more securities or commodities; or the price specified to a correspondent. Often shortened to "quote." The highest bid to buy and the lowest offer to sell a security or commodity in a given market at a given time. (1990:1256)

The term "bid quote" was defined in Black's as "a price at which one (usually a broker or dealer) is willing to purchase a security (or commodity)" (1990:162).

The key ideas seem to be that the term is synonymous with quotation and is the act of stating a price and terms of sale. Therefore, based on this evaluation the synthesized definition is:

The seller's statement of price, description of service and terms offered to a buyer.

Request for Equitable Adjustment

Keyes has stated that an equitable adjustment is a "cost adjustment employed where a change in the cost of execution is caused by modification of the terms pursuant to a changes clause" (1987:10). In effect, when the purchasing party changes its requirements, the performing party is entitled to fair compensation. It should be noted that this adjustment could result in an increase or a decrease in the value of the contract, dependent upon the nature of the change which occurred. As noted by Sherman, the concept is "to return the parties to the same relative positions they held prior to the event for which the equitable adjustment was made" (1987:1369). In fact, the expression itself comes from the concept of "equity", which implies fairness or equal treatment.

The "request" segment of this term refers to "the expression of a desire for something to be granted or done,

particularly for the payment of a debt" (Black, 1990:1304). By adding each of these individual pieces together, the resultant composite yields the following synthesized definition:

A written expression transmitted from one party of a contract to another, asking for a change in the contract (usually price) as the direct result of the modification of its original terms. The concept is to return all parties involved to their original (financial) status held prior to the change taking place.

Responsibility

The concept of responsibility goes back to the root of the word: responsible. As a starting point, The American Heritage Dictionary defines responsible, in part, as "capable of being trusted or depended upon; reliable" (1982:1053). Applying this concept more specifically to a contracting environment, Ryan defined the term "responsible contractor as "a capable party who appears able to satisfactorily fulfill a specific contractual requirement" (1988:67). He also included within his definition those characteristics which are encompassed within the word "capable": adequate financial resources, ability to deliver the product or service, ability to meet the delivery schedule, and reputation for operating within acceptable standards of conduct. These same characteristics are specified under FAR 9.1. "Responsibility" really refers to the broader concept of whether or not a particular

bidder/offeror is in fact a "responsible contractor." In government procurement, the contracting officer must make a "determination of responsibility" before a given contractor can receive an award.

Based upon the previous work accomplished by Ryan, only slight modifications need be made to his definition in order to make it applicable to the concept of "responsibility". Therefore, the synthesized definition is proposed as shown below:

A concept whereby the inherent qualities of a given party (bidder/offeror) are analyzed for the purpose of deciding whether or not the party is capable (i.e., has adequate financial resources, ability to deliver on time, maintains acceptable standards of conduct, etc.) of fulfilling a specific contractual requirement.

Responsiveness

According to the National Estimating Society Dictionary of Cost Estimating Terms and Phrases the term "responsive" means:

Used in the evaluation of proposals to indicate how closely or well the bidders followed the requirements, provisions, and instructions set forth in the request for proposal or quotation. (1986:127)

Arnavas describes responsiveness as "a bid's conformity with, and commitment to meet, the material terms of an invitation for bids" (1987:GL-15).

According to Desktop Guide, responsive means "a bid that meets, without any material deviation, the expressed requirements of a solicitation" (1990:42).

Black's Law Dictionary states a similar definition for the term responsive: "Answering; constituting or comprising a complete answer" (1990:1312).

The Dictionary of Purchasing Terms describes a responsive bidder as: "A bidder whose bid does not vary from the specifications and terms set out in the invitation for bids" (1986:26).

Arnavas seems to agree, by calling a responsive bid:

one which contains a definite, unqualified offer to meet the material terms of the IFB. In this context, a "material" term is one which could affect the price, quantity, quality, or delivery of the items being procured. (1987:3-24)

The key concept seems to be conformity. Based on the above information, the synthesized definition is established below:

A term used in the evaluation of bids to indicate how closely the bid conforms with the material terms of a solicitation. A material term is one which affects price, quantity, quality, or delivery.

Special Test Equipment

Special Test Equipment (STE) often becomes an area where significant disagreements exist between buyers (i.e., the government) and sellers (i.e., contractors). This is due to the financial implications which result from a determination that a given piece of equipment qualifies as STE or is simply considered to be "common" test equipment. Generally speaking, STE may be charged directly to a contract while common test equipment is typically an

"expensed" item which appears only in a firm's overhead accounts. Notwithstanding the debate that this issue causes, both Keyes and the FAR espouse identical definitions of the term "STE":

Either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes. (1985:154)

This lengthy definition would seem to cover all of the unique features of STE. The main thoughts here appear to be the concepts of "integrated units" which are "interconnected and interdependent so as to become a new functional entity". Similar language can be located in both the Glossary and the Compendium. The Dictionary of Cost Estimating Terms and Phrases also embraces these thoughts, but adds what these researchers feel is an essential characteristic: the status of STE as a deliverable item under a contract. This is addressed by the statement that STE is considered to be "items of accountable test equipment used by the contractor or the government but not included as deliverable contract end items" (1986:135). As such, any STE directly charged to a specific contract would become the purchaser's property at the conclusion of the contract as residual material. By

meshing these concepts together, the synthesized definition is proposed as follows:

Single or multipurpose integrated test units engineered, designed, fabricated or modified specifically for the accomplishment of testing during performance of a particular contract. These items consist of assemblies of test equipment which are interconnected and interdependent so as to become new functional entities. Such items are (typically) not included as deliverable contract end items per se, but become residual property at the conclusion of the contract and thus belong to the buyer. General plant testing equipment (including various materials, special tooling or facilities (except foundations and similar improvements necessary for installing special test equipment)) are not considered to be special test equipment.

Standard Commercial Item(s)

The National Estimating Society Dictionary of Cost Estimating Terms and Phrases describes standard commercial items in the following manner:

These are those items of a class or kind that are regularly used for other than Government purposes and are sold or traded in the course of normal commercial operations. Standard commercial items may be fabricated by the prime contractor or purchased from others. (1986:136)

Since the National Estimating Society Dictionary of Cost Estimating Terms and Phrases was the only source located for this definition, it was selected for the synthesized definition:

Items regularly used, sold or traded in normal commercial operations (National Estimating Society Dictionary of Cost Estimating Terms and Phrases, 1986:136).

Subcontract

The American Heritage Dictionary refers to the prefix "sub-" as meaning "below, under, beneath, or secondary" (1982:1210). This is precisely what the term "subcontract" is meant to imply. It is simply a contract at a tier below the prime contract. Keyes has stated that a subcontractor is "any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor" (1987:83). In an earlier writing, Keyes defined a subcontract as:

Any agreement entered into by a prime contractor or subcontractor calling for supplies and/or services required for contract performance, contract modification, or subcontract. (1985:156)

Based upon these statements, it is clear that a subcontract is simply a contract between two (or more) parties, none of which is the ultimate end purchaser. In theory, a subcontract could occur at the absolute lowest level of performance on a contract. For example, the purchase order containing various nuts and bolts which hold together a power supply, which in turn is mated with other similar devices to form a major subassembly, which in turn goes into an F-16 represents a subcontract under the prime Air Force contract for the F-16 aircraft itself. Frequently, in an attempt to reflect relative dollar values, the term "subcontract" is used to indicate a substantial effort as opposed to "purchase order" which may indicate a much smaller, less important, activity. The Glossary states

the "the term (subcontract) frequently implies a substantial dollar value and/or nonstandard specifications" (1989:130). However, no specific dollar threshold could be found within existing literature to indicate when a purchase order becomes a subcontract (thus leaving this facet open to the interpretation of the parties involved), a discussion of this characteristic will not be included in the proposed definition.

By utilizing the key features of each of the references provided above, the proposed definition for the term "subcontract" is:

Any agreement entered into by a prime contractor (or by a prime contractor's various suppliers, distributors, or vendors at any tier) calling for supplies and/or services which are ultimately required to fulfill the prime contract.

Supplemental Agreement

As the literal meaning of this term implies, it is an agreement which supplements the original agreement (or contract). Keyes utilizes a definition which is identical to that found in FAR, stating that a supplemental agreement is "a contract modification that is accomplished by the mutual action of the parties" (1985:158). The Glossary is somewhat more specific, setting forth the idea that a supplemental agreement is a:

Bilateral written amendment to a contract by which the government (buyer) and the contractor (seller) settle price and/or performance adjustments to the basic contract. (1989:130)

The common thread running through each of these definitions is clear: a bilateral amendment/modification to an existing contract. The Dictionary of Purchasing Terms, and Compendium both contain similar definitions. Based upon this literature, the proposed synthesized definition is set forth below:

A bilateral written modification to an existing contract which settles price, performance, and/or other adjustments to said existing contract.

Termination for Convenience

According to the National Estimating Society Dictionary of Cost Estimating Terms and Phrases, termination for convenience is:

A procedure which may apply to any government contract. Termination can be implemented at any time during the life of the contract and can be for the total quantity or a partial quantity. (1986:147)

Arnavas describes a termination for convenience as:

Right reserved to the government, under standard Termination for Convenience of the Government clauses, to bring an end to contracts that are made obsolete by technological and other developments, or that are otherwise no longer advantageous to it. (1987:GL-16)

The Dictionary of Purchasing Terms generally agrees with the two previous explanations:

The termination by the buyer of a product or service contract in whole or in part. The buyer settles the vendor's claims in accordance with appropriate regulations. (1986:30)

According to Desktop Guide the meaning is:

An action taken pursuant to a contract clause in which the contracting officer unilaterally ends all or part

of the work; can be "Termination for Convenience", in which the ending of work is in the best interest of the government. (1990:47)

The key concepts seem to be that the termination is initiated by the contracting officer and can affect the whole contract or only a portion and is judged to be in the best interest of the government. Based on the above information the synthesized definition is:

An action taken by a contracting officer to unilaterally terminate all or part of a contract when such action is considered to be in the best interest of the government and through no fault of the contractor.

Termination for Default

In the Dictionary of Purchasing Terms termination for default is described as:

The cessation or cancellation, in whole or in part, of work under a prime contract, or a subcontract thereunder, at the option of the buyer due to the vendor's failure to perform. (1986:30)

According to Desktop Guide the meaning is:

An action taken pursuant to a contract clause in which the contracting officer unilaterally ends all or part of the work; in which the contractor has not performed according to the terms of the contract. (1990:47)

Arnavas calls it a "sanction which the government may impose, under the standard Default clause, for a contractor's unexcused failure to perform" (1987:GL-16).

Elsewhere in the text, Arnavas gives a more detailed explanation stating:

The situation where a government contract ends sooner than anticipated. Termination for default is undoubtedly the most traumatic experience which can

befall a government contractor. Not only does that action - unless successfully contested by the contractor - put an end to performance of the contract and, in all probability, to the contractor's hopes for profits on the contract, it also subjects the contractor to possible liability for the government's extra costs of having the contract completed by another contractor. In addition, the termination is a negative entry on the contractor's record which could prevent him from receiving future contract awards. (1987:15-2).

The key concept to understand is that this term describes a reaction to the contractor's failure to perform. Based on the above evaluation the synthesized definition is:

An action taken by the contracting officer to unilaterally terminate all or part of a contract when the contractor has not performed in accordance with the terms of the contract.

Terms and Conditions

Very little documentation currently exists which clearly defines what is meant by this expression. Black defines "terms" as simply "conditions, obligations, rights, prices, etc., as specified in (a) contract or instrument" (1990:1472). It was interesting that he included the word "conditions" in his definition of the word "terms". It is clear from existing literature that these words have evolved to have the virtually identical meanings, but that they continue to be used together in a single phrase. Two rather all encompassing definitions were found which will be utilized to form the basis of the synthesized definition proposed as part of this research. The first, from The Dictionary of Purchasing Terms is provided below:

A phrase generally applied to the rules under which all bids must be submitted and the stipulations, included in most purchasing contracts, often published by purchasing authorities for the information of all potential bidders. (1986:30)

A second definition was found in the Dictionary of Cost Estimating Terms and Phrases as follows:

The part of a contract or purchase order which covers the general and special provisions, services, delivery dates, contractual incentives, prices, listings of standards, and specifications included in a contract. (1986:147)

It is interesting that the defacto usage of this expression, at least within the defense contracting community, has come to mean those stipulations which the seller includes within a proposal. After the resultant contract or modification has been issued, any such stipulations which were in fact included in the contract or modification are no longer referred to as terms and conditions: they are now general provisions, special contract requirements, prices, delivery schedules, etc. With this in mind, the synthesized definition is proposed as shown below:

Those rules which buyers may include within their requests for proposal (acceptance of which may be necessary for a proposal to be considered responsive) or sellers may include in their bid/offer (acceptance of which their offer may be contingent). Such rules may also be included in the resultant contract if all parties involved so concur. These rules may address various stipulations regarding general or special provisions, incentives, specifications, delivery requirements, rights, obligations, prices, or any other aspect of the request for proposal, bid/offer, or resultant contract.

Truth in Negotiations Act (TINA)

The "Truth in Negotiations Act" was introduced by the legislature as Public Law 87-653, which generally established the law requiring submission of cost and pricing data to the government, as well as certification as to its accuracy, on all negotiated procurements in excess of certain dollar thresholds. More specifically, according to the Dictionary of Cost Estimating Terms and Phrases, P.L. 87-653 created in law the requirements for:

The submission either actually or by specific identification in writing of cost or pricing data and certification of their accuracy, completeness and currency for the award of any negotiated contract. Certain exceptions apply that are tied to adequate price competition or other conditions reflecting a competitive marketplace. (1986:119)

The Dictionary of Purchasing Terms provides a similar definition of the Truth in Negotiations Act:

Established the requirement that for Federal non-competitive negotiated contracts over \$100,000, contractors must furnish the government buyer with complete, accurate and detailed cost estimates, and must further certify such information's accuracy. (1986:31)

Keyes echoes similar thoughts, but adds that the contractor is subject to penalties if the information provided is later determined to be faulty:

Truth in negotiations refers to a statutory requirement that in all negotiated procurements in excess of \$100,000 the contractor must certify that the cost and pricing data supporting his fee is current, accurate, and complete at the time of contracting. The fee can be adjusted downward to the extent that such cost and pricing data is faulty. (1987:29)

It is clear that the common theme throughout each of these definitions include the concept of submitting cost or pricing data on negotiated procurements, in excess of specified dollar thresholds, to which the contractor must certify as to its accuracy, currency and completeness. Further, this act applies not only to new contracts but to modifications to existing contracts as well (Sherman, 1987:365). Although several of the cited authors have set forth \$100,000 as the threshold above which the TINA requirements are invoked, this amount has fluctuated between that amount and \$500,000 over the years. So as to avoid having the results of this research invalidated by a future change in this threshold, no specific amount will be included in the proposed definition. Therefore, joining each of these concepts into a single synthesized definition yields the following:

Officially established as Public Law 87-653, this statute requires that contractors provide cost or pricing data to the government on all negotiated procurements (whether for new contracts or for modifications to existing contracts) in excess of specified dollar thresholds. Certain exceptions to this requirement exist where adequate price competition, reflecting a competitive marketplace, can be readily demonstrated. Further, contractors must certify as to the accuracy, currency, and completeness of the submitted data, and are subject to profit or fee reductions if such data is later determined to have been faulty.

Undefinitized Contract Action (UCA)

This phrase is used in reference to a particular contract action which has at least one facet of the contract unspecified at the present time. While in theory this could refer to schedules, specifications, or various contract clauses to which the contractual parties have not fully agreed upon, in actual usage it typically implies a price (or prices) within the contract which has not been specified. This type of situation occurs most frequently in relation to change orders or letter contracts. When those types of documents are issued, they generally contain a "not-to-exceed" (NTE) or "not-less-than" (NLT) price which, while establishing an agreed to maximum or minimum liability, are not intended to be the final price. In essence, the parties agree to this established maximum or minimum and further agree to negotiate a specific dollar amount at a point in the near future. Sherman states succinctly that an undefinitized element of work is "any part of a project which, although authorized, has not been negotiated in terms of total cost and schedule" (1987:235). The Glossary provides a more specific viewpoint as provided below:

New procurement action entered into by agency head for which contractual terms, specifications or price are not agreed upon before performance is begun (letter contract or change order). (1989:142)

It should be noted that the reference to a "new procurement action" above does not necessarily mean a new

contract, since change orders issued pursuant to the Changes clause in government contracts are not considered new contracts; they are simply modifications to existing contracts. Meshing these ideas into one synthesized definition yields the following:

A contract action entered into which, although authorized, is not fully negotiated with respect to at least one of its contractual terms, specifications, cost or price prior to the initiation of performance. The most typical examples of such an action would include letter contracts and change orders issued pursuant to the "Changes" clause included within government contracts.

Unilateral Modification

William W. Thybony offers the following definition of a unilateral modification:

A contract modification signed only by the contracting officer. Unilateral modifications are used, for example, to: (1) make administrative changes; (2) issue change orders; (3) make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.); and (4) issue termination notices. (1987:48)

The term "unilateral" is defined in Funk and Wagnall's Standard Desk Dictionary as:

Existing on one side only; made, undertaken, done, or signed by only one or two or more people or parties. One-sided; relating to or concerned with only one side of a question, dispute. (1981:743)

Based on the above information the synthesized definition is:

A modification requiring only the signature of the contracting officer.

Unlimited Rights

Unlimited rights refers to those rights obtained by the purchaser of technical data (or computer software). The American Heritage Dictionary refers to the word "unlimited" as meaning "having no limits, bounds, or qualifications" (1982:1323). This is consistent with the thoughts of Black, who has described "unlimited" as "without confines, unrestricted, boundless" (1990:1537). Taken within context, acquiring unlimited rights to technical data would imply that the purchaser has the freedom to use such data in any manner he or she sees fit. In fact, as it applies to government acquisition of such data, Sherman has written that "if unlimited rights flowed to the government, it acquired unrestricted use of the data" (1987:177).

Several broad definitions of unlimited rights were found within the existing literature. Two of these are provided below. Although very similar, their differences are proof that a single, synthesized definition is necessary. The first is taken from the Glossary, which states that unlimited rights are:

Rights to use, duplicate, release or disclose technical data or computer software in whole or in part in any manner and for any purpose, and to have or permit others to do so. (1989:143-144)

The second, more detailed definition is taken from FAR 27.401, which defines unlimited rights in terms of:

The rights of the government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display

publicly, in any manner and for any purpose, and to have or permit others to do so.

By including each of the common themes running throughout the above referenced writings, a synthesized definition for the term "unlimited rights" is proposed below:

With respect to technical data or computer software, the legal authority to use, duplicate, release, disclose, reproduce, prepare derivative works, perform or display publicly, or to have or permit others to do so, in whole or in part in any manner or for any purpose.

Value Engineering Change Proposal

The Glossary defines a value engineering change proposal as one which is:

Submitted by the contractor for review as to its value engineering applicability. If accepted by the government, normally the contractor is compensated for saving the government money. (1989:145)

In the National Estimating Society Dictionary of Cost Estimating Terms and Phrases, value engineering is described as:

An engineering function which examines proposed designs, methods, and processes with the object of identifying lower cost techniques or processes to produce the item more economically without significant loss of performance. (1986:153)

The definition in the Desktop Guide agrees with those shown above, describing it as:

A proposal that requires a change to the contract to implement and results in reducing the overall projected cost to the agency without impairing essential functions or characteristics provided that it does not

involve a change in deliverable end item quantities, R & D quantities; or the contract type. (1990:49)

The definition offered in the Compendium is:

A change proposal submitted pursuant to the value engineering clause in the contract which results in a net life cycle cost reduction to the Department of Defense and requires a contract modification.
(1981:733)

Based on the above information the synthesized definition is:

A change proposal submitted by the contractor in accordance with the value engineering clause which reduces costs without a loss of performance or function. If accepted, the government and the contractor share the savings.

Withholding (Payment)

This word encompasses the same meaning within a contracting management context as it does in everyday usage.

The American Heritage Dictionary defines withholding, in part, as "to refrain from giving, granting, or permitting" (1982:1387). Within a more legalistic context, Black has set forth the following definition:

To retain in one's possession that which belongs to or is claimed or sought by another. To omit to disclose upon request. To refrain from paying that which is due. (1990:1602)

Within a contracting context, this term typically refers to situations where the buyer denies (at least temporarily) the seller's request for payment for supplies or services rendered. One example would be where the seller has shipped inferior goods, i.e., items which are at a

performance level below that which is required by the contract, and the buyer refuses to pay or "withholds" some portion of the payment until such time as the deficiencies are corrected by the seller. In this sense, "withholds" are generally considered to be temporary in nature. Once the seller corrects the noted deficiencies, the withholds would be released. If the supplies could not be upgraded to meet the specifications set forth within the contract, the buyer and seller may agree to some permanent reduction in the contract price, in such case the entire withhold would not be released; only that part representing a value equal to the improvement which was actually restored by the seller over and above that which existed at the time of original delivery. In such a case, a supplemental agreement would be required to formally revise (lower) the price of the contract, and the amount of the reduction would no longer be referred to as a "withhold."

Therefore, taken in a contract management context, the term "withholding (payment)" is proposed to mean the following:

An action taken by the buyer in response to a lack of performance by the seller. This action is generally considered to be of a temporary nature, implying that the payment involved will be released to the seller once the lack of performance is corrected. If the required performance cannot be achieved by the seller, a price reduction (or other equitable consideration) would be negotiated by the parties and a supplemental agreement to the contract issued which formally incorporates such a settlement. After such a modification is issued, the funds in question would no longer be referred to as a "withhold".

This chapter has presented the proposed definitions which resulted from a thorough analysis of existing literature. The next phase of this research was to transmit these proposed definitions via a questionnaire/survey to a randomly selected group of Certified Professional Contract Managers (CPCMs) for review and comment. The intent of this was to determine the extent of their agreement with the proposed definitions.

This survey is described in more detail in the next chapter (Chapter III), entitled Methodology, and the survey results are presented in Chapter IV, entitled Data Analysis.

III. Methodology

Introduction

While many other professions have well-established, generally agreed upon definitions unique to their field, the body of knowledge inherent within the contract management field does not presently include a universal set of definitions for contracting-related terminology. This lack of universally accepted definitions increases the potential for miscommunication and misunderstanding between contracting parties.

The purpose of this research is to establish universal definitions for 50 words or terms frequently utilized within the contract management profession.

Method

Through a review of existing literature the researchers focused on definitions which currently exist, examined each for similarities and differences, and attempted to compose or synthesize a single definition (where appropriate) which contained the key universally accepted concepts. The assimilated definitions were presented to senior members of the contract management community, and feedback was obtained. Based upon this feedback, each definition was further revised so that it accurately reflected the actual

usage of the terminology within the practicing contract management field.

Through the use of a mail survey the researchers obtained input on these proposed definitions from a representative cross-section of senior contract management professionals from both the private and public sectors. The survey findings provided the basis for modifying the original proposed definitions so that they accurately reflect current usage within the contract management field.

Following Moyle's example (1990:3-8) the researchers used a five point Likert scale to record subjects' opinions of the proposed definitions. Choices included "strongly disagree", "somewhat disagree", "undecided", "somewhat agree", and "strongly agree". Space for additional comments was provided. If a majority agreed with a definition it was used as is. If a majority disagreed, the definition was changed accordingly.

As recommended by John A. Dillman in his Total Design Method concept (1978:165), a cover letter was included which described the purpose of the study, persuaded subjects to participate and assured confidentiality. Researchers replicated the survey cover letter, follow-up survey letter, survey questionnaire instructions and background information successfully employed by Shelley (1991:83, 85-87).

Subjects' names and addresses were randomly selected from a potential population of approximately 4,113 certified

professional contract managers (CPCMs) of the National Contract Management Association (NCMA). From the total 4,113 CPCMs, the 148 previously selected by Stephanie Shelley, were subtracted. Sample size was determined from the following formula as utilized by Shelley (1991:31):

$$n = \frac{N(z^2) \times p(1-p)}{(N-1)(d^2) + [(z^2) \times p(1-p)]}$$

n = sample size

N = population size of 4,113 - 148 = 3965

p = maximum sample size factor (.50)

d = desired tolerance (.10)

z = assurance factor (1.645) for a 90% confidence level

A sample size of 67 was determined by solving the equation above. To receive 67 replies, it is estimated that 145 names must be randomly chosen by each researcher from a master listing of NCMA CPCMs. A series of follow-up reminders were used to ensure maximum participation. This technique, developed by Don A. Dillman, was successfully utilized first by Moyle (1990:3-4) and later by Shelley (1991:32-34). The first reminder followed the initial survey by one week. Three weeks after the initial mailing another letter and duplicate survey were sent. It is noted that these follow-up contacts proved to be absolutely

essential in obtaining a satisfactory response rate; use of similar techniques are highly recommended for future research projects.

The next phase of this research was to compile to questionnaire/survey results in a meaningful manner so that a thorough analysis could be conducted. Such an analysis is provided in the following chapter (Chapter IV). This includes both a quantitative summary of the responses received as well as a discussion of any comments provided by the respondents. A format similar to that shown below has been included for each contracting term:

No Mark	Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree
4	5	3	6	26	37

Comments (indicating agreement or disagreement) are then listed, followed by an analysis/discussion of these comments. Finally, a revised ("final") definition is provided which thoroughly considers all inputs received from the surveys. A listing of these final definitions is included at Appendix E.

IV. DATA ANALYSIS

This chapter analyzes the results of the survey (reference Appendix D) which was submitted to 290 Certified Professional Contract Managers (CPCMs) as discussed previously herein.

A total of 290 surveys were mailed. Each of the surveys contained 25 of the total 50 terms addressed by this thesis, i.e. each term was "surveyed" 145 times. Of the total 290 surveys mailed, 41 were returned because they contained incorrect addresses. Nine potential participants returned unanswered questionnaires because they were retired and felt their knowledge would not be current. Three questionnaires were returned due to death. One participant had suffered a stroke and was incapacitated. Thus, a total of 54 unusable questionnaires were returned. A total of 152 usable questionnaires were received, which satisfied the required sample size of 134. The 54 unusable questionnaires combined with the 152 usable questionnaires equals 206 total returned questionnaires.

Based on the total number of returned questionnaires, the response rate is $206/290$ or approximately 71.0%. Eliminating the 41 bad addresses yields a response rate of $152/249$ or approximately 61.0%. Considering only the 152 usable questionnaires, the response rate is $152/290$, or approximately 52.4%, based on total mail outs.

In general, the majority of respondents agreed with each proposed definition. However, the respondents did provide many useful recommendations for improving the proposed definitions. Thus, many of the proposed terms were revised to reflect the most frequently cited suggestions. A detailed analysis of the survey results is provided below on a term by term basis. In each case, the original "proposed" definition is provided first, followed by a numerical analysis of the survey results. In those instances where a respondent failed to indicate their feelings regarding the proposed definition of a particular term, the numerical analysis indicates "no mark" was made on the survey form. A summary of the most significant/recurring comments is then listed. In some cases, these comments have been paraphrased and/or combined with other similar comments in order to attain a more condensed list of comments. Finally, the "final" definition is provided. A summarized listing of these final definitions can also be found in Appendix E.

ABSTRACT OF BIDS

"A summary of the bidders and their bids for a specific procurement."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	0	3	2	26	43

Nearly all participants (93.24%) agreed with this definition. Respondents' comments included the following:

- Also records names and certifications of government bid opening officials.
- Should also mention abstract is a publicly releasable document. Recorded on a standard form.
- Substitute "bid prices" for "bids".

The comments cited above offer useful information which should be added to further clarify the basic definition.

Therefore, the revised definition is:

ABSTRACT OF BIDS: A summary of the bidders and their bid prices for a specific procurement. The abstract also records the names and certifications of the government bid opening officials. The abstract is a publicly releasable document, recorded on a standard form.

APPROPRIATED FUNDS

"Monies which are provided by an act of Congress, thereby permitting Federal agencies to expend designated amounts for specified purposes within a specified timeframe."

Survey results regarding the proposed definition for this term are summarized below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	0	3	0	24	49

While nearly all of the respondents (93.6%) agreed somewhat or agreed strongly with the proposed definition, several comments were made which deserved consideration. These are listed below:

- Explain "specified purposes".
- First sentence should state "Federal (public) monies which are...".
- Appropriated funds must be obligated within a certain timeframe; expenditure may be years later.

The first comment, dealing with "specified purposes", presumably is a reaction to the lack of specific items or categories/types of efforts being addressed in the definition. Specific references to construction projects, major weapon system procurements, spare parts acquisition, or janitorial services could be added. However, this would seem to unnecessarily lengthen and complicate the definition without providing any real "value added". Therefore, this comment will not be addressed. The other two comments are obviously valid and have been incorporated into the final definition shown below:

APPROPRIATED FUNDS: Federal (public) monies which are provided by an act of Congress, thereby permitting Federal agencies to obligate designated amounts for specified purposes within a given timeframe.

BID REJECTION

"Unaccepted because: acceptance of one bid constitutes rejection of all others; absence of competition invalidates all bids; readvertisement is equivalent to rejection of all bids." (Compendium, 1981:96)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	7	10	12	35	10

Over half of the respondents (60.81%) agreed with this definition. However, several people complained that the definition was hard to understand, and made comments to that effect:

- I don't understand the definition.
- Definition is somewhat confusing to read.
- Use plain English.

Others objected to the fact that not all possible cases were listed, stating:

- Does not cover all cases.
- There are many reasons for bid rejection, not just those cited above. Recommend not trying to limit it to those.

Another respondent suggested prefacing the definition with the following:

- The government's refusal to accept a bid based on various circumstances deemed by the soliciting agency to constitute nonconformance for reasons such as ...(your definition follows).

This suggestion seems to be a good idea and will improve the basic definition in two ways: first, it will reinforce the idea that bid rejection is a refusal to accept a bid, and secondly it explains that the definition merely offers some examples and does not intend to list every possible case. Therefore the revised definition is:

BID REJECTION: The refusal to accept a bid for a variety of reasons, such as where acceptance of one bid would constitute rejection of all others or where absence of competition invalidates all bids; readvertisement is equivalent to rejection of all bids.

BIDDERS MAILING LIST

"A list maintained by the purchasing office which contains the names and addresses of contractors who are interested in doing business with the government, and to whom invitations for bids, or requests for proposals and quotes should be sent." (Dictionary of Purchasing Terms, 1986:3)

The survey results for this definitions were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	4	1	24	43

While a large majority (90.54%) agreed with this definition, several people expressed concern over the use of the word "should". Comments included the following:

- Note: "Should" is the imperative of "shall". The definition implies that you should always send IFBs, RFPs, etc. Also, procedures may call for rotation of vendors for smaller dollar amounts.
- It's a list which you could select to send quotes but you don't have to always send quotes to all if you have a system for ensuring competition and fairness in the selection.
- Change "should" to "may".

Others wanted a more detailed explanation of procedures stating:

- List usually set up by federal stock class (FSC) and rotated among bidders if the list is voluminous.
- Add "on a rotating basis as practical or economically feasible".

In response to the comments concerning the use of the word "should" the definition was altered to read "may". In addition, the suggestion to add that it is set up by federal stock class and rotated among bidders is adopted since these are important parts of the procedure. Therefore the revised definition is:

BIDDERS MAILING LIST: A list maintained by the purchasing office which contains the names and addresses of contractors who are interested in doing business with the government, and to whom invitations for bids, or requests for proposals and quotes may be sent.

BILATERAL AGREEMENT

"A contract modification signed by the contractor and the contracting officer; a contract in which both parties are bound to perform."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	3	6	1	24	39

A majority of the respondents (85.14%) agreed with this definition. Several respondents disapproved of the use of "contract modification" stating:

- It does not have to be a "contract modification."
It can be any contractual agreement definitized or undefinitized on which the parties "mutually" agree.

- Bilateral constitutes two party execution of an agreement. It need not be a modification.
- Essentially an agreement between two parties defining obligations and rights of each party.

Based on the comments above, the definition was altered to read:

BILATERAL AGREEMENT: An agreement signed by the contractor and the contracting officer; an agreement in which both parties are bound to perform.

BRAND NAME OR EQUAL

"The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words or equal." (Government Contract Law, 1988:8-2)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	5	7	25	35

A majority of the respondents (81.08%) agreed with this definition. Comments included the following:

- I agree that the definition is what has commonly been used, but it's a terrible definition and leads to all kinds of problems. It needs clarification as to what characteristics must be equal - i.e. in form, fit, and function - or something along those lines.
- Salient characteristics of brand item should be listed.

Those respondents who disagreed made a good point. Citing the brand name alone is not enough. Therefore, the

definition was revised to include a more detailed explanation. The revised definition is:

BRAND NAME OR EQUAL: The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words or equal. The salient characteristics of the brand item should also be listed, such as the physical, functional or other features that are essential to the government's needs.

BREACH OF CONTRACT

"The breaking of a contract, either in full or in part, as a result of failure to perform acts promised (or by prevention, hinderance, or repudiation), to the extent that the other party is injured by this failure to act."

The survey results regarding the proposed definition for this term are summarized below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
4	3	8	2	27	34

The proposed definition for this term received an "agreement rating" of approximately 82.4%. Nonetheless, several valid comments were provided by the respondents. The most discussion surrounded the portion of the definition dealing with "...to the extent damaged...". Many of the CPCMs contacted felt that this was not a factor; that a breach could occur without actual damage being incurred. A synopsis of the comments received is provided below:

- Must one party be injured (suffer damage) in order for a breach to occur? Breach is more a question of fact rather than to the extent of injury. Measuring

the extent of injury seems more a matter of equity than of law.

- Suggest changing "...breaking of..." to "...non-compliance with..." or "...failure to perform as specified by the terms, conditions, and other requirements of a...".
- Suggest replacing the word "full" in the first line with the word "whole", and deleting the last five words altogether.
- Should address the government's "sovereignty" and how this impacts its contract breach situations. Government contracts provide relief for the contractor (in most instances) when the government is unable to fulfill its contractual obligations (thereby heading off breach of contract suits against the government).
- Breach can also occur when one party affirmatively acts (as opposed to fails to act) in a manner inconsistent with the terms of the contract. Examples would be cardinal changes, constructive changes, etc.
- Breach is simply a material departure from the contract terms.

The second comment, regarding changing the beginning of the definition is very appropriate and makes the overall definition read much better. Furthermore, the idea that a party must be injured in order for a contract breach to occur was also incorrect. Although in reality one party usually is injured/damaged in some manner when the other party breaches an agreement, it is not a necessary condition for a breach to occur.

Further, regarding the issue of the government's sovereignty and the impact this has upon its legal authority to breach contracts, the researchers feel that this comment, while valid, is best ignored for the purposes of the current

research. First of all, the addition of this type of discussion within the final definition would greatly expand the definition beyond the level of detail of what is desired. Secondly, every attempt has been made to keep these definitions "generic" in the sense that they will be applicable to contracting within the private sector as well as the public sector, at least to the greatest extent possible. Some of the terms discussed herein are, by their very nature, limited to situations involving government contracting. However, contract breach may occur during performance of any contract; public or private.

Based upon the discussion above, the final definition for this term is provided below:

BREACH OF CONTRACT: The failure to perform as specified by the terms, conditions, or other requirements of a contract, either in whole or in part; a material departure from the contract terms.

COMMERCE BUSINESS DAILY

"The Commerce Business Daily (CBD) is a United States Department of Commerce publication, issued every business day, which notifies the public of procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities." (Government Contract Guidebook, 1987:2-21)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	1	1	3	8	61

A vast majority of the respondents (93.24%) agreed with this definition. A few people expressed the following concern:

-- Also need to mention that the CBD publishes "sources sought" synopses.

Thus the definition was modified to include this function. The revised definition is:

COMMERCE BUSINESS DAILY: A United States Department of Commerce publication, issued every business day, which notifies the public of procurement invitations, contract awards, subcontracting leads, sales of surplus property, foreign business opportunities and publishes sources sought synopses.

COMPETITIVE PROPOSALS

"The method of procurement generally favored where use of the sealed bid approach is considered inappropriate. It is a process of publicizing a purchaser's needs, requesting proposals via a request for proposal (RFP), evaluating the resulting proposals in accordance with specified evaluation criteria included within the RFP, and holding discussions with every acceptable or potentially acceptable offeror prior to award, if it is determined necessary by the purchaser."

Results of our survey are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
4	5	7	2	25	35

While 60 out of the 78 total respondents agreed with the original proposed definition, several useful comments were also included in their responses. These are listed below:

- Suggest putting the words "if it is determined necessary by the purchaser" in parenthesis immediately after the phrase "and holding discussions...".
- Add that factors other than price are considered.
- Suggest clarifying those circumstances where sealed bid approach is considered inappropriate, such as where the exact configuration cannot be defined by the purchaser.
- Last half of definition is a bit wordy/cumbersome.
- The phrase "...every acceptable or potentially acceptable offeror..." really means "...every offer found to be within the competitive range...".

The first and last comments listed above really address grammatical concerns which do not change the intent of the proposed definition. As such, these will be incorporated into the final definition without discussion. This will also alleviate the concerns of the respondent who noted that the end of the definition was "a bit wordy/cumbersome." The second and third comments more directly impact the meaning of the definition itself, and an attempt has been made to accommodate these concerns, also. Listing all of the circumstances which would/might create a situation where competitive proposals would be used would greatly lengthen the definition. The goal here is to precisely define the term; not necessarily to present a complete compendium of all information related to the term itself. However, reference to the lack of an exact configuration has been added to the definition in an attempt to address the

comment. Based upon all of the above, the final definition for the term "competitive proposals" is as shown below:

COMPETITIVE PROPOSALS: The method of procurement generally favored where use of the sealed bid approach is considered inappropriate, such as where the complete configuration of the item to be purchased is not known. It is a process of publicizing a purchaser's needs, requesting proposals via a request for proposal (RFP), evaluating the resulting proposals in accordance with specified evaluation criteria (to include price and other factors) addressed within the RFP, and holding discussions (if deemed necessary by the purchaser) with every offeror found to be within the competitive range.

COMPETITIVE SEALED BIDDING

"A method of contracting which uses sealed bids, public opening of bids at a specified time, and awards made to the lowest responsive and responsible bidder. Prior to the Competition in Contracting Act of 1984 this method was called formal advertising."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	0	2	1	14	56

A vast majority of the respondents (94.59%) agreed with the definition. Comments included the following:

- It must also be most advantageous to the government considering only price and price-related factors.
- At the end of the first sentence add, "whose bid is most advantageous to the government considering only price and price related factors".
- Include "strict rules" provided for bid opening, late bids, mistakes in bids, untimely bids, etc.

-- Recent indications are that this is again the preferred method of procurement - should this be addressed?

Since price and price related factors and strict rules are important features of competitive sealed bidding those suggestions were adopted. The researcher declined to adopt the statement concerning the preferred method of procurement for several reasons; policies change, preference can be an individual interpretation, the preferred method depends on the objective and the nature of the procurement. Here it is preferable to focus on facts. Therefore, the revised definition is:

COMPETITIVE SEALED BIDDING: A method of contracting which uses sealed bids, public opening of bids at a specified time, and awards made to the lowest responsive and responsible bidder whose bid is most advantageous to the government considering only price and price related factors. Strict rules are followed for bid openings, late bids, mistakes in bids, etc. Prior to the Competition in Contracting Act of 1984 this method was called formal advertising.

CONFIGURATION

"A complete technical description of both the functional (i.e., performance) and physical (i.e., appearance) characteristics of an item, describing both hardware and software to the level of detail required for fabrication, testing, acceptance, operation, maintenance, and logistical supportability of the item."

The proposed definition for this word resulted in the following survey results:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	3	7	8	22	36

Those comment most frequently seen within the surveys included the following:

- "Physical" also includes dimensions, interfaces, and composition.
- Configuration is used conceptually to separate items which are very similar but slightly different.
- Since the configuration of an item may change over time, the concept of a configuration as a "snapshot" in time may be useful.
- Should also address firmware in addition to hardware and software.

Each of these comments are valid and will be addressed in the final definition, with one exception. The second comment, while true, addresses one manner in which the term "configuration" is used. It does not actually help to define the term, except by providing one example of its usage. Including a listing of each possible use would unnecessarily lengthen the definition, as well as be inconsistent with the manner in which all of the other terms included herein have been addressed. Therefore, the final definition will not contain a reference to it. This final definition is provided below:

CONFIGURATION: A complete technical description of both the functional (i.e. "performance") and physical (i.e. appearance, composition, dimensions, interfaces, weight, etc.) characteristics of an item, describing the hardware, firmware, and software to a level of detail required for

fabrication, testing, acceptance, operation, maintenance, and logistical supportability of the item. The configuration of an item may be subject to change over time due to updates, upgrades, or retrofits. As such, the stated configuration must also make reference to a specific date as of which these characteristics were correct.

CONTRACT, FIXED-PRICE, AWARD FEE

"A contract which provides for a firm price, or under appropriate circumstances provides for potential adjustments to the price (as found within fixed price incentive (FPI) contracts or fixed price contracts with economic price adjustment (EPA) features), also containing provisions for an award fee which may be earned by the seller through achievement of certain performance goals specified within the contract. These goals may relate to technical performance, timeliness, product quality, or other characteristics as designated within the contract. The amount of the award fee to be paid is determined by the purchaser's judgmental evaluation of performance in terms of the criteria specified within the contract. In government contracting, this determination is made unilaterally by the government and is not subject to the "Disputes" clause found within all government contracts."

Results of the survey discussed elsewhere within this thesis are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	6	6	3	29	33

Many comments were received regarding this definition. Possibly because of its length, many respondents noted that the proposed definition was somewhat confusing and difficult to follow. Several suggested breaking the term into two or three different parts, as this would make each piece easier

to define in a coherent manner. A summary of the comments are listed below:

- First sentence is too long and rambling.
- Suggest deleting the words "or under appropriate circumstances...economic price adjustment (EPA) features)," from the first sentence (it only confuses the issue).
- Suggest splitting this term into three separate definitions: FFP, FPI, and Award Fee.
- Definition is too long; very wordy.
- Should clarify that the award fee could be based on achieving certain management goals (as opposed to technical or performance goals).
- Might want to include the idea that award fees are also used to improve areas which are subjective such as "management" or "user friendliness".
- Need to stress that the contractor's attainment of the award fee is based upon a subjective evaluation on the part of the government.
- Delete the portion of the first sentence found between the "()".
- Add the word "generally" before the word "subject" in the last sentence. Courts have made a few exceptions to this rule over the years.
- The seventh word should be changed to "fixed" in order to remain consistent with the phrase being defined.
- Never heard of this type of arrangement; not sure it is illegal, just not used very often (ever?).

The researchers feel that the term cannot be split into three separate terms as suggested by some of the comments. It is possible that these terms have already been, or will be in the future, defined as part of a separate thesis. Previous work by Hauf (see Chapter 1) identified a master

list of terms which required definition; "contract, fixed-price, award fee" was one of these. It is not our intent here to question the validity of this prior work. As such we will not consider changing the structure of the term.

Each of the other comments remain valid and the proposed definition has been revised so as to address each of those concerns. Therefore, the final definition is as shown below:

CONTRACT, FIXED-PRICE, AWARD FEE: A contract which provides for a fixed price, as well as an award fee which may be earned by the seller through achievement of certain performance and/or management goals specified within the contract. These goals may relate to technical performance, timeliness, product quality, or any other characteristics deemed appropriate by the purchaser. The amount of the award fee to be paid is determined by the purchaser's judgmental (subjective) evaluation. In government contracting, this determination is made unilaterally by the government and is not generally subject to dispute on the part of the seller.

CONTRACT DATA REQUIREMENTS LIST (CDRL)

"A listing found within the contract which identifies all data, reports, and/or other documentation required from the seller, stating exactly what to deliver, when to deliver it and how it will be accepted, as well as where to look for any further instructions."

Survey results produced the following findings:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	1	3	2	34	38

The proposed definition for this term received one of the highest "approval" ratings of the entire survey. Better

than 92% of the respondents either strongly agreed or somewhat agreed with the proposed definition. Still, several good comments were received, as shown below:

- Add reference to DD Forms 1423 (which state when and to whom the data shall be delivered) and Data Item Descriptions (which provide a detailed account of exactly what must be delivered).
- Also should indicate where to deliver the data.
- Suggest changing "...found within..." to read "...attached to...".
- Not clear what "further instructions" are being referred to.
- Suggest changing beginning to "An agreed to listing...".
- Also includes a description of the documentation to be provided and usually the cost per data item (unless they are "not separately priced").
- Data requirements mandated by FAR may also appear in Section H of a government contract.

The first and last comments are government contract specific, in that they would only relate to contracts issued by the federal government. In order to maintain consistency throughout this these, these types of comments have not been addressed unless the term itself is unique to government contracting. While the term CDRL may be government unique, a similar listing could potentially be found in private sector contracts under, possibly under a different name. Furthermore, the additional information highlighted by these two comments would not truly improve upon the proposed definition. Therefore, these comments will not be utilized.

The other comments, however, provide additional clarification as well as easier reading, and they have been incorporated in full in the final definition. This is provided below:

CONTRACT DATA REQUIREMENTS LIST (CDRL): An agreed to listing attached to the contract which identifies various data, reports, and/or other documentation required from the seller, stating exactly what to deliver, when and where to deliver it, and the method of acceptance by the buyer.

CONTRACT MANAGEMENT

"The process of taking all actions necessary to obtain a mutually binding agreement between two or more legally competent parties, in the proper form and regarding a legal subject matter, for a legal consideration. This agreement is then administered through a series of ongoing actions designed to organize, direct, coordinate, and control the process, with the goal of successfully accomplishing all tasks specified within the agreement."

The results of our survey yielded the following findings:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	9	12	6	25	23

The proposed definition for this term was one of the more controversial out of all fifty terms reviewed during this research. The main thrust of dissenting opinion regarded when contract management actually begins. Respondents were clearly divided into two categories: one that felt contract management started when the requirement for a purchase was first identified, and one that felt

contract management did not begin until a contract had been issued. The proposed definition sided with the first group, taking the view that contract management was an all encompassing effort which could best be described as "conception" (as opposed to cradle) to grave. The second group leaned more toward a "contract administration" definition of contract management. Comments received from this group can best be summarized by the following:

- Doesn't contract management, by definition, imply that a contract must already exist? Doesn't "contract management" describe actions taken after award to carry out the contract, to include contract modifications? To most people, contract management means contract administration, i.e. after award.

While the logic here is clear, it is felt by these researchers that any meaningful analysis of contract management must address issues which occur prior to contract award. Failing to do so would mean that topics such as solicitation development, contract negotiation, proposal evaluation, etc., could not be included. It is our opinion that this would be a loss to the contracting community as a whole. Therefore, this comment, and other comments similar to it, will not be addressed in the final definition.

Other comments consisted mainly of "wordsmithing"; attempting to better state what was already in the definition. This type of comment is represented by the following:

- Change the first sentence to read: "The process consisting of all actions necessary to negotiate and

administer a mutually binding agreement (i.e., a contract) between two..."

- Should include the concept of "customer interaction".
- Suggest replacing the word "agreement" with the word "contract" everywhere it is used.
- Replace "the process" in the last sentence with "performance under the contract".
- Too wordy.
- Need more specifics regarding those actions necessary to obtain a contract: advertisement, RFP preparation, proposal preparation, proposal review/evaluation, negotiation, etc.
- Delete lines two through four and replace with "contract, then administering this agreement through a series of ongoing..."
- Replace the word "obtain" in the first sentence with "...achieve desired ends by obtaining..."
- Contract management can be divided into three phases: (a) obtaining a binding agreement, (b) administering the agreement, and (c) close-out of the agreement after completion.

Each of these is clearly valid and have been included within the final definition. The last comment is of special interest in that it further addresses the controversy alluded to earlier regarding when contract administration begins. This respondent obviously grasped the approach that these researchers were attempting to utilize: that of contract management as an ongoing process from the very beginning to the very end of fulfilling a requirement.

The final definition for this term, revised as indicated above, is:

CONTRACT MANAGEMENT: The entire process consisting of all actions necessary to obtain, administer and eventually close-out a contract between two or more legally competent parties, in the proper form and regarding a legal subject matter, for a legal consideration. This contract is managed through customer interaction and a series of ongoing actions intended to organize, direct, coordinate, and control performance under the contract, with the goal of successful completion of all tasks required by the contract.

DEFINITIZATION

"The process of finalizing a contract action (typically a change order or letter contract) which originally contained at least one open issue (usually a firm price), through the issuance of a supplemental agreement which finally and completely settles the issue(s)."

The survey results regarding the proposed definition for this word are shown below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	0	5	4	22	44

Comments received regarding the proposed definition for this term are as shown below:

- Need to define "contract action".
- Suggest using the phrase "...(typically the lack of a firm price)...". Should also address the possibility that this was a FPI or CPIF contract.
- Change the last three words to "...defines the agreement."
- Change the second word to "act".
- If a letter contract is being definitized, the definitizing instrument is a stand-alone new contract document.

The first comment regarding the definition of a contract action seems inappropriate to these researchers. We are attempting to define "definitization" here; to add on other tangential definitions would tend to produce extremely complicated (and lengthy) definitions. As such, this comment will not be addressed further. Likewise, the last comment, while true, does not require a change to the proposed definition. The new contract which is issued to definitize a letter contract still represents a definitization; this does not conflict with the original definition.

The remaining comments were considered appropriate and have been addressed in the final definition shown below. One exception is the comment relating to the "possibility that this was a FPI or CPIF contract." The proposed definition did not deny this possibility, and to specifically address it within the definition would seem cumbersome. Therefore, that portion of the proposed definition remains unchanged.

DEFINITIZATION: The act of finalizing a contract action (typically a change order or letter contract) which originally contained at least one open issue (typically the lack of a firm price), through the issuance of a supplemental agreement which fully and completely defines the final agreement.

DELIVERY ORDER

"A delivery order is a written order used to purchase supplies or services from an already existing contract or government supply source."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	2	1	4	27	38

A majority of the respondents (87.83%) agreed with this definition. Comments included the following:

- Explain that basic contract sets forth who may order, when, how much at one time, max/min, etc.
- Change "from" to "under".

Both suggestions were adopted since they add useful information which helps to clarify the original definition. Based on the comments cited above, the revised definition is:

DELIVERY ORDER: A delivery order is a written order used to purchase supplies or services under an already existing contract or government supply source. The basic contract sets forth who may order, when, how much, the maximum or minimum amounts and other such pertinent information.

DETERMINATION OF RESPONSIBILITY

"The process undertaken by the contracting officer to make an affirmative finding of responsibility concerning a prospective contractor. In this case responsibility means the apparent ability to successfully complete a contract."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	3	4	3	30	33

Although a large majority of respondents (85.14%) agreed with this definition, several people wanted to see examples of what things a contracting officer considers when making this determination such as:

- Good but there is more to it than just to "successfully complete". Also is process where we determine contractor is eligible, i.e., not on debarred/suspended list and has provided required construction bonds, etc.
- Define aspects of responsibility in your definition such as business integrity, financial capability, etc.

One suggestion was particularly good:

- Revise second sentence by adding, "based upon an evaluation of such factors as financial health, physical resources and record of past performances".

Based on the comments above it was decided to incorporate the last suggestion into the original definition. Therefore, the revised the definition is:

DETERMINATION OF RESPONSIBILITY: The process undertaken by the contracting officer to make an affirmative finding of responsibility concerning a prospective contractor. In this case responsibility means the apparent ability to successfully complete a contract based upon an evaluation of such factors as financial health, physical resources and record of past performances.

FEDERAL ACQUISITION REGULATION

"The primary government regulation for the codification and publication of uniform policies and procedures regarding acquisition. Established on April 12, 1984, it contains direction applicable to all executive agencies and addresses all aspects of the government's acquisition process."

Survey results are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	0	3	3	34	36

Significant comments received relative to our proposed definition are summarized below:

- When it was established is of no importance.
- Include the word "federal" between the words "primary" and "government" in the first sentence.
- Should address agency supplements (DFARS, etc.) since the FAR does not attempt to delve into the level of detail necessary for each individual agency.
- Suggest just using the first sentence. The date is not important, and it is not exactly correct to say that it "addresses all aspects" of the acquisition process, e.g. requirements determination, etc.
- Replace "...for the codification and publication of..." with "...which implements statutes and uniform policies...".

The fourth comment above seems to be the most meaningful. The researchers agree that the date on which the FAR was established does not really serve any valid purpose within the definition. Also true is the last part of this same comment, specifically the observation that it is not entirely true that the FAR "addresses all aspects" of the acquisition process. By revising the proposed definition in accordance with this comment, the first comment is also considered. A reference to the various supplements (DFARS, etc.) has also been added, along with making the word changes identifies in the other comments.

Based upon this analysis, the final definition for this term is provided below:

FEDERAL ACQUISITION REGULATION (FAR): The primary federal government regulation which, as supplemented by the various government agencies which fall under its control, implements statutes and uniform policies and procedures regarding acquisition.

GENERAL SCOPE

"It includes whatever performance should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into."
(Government Contract Law, 1988:10-3)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	2	1	4	24	43

A vast majority of the respondents (90.54%) agreed with this definition. Comments included the following:

-- Insert the words "specified in the contract and" between "performance should".

Based on the comment above the revised definition is:

GENERAL SCOPE: It includes whatever performance was specified in the contract and should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into.

GOVERNMENT FURNISHED EQUIPMENT

"Government material or equipment made available to a contractor."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	2	19	2	22	28

A majority of the respondents (67.56%) agreed with this definition, however, several people objected to the fact that the definition failed to specify that the equipment furnished is for performance of a specific government contract:

- The definition stops a bit short - implied but unstated is the linkage of GFE to the performance of a specific contract.
- Should you talk about the requirement of the government to make this available via the contract terms?
- Government required to provide when called out in contract schedule or equitable adjustment is due the contractor.
- Add "for performance of a government contract".

Other respondents complained about the word "material" stating that material is different from equipment and should not be included as GFE:

- There is a difference between "material" and "equipment".
- GFE has no official FAR definition. GFE could equally mean Government Furnished Special Test Equipment or Government Furnished Industrial Plant Equipment. If you meant material only - then use Government Furnished Material GFM. If you meant material and equipment, then use Government Furnished Property GFP. Property includes all types of stuff: material, tooling, STE, facilities, and appliances.

Lastly, several people argued that the word "furnished" should be substituted for "made available":

-- "Furnished" is not equal to "made available".

-- Delete "made available" and add "provided".

It was decided that all the suggestions above could be utilized to improve the original definition. Thus, the revised definition is:

GOVERNMENT FURNISHED EQUIPMENT: Government equipment furnished to a contractor for performance of a specific government contract.

INCENTIVE ARRANGEMENT

"A contract structure which financially motivates the seller to emphasize particular aspects of the overall contract (i.e., cost control or accelerated delivery) while discouraging inefficiency and waste."

The proposed definition for this term resulted in the following survey results:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	1	9	2	28	35

Many comments were received in response to our proposed definition for this term. While the vast majority of the respondents either fully or somewhat agreed with our initial definition, it is clear that there exists some room for improvement. A summary of these comments is provided below:

-- Could also address technical improvements, procedure/process improvements, or performance improvements.

- Define "contract structure".
- Add the words "through a fee adjustment formula" after the word "seller".
- An incentive arrangement does not have to discourage inefficiency and waste.
- Replace "i.e." with "e.g.". Also suggest deleting the last five words of the definition.
- The arrangement is intended (or attempts) to motivate the seller; it may or may not do so in actuality.
- Include the idea that the incentive is based upon some type of objective measurement, as opposed to award fees which are subjective.
- The concept is to impose some risk on the contractor without placing the full assumption of risk (as is the case with a firm fixed price contract).

With the exception of the second comment, each of these comments has been used as the basis for revising the original definition. The second comment is similar to others discussed elsewhere within this thesis. Continually defining terms found within the definition would produce a page long definition; clearly not the intent of this research. The researchers have made an assumption that individuals referring to this work will have sufficient background to understand the terminology utilized within these definitions. Such an assumption is a necessity, or else each definition would simply become too large to manage.

Again, with the sole exception of the second comment, each of the above comments has been incorporated into the final definition as shown below:

INCENTIVE ARRANGEMENT: A contract structure which is intended to financially motivate the seller, through the use of a profit/fee adjustment formula, to emphasize particular aspects of the overall contract (e.g. cost control, accelerated delivery, quality or technical improvements). This approach utilizes objective measurement (as opposed to subjective measurement as is used under an "award fee" approach) for calculating the amount of incentive to be received.

INTEGRATION

"Those technical and functional activities, and interfaces, required to create a complex system. This includes the physical mating of hardware subassemblies from the lowest to the highest levels, as well as ensuring that all software within the system is capable of functioning as a single entity."

The proposed definition for this word yielded the following survey results:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	3	2	9	30	31

Significant/recurring comments received in response to our questionnaire are provided below:

- Integration is a "process".
- In lieu of "technical and functional activities" suggest you say what you mean: design, development, manufacturing, testing, etc. May need to expand the definition to more than a single paragraph.
- This definition addresses the "physical" aspects of integration but not the "managerial" aspects.
- Suggest changing the word "create" to "build or produce".

-- May be overstating the definition when you say "...ensuring that all software within the system is capable of functioning as a single entity." This may not be a contract requirement.

Each of the above comments is considered valid by the researchers. In response, the definition was revised so that each of these concerns was adequately addressed. The final definition for the term "integration" is as shown below:

INTEGRATION: The process of interfacing the various technical/functional activities (design, development, manufacturing, testing, etc.) in such a manner as is required to produce a complex system. This process includes the physical mating of hardware subassemblies as well as testing to ensure the necessary degree of software compatibility within the system.

LETTER OF AGREEMENT (LOA)

"An obsolete term for an Army document in which a combat developer and materiel developer outline agreements for a potential materiel system. Replaced by the term initial required operational capability (ROC)." (Glossary, 1989:70)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
9	7	2	41	7	8

This term, perhaps more than any other, illustrates why a contracting dictionary is necessary and will greatly improve communication. The majority of the respondents (55.40%) were undecided about the meaning of this term. Comments were so varied that it is difficult to determine if

there is any consensus at all as to the correct usage. A good many admitted they simply just did not know exactly what it meant:

- No knowledge.
- Not familiar with term.
- Never involved in this.

Several suggested that it is commonly used when referring to foreign military sales:

- Huh? Surely this is a typo! LOA is normally the contract above the contract, i.e., on FMS sale the agreement between the U.S. government and the foreign country. LOA often used loosely to mean any host-tenant or intraservice agreement.
- I'm more acquainted with the term in connection with Foreign Military Sales.
- There are other applications for this term such as agreements with foreign countries such as an FMS case.

Others believe it to be equivalent to the terms "memo of agreement" and "memo of understanding":

- This terminology has a much broader use in negotiations today. The Army document use has been overcome by the use today which parallels "memo of agreement".
- The definition in plain English is so common that it should not be defined as an obsolete term. Letter of agreement might be used by some interchangeably with memo of agreement or memo of understanding.

One individual believed it to be synonymous with the term "operational requirements document" - a document which describes performance, operation and support parameters for a proposed weapon system:

-- I didn't know that was the origin. Doesn't DoDD 5000.2 use "ORD" - operational requirements document now?

And another individual suggested we simply change the term to "basic ordering agreement (BOA):

-- Why not call it a BOA (basic ordering agreement) if it's an agreement to terms?

A few suggested that we eliminate the term from the dictionary (if it is obsolete) and that the proposed definition, while interesting, is basically useless:

-- Delete since it's obsolete.

-- Why use it at all?

-- The history of this term is interesting but probably irrelevant.

Finally, a few suggested that this term has multiple meanings, but unfortunately, declined to state what they believe them to be:

-- Many meanings.

-- The term is still used under different conditions.

It is the researcher's opinion that under the circumstances a definitive conclusion is not possible. Therefore it is best to leave the original proposed definition unchanged and recommend this term for further study. Thus, the proposed definition remains:

LETTER OF AGREEMENT: An obsolete term for an Army document in which a combat developer and materiel developer outline agreements for a potential materiel system. Replaced by the term initial required operational capability (ROC). (Glossary, 1989:70)

LIMITED RIGHTS

"As it applies to technical data and computer software, this refers to the buyer's legal restriction to use the data only in the manner explicitly specified within the contract. Such data has been developed at private expense or may embody trade secrets or other confidential information."

Survey findings regarding the proposed definition of this term are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	2	3	4	32	36

As shown above, better than 88% of those responding to our survey agreed with the proposed definition. Several minor revisions appear appropriate, however, in light of the comments shown below:

- These items may have been developed at private expense. If so, then use by the buyer may be restricted as agreed to within the contract.
- Last sentence not necessary; not sure it is applicable in all cases.
- Limited rights applies to hardware; restricted rights applies to computer software.
- Should emphasize that it is the buyer's responsibility to "protect" the data or software from inappropriate use or disclosure.
- Typically this means the government may use, duplicate, and/or disclose the data only within the government, and specifically may not use it for competitive procurements.
- These restrictions should be imprinted on the data itself, not just addressed within the body of the contract.

-- Suggest adding "competition sensitive" to the last line.

These comments will be addressed in order of their appearance above. While the researchers fully concur with the first comment, we disagree with the second comment. The last sentence is considered applicable but will be changed in accordance with the last comment. The remaining comments are all addressed/incorporated in one form or another by the final revised definition. This definition is provided below:

LIMITED RIGHTS: Those legal restrictions pertaining to a buyer's use of data provided by a seller during performance of a contract. Such restrictions should be identified explicitly within the contract, as well as via markings on the data itself. Such data may have been developed at private expense, and may embody trade secrets or other confidential/competition sensitive information. It is the buyer's responsibility to "protect" this data. Within government contracting, this typically means the government may use, duplicate, and/or disclose the data only within the government, and specifically may not use it for future competitive procurements.

MEMORANDUM OF AGREEMENT (MOA)

"A document of mutually agreed to statements of fact, intentions, procedures, parameters or understandings regarding past, present, or future rights and duties of two or more parties. This document is not a contract, and may be lacking one or more essential elements of a contract."

Results of the survey yielded the following with regard to the proposed definition for this term:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	5	2	23	46

Comments received relative to this term (as well as "Memorandum of Understanding" which follows) indicated the lack of a consistent usage among contracting professionals. Many indicated that they were unaware of any difference between the two terms. Based upon our literature review on this term (see Chapter II), the intended meanings between these two terms are significantly different. Comments received regarding MOA are listed below:

- Frequently used interchangeably with "MOU".
- These are generally not "enforceable" in law; they require good faith adherence by both parties in order to be effective.

It is interesting to note that most respondents (almost 90%) agreed with the proposed definition of MOA, while a significant number disagreed with the proposed definition of MOU. Running throughout these two was a consistent sense that the respondents really did not have a good handle on what these terms actually mean. An interesting effort for future research may be to reverse the order with which these two terms are presented to respondents, to see if their agreement/disagreement opinions are also reversed. Nonetheless, the researchers have determined that the

original proposed definition will remain, with a slight adjustment to address the second comment shown above.

MEMORANDUM OF AGREEMENT (MOA): A document of mutually agreed to statements of fact, intentions, procedures, parameters or understandings regarding past, present, or future rights and duties of two or more parties. This document is not a contract, as it may be lacking one or more essential elements thereof. As such, these are generally not enforceable in law, thereby requiring good faith adherence by both parties in order to be effective.

MEMORANDUM OF UNDERSTANDING (MOU)

"An official international agreement between two or more parties, typically between the defense ministries of the NATO nations. While ranking below government-to-government international treaties, these agreements are generally recognized as legally binding even if no legal claims could be based upon their contents."

Our survey revealed the following impressions of the proposed definition for this term:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	4	11	22	20	19

As indicated on the previous term ("MOA"), there seemed to be some confusion among the respondents regarding the difference between an "MOA" and a "MOU". One similarity with comments received on our "MOA" definition was that these terms are used interchangeably. As stated above, a review of available literature does not support this opinion. The current body of knowledge indicates a distinction between these two terms.

Other comments indicated that the researchers may have been overly narrow in the proposed definition; that MOUs are sometimes used between two or more aerospace firms or two or more U.S. government agencies. A summary of these comments are provided below:

- MOUs exist in areas other than the international arena.
- In our office, MOA and MOU are often used interchangeably.
- What about MOUs between U.S. government agencies?
- Not aware of any formal distinction between MOAs and MOUs.
- MOUs are sometimes used between two aerospace firms; not just between two or more countries.

The final definition has been revised to broaden its applicability somewhat. The definition was not changed to indicate that it is totally interchangeable with "MOA"; the existing literature simply does not support this contention. As such, the final definition is as shown below:

MEMORANDUM OF UNDERSTANDING (MOU): An agreement between two or more parties, historically involving official international agreements between defense ministries of NATO countries. While ranking below government-to-government international treaties, these agreements are generally recognized as legally binding even though they may not be legally sufficient as the basis of a claim.

MODIFICATION - (CONTRACT MODIFICATION)

"A formal written change to a contract which affects the specifications, delivery, contract period, price, quantity, or other provisions."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	0	3	1	25	44

A vast majority of the respondents (93.25%) agreed with this definition. Comments included the following:

- Change to "A formal written change to a contract which may affect all or some of the following:"
- Add: "as set forth by the changes clause of the contract".
- Add: "can be unilateral or bilateral".

All three suggestions above either add beneficial information to the original definition or clarify the intent of the definition and were therefore incorporated. The revised definition is:

MODIFICATION - (CONTRACT MODIFICATION): A formal written change to a contract as set forth by the changes clause of the contract which may affect all or some of the following: specifications, delivery, contract period, price, quantity, or other provisions. A modification can be described as either unilateral or bilateral.

NOTICE OF AWARD

"The formal announcement that a contract has been awarded. The successful bidder receives notice of award either by receipt of the award document (the contract) or by a written notice. Unsuccessful bidders are notified of rejection either orally or in writing."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	3	5	19	45

A large majority of the respondents (86.48%) agreed with this definition. Comments included the following:

- I'd like to modify the first sentence by including "by the contracting officer" after "formal announcement". Too many outsiders want to get in on the act!
- Delete the last sentence. Make it a simple affirmative statement only.

It is important to know who makes the official announcement, therefore, the first suggestion was utilized in the revised definition. The researchers declined to accept the second suggestion for basically the same reason, it is also important to know that those who did not receive the award are notified also and the means of communication. Therefore, the revised definition reads:

NOTICE OF AWARD: The formal announcement by the contracting officer that a contract has been awarded. The successful bidder receives notice of award either by receipt of the award document (the contract) or by a written notice. Unsuccessful bidders are notified of rejection either orally or in writing.

PAYMENT BOND

"A bond required of government construction contractors which secures their obligation to pay their laborers and materialmen." (Government Contract Guidebook, 1987:GL-14)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	1	1	7	21	41

A large majority of the respondents (83.78%) agreed with this definition. A few people made comments similar to the following:

-- After "materialmen", add "involved in performance of a government contract".

This suggestion was used since it clarifies that a payment bond is for a specific contract. Therefore, the revised definition is:

PAYMENT BOND: A bond required of government construction contractors which secures their obligation to pay their laborers and materialmen involved in performance of a specific government contract.

POST AWARD

"Any time after contract award."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	3	4	5	21	41

While a large majority of the respondents (83.78%) agreed with this definition, several expressed a desire to add examples of post award activities. Comments included the following:

- Yes, but could give an example or two of normal post award activities.
- It usually refers to the time right after award ... post-award conference, for example.
- Also refers to a particular conference between government and contractor personnel to discuss issues pertaining to the contract.

Two suggestions proved helpful in satisfying the above requests and were therefore utilized in the revised definition:

- Add "through contract completion and close-out".
- Post award activities include: contract administration, closeout, or possibly a termination action.

Thus, the revised definition is:

POST AWARD: Any time after contract award through contract completion and close-out. Examples of post award activities may include a post award conference, contract administration, closeout, or possibly a termination action.

PRE-PROPOSAL CONFERENCE

"A group meeting held with prospective offerors prior to submission of their proposals, intended to clarify ambiguous situations, answer questions, and generally ensure that all potential offerors have a common basis of understanding regarding the supplies or services required. Referred to as a pre-bid conference on a sealed bid procurement."

Survey findings are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	0	3	0	16	58

All but 3 respondents provided favorable opinions of the proposed definition for this term. Those comments which were received are listed below:

- Indicate that the meeting is sponsored/organized by the buying agency.
- Suggest you better clarify the word "situations". Perhaps replace the phrase "...ambiguous situations..." with "...areas of ambiguity within the solicitation...".
- Delete the second word ("group").
- Replace the words "...held with..." with "...open to all...".

Each of these comments are considered valid and have driven a revision to the proposed definition. The final definition is as identified below:

PRE-PROPOSAL CONFERENCE: A meeting organized/sponsored by the buying activity, open to all prospective offerors, prior to submission of proposals. It is intended to clarify areas of ambiguity within the solicitation, answer general questions, and to help all potential offerors better understand the nature of the supplies or services required. Referred to as a "pre-bid conference" during sealed bid procurements.

QUALITY ASSURANCE

"A management function whose goal is to ensure quality, satisfactory performance and confidence that material, data, supplies, and services conform to technical requirements."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	2	9	1	27	34

QUOTE

"The seller's statement of price, description of service and terms offered to a buyer."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	3	8	1	31	30

Although a large majority of the respondents (82.43%) agreed with this definition, several felt that the basic definition could be improved by adding the following information:

- Insert "oral or written" between "seller's statement".
- The definition should include "schedule" or "delivery" dates.
- Add "delivery".

Thus, the revised definition is:

QUOTE: The seller's oral or written statement of price, description of service, delivery and terms offered to a buyer.

REQUEST FOR EQUITABLE ADJUSTMENT

"A written expression transmitted from one party of a contract to another, asking for a change in the contract (usually price) as the direct result of the modification of its original terms. The concept is to return all parties involved to their original (financial) status as held prior to the change taking place."

Survey results were as shown below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	2	4	4	35	31

While 86.8% of respondents looked upon the proposed definition favorably, this term generated a large number of comments. These are identified below:

- Should include language indicating that this results in the modification of the contract as a direct result of a change in the requirements originally specified.
- Delete the word "(financial)" from the last sentence.
- Suggest replacing the words "as held" in the last sentence with "existing."
- The "modification of its original terms..." implies that something was agreed to and written down; this is not usually the case. Typically, an unanticipated "triggering event" occurs (such as late/defective GFP, etc.) that initiates the equitable adjustment process.
- The objective is to adjust the contract in a manner which reflects the actual changes(s) which occurred. Not sure that returning the parties to their original (financial) status is really the goal.
- The concept is to compensate one of the parties for the changed condition.
- Adjustment could regard schedules as well as price.
- Change the phrase "written expression" to "formal request".
- This request is generally the result of the other party's modification/non-compliance with the contract's original terms.

Several of these comments are simply requests for revised wording of a particular phrase within the

definition. These comments will be fully addressed within the final definition. Several of the other comments suggested specific "new thoughts" be added to the definition. In particular, the comments regarding "...the other party's modification/non-compliance..." and the concept of "...a 'triggering event'..." will enhance the definition significantly. As a result of these revisions, the final definition is as follows:

REQUEST FOR EQUITABLE ADJUSTMENT: A formal request transmitted from one party of a contract to another, requesting a change in the contract terms (typically price and/or schedule) as the direct result of a perceived deviation by the other party relative to the original contract terms. The concept is to adjust the contract in a manner which reflects the actual changes(s) which occurred. This results in a modification to the contract which contractually incorporates the change(s) which initiated the request, as well as the equitable adjustment made in response to the change(s).

RESPONSIBILITY

"A concept whereby the inherent qualities of a given party (bidder/offeror) are analyzed for the purpose of deciding whether or not the party is capable (i.e., has adequate financial resources, ability to deliver on time, maintains acceptable standards of conduct, etc.) of fulfilling a specific contractual requirement."

The proposed definition for this word resulted in the following survey results:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	0	7	2	35	34

As shown above, the vast majority (88.5%) of the surveys indicated agreement with our proposed definition.

Comments received are identified below:

- Define "inherent qualities".
- Replace "i.e." with "e.g.".
- Also should include a review of technical resources/capabilities and adequacy of available facilities and staffing levels.
- Should also include a review of past performance (on similar efforts).
- Responsibility is a legal determination, not a "concept."
- The key objective here is to determine capability and capacity to perform.
- Delete the word "party" and the parentheses around "bidder/offeror" in the first sentence, as well as replace the word "deciding" with the word "determining". Finally, replace the last four words of the definition with "...the requirements, terms and conditions of the anticipated contract."
- The ending should read: "...of fulfilling the contractual requirements."

Each of these comments was felt to be valid by the researchers. While several were of the "grammatical" variety, many will clearly improve the final definition. In particular, the addition of references to past performance and technical resources/capabilities will enhance the definition. Further, the comment regarding the meaning of "inherent qualities" has prompted the deletion of that phrase from the definition altogether. It would be cumbersome to attempt defining the phrase within the definition, and would not serve to significantly improve the

definition. Therefore, based upon these findings, the proposed definition has been revised to read as follows:

RESPONSIBILITY: A legal determination whereby various qualities of a given bidder/offeror are analyzed for the purpose of determining whether or not that bidder/offeror has the capability and capacity (e.g., has adequate financial resources, ability to deliver on time, acceptable standards of conduct, adequate technical resources/capabilities/staffing levels, an acceptable past performance record, etc.) to fulfill the requirements of the anticipated contract.

RESPONSIVENESS

"A term used in the evaluation of bids to indicate how closely the bid conforms with the material terms of a solicitation. A material term is one which affects price, quantity, quality, or delivery."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	2	9	0	28	33

While a large majority of the respondents (82.43%) agreed with this definition, several took exception to the use of the words "how closely". Comments included the following:

- Bid is either responsive or non-responsive. Being "close" to a material term is irrelevant.
- This definition implies degrees of responsiveness. It either is or isn't responsive.
- Not "how closely" - it's either responsive or it isn't.

The researchers felt the respondents' comments were quite correct. Several participants offered possible alternative wording which would result in a clearer, more absolute statement:

-- Needs wordsmithing. A term used in the evaluation of bids and proposals to indicate their conformance with the material terms of a solicitation.

-- Why not just say "conforms to the solicitation".

One respondent wanted to add an explanation stating the following:

-- Intent is to prevent a bidder from qualifying their offer.

The researchers strongly agree that all suggestions cited above will vastly improve the original definition.

Thus the revised definition is:

RESPONSIVENESS: A term used in the evaluation of bids to indicate conformance with the material terms of a solicitation. A material term is one which affects price, quantity, quality, or delivery. The intent is to prevent a bidder from qualifying an offer.

SPECIAL TEST EQUIPMENT

"Single or multipurpose integrated test units engineered, designed, fabricated or modified specifically for the accomplishment of testing during performance of a particular contract. These items consist of assemblies of test equipment which are interconnected and interdependent so as to become new functional entities. Such items are (typically) not included as deliverable contract end items per se, but become residual property at the conclusion of the contract and thus belong to the buyer. General plant testing equipment (including various materials, special tooling or facilities (except foundations and similar improvements necessary for installing special test equipment)) are not considered to be special test equipment."

This term, and its related proposed definition, received the following response from our survey participants:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	1	7	9	25	33

Again, a significant majority (77.3%) of our respondents agreed with the proposed definition. Many people commented that this definition was too long and/or too difficult to follow. While the researchers do not necessarily disagree with this contention, the nature of this term mandates a relatively long definition due to its inherent technicalities. Nonetheless, an attempt to shorten/ simplify the final definition has been made by deleting the last two sentences in their entirety. It was felt by the researchers, upon reflection, that this information added little to a concise definition of this term, and only served to potentially confuse the reader.

Other comments received are shown below:

- Suggest changing the start of the second sentence to read: "These items may consist of assemblies...".
- Second sentence implies that STE must consist of multiple assemblies; it could be a single item of test equipment.
- Suggest deleting the first three words. "Multipurpose" almost implies "general purpose" test equipment, which confuses the subject.

- Since a piece of STE could legitimately be used on more than one contract if multiple contracts were issued for the purchase of a single system or subsystem, suggest changing the end of the first sentence to read "...of a particular item or system."
- Suggest adding the following to the end of the first sentence: "...which cannot be returned to its original state without significant expense."
- These items may become residual property at the conclusion of the contract and thereby belong to the buyer. It all depends what the contract says (usually determined by which party absorbed the cost of the STE).
- Add the phrase "...a specific product..." before the last six words of the first sentence.

As can be seen, each of these comments are of the "change this to that" variety. The researchers feel that each comment is appropriate in its own right and every attempt was made to incorporate these concerns into the final definition. On the other hand, the researchers felt constrained to limit the length of the definition by the number of subjects who responded with a "too long" comment. Every attempt has been made to achieve an appropriate compromise, as is shown below:

SPECIAL TEST EQUIPMENT: Integrated test units engineered, designed, fabricated or modified specifically for the accomplishment of testing a particular item or system, which cannot be returned to their original state without significant effort/expense. These items typically consist of assemblies of test equipment which are interconnected and interdependent so as to become new functional entities.

STANDARD COMMERCIAL ITEM(S)

"Items regularly used, sold or traded in normal commercial operations." (National Estimating Society Dictionary of Cost Estimating Terms and Phrases, 1986:136)

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	0	3	7	24	39

A large majority of the respondents (85.13%) agreed with this definition. Comments from those who disagreed included the following:

- What about sold in substantial quantity to the public?
- Add "in large quantities to the general public".
- New definition includes being "offered to the general public".

The researchers agreed that being sold in large quantities to the general public is an important characteristic of standard commercial items, therefore, the definition was revised to reflect the respondents' suggestions. The revised definition is:

STANDARD COMMERCIAL ITEM(S): Items regularly used, sold or traded in large quantities to the general public in normal commercial operations.

SUBCONTRACT

"Any agreement entered into by a prime contractor (or by a prime contractor's various suppliers, distributors, or vendors at any tier) calling for supplies and/or services

which are ultimately required to fulfill the prime contract."

The proposed definition for this word resulted in the following survey findings:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	1	8	2	20	45

A limited number of comments were received in response to the proposed definition for this term. Better than 85% of the respondents agreed with the original definition, indicating that it was a valid starting point for this research. Comments received are identified below:

- Should differentiate between a subcontract and a purchase order for off-the-shelf ("commercial") items. Not sure items such as screws purchased from a hardware store (and which just as easily could have been put into general stock) would be considered a subcontract on an aircraft acquisition.
- Add the word "contractual" between the first two words.
- Subcontracts generally refer to relatively high dollar value efforts and/or technically complex commodities.
- Should attempt to address "flow-down" requirements which generally apply to major subcontracts but not to purchase orders, etc.

All but the second comment above are really attempting to convey the same thoughts, only in different words. The idea is that the term "subcontract" produces visions of a large effort where statements of work, specifications, management reviews, etc., may well be required. The effort

could very well involve state-of-the-art research or one-of-a-kind components. This contrasts greatly with a simple purchase order for standard off-the-shelf items such as most capacitors, transistors, or screws. This concept is much better addressed in the final definition than it was in the original proposed definition. The other comment reflects a simple oversight on the researcher's part during development of the proposed definition; it, too, has now been included.

SUBCONTRACT: A contractual agreement entered into by a prime contractor (or by a prime contractor's various suppliers, distributors, or vendors at any tier) calling for supplies and/or services which are ultimately required to fulfill the prime contract. This type of agreement is differentiated from a purchase order by the nature of the effort being purchased. Typically, subcontracts represent major efforts which are of the "made-to-order" variety; purchase orders are typically utilized when purchasing standard (off-the-shelf) items.

SUPPLEMENTAL AGREEMENT

"A bilateral written modification to an existing contract which settles price, performance, and/or other adjustments to said existing contract."

This term's proposed definition resulted in the following feedback:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	4	3	18	51

Approximately 89.6% of the respondents agreed with the proposed definition for this term. This was not unexpected

due to the frequent usage of supplemental agreements and the common understanding which such usage generates. Several "grammatical" comments were received, and each of these have been incorporated into the final definition. A summary of these comments is provided below:

- Current language could imply that supplemental agreements are only used to definitize change orders, letter contracts, etc. While they are used for this purpose, they also may represent a "complete" change unto themselves, i.e. changing requirements, schedules, price, GFP, etc. all in one document. Suggest changing the words "...settles price, performance and/or other..." to "...completes the contractual adjustments negotiated by the parties with regards to a particular change in the contract requirements or conditions."
- Suggest replacing the word "settles" with the phrase "sets forth".
- Replace the words "said existing" with the word "the".

As noted above, these comments reflect simple grammatical concerns which have been readily addressed in the final definition as seen below:

SUPPLEMENTAL AGREEMENT: A bilateral written modification to an existing contract which sets forth contractual adjustments negotiated by the parties regarding price, performance and/or other facets of the contract.

TERMINATION FOR CONVENIENCE

"An action taken by a contracting officer to unilaterally terminate all or part of a contract when such action is considered to be in the best interest of the government and through no fault of the contractor."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
0	0	2	3	14	55

Although almost all of the respondents (93.24%) agreed with this definition, a few expressed disagreement with the phrase "through no fault of the contractor". Comments included the following:

- The "through no fault of the contractor" part is misleading.
- Delete the last seven words. They incorrectly imply that you can only terminate for convenience upon a finding that the contractor is not at fault.

In order to promote clarity and avoid confusion the definition was revised to read:

TERMINATION FOR CONVENIENCE: An action taken by a contracting officer to unilaterally terminate all or part of a contract when such action is considered to be in the best interest of the government.

TERMINATION FOR DEFAULT

"An action taken by the contracting officer to unilaterally terminate all or part of a contract when the contractor has not performed in accordance with the terms of the contract."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	2	3	23	44

Although nearly all of the respondents (90.54%) agreed with this definition, a few felt that the words "not performed" were not strong enough. Comments included the following:

- Delete "not performed" and insert "inexcusably failed to perform".
- In the third line, suggest replacing the words "not performed" with "failed to perform".
- Has not materially performed. Breach of contract.

As noted above, those respondents who disagreed wanted to stress more emphatically that failure to perform was the cause for the termination for default. Therefore, the revised definition is:

TERMINATION FOR DEFAULT: An action taken by the contracting officer to unilaterally terminate all or part of a contract when the contractor has inexcusably failed to perform in accordance with the terms of the contract.

TERMS AND CONDITIONS

"Those rules which buyers may include in their requests for proposal (acceptance of which may be necessary for a subsequent proposal to be considered responsive) or sellers may include within their bid/offer (acceptance of which their offer may be contingent). Such rules may also be included in the resultant contract if all parties involved so concur. These rules may address various stipulations regarding general or specific provisions, incentives, specifications, delivery requirements, rights, obligations, prices, or any other aspect of the request for proposal, bid/offer, or resultant contract."

Our survey results are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	0	5	3	29	38

While only 6.6% of our respondents somewhat disagreed with the proposed definition, several valid comments were received. A summary of these are listed below:

- Recommend you delete the information in parenthesis; you should simply define what terms and conditions are, not what negotiation is all about.
- Replace the first two words in the definition with the following: "The statements of legal rights and obligations..."
- Replace the word "rules" with "conditions", "stipulations", "provisions", or "requirements" everywhere it is used.
- The terms and conditions of a proposal are simply the basis/circumstances upon which the proposal is predicated.
- This is confusing; suggest a rewrite to simplify the definition.
- Delete the phrase "...various stipulations regarding..." in the last sentence. It adds nothing and makes the sentence too wordy.

As can be seen above, most of these comments deal with suggestions for shortening/condensing the proposed definition. The researchers agree that the original definition may well have been too rambling. In order to correct this, the first and last comments have been incorporated verbatim, while integrating each of the other comments in such a manner as to make the overall definition

more readable. Based upon these changes, the final definition for this term is shown below:

TERMS AND CONDITIONS: Those statements of legal rights and obligations which buyers might include in a solicitation or sellers may include within a bid or offer. Such stipulations may be incorporated into the resultant contract by mutual consent of the parties. These conditions may address general or specific provisions, incentives, specifications, delivery requirements, rights, obligations, prices, or any other aspect of the solicitation, bid/offer, and/or subsequent contract.

TRUTH IN NEGOTIATIONS ACT (TINA)

"Officially established as Public Law 87-653, this statute requires that contractors provide cost or pricing data to the government on all negotiated procurement (whether for new contracts or for modification to existing contracts) in excess of specified dollar thresholds. Certain exceptions to this requirements exist where adequate price competition, reflecting a competitive marketplace, can be readily demonstrated. Further, contractors must certify as to the accuracy, currency, and completeness of the submitted data, and are subject to profit or fee reductions if such data is later determined to have been faulty."

The proposed definition for this term yielded the following survey results:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	3	3	31	39

Once again, the vast majority of respondents (almost 91%) agreed with the proposed definition. However, for some reason this term generated a large number of comments. Of the nine comments shown below, five are generally grammatical in nature. The remainder involve broader

fact that a Contracting Officer may, in fact, request cost or pricing data at any time he/she feels necessary to establish a fair and reasonable price has been included. The reference to dollar thresholds appearing within the proposed definition actually referred to certified cost or pricing data. This was touched upon by the fifth comment above. Finally, the researchers must take some exception to the fourth comment. While the comment itself is valid, bringing the concept of fraud into the definition would again serve to lengthen and complicate the definition. Assuming that cost/pricing data as submitted was not accurate, current, and complete as of the conclusion of negotiations, there still exists a monumental jump to demonstrate fraud. It is very probable that such data was submitted due to an (unintended) oversight on the part of the contractor. In such cases, a profit or fee reduction alone would be entirely appropriate. The other comments are all clearly appropriate and have been fully incorporated into the final definition.

In summary, a final definition for this term has been established after lengthy consideration of the comments listed above. This definition is provided below:

TRUTH IN NEGOTIATIONS ACT (TINA): Officially established by Public Law 87-653, this statute requires contractors to provide cost or pricing data to the government on all applicable negotiated procurements (for new contracts or modifications to existing contracts) in excess of specified dollar thresholds. Such data may also be requested by the Contracting Officer at any time he/she deems it necessary to establish a fair and reasonable price. Further, the

implications which are addressed later in this discussion.

Significant comments included the following :

- The definition refers to exceptions (plural), but only specifically addresses adequate price competition. What are the other exceptions?
- In last sentence change "must" to "...may be required to...".
- Add the word "applicable" between the words "all" and "negotiated" in the third line.
- Contractors are subject to recoupment of overstated costs, interest, and in some cases other penalties; not just profit or fee reductions. They may also be subject to prosecution for submission of falsely certified data, fraud, etc.
- Should add the concept that the data must have been current, accurate and complete as of the date negotiations were completed.
- Change the third word to "by".
- Contracting Officers can require cost/pricing data in circumstances other than when the purchase will exceed a particular dollar threshold.
- Suggest you change the second sentence to read:
"Certain exceptions to this requirements exist where adequate price competition exists."
- Suggest adding "e.g." after the phrase in the second sentence which reads "Certain exceptions to this requirement exist,...".

The first comment refers to exemptions (other than adequate price competition) to the requirement for submission of cost or pricing data. Valid catalog pricing or prices set by law/regulation represent two other exceptions. However, it was the feeling of the researchers that to address every potential exception a very lengthy definition would be required. Instead, a reference to the

contractor may be required to certify that such data is accurate, current, and complete as of the date negotiations were completed. Contractors are subject to profit or fee reductions, recoupment of excess costs, interest, and potential additional penalties if such a certification is later learned to have been faulty.

UNDEFINITIZED CONTRACT ACTION (UCA)

"A contract action entered into which, although authorized, is not fully negotiated with respect to at least one of its contractual terms, specifications, cost or price prior to the initiation of performance. The most typical examples of such an action would include letter contract and change orders issued pursuant to the "Changes" clause included within government contracts."

The proposed definition for this term resulted in the following survey comments:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	1	1	4	24	45

Only 2 of 75 respondents disagreed with the proposed definition. Further, only two comments were received. The researchers agree with the content of one of these, while disagreeing with the other. The comments are listed below:

- Delete the word "action" from the first sentence.
- Should include the idea that any unresolved issues must be addressed by the parties later, i.e. definitized.

The researchers disagree with the first comment in that deletion of the word "action" from the definition might falsely imply that UCAs only involve new contracts. This is far from the truth, since the majority of UCAs (at least

within Air Force Systems Command) are actually change orders issued pursuant to the Changes clause. The second comment, however, is appropriate to include here. Clearly, an undefinitized action needs to be definitized at some future date. As such, the definition is modified to read as follows:

UNDEFINITIZED CONTRACT ACTION (UCA): A contract action entered into which, although authorized, is not fully negotiated with respect to at least one of its contractual terms (specifications, cost or price, delivery schedule, etc.) prior to the initiation of performance. It has been agreed by the parties concerned that these unresolved terms must be negotiated/finalized in the relative near future. The most typical examples of such an action would include letter contracts, or "Change Orders" issued pursuant to the "Changes" clause found within government contracts.

UNILATERAL MODIFICATION

"A modification requiring only the signature of the contracting officer."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	0	3	5	21	44

A large majority of the respondents (87.83%) agreed with this definition. Comments included the following:

- I suggest "A modification, pursuant to the 'Changes' clause, requiring only the signature of the contracting officer".
- Give examples: i.e., correction of typos, accounting classification, obligations of additional funds, exercise options, change orders et al.

Since it is important to know the authority for a unilateral modification and examples enhance understanding, both suggestions were adopted. Thus, the revised definition is:

UNILATERAL MODIFICATION: A modification, pursuant to the Changes clause, requiring only the signature of the contracting officer. Some examples of usage include; correcting typographical errors, changing accounting classifications, obligating additional funds, exercising options, and issuing change orders.

UNLIMITED RIGHTS

"With respect to technical data or computer software, the legal authority to use, duplicate, release, disclose, reproduce, prepare derivative works, perform or display publicly, or have or permit others to do so, in whole or in part in any manner or for any purpose."

Survey results are provided below:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
2	1	2	5	15	53

The least amount of discussion was noted with respect to the proposed definition for this term. In fact, only one comment was received, as noted below:

-- Add the word "sell" somewhere in the second line.

The researchers fully concur with this comment. If one party has unlimited rights to a particular piece of data, it is also legally permitted to sell the data to another party. Furthermore, one comment received regarding the proposed definition for the term "Limited Rights" is also applicable

here. That comment stated that such rights apply to hardware, while restricted rights applies to software. In order to maintain consistency within this research, it was deemed best to omit the reference to hardware/software/technical data from the definition altogether and avoid confusing the reader. Therefore, the final definition has been revised to incorporate this idea:

UNLIMITED RIGHTS: The legal authority to use, duplicate, release, disclose, reproduce, sell, prepare derivative works, perform or display publicly, or have or permit others to do so, in whole or in part in any manner or for any purpose.

VALUE ENGINEERING CHANGE PROPOSAL

"A change proposal submitted by a contractor in accordance with the value engineering clause which reduces costs without a loss of performance or function. If accepted, the government and the contractor share the savings."

The survey results for this definition were as follows:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
1	1	4	2	28	38

While a large majority of the respondents (89.18%) agreed with this definition, a few wanted to stress the fact that value engineering change proposals, as the name implies, are merely proposals and must be evaluated by the contracting officer. Comments to that effect included the following:

- Change "which reduces costs" to "which proposes to reduce costs".
- Add "may" in the last sentence after the word "contractor".

To reflect this idea of uncertainty or possibility the definition was revised as suggested. The revised definition is:

VALUE ENGINEERING CHANGE PROPOSAL: A change proposal submitted by a contractor in accordance with the value engineering clause which proposes to reduce costs without a loss of performance or function. If accepted, the government and the contractor may share the savings.

WITHHOLDING (PAYMENT)

"An action taken by the buyer in response to a lack of performance by the seller. This action is generally considered to be of a temporary nature, implying that the payment involved will be released to the seller once the lack of performance is corrected. If the required performance cannot be achieved by the seller, a price reduction (or other equitable consideration) would be negotiated by the parties and a supplemental agreement to the contract issued which formally incorporates such a settlement. After such a modification is issued, the funds in question would no longer be referred to as a 'withhold'."

The proposed definition for this concept resulted in the following comments from our survey respondents:

No Mark	1 Strongly Disagree	2 Somewhat Disagree	3 Undecided	4 Somewhat Agree	5 Strongly Agree
3	4	7	5	35	24

The proposed definition generated much discussion by the respondents. A summary of the comments received is provided below:

- Lack of performance could also result in termination for default, in which case the withholding of payments would simply precede the actual termination.
- The definition seems to imply that the seller has agreed to this withholding, which is not always the case.
- Not sure how much clarification the last sentence actually adds.
- Suggest changing the term to be defined to "Suspension or Reduction of Payments".
- Some "withholding" is built into the payment process, e.g., progress payments are only 85%, less than full reimbursement is paid on cost-type contracts until the final certificate and invoice are submitted, etc. Should differentiate between this type of withholding and withholding due to unsatisfactory performance.
- Change last two words to "...being withheld."
- A simpler way to say this would be "The deliberate non-payment of some or all contractual consideration by the buyer as a result of the seller's allegedly deficient contract performance."
- Change the ending to "...referred to as 'withheld.'"
- Change the ending to "...funds in question would be released (in a manner consistent with the terms of the modification)."

The last comment represents a good paraphrase of many of these individual comments. Therefore, we have adopted in full the revision recommended by the final comment.

The researchers feel that the first comment, although true, does not belong in this definition. What is being defined here is "withholding", not what each of the potential outcomes of such an action might be. As such, this comment is not included in the final definition. The

second comment is valid and has been addressed in full in the definition. The suggestion in the fourth comment is not within the purview of the researchers. The fifth comment is true but it is inconsistent with the researcher's perspective of the term itself. A "withhold" is an occurrence which was not envisioned/anticipated at the time the contract was agreed to by the parties. While they might have agreed that the buyer had the right to take such an action, neither party wanted the action to become necessary and presumably neither anticipated that it would. This is significantly different from the comment, which includes progress payments and partial reimbursements as representative of withholding activities.

The seventh comment is also true, but does not provide sufficient detail to be sufficient by itself. The researchers have taken some of the ideas represented by this comment and incorporated them into the revised final definition. The last comment represents a good paraphrase of the other three comments not separately addressed and has been incorporated into the final definition which follows:

WITHHOLDING (PAYMENT): An action taken by the buyer in response to a perceived lack of performance by the seller. On government contracts, the government has the unilateral right to make such a withholding under appropriate circumstances. This action is generally considered to be of a temporary nature, implying that the payment involved will be released to the seller once the lack of performance is corrected. If the required performance cannot be achieved, equitable consideration must be negotiated by the parties and a supplemental agreement to the contract issued which formally incorporates such a settlement. Subsequent to

this, the funds in question would be released in a manner consistent with the supplemental agreement.

The purpose of this chapter was to analyze the survey results. Each individual definition and the corresponding respondents' comments were examined. The synthesized definitions were revised in accordance with the respondents' recommendations to increase consensus, clarity of meaning and reflect current usage. The final revised definitions can be found in Appendix E. These final definitions accurately represent the usage of the majority of the contracting professionals who participated in the questionnaire/survey effort.

The next chapter (Chapter V) summarizes this thesis and provides recommendations for future research which will further expand the body of knowledge existing within the contract management profession.

V. Conclusions and Recommendations

Summary

This thesis has established definitions for 50 contracting management terms. During the literature review, existing definitions were examined and synthesized definitions were created. Using a mail survey the synthesized definitions were reviewed and evaluated by a randomly selected group of certified contracting management professionals. Based upon this feedback, definitions were revised to reflect actual current usage.

Chapter I provided a discussion of the overall research problem, as well as the background and rationale for performing this study. The specific investigative objective for this research was to establish universally acceptable definitions for 50 contracting management terms based upon actual usage within the contracting community.

Chapter II documented the results of research into the existing definitions for each term. In this chapter, the synthesized definitions, which formed the basis for the survey, were generated.

Chapter III discussed the technical details involved in selecting the sample population as well as the survey content and format.

Chapter IV addressed the survey response rate, ratings and comments received. A discussion of each individual term explained how the selected comments were integrated into the

original synthesized definitions to form the final definitions.

The purpose of this chapter is to provide a summary of the research, draw conclusions from the results of that research, and provide recommendations for future research.

Conclusions

Overall, this thesis has provided the researchers with interesting and useful insight into the meanings of various terms utilized within today's contracting environment. Each of the 50 terms reviewed here represent but a small piece of the "contracting puzzle", but when added to the growing list of similar terms (which have already been studied), the entire picture may emerge. One factor that cannot be understated is the existence of a wide range of opinion within the contracting community regarding the exact meaning of the terms reviewed herein. Almost without exception, every term received an assorted list of comments which were anything but repetitive. This clearly demonstrates the need for the research presented herein, as well as additional future research of a similar nature. These findings support those of Ryan (1988:2), who found that misunderstanding and inefficiency are the results of terms having different meanings for different individuals.

This thesis has provided essential research into the "true" meanings of fifty contracting management terms, and

the final recommended definitions are attached hereto at Appendix E. This effort should prove useful to future contracting professionals as well as to future researchers.

Recommendations

One term, letter of agreement (LOA), is recommended for further research. After examining the survey results and comments it was difficult to reach any definitive conclusion about the current use and meaning of this word. A majority of respondents indicated that they did not use this word nor were they familiar with its meaning. Others seemed sure that they understood the correct usage. However, the definitions that they provided were too varied to be of any practical use. Clearly, additional research is needed to obtain a consensus definition for this term.

Also, it would be beneficial if the mailing list of Certified Professional Contract Managers (used for survey purposes) could be updated to provide more current addresses. A total of 290 surveys were mailed. Of those 290, 41 were returned for incorrect addresses. The response rate might have been improved if correct addresses were available.

Finally, it is recommended that the National Contract Management Association (NCMA) continue its quest to inform individuals within the contracting management community of this research. This was originally suggested by Shelley in

her research, and the researchers feel that such a recommendation deserves repetition.

Appendix A: Survey Cover Letter

AFIT/LSP

6 Mar 1992

Survey Questionnaire

Certified Professional Contracts Manager

The National Contract Management Association (NCMA) is compiling a dictionary of contracting terms in an effort to improve communications within the contracting field. In support of this work, the definitions of several contracting terms have been developed based on research of the current literature. However, it is important to know how contracting professionals are using these terms and if they agree with these definitions.

This survey is being sent to a randomly selected group of CPCMs to determine the amount of agreement with each term's definition. Your response is essential if we are to get a representative opinion concerning each term's definition.

Your response to this survey will remain confidential. Each questionnaire has a number assigned, so that we can tell which ones have been returned. There will be no public identification of any responses. Your help in creating this dictionary of contracting terms is greatly appreciated. Once all the terms are defined, we are planning to publish them in the NCMA Journal. It is hoped that these definitions will be used to improve communications during negotiations.

For your convenience, we are enclosing a stamped return envelope for the questionnaires. John Padgett will be happy to answer any questions you may have. His phone number is (513) 439-2872.

Thank you very much for your assistance in this matter.

Sincerely,

WILLIAM C. PURSCH, Ph.D.
Professor, Contracting Management
School of Systems and Logistics

2 Atch
1. Questionnaire
2. Envelope

Appendix B: Follow-Up Letter

AFIT/LSG

27 Mar 92

"Contract Terms" Survey

Contracting Professional:

Approximately two weeks ago a questionnaire was mailed to you concerning the definitions of various contracting terms. If you have already returned it to me, I sincerely thank you.

If you have not yet returned the questionnaire, please do so today. Your response is important, since we want to have a representative sample of inputs from contracting professionals like you, who truly know how these terms are used within the contracting community today.

If for some reason you did not receive a copy of this questionnaire, please contact me at (513) 439-2872 and I will mail another copy to you immediately.

Thank you again for your cooperation.

Sincerely,

John H. Padgett
Graduate Student, Air Force
Institute of Technology (AFIT)

Appendix C: Survey Questionnaires

BACKGROUND INFORMATION

1. What is the highest academic degree you have obtained?

- a. High School diploma (or equivalent)
- b. Bachelor's degree
- c. Master's degree
- d. Doctorate (Ph.D.)

2. Where are you currently employed?

- a. Government/public sector
- b. Commercial/private sector
- c. Academic institution
- d. Other

3. Which field best describes your professional background?

- a. Contracting/acquisition
- b. Manufacturing/production
- c. Accounting/pricing
- d. Engineering
- e. Research
- f. Legal
- g. Other

4. How many years of experience do you have in the field identified above?

- a. 2 years or less
- b. 2 - 5 years
- c. 5 - 10 years
- d. 10 - 20 years
- e. More than 20 years
- i. No Response

Questionnaire "A"

ABSTRACT OF BIDS

A summary of the bidders and their bids for a specific procurement.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

BID REJECTION

Unaccepted because: acceptance of one bid constitutes rejection of all others; absence of competition invalidates all bids; readvertisement is equivalent to rejection of all bids. (Compendium, 1981:96)

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

BIDDERS MAILING LIST

A list maintained by the purchasing office which contains the names and addresses of contractors who are interested in doing business with the government, and to whom invitations for bids, or requests for proposals and quotes should be sent. (Dictionary of Purchasing Terms, 1986:3)

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

BILATERAL AGREEMENT

A contract modification signed by the contractor and the contracting officer; a contract in which both parties are bound to perform.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

BRAND NAME OR EQUAL

The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words or equal. (Government Contract Law, 1988:8-2)

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

COMMERCE BUSINESS DAILY

The Commerce Business Daily (CBD) is a United States Department of Commerce publication, issued every business day, which notifies the public of procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities. (Government Contract Guidebook, 1987:2-21)

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

COMPETITIVE SEALED BIDDING

A method of contracting which uses sealed bids, public opening of bids at a specified time, and awards made to the lowest responsive and responsible bidder. Prior to the Competition in Contracting Act of 1984 this method was called formal advertising.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

DELIVERY ORDER

A delivery order is a written order used to purchase supplies or services from an already existing contract or government supply source.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

DETERMINATION OF RESPONSIBILITY

The process undertaken by the contracting officer to make an affirmative finding of responsibility concerning a prospective contractor. In this case responsibility means the apparent ability to successfully complete a contract.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

GENERAL SCOPE

It includes whatever performance should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into.
(Government Contract Law, 1988:10-3)

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

GOVERNMENT FURNISHED EQUIPMENT

Government material or equipment made available to a contractor.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

LETTER OF AGREEMENT (LOA)

An obsolete term for an Army document in which a combat developer and materiel developer outline agreements for a potential materiel system. Replaced by the term initial required operational capability (ROC). (Glossary, 1989:70)

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

MODIFICATION - (CONTRACT MODIFICATION)

A formal written change to a contract which affects the specifications, delivery, contract period, price, quantity, or other provisions.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

NOTICE OF AWARD

The formal announcement that a contract has been awarded. The successful bidder receives notice of award either by receipt of the award document (the contract) or by a written notice. Unsuccessful bidders are notified of rejection either orally or in writing.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

PAYMENT BOND

A bond required of government construction contractors which secures their obligation to pay their laborers and materialmen. (Government Contract Guidebook, 1987:GL-14)

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

POST AWARD

Any time after contract award.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

QUOTE

The seller's statement of price, description of service and terms offered to a buyer.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

QUALITY ASSURANCE

A management function whose goal is to ensure quality, satisfactory performance and confidence that material, data, supplies, and services conform to technical requirements.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

QUALITY CONTROL

Practices and procedures used to ensure quality, satisfactory performance, conformance to requirements and to detect and prevent defects.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

RESPONSIVENESS

A term used in the evaluation of bids to indicate how closely the bid conforms with the material terms of a solicitation. A material term is one which affects price, quantity, quality, or delivery.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

STANDARD COMMERCIAL ITEM(S)

Items regularly used, sold or traded in normal commercial operations. (National Estimating Society Dictionary of Cost Estimating Terms and Phrases, 1986:136)

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

TERMINATION FOR CONVENIENCE

An action taken by a contracting officer to unilaterally terminate all or part of a contract when such action is considered to be in the best interest of the government and through no fault of the contractor.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

TERMINATION FOR DEFAULT

An action taken by the contracting officer to unilaterally terminate all or part of a contract when the contractor has not performed in accordance with the terms of the contract.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

UNILATERAL MODIFICATION

A modification requiring only the signature of the contracting officer.

Do you agree with this definition?

---1-----2-----3-----4-----5---
Strongly Somewhat Undecided Somewhat Strongly
disagree disagree agree agree

Comments:

VALUE ENGINEERING CHANGE PROPOSAL

A change proposal submitted by a contractor in accordance with the value engineering clause which reduces costs without a loss of performance or function. If accepted, the government and the contractor share the savings.

Do you agree with this definition?

---1-----	---2-----	---3-----	---4-----	---5---
Strongly disagree	Somewhat disagree	Undecided	Somewhat agree	Strongly agree

Comments:

Questionnaire "B"

APPROPRIATED FUNDS

Monies which are provided by an act of Congress, thereby permitting Federal agencies to expend designated amounts for specified purposes within a specified timeframe.

Do you agree with this definition?

-----1-----2-----3-----4-----5-----
Strongly Somewhat Undecided Somewhat Strongly
Disagree Disagree Agree Agree

Comments:

BREACH OF CONTRACT

The breaking of a contract, either in full or in part, as a result of failure to perform acts promised (or by prevention, hinderance, or repudiation), to the extent that the other party is injured by this failure to act.

Do you agree with this definition?

-----1-----2-----3-----4-----5-----
Strongly Somewhat Undecided Somewhat Strongly
Disagree Disagree Agree Agree

Comments:

COMPETITIVE PROPOSALS

The method of procurement generally favored where use of the sealed bid approach is considered inappropriate. It is a process of publicizing a purchaser's needs, requesting proposals via a request for proposal (RFP), evaluating the resulting proposals in accordance with specified evaluation criteria included within the RFP, and holding discussions with every acceptable or potentially acceptable offeror prior to award, if it is determined necessary by the purchaser.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

CONFIGURATION

A complete technical description of both the functional (i.e., performance) and physical (i.e., appearance) characteristics of an item, describing both hardware and software to the level of detail required for fabrication, testing, acceptance, operation, maintenance, and logistical supportability of the item.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

CONTRACT, FIXED PRICE, AWARD FEE

A contract which provides for a firm price, or under appropriate circumstances provides for potential adjustments to the price (as found within fixed price incentive (FPI) contracts or fixed price contracts with economic price adjustment (EPA) features), also containing provisions for an award fee which may be earned by the seller through achievement of certain performance goals specified within the contract. These goals may relate to technical performance, timeliness, product quality, or other characteristics as designated within the contract. The amount of the award fee to be paid is determined by the purchaser's judgmental evaluation of performance in terms of the criteria specified within the contract. In government contracting, this determination is made unilaterally by the government and is not subject to the "Disputes" clause found within all government contracts.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

CONTRACT DATA REQUIREMENTS LIST (CDRL)

A listing found within the contract which identifies all data, reports, and/or other documentation required from the seller, stating exactly what to deliver, when to deliver it and how it will be accepted, as well as where to look for any further instructions.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

CONTRACT MANAGEMENT

The process of taking all actions necessary to obtain a mutually binding agreement between two or more legally competent parties, in the proper form and regarding a legal subject matter, for a legal consideration. This agreement is then administered through a series of ongoing actions designed to organize, direct, coordinate, and control the process, with the goal of successfully accomplishing all tasks specified within the agreement.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

DEFINITIZATION

The process of finalizing a contract action (typically a change order or letter contract) which originally contained at least one open issue (usually a firm price), through the issuance of a supplemental agreement which finally and completely settles the issue(s).

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

FEDERAL ACQUISITION REGULATIONS (FAR)

The primary government regulation for the codification and publication of uniform policies and procedures regarding acquisition. Established on April 12, 1984, it contains direction applicable to all executive agencies and addresses all aspects of the government's acquisition process.

Do you agree with this definition?

-----1-----2-----3-----4-----5-----
Strongly Somewhat Undecided Somewhat Strongly
Disagree Disagree Agree Agree

Comments:

INCENTIVE ARRANGEMENT

A contract structure which financially motivates the seller to emphasize particular aspects of the overall contract (i.e., cost control or accelerated delivery) while discouraging inefficiency and waste.

Do you agree with this definition?

-----1-----2-----3-----4-----5-----
Strongly Somewhat Undecided Somewhat Strongly
Disagree Disagree Agree Agree

Comments:

INTEGRATION

Those technical and functional activities, and interfaces, required to create a complex system. This includes the physical mating of hardware subassemblies from the lowest to the highest levels, as well as ensuring that all software within the system is capable of functioning as a single entity.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

LIMITED RIGHTS

As it applies to technical data and computer software, this refers to the buyer's legal restriction to use the data only in the manner explicitly specified within the contract. Such data has been developed at private expense or may embody trade secrets or other confidential information.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

MEMORANDUM OF AGREEMENT (MOA)

A document of mutually agreed to statements of fact, intentions, procedures, parameters or understandings regarding past, present, or future rights and duties of two or more parties. This document is not a contract, and may be lacking one or more essential elements of a contract.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

MEMORANDUM OF UNDERSTANDING (MOU)

An official international agreement between two or more parties, typically between the defense ministries of the NATO nations. While ranking below government-to-government international treaties, these agreements are generally recognized as legally binding even if no legal claims could be based upon their contents.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

PRE-PROPOSAL CONFERENCE

A group meeting held with prospective offerors prior to submission of their proposals, intended to clarify ambiguous situations, answer questions, and generally ensure that all potential offerors have a common basis of understanding regarding the supplies or services required. Referred to as a pre-bid conference on a sealed bid procurement.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

REQUEST FOR EQUITABLE ADJUSTMENT

A written expression transmitted from one party of a contract to another, asking for a change in the contract (usually price) as the direct result of the modification of its original terms. The concept is to return all parties involved to their original (financial) status as held prior to the change taking place.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

RESPONSIBILITY

A concept whereby the inherent qualities of a given party (bidder/offeror) are analyzed for the purpose of deciding whether or not the party is capable (i.e., has adequate financial resources, ability to deliver on time, maintains acceptable standards of conduct, etc.) of fulfilling a specific contractual requirement.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

SPECIAL TEST EQUIPMENT

Single or multipurpose integrated test units engineered, designed, fabricated or modified specifically for the accomplishment of testing during performance of a particular contract. These items consist of assemblies of test equipment which are interconnected and interdependent so as to become new functional entities. Such items are (typically) not included as deliverable contract end items per se, but become residual property at the conclusion of the contract and thus belong to the buyer. General plant testing equipment (including various materials, special tooling or facilities (except foundations and similar improvements necessary for installing special test equipment)) are not considered to be special test equipment.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

SUBCONTRACT

Any agreement entered into by a prime contractor (or by a prime contractor's various suppliers, distributors, or vendors at any tier) calling for supplies and/or services which are ultimately required to fulfill the prime contract.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

SUPPLEMENTAL AGREEMENT

A bilateral written modification to an existing contract which settles price, performance, and/or other adjustments to said existing contract.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

TERMS AND CONDITIONS

Those rules which buyers may include in their requests for proposal (acceptance of which may be necessary for a subsequent proposal to be considered responsive) or sellers may include within their bid/offer (acceptance of which their offer may be contingent). Such rules may also be included in the resultant contract if all parties involved so concur. These rules may address various stipulations regarding general or special provisions, incentives, specifications, delivery requirements, rights, obligations, prices, or any other aspect of the request for proposal, bid/offer, or resultant contract.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

TRUTH IN NEGOTIATIONS ACT (TINA)

Officially established as Public Law 87-653, this statute requires that contractors provide cost or pricing data to the government on all negotiated procurements (whether for new contracts or for modifications to existing contracts) in excess of specified dollar thresholds. Certain exceptions to this requirement exist where adequate price competition, reflecting a competitive marketplace, can be readily demonstrated. Further, contractors must certify as to the accuracy, currency, and completeness of the submitted data, and are subject to profit or fee reductions if such data is later determined to have been faulty.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

UNDEFINITIZED CONTRACT ACTION (UCA)

A contract action entered into which, although authorized, is not fully negotiated with respect to at least one of its contractual terms, specifications, cost or price prior to the initiation of performance. The most typical examples of such an action would include letter contracts and change orders issued pursuant to the "Changes" clause included within government contracts.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

UNLIMITED RIGHTS

With respect to technical data or computer software, the legal authority to use, duplicate, release, disclose, reproduce, prepare derivative works, perform or display publicly, or to have or permit others to do so, in whole or in part in any manner or for any purpose.

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

WITHHOLDING (PAYMENT)

An action taken by the buyer in response to a lack of performance by the seller. This action is generally considered to be of a temporary nature, implying that the payment involved will be released to the seller once the lack of performance is corrected. If the required performance cannot be achieved by the seller, a price reduction (or other equitable consideration) would be negotiated by the parties and a supplemental agreement to the contract issued which formally incorporates such a settlement. After such a modification is issued, the funds in question would no longer be referred to as a "withhold."

Do you agree with this definition?

-----1-----	-----2-----	-----3-----	-----4-----	-----5-----
Strongly Disagree	Somewhat Disagree	Undecided	Somewhat Agree	Strongly Agree

Comments:

Appendix D: Demographics

1. Highest Degree
 - a. Bachelor's (28.9%)
 - b. Master's (52.0%)
 - c. Ph.D. (6.6%)
 - d. J.D. (2.6%)
 - e. No Response (9.9%)
2. Current Employment
 - a. Government Contracting (48.7%)
 - b. Commercial Contracting (25.7%)
 - c. Academic Institution (1.3%)
 - d. Other (13.8%)
 - e. Retired (2.6%)
 - f. No Response (7.9%)
3. Current Career Field
 - a. Contracting/Acquisition (62.5%)
 - b. Manufacturing/Production (1.3%)
 - c. Accounting/Pricing (5.3%)
 - d. Engineering (None)
 - e. Research (None)
 - f. Legal (4.6%)
 - g. Other (15.8%)
 - h. Retired (2.6%)
 - i. No Response (7.9%)
4. Years of Experience
 - a. 2 years of less (17.6%)
 - b. 2 - 5 years (18.9%)
 - c. 5 - 10 years (21.6%)
 - d. 10 - 20 years (8.1%)
 - e. More than 20 years (25.9%)
 - f. No response (7.9%)

Appendix E: Final Definitions

ABSTRACT OF BIDS:

A summary of the bidders and their bid prices for a specific procurement. The abstract also records the names and certifications of the government bid opening officials. The abstract is a publicly releasable document, recorded on a standard form.

APPROPRIATED FUNDS:

Federal (public) monies which are provided by an act of Congress, thereby permitting Federal agencies to obligate designated amounts for specified purposes within a given timeframe.

BID REJECTION:

The refusal to accept a bid for a variety of reasons, such as where acceptance of one bid constitutes rejection of all others or where absence of competition invalidates all bids; readvertisement is equivalent to rejection of all bids.

BIDDERS MAILING LIST:

A list maintained by the purchasing office which contains the names and addresses of contractors who are interested in doing business with the government, and to whom invitations for bids, or requests for proposals and quotes may be sent.

BILATERAL AGREEMENT:

An agreement signed by the contractor and the contracting officer; an agreement in which both parties are bound to perform.

BRAND NAME OR EQUAL:

The minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words or equal. The salient characteristics of the brand item should also be listed, such as the

physical, functional or other features that are essential to the government's needs.

BREACH OF CONTRACT:

The failure to perform as specified by the terms, conditions, or other requirements of a contract, either in whole or in part; a material departure from the contract terms.

COMMERCE BUSINESS DAILY:

The Commerce Business Daily (CBD) is a United States Department of Commerce publication, issued every business day, which notifies the public of procurement invitations, contract awards, subcontracting leads, sales of surplus property, foreign business opportunities and publishes sources sought synopses.

COMPETITIVE PROPOSALS:

The method of procurement generally favored where use of the sealed bid approach is considered inappropriate, such as where the complete configuration of the item to be purchased is not known. It is a process of publicizing a purchaser's needs, requesting proposals via a request for proposal (RFP), evaluating the resulting proposals in accordance with specified evaluation criteria (to include price and other factors) addressed within the RFP, and holding discussions (if deemed necessary by the purchaser) with every offeror found to be within the competitive range.

COMPETITIVE SEALED BIDDING:

A method of contracting which uses sealed bids, public opening of bids at a specified time, and awards made to the lowest responsive and responsible bidder whose bid is most advantageous to the government considering only price and price related factors. Strict rules are followed for bid openings, late bids, mistakes in bids, etc. Prior to the Competition in Contracting Act of 1984 this method was called formal advertising.

CONFIGURATION:

A complete technical description of both the functional (i.e. "performance") and physical (i.e. appearance,

composition, dimensions, interfaces, weight, etc.) characteristics of an item, describing the hardware, firmware, and software to a level of detail required for fabrication, testing, acceptance, operation, maintenance, and logistical supportability of the item. The configuration of an item may be subject to change over time due to updates, upgrades, or retrofits. As such, the stated configuration must also make reference to a specific date as of which these characteristics were correct.

CONTRACT, FIXED PRICE, AWARD FEE:

A contract which provides for a fixed price, as well as an award fee which may be earned by the seller through achievement of certain performance and/or management goals specified within the contract. These goals may relate to technical performance, timeliness, product quality, or any other characteristics deemed appropriate by the purchaser. The amount of the award fee to be paid is determined by the purchaser's judgmental (subjective) evaluation. In government contracting, this determination is made unilaterally by the government and is not generally subject to dispute on the part of the seller.

CONTRACT DATA REQUIREMENTS LIST (CDRL):

An agreed to listing attached to the contract which identifies various data, reports, and/or other documentation required from the seller, stating exactly what to deliver, when and where to deliver it, and the method of acceptance by the buyer.

CONTRACT MANAGEMENT:

The entire process consisting of all actions necessary to obtain, administer and eventually close-out a contract between two or more legally competent parties, in the proper form and regarding a legal subject matter, for a legal consideration. This contract is managed through customer interaction and a series of ongoing actions intended to organize, direct, coordinate, and control performance under the contract, with the goal of successful completion of all tasks required by the contract.

DEFINITIZATION:

The act of finalizing a contract action (typically a change order or letter contract) which originally contained

at least one open issue (typically the lack of a firm price), through the issuance of a supplemental agreement which fully and completely defines the final agreement.

DELIVERY ORDER:

A delivery order is a written order used to purchase supplies or services under an already existing contract or government supply source. The basic contract sets forth who may order, when, how much, the maximum or minimum amounts and other such pertinent information.

DETERMINATION OF RESPONSIBILITY:

The process undertaken by the contracting officer to make an affirmative finding of responsibility concerning a prospective contractor. In this case responsibility means the apparent ability to successfully complete a contract based upon an evaluation of such factors as financial health, physical resources and record of past performances.

FEDERAL ACQUISITION REGULATION:

The primary federal government regulation which, as supplemented by the various government agencies which fall under its control, implements statutes and uniform policies and procedures regarding acquisition.

GENERAL SCOPE:

It includes whatever performance was specified in the contract and should be regarded as having been fairly and reasonably within the contemplation of the parties when the contract was entered into.

GOVERNMENT FURNISHED EQUIPMENT:

Government equipment furnished to a contractor for performance of a specific government contract.

INCENTIVE ARRANGEMENT:

A contract structure which is intended to financially motivate the seller, through the use of a profit/fee adjustment formula, to emphasize particular aspects of the overall contract (e.g. cost control, accelerated delivery,

quality or technical improvements). This approach utilizes objective measurement (as opposed to subjective measurement as is used under an "award fee" approach) for calculating the amount of incentive to be received.

INTEGRATION:

The process of interfacing the various technical/functional activities (design, development, manufacturing, testing, etc.) in such a manner as is required to produce a complex system. This process includes the physical mating of hardware subassemblies as well as testing to ensure the necessary degree of software compatibility within the system.

LETTER OF AGREEMENT (LOA):

An obsolete term for an Army document in which a combat developer and materiel developer outline agreements for a potential materiel system. Replaced by the term initial required operational capability (ROC). (Glossary, 1989:70)

LIMITED RIGHTS:

Those legal restrictions pertaining to a buyer's use of data provided by a seller during performance of a contract. Such restrictions should be identified explicitly within the contract, as well as via markings on the data itself. Such data may have been developed at private expense, and may embody trade secrets or other confidential/competition sensitive information. It is the buyer's responsibility to "protect" this data. Within government contracting, this typically means the government may use, duplicate, and/or disclose the data only within the government, and specifically may not use it for future competitive procurements.

MEMORANDUM OF AGREEMENT:

A document of mutually agreed to statements of fact, intentions, procedures, parameters or understandings regarding past, present, or future rights and duties of two or more parties. This document is not a contract, as it may be lacking one or more essential elements thereof. As such, these are generally not enforceable in law, thereby requiring good faith adherence by both parties in order to be effective.

MEMORANDUM OF UNDERSTANDING (MOU):

An agreement between two or more parties, historically involving official international agreements between defense ministries of NATO countries. While ranking below government-to-government international treaties, these agreements are generally recognized as legally binding even though they may not be legally sufficient as the basis of a claim.

MODIFICATION - (CONTRACT MODIFICATION):

A formal written change to a contract as set forth by the changes clause of the contract which may affect all or some of the following: specifications, delivery, contract period, price, quantity, or other provisions. A modification can be described as either unilateral or bilateral.

NOTICE OF AWARD:

The formal announcement by the contracting officer that a contract has been awarded. The successful bidder receives notice of award either by receipt of the award document (the contract) or by a written notice. Unsuccessful bidders are notified of rejection either orally or in writing.

PAYMENT BOND:

A bond required of government construction contractors which secures their obligation to pay their laborers and materialmen involved in performance of a specific government contract.

POST AWARD:

Any time after contract award through contract completion and close-out. Examples of post award activities may include a post award conference, contract administration, closeout, or possibly a termination action.

PRE-PROPOSAL CONFERENCE:

A meeting organized/sponsored by the buying activity, open to all prospective offerors, prior to submission of proposals. It is intended to clarify areas of ambiguity within the solicitation, answer general questions, and to

help all potential offerors better understand the nature of the supplies or services required. Referred to as a "pre-bid conference" during sealed bid procurements.

QUALITY ASSURANCE:

An organizational function whose goal is to ensure contractor quality, satisfactory performance and confidence that material, data, supplies, and services conform to contractual requirements.

QUALITY CONTROL:

Practices and procedures used by contractor and approved by the government contracting officer to ensure quality, satisfactory performance, conformance to contract requirements and to detect and prevent defects.

QUOTE:

The seller's oral or written statement of price, description of service, delivery and terms offered to a buyer.

REQUEST FOR EQUITABLE ADJUSTMENT:

A formal request transmitted from one party of a contract to another, requesting a change in the contract terms (typically price and/or schedule) as the direct result of a perceived deviation by the other party relative to the original contract terms. The concept is to adjust the contract in a manner which reflects the actual changes(s) which occurred. This results in a modification to the contract which contractually incorporates the change(s) which initiated the request, as well as the equitable adjustment made in response to the change(s).

RESPONSIBILITY:

A legal determination whereby various qualities of a given bidder/offeror are analyzed for the purpose of determining whether or not that bidder/offeror has the capability and capacity (e.g., has adequate financial resources, ability to deliver on time, acceptable standards of conduct, adequate technical resources/capabilities/staffing levels, an acceptable past

performance record, etc.) to fulfill the requirements of the anticipated contract.

RESPONSIVENESS:

A term used in the evaluation of bids to indicate conformance with the material terms of a solicitation. A material term is one which affects price, quantity, quality, or delivery. The intent is to prevent a bidder from qualifying an offer.

SPECIAL TEST EQUIPMENT:

Integrated test units engineered, designed, fabricated or modified specifically for the accomplishment of testing a particular item or system, which cannot be returned to their original state without significant effort/expense. These items typically consist of assemblies of test equipment which are interconnected and interdependent so as to become new functional entities.

STANDARD COMMERCIAL ITEM(S):

Items regularly used, sold or traded in large quantities to the general public in normal commercial operations.

SUBCONTRACT:

A contractual agreement entered into by a prime contractor (or by a prime contractor's various suppliers, distributors, or vendors at any tier) calling for supplies and/or services which are ultimately required to fulfill the prime contract. This type of agreement is differentiated from a purchase order by the nature of the effort being purchased. Typically, subcontracts represent major efforts which are of the "made-to-order" variety; purchase orders are typically utilized when purchasing standard (off-the-shelf) items.

SUPPLEMENTAL AGREEMENT:

A bilateral written modification to an existing contract which sets forth contractual adjustments negotiated by the parties regarding price, performance and/or other facets of the contract.

TERMINATION FOR CONVENIENCE:

An action taken by a contracting officer to unilaterally terminate all or part of a contract when such action is considered to be in the best interest of the government.

TERMINATION FOR DEFAULT:

An action taken by the contracting officer to unilaterally terminate all or part of a contract when the contractor has inexcusably failed to perform in accordance with the terms of the contract.

TERMS AND CONDITIONS:

Those statements of legal rights and obligations which buyers might include in a solicitation or sellers may include within a bid or offer. Such stipulations may be incorporated into the resultant contract by mutual consent of the parties. These conditions may address general or specific provisions, incentives, specifications, delivery requirements, rights, obligations, prices, or any other aspect of the solicitation, bid/offer, and/or subsequent contract.

TRUTH IN NEGOTIATIONS ACT (TINA):

Officially established by Public Law 87-653, this statute requires contractors to provide cost or pricing data to the government on all applicable negotiated procurements (for new contracts or modifications to existing contracts) in excess of specified dollar thresholds. Such data may also be requested by the Contracting Officer at any time he/she deems it necessary to establish a fair and reasonable price. Further, the contractor may be required to certify that such data is accurate, current, and complete as of the date negotiations were completed. Contractors are subject to profit or fee reductions, recoupment of excess costs, interest, and potential additional penalties if such a certification is later learned to have been faulty.

UNDEFINITIZED CONTRACT ACTION (UCA):

A contract action entered into which, although authorized, is not fully negotiated with respect to at least one of its contractual terms (specifications, cost or price, delivery schedule, etc.) prior to the initiation of

performance. It has been agreed by the parties concerned that these unresolved terms must be negotiated/finalized in the relative near future. The most typical examples of such an action would include letter contracts, or "Change Orders" issued pursuant to the "Changes" clause found within government contracts.

UNILATERAL MODIFICATION:

A modification, pursuant to the Changes clause, requiring only the signature of the contracting officer. Some examples of usage include; correcting typographical errors, changing accounting classifications, obligating additional funds, exercising options, and issuing change orders.

UNLIMITED RIGHTS:

The legal authority to use, duplicate, release, disclose, reproduce, sell, prepare derivative works, perform or display publicly, or have or permit others to do so, in whole or in part in any manner or for any purpose.

VALUE ENGINEERING CHANGE PROPOSAL:

A change proposal submitted by a contractor in accordance with the value engineering clause which proposes to reduce costs without a loss of performance or function. If accepted, the government and the contractor may share the savings.

WITHHOLDING (PAYMENT):

An action taken by the buyer in response to a perceived lack of performance by the seller. On government contracts, the government has the unilateral right to make such a withholding under appropriate circumstances. This action is generally considered to be of a temporary nature, implying that the payment involved will be released to the seller once the lack of performance is corrected. If the required performance cannot be achieved, equitable consideration must be negotiated by the parties and a supplemental agreement to the contract issued which formally incorporates such a settlement. Subsequent to this, the funds in question would be released in a manner consistent with the supplemental agreement.

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Vita

Marilyn J. Bayless was born in Concord, North Carolina. She enlisted in the Air Force in August 1976 as a technician within the Autovon maintenance career field. Assignments included Rhein Main AFB, Germany, McClellan AFB, California, and Eglin AFB, Florida. In 1984 she earned a Bachelor of Science degree from Troy State University and was commissioned through Officer Training School in April of 1985. Assigned to Sheppard AFB, Texas, as an administrative officer, she was a student squadron commander and later group executive officer. In 1988 she cross-trained into the contracting career field and gained approximately three years experience before arriving at the Air Force Institute of Technology (AFIT).

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Vita

John H. Padgett was born in Dayton, Ohio. He graduated from Ohio University in June of 1980 with a Bachelor of Business Administration (BBA) degree. After graduation, he worked as a buyer and contract price analyst at the Defense Electronics Supply Center (DESC). In August 1983, John transferred to Aeronautical Systems Division (ASD), Wright-Patterson AFB, as a contract negotiator within the B-1B System Program Office (SPO). After being reassigned to work on the Special Operations Forces Aircrew Training System in 1988, he became Chief of the F-16 Simulator Contracting Group within the Training Systems SPO (ASD/YW) in October 1989, where he remained until entering AFIT in May 1991.

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12a. DISTRIBUTION/AVAILABILITY STATEMENT APPROVED FOR PUBLIC RELEASE; DISTRIBUTION UNLIMITED			12b. DISTRIBUTION CODE
13. ABSTRACT (Maximum 200 words) THIS STUDY INVESTIGATED THE DEFINITIONS OF FIFTY (50) CON-TRACT TERMS AND THE MANNER IN WHICH THESE TERMS ARE USED BY CONTRACT MANAGEMENT PROFESSIONALS IN TODAY'S WORK ENVIRONMENT. A REVIEW OF CURRENT LITERATURE, AND THE DEFINITIONS WERE RESEARCHED AND ESTABLISHED. BASED UPON THE RESULTS OF THIS RESEARCH, THE OLD DEFINITIONS WERE REFINED AND ASSIMILATED. THROUGH THE USE OF A QUESTIONNAIRE/INTERVIEW, THESE "REFINED" DEFINITIONS WERE PRESENTED TO A RANDOMLY SELECTED GROUP OF CONTRACT MANAGEMENT PROFESSIONALS (CONTRACT MANAGERS) FOR EVALUATION AND COMMENT. THE REFINED DEFINITIONS WERE USED AS THE BASIS FOR REFINING THE ORIGINAL "OLD" DEFINITIONS. THE "REFINED" DEFINITIONS WERE THEN PRESENTED TO A GROUP OF CONTRACT MANAGERS FOR EVALUATION AND COMMENT. THE REFINED DEFINITIONS WERE THEN PRESENTED TO A GROUP OF CONTRACT MANAGERS FOR EVALUATION AND COMMENT. THE REFINED DEFINITIONS WERE THEN PRESENTED TO A GROUP OF CONTRACT MANAGERS FOR EVALUATION AND COMMENT.			
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AFIT RESEARCH ASSESSMENT

The purpose of this questionnaire is to determine the potential for current and future applications of AFIT thesis research. Please return completed questionnaires to: AFIT/LSC, Wright-Patterson AFB OH 45433-9905.

1. Did this research contribute to a current research project?

a. Yes

b. No

2. Do you believe this research topic is significant enough that it would have been researched (or contracted) by your organization or another agency if AFIT had not researched it?

a. Yes

b. No

3. The benefits of AFIT research can often be expressed by the equivalent value that your agency received by virtue of AFIT performing the research. Please estimate what this research would have cost in terms of manpower and/or dollars if it had been accomplished under contract or if it had been done in-house.

Man Years _____ \$ _____

4. Often it is not possible to attach equivalent dollar values to research, although the results of the research may, in fact, be important. Whether or not you were able to establish an equivalent value for this research (3, above) what is your estimate of its significance?

a. Highly
Significant

b. Significant

c. Slightly
Significant

d. Of No
Significance

5. Comments

Name and Grade

Organization

Position or Title

Address