4 Purchasing

4 Purchasing ................................................................. 119
4.1 Policy ................................................................. 119
  4.1.1 General ......................................................... 119
  4.1.2 Purchasing Framework ....................................... 119
4.2 The Purchasing Process ........................................... 119
  4.2.1 Planning ....................................................... 119
  4.2.2 Solicitations .................................................. 120
    4.2.2.a General .................................................. 120
    4.2.2.b Draft Solicitations ..................................... 120
    4.2.2.c Preparation and Format ................................ 120
    4.2.2.d Proposal Preparation Time ............................. 120
    4.2.2.e Availability of Solicitations .......................... 120
    4.2.2.f Preproposal Conference ................................. 120
    4.2.2.g Amendment of Solicitations ............................. 121
    4.2.2.h Cancellation of Solicitations .......................... 121
    4.2.2.i Disclosure and Use of Information ................. 121
  4.2.3 Receipt of Proposals ........................................ 122
    4.2.3.a General .................................................. 122
    4.2.3.b Modification and Withdrawal .......................... 122
    4.2.3.c Late Proposals and Modifications .................... 122
    4.2.3.d Failure to Acknowledge Amendments .................. 123
  4.2.4 Oral Presentations .......................................... 123
    4.2.4.a General .................................................. 123
    4.2.4.b Discussions ............................................. 123
  4.2.5 Performance Evaluation .................................... 123
    4.2.5.a General .................................................. 123
    4.2.5.b Roles and Responsibilities ............................ 124
    4.2.5.c Discussions ............................................. 125
    4.2.5.d Best Value Determinations ............................ 126
  4.2.6 Contract Award .............................................. 126
  4.2.7 Notification ................................................ 127
  4.2.8 Debriefing ................................................... 127
4.3.7 Tailoring Provisions and Clauses .................................................. 133
  4.3.7.a Policy. .............................................................. 133
  4.3.7.b Clause 4-2, Contract Terms and Conditions — Commercial Items 134
4.3.8 Exemptions from Law ......................................................... 137
  4.3.8.a General. .............................................................. 137
  4.3.8.b Applicability ........................................................ 137
  4.3.8.c Contracts and Subcontracts ........................................ 137
  4.3.8.d Exemptions .......................................................... 137
4.4 Design and Construction Purchasing ........................................... 138
  4.4.1 General ................................................................. 138
    4.4.1.a Policy. .............................................................. 138
    4.4.1.b Real Estate and Related Services. .............................. 138
  4.4.2 Architect-Engineer Services .......................................... 138
    4.4.2.a Policy. .............................................................. 138
    4.4.2.b Applicability ........................................................ 138
    4.4.2.c Definitions ........................................................ 138
    4.4.2.d Selection Procedures ............................................ 139
    4.4.2.e Discussions ....................................................... 140
    4.4.2.f A/E Supplier Performance Evaluation. .......................... 140
    4.4.2.g Indefinite-Quantity A/E Services Contracts .................... 140
  4.4.3 Construction ............................................................ 141
    4.4.3.a Purchasing Construction ........................................ 141
    4.4.3.b Indefinite-Quantity Construction Contracts .................... 144
  4.4.4 Design-Build Contracting ................................................ 145
    4.4.4.a Applicability. ...................................................... 145
    4.4.4.b Definition. ........................................................ 145
    4.4.4.c Purchase Method. ............................................... 145
    4.4.4.d Contract Types .................................................. 145
    4.4.4.e Solicitations For Design-Build Contracts. ..................... 147
    4.4.4.f Requirements for Design-Build Proposals. ...................... 147
    4.4.4.g Design-Build Supplier Performance Evaluations ............... 147
  4.4.5 Construction Management Support Services ............................. 147
    4.4.5.a Applicability. ...................................................... 147
    4.4.5.b Definition. ........................................................ 147
    4.4.5.c Purchase Method. ................................................ 147
    4.4.5.d Contract Types. ................................................ 147
    4.4.5.e CMSS Contract as an Alternative to A/E Contract Options. . 147
    4.4.5.f Solicitations for Construction Management Support Services Contracts. 148
    4.4.5.g Selection Processes for Construction Management Support Services Contracts. 148
    4.4.5.h Evaluation of Price Proposals. ................................ 148
    4.4.5.i Contract Award. ................................................ 148
4.5.1 General
4.5.1.a Policy
4.5.1.b Purchasing Method
4.5.3 Contracting Officer’s Representative
4.5.3.a Designation
4.5.3.b Authority and Limitations
4.5.3.c Restrictions
4.5.4 Mailing Lists
4.5.4.a Establishing Mailing Lists
4.5.4.b Retention on Lists
4.5.4.c Use of Mailing Lists
4.5.4.d Publicizing
4.5.5 Contracts
4.5.5.a Contract Type
4.5.5.b Contract Term
4.5.5.c Use of Contracts
4.5.5.d Modes of Transportation
4.5.5.e Alternatives to Contracts
4.5.6 Renewal of Contracts
4.5.6.a General
4.5.6.b Characteristics of Renewal Contracts
4.5.6.c Renewal Procedures
4.5.6.d Restrictions
4.5.6.e Clause
4.5.7 Extension and Short-Term Renewal of Contracts
4.5.8 Contract Changes
4.5.8.a General
4.5.8.b Termination for Convenience
4.5.8.c Service Changes
4.5.8.d Exceptional Service
4.5.8.e Schedule Changes for Highway or Domestic Inland Water Contracts
4.5.8.f Emergency Contracts
4.5.8.g Clauses
4.5.9 Subcontracting
4.5.9.a Highway or Domestic Inland Water Contracts
4.5.9.b Other Surface Contracts and Air Contracts
4.5.10 Release of Supplier
4.5.11 Service Deficiencies
4.6 Special Categories of Purchases

4.6.1 General

4.6.2 Supplemental Policies and Procedures

4.6.3 Professional/Technical and Consultant Services

4.6.4 Personal Services Contracts

4.6.5 Information Technology

4.6.6 Research and Development
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.6.6.c</td>
<td>Prequalification</td>
<td>176</td>
</tr>
<tr>
<td>4.6.6.d</td>
<td>Solicitations</td>
<td>176</td>
</tr>
<tr>
<td>4.6.6.e</td>
<td>Contract Type</td>
<td>177</td>
</tr>
<tr>
<td>4.6.6.f</td>
<td>Limitations on Subcontracting</td>
<td>178</td>
</tr>
<tr>
<td>4.6.6.g</td>
<td>Educational Institutions and Nonprofit Organizations</td>
<td>178</td>
</tr>
<tr>
<td>4.6.6.h</td>
<td>Organizational Conflict of Interest</td>
<td>179</td>
</tr>
<tr>
<td>4.6.7</td>
<td>Utility Services</td>
<td>179</td>
</tr>
<tr>
<td>4.6.7.a</td>
<td>Definitions</td>
<td>179</td>
</tr>
<tr>
<td>4.6.7.b</td>
<td>Policy</td>
<td>179</td>
</tr>
<tr>
<td>4.6.8</td>
<td>Structured Contracts and Controlled Contracts</td>
<td>181</td>
</tr>
<tr>
<td>4.6.8.a</td>
<td>Definitions and Examples</td>
<td>181</td>
</tr>
<tr>
<td>4.6.8.b</td>
<td>Policies and Procedures</td>
<td>181</td>
</tr>
</tbody>
</table>
4 Purchasing

4.1 Policy

4.1.1 General

So that all interested parties (requesting organizations, suppliers, purchase teams, etc.) may be assured of the effectiveness and integrity of Postal Service purchases, it is Postal Service policy that a single purchase process be used to acquire needed goods and services. This process entails the solicitation of a sufficient number of offers to ensure adequate competition, the comparative evaluation of proposals, and discussions with the most qualified suppliers in order to reach the best business arrangement for the Postal Service and the supplier. Due to the wide variety of goods and services required by the Postal Service, several commodity-specific purchases, including high technology, information systems, professional and consultant services, facility design and construction and mail transportation, require different approaches to the purchasing process and differing solicitation provisions and contract clauses.

4.1.2 Purchasing Framework

All Postal Service purchases are accomplished under the common framework of solicitation, evaluation, discussion, selection and award. This framework is designed in order to ensure that (1) all parties are treated fairly, (2) the Postal Service obtains the best value and (3) mutually beneficial contractual relationships are established. Section 2 describes the process through which these goals are reached and Sections 3 through 6 describe variations to the process for various commodity-specific purchases.

4.2 The Purchasing Process

4.2.1 Planning

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

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

4.2.2.b Draft Solicitations. In order to further ensure the clarity and completeness of solicitations, purchase teams should consider circulating draft solicitations within the particular supplier community for review and comment. Purchase teams may also consider issuing presolicitation notices (see 3.5.3.c).

4.2.2.c Preparation and Format. Solicitations are prepared in accordance with Appendix A.

4.2.2.d Proposal Preparation Time. Consistent with the objectives of the purchase (including whether the solicitation will be competed among prequalified suppliers only), solicitations must allow sufficient time for suppliers to prepare and submit proposals.

4.2.2.e Availability of Solicitations

1. Enough suppliers must be solicited to ensure adequate competition. In addition, contracting officers should make a reasonable effort to provide copies of solicitations to any supplier requesting one. In their role as business leader of the purchasing process, contracting officers should fully explain to suppliers the unavailability of solicitations. If the requirement is being competed among prequalified suppliers, suppliers not on the prequalification list may be provided a copy of the solicitation, but they must be explicitly told that the Postal Service plans to award the resulting contract to a supplier on the prequalification list. Requests for copies may be denied if, in the judgment of the contracting officer, copies have already been provided to a sufficient number of suppliers to ensure adequate competition.

2. When a solicitation or solicitation package is so voluminous that it is impracticable to reproduce a reasonable number of copies for those requesting them, a limited number of copies should be made available for sale; the cost should include the cost of reproduction and postage.

4.2.2.f Preproposal Conference

1. Whenever circumstances suggest that it would add to the success of the purchase, such as when a solicitation contains complicated specifications or statements of work, a preproposal conference may be held to brief suppliers. Notice of the preproposal conference should be contained in the solicitation. If time allows, suppliers should be allowed to submit written questions in advance, so that prepared answers may be distributed at the conference.

2. The entire purchase team should attend the conference. The contracting officer or a designated representative must conduct the
conference, with the assistance of the purchase team and assigned counsel, as appropriate.

3. A record of the conference must be furnished to all of the suppliers who received the solicitation. Because the role of that record is to ensure that all prospective suppliers fully understand the Postal Service’s intent with respect to the purchase, and not necessarily to provide a verbatim reconstruction of the conference, the record may be edited for clarity and brevity and corrected where necessary.

4.2.2.g Amendment of Solicitations

1. Solicitations must be amended when changes such as quantity, specifications, delivery schedule, date of receipt of proposals, or changes to clarify or correct solicitation ambiguities or defects must be made. When solicitations are amended, suppliers must be provided sufficient time to consider the amendment in the preparation or revision of their proposals. When it is necessary to give notification of a change by telephone or some other means, confirmation by written amendment must follow.

2. When deciding which suppliers are affected by a change, contracting officers should consider the stage of the purchase:
   (a) If proposals are not yet due, the amendment must be sent to all suppliers who received the solicitation; if the solicitation had been previously posted, the amendment must be similarly posted.
   (b) If the time for receipt of proposals has passed but proposals have not been evaluated, the amendment must be sent to the suppliers who provided proposals.

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

4.2.2.i Disclosure and Use of Information

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

2. **After Receipt of Proposals**

   (a) Information concerning the content of proposals or the number or identity of suppliers may not be disclosed outside the Postal Service, except when necessary for proposal evaluation, or to anyone in the Postal Service not having a legitimate interest.

   (b) During the preaward period, only the contracting officer, the contracting officer’s supervisor having contracting authority, the purchase team or the evaluation team (see 4.2.5.b) may transmit technical or other information and conduct discussions with suppliers. Information may not be furnished to any supplier if, alone or together with other information, it may afford that supplier an advantage over other suppliers. However, general information that is not prejudicial to other suppliers or to the integrity of the purchasing process may be furnished upon request.

   (c) Suppliers may place restrictions on the disclosure and use of data contained in their proposals, in accordance with Provision A-7, Restriction on Disclosure and Use of Data. The portions of the proposal that are so restricted (except for information obtainable from another source without restriction) must be used only for evaluation and may not be disclosed outside the Postal Service, except when necessary for proposal evaluation, without the permission of the offeror.

4. **Release of Solicitation Mailing Lists.** Solicitation mailing lists may be released when the contracting officer deems a purchase highly competitive and that competition will not be harmed by the release. The contracting officer should also consider the potential for subcontracting opportunities when considering releasing the list.

4.2.3 **Receipt of Proposals**

4.2.3.a **General.** Proposals must be marked with the date and time of receipt, and kept secure until they are provided to the evaluation team.

4.2.3.b **Modification and Withdrawal.** Proposals may be modified or withdrawn by written or electronic notice before the specific contract is awarded.

4.2.3.c **Late Proposals and Modifications**

1. Proposals and modifications of proposals are late if received after the date and time established in the solicitation for receipt of proposals. This does not include the normal revisions of proposals made by a supplier during discussions (see 4.2.5.c).
2. Late proposals and modifications may be considered in accordance with Provision A-4, Late Submissions and Modifications of Proposals. It is normally in the interest of the Postal Service to consider a late proposal if when doing so would not cause a delay in the evaluation process, or the proposal was late because of mishandling after receipt, or the proposal offers a significant cost, quality, or technical benefit. It is not in the interest of the Postal Service to consider any proposal received so late that its consideration would jeopardize, or give the appearance of jeopardizing, the integrity of the purchasing process.

3. When a late proposal or modification is not considered, the supplier must be given written notification that its proposal or modification was received late and was not considered.

4. Each late proposal must be retained in the solicitation file with a statement as to whether it was considered, and the rationale as to why or why not.

4.2.3.d Failure to Acknowledge Amendments. Generally, it is in the Postal Service’s interest that suppliers be as informed as possible. Therefore, if a supplier fails to acknowledge a solicitation amendment, or if a proposal contains a suspected mistake, the contracting officer should question the supplier as to the matter. Suppliers should be granted the opportunity to address amendments or correct mistakes if doing so will enhance competition and not otherwise compromise the integrity of the purchasing process.

4.2.4 Oral Presentations

4.2.4.a General. Oral presentations are a performance evaluation method (see 4.2.5) used to evaluate a supplier’s experience, ability, and proposed method to perform the work called for in the solicitation. As a general rule, their use can speed up the evaluation process and provide a better picture of both the supplier’s understanding of the solicitation requirements and its proposed approach to meeting the Postal Service’s needs. During oral presentations suppliers may address any or all of a solicitation’s performance evaluation factors (see 2.1.7).

4.2.4.b Discussions. Discussions (see 4.2.5.c) are encouraged during oral presentations in order that the supplier gain a better understanding of the Postal Service’s expectations and the Postal Service gain a better understanding of the supplier’s abilities. The contracting officer, as business leader of the purchase team, must ensure that all suppliers taking part in oral presentations are treated fairly and that any proprietary information presented is protected. Contracting officers must also ensure that any understandings reached as a result of discussions taking place during oral presentations are reflected in the final contract.

4.2.5 Performance Evaluation

4.2.5.a General

1. Purpose. Performance evaluation is a two-step process: (1) evaluation of individual proposals in relation to the solicitation’s stated
performance evaluation factors; and (2) comparative evaluation of the individual proposals in relation to each other in order to judge each proposal’s relative value. Either of these steps may include discussions with suppliers (see 4.2.5.c). Depending on the quality of the proposals received, performance evaluation may be an interactive process through which the Postal Service determines which supplier or suppliers offers the best value, and most merits contract award.

2. **Individual Evaluation.** The first step consists of analyzing an individual proposal’s strengths, weaknesses and risks, and documenting conclusions reached regarding the proposal. This narrative should be prepared simultaneously with the scoring and, in addition to documenting the proposal’s strengths, weaknesses and risk, must provide the evaluation team’s rationale for a particular supplier’s score. Proposed prices may also be examined and evaluated in order to gain an understanding of the supplier’s approach to the purchase and its grasp of the resources needed for successful performance. The team must arrive at a consensus decision for each proposal and should do so as soon as possible after review and evaluation.

3. **Comparative Evaluation.** The second step of the process requires the comparison of the relative value offered by each proposal in relation to its competitors. This comparison of proposals is extremely important and must describe the differences between proposals and assess the value of the differences or the impact that the differences will have on the Postal Service.

4.2.5.b **Roles and Responsibilities**

1. **Purchase Team.** The purchase team is responsible for the overall direction of the purchase. This includes establishing the purchase plan and the supplier-selection strategy, and determining which supplier or suppliers offer the best value to the Postal Service (however, see 4.2.5.d.1). In all of these functions, the team is headed by the contracting officer.

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

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

1. *Definition.* Discussions include all communications held with suppliers during the purchasing process; the term “discussions” is used in this PM in its common dictionary sense, and not as defined or circumscribed in previous Postal Service purchasing regulations or similar regulations of other Federal agencies.

2. *Purpose.* Discussions may be held in order to (1) allow for the clarification of matters contained in a proposal which raise questions regarding acceptability or evaluation score; (2) address suspected mistakes or questionable assumptions; and (3) obtain the best value to the Postal Service and establish final contract terms and conditions. Discussions need not be held with individual suppliers when, after evaluation and comparison of their proposals, it becomes apparent that their proposals do not offer the best value to the Postal Service and could not be improved to do so without extensive and substantial revision. The contracting officer is responsible for the conduct of discussions. During the conduct of discussions, contracting officers must ensure that no leveling or technical transfusion occurs.

3. *Use*

(a) During the evaluation process, including during oral presentations, discussions may be held with any supplier in order to clear up misunderstandings or uncertainties or to gain a better understanding of the supplier’s responses and intent regarding the solicitation’s provisions including its performance factors, and any aspect of a supplier’s proposal including price, in order to obtain a more informed comparison of the relative value of individual proposals.

(b) After proposal comparisons have been made, further discussions may be held to address any outstanding matters. These discussions should be made with a sufficient number of suppliers for the purchase team to be confident that it can reasonably determine which supplier or suppliers offers the best value to the Postal Service. However, the fact that discussions are held with one or more offerors does not require that discussions be held with other offerors if there is no business necessity for additional discussions. Offerors whose offers are not the subject of discussions need not be afforded a specific opportunity to revise their offers.

(c) Suppliers whose offers are the subject of discussion at any stage must be given sufficient time to revise their proposals in light of those discussions. The time provided must be reasonable in view of the complexity and extent of the issues discussed, but the time provided one supplier need not be the same as that provided another. However, all suppliers must be treated fairly, and all information provided the Postal Service during discussions must be protected.

(d) The final stage of discussions is reaching agreement on the contract’s terms and conditions with the apparently successful
supplier. The goal of this stage is to reach the best business arrangement for the Postal Service, and during this stage any remaining issues should be addressed and revised. However, if the extent of these issues may reasonably be viewed as changing the rationale for determining the best value to the Postal Service, the contracting officer must consider reopening discussions with other suppliers. In no event may changes be made to the Postal Service’s requirements or the supplier’s proposal which, if made before supplier selection, would have affected the basis for that selection.

4.2.5.d Best Value Determinations

1. Responsibility. After evaluation, comparative analysis and ranking of the proposals (including price proposals) and, if necessary, discussions with suppliers, it must be determined which supplier or suppliers offer the best value to the Postal Service. This determination should be reached through the consensus of the purchase team; if consensus cannot be reached, the contracting officer must make the determination based upon the business and competitive needs of the Postal Service, as expressed in the solicitation.

2. Process. At the heart of this decision are (1) the trade-off judgment between price and the value offered in response to the solicitation’s performance evaluation factors, (2) the relative value offered by a supplier or suppliers in relation to the competition, and (3) whether a lower cost is worth the lesser technical value (and potentially higher risk), or whether a higher price is worth the increased technical/managerial capabilities (and potentially lower risk). These judgments must be made in accordance with the relative overall importance of the performance evaluation factors to price.

3. Documentation. The purchase team must clearly understand, explain and document the rationale for the best value determination.

4.2.6 Contract Award

4.2.6.a Contract award is made by execution of a contract by both parties. For commercial purchases see 3.4.b.

4.2.6.b If a proposed award requires higher-level review and approval or a delegation of contracting authority, award may not be made until the approval or delegation has been obtained (see 1.5.3).

4.2.6.c When more than one award results from any single solicitation, separate award documents must be executed. When an award is made to a supplier for fewer than all items that may be awarded to that supplier, and additional items are being withheld for subsequent award, the first award to that supplier must state that the Postal Service may make subsequent awards on additional items within the proposal acceptance period, if applicable. When two or more awards are made to a single supplier under a solicitation, the original copy of the proposal must be attached to the retained office copy of the first award, and duplicate copies attached to succeeding awards.
4.2.7 Notification

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

1. The number of proposals received;
2. The name and address of each supplier receiving an award;
3. The items, quantities, and unit prices of each award, or the total of estimated cost and fee for cost-reimbursement contracts;
4. If award was made without discussions, a statement to that effect; and
5. A brief rationale relating the award to the selection criteria. For example:
   “The offeror had the highest-rated performance evaluation factors and the second-lowest rated price. The evaluation scheme provided that the performance factors were more important than price in the award decision.”

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

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

4.2.8 Debriefing

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

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

4.2.8.c Purpose. Debriefings are intended to explain to a supplier how its proposal was evaluated and to help it prepare for future purchase opportunities. Contracting officers should fully explain the rationale for contract award, and, if necessary, use the debriefing as a means of educating suppliers in the way the Postal Service conducts its purchases. Suppliers may be told their relative strengths and weaknesses, and, if proposals were ranked, their ranking. Suppliers may also be told their rating and that of the successful offeror, however, no point-by-point comparisons with other proposals or further breakdown of other evaluated scores may be made.

4.2.8.d Content.

1. Information must not be disclosed to any supplier as to another supplier’s:
   (a) Trade secrets;
   (b) Restricted data or privileged or confidential manufacturing processes or techniques; or
4.3.2.b Purchasing

(c) Business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

2. The contracting officer or a designated representative must conduct the debriefing, with the assistance and participation of the purchase team and assigned counsel, as appropriate.

3. The contracting officer must include a summary of the debriefing in the solicitation file.

4.3 Commercial Purchasing

4.3.1 Policy

Commercial purchasing is the purchase of commercially available goods and services. It is Postal Service policy to buy commercially available goods and services whenever practicable.

4.3.2 Applicability

4.3.2.a General. Use the following policies and procedures when purchasing commercial products or services.

4.3.2.b Definition. Commercial products and services are:

1. Products customarily used by the general public and available in the commercial marketplace.

2. Products that have evolved from existing commercial products through advances in technology or performance, even if not yet available in the commercial marketplace, if the product will be available in the commercial marketplace in time to satisfy the Postal Service’s delivery requirements.

3. Commercial products with minor modifications of a type customarily available in the commercial marketplace.

4. Installation, maintenance, repair and training services if purchased in support of a commercial product under terms and conditions available to the general public.

5. Other commercial services offered and sold competitively, in the commercial marketplace, based on established commercial prices for specific tasks performed under standard commercial terms and conditions. Facility repair and alteration, including painting (see 4.4) are such commercial services.

6. Mail transportation services of all modes (see 4.5) may be purchased as commercial services at the discretion of the contracting officer.
4.3.2.c Considerations

1. When using commercial purchasing procedures, purchase teams must:
   (a) Conduct market research to determine whether commercial items are available to meet the Postal Service's requirements (see 2.1.3).
   (b) Encourage suppliers and subcontractors to incorporate commercial items as components in items supplied to the Postal Service.

2. There may be instances where a product or services is available in the commercial marketplace but not capable of meeting a specific Postal Service requirement without substantial adaptation or customization. In these instances, the other purchasing methods described in this chapter may be used.

4.3.2.d DollarLimitations. Contracting officers may use commercial purchasing methods up to the limit of their delegated contracting authority. Other types of dollar limitations, such as applicable labor provisions, bonding requirements, publicizing, etc., do apply.

4.3.2.e Competition

1. Competition must be sought to the extent appropriate for purchases above the competitive threshold (see 1.7.1.a). Proposals or quotations must be solicited from a sufficient number of qualified suppliers to ensure adequate competition.

2. Commercial purchase or prequalification opportunities valued at $1 million or more must be publicized in accordance with 3.5.3.

3. If suppliers have been prequalified, competition may be restricted solely to those suppliers (see 3.5.2.b.2).

4. Solicitations may be limited to one supplier if it is determined that only one source is available, subject to the requirements of 3.5.5.

4.3.2.f Performance Evaluation Factors.

1. Supplier-Specific. The supplier-specific performance evaluation factors of past performance and supplier capability (see 2.1.7.c) must always be evaluated when determining which suppliers of commercial items offer the best value to the Postal Service. Evaluations also must consider price.

2. Proposal-Specific
   (a) Purchase teams may use proposal-specific performance evaluation factors when purchasing commercial items. When technical information is necessary for evaluation of offers, purchase teams should, as part of market research, review existing product literature generally available in the industry. If such literature is adequate for purposes of evaluation, it may be requested in lieu of technical proposals.
4.3.2.i Pricing. When purchasing commercial items the policies and procedures in Chapter 5 must be used to establish the reasonableness of price.

4.3.2.j Contract Financing. Customary market practices for some commercial items may call for the buyer to provide contract financing. For instance, suppliers may customarily require a deposit prior to the start of contract performance. In these instances, purchase teams may consider such financing (see 1.7.6).

4.3.2.k Technical Data. When purchasing commercial items, the Postal Service acquires only the technical data and rights in that data customarily provided to the public. It will be assumed that the data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer must include the appropriate provisions and clauses delineating the rights in technical data (see Chapter 8) as an addendum to Form 8203, Order/Solicitation/Offer/Award (see 4.3.5.b).

4.3.2.l Computer Software
1. Commercial computer software or commercial computer software documentation is acquired under license customarily provided to the public or to other Federal agencies to the extent such licenses are consistent with Federal law and otherwise satisfy the Postal Service needs. Generally, offerors and suppliers will not be required to:
   (a) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;
   (b) Relinquish to, or otherwise provide the Postal Service, rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

2. With regard to commercial computer software and commercial computer software documentation, the Postal Service will have only those rights specified in the license contained in any addendum to Form 8203.
4.3.2.m Other Customary Commercial Practices. In the commercial marketplace, it is customary during a given transaction for the buyer and seller to offer each other differing terms and conditions. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and the seller, and are generally appropriate for use in a wide range of purchases. However, market research may indicate other customary commercial practices that are appropriate for the purchase of the particular item. If the purchase team determines such practices are essential to the success of the purchase, and if such terms and conditions are not otherwise precluded by law or executive order, they may be incorporated into the solicitation and contract.

4.3.3 Solicitations

4.3.3.a General. Solicitations for proposals or quotations may be done in writing or orally.

1. Written Solicitations. Because written solicitations provide a clearer understanding of the requirement, they should be used whenever practicable. Purchasing teams are strongly encouraged to consider the use of oral presentations to reduce cycle times and improve understanding of proposals. Form 8203 is used as the request for proposal and subsequent contract.

2. Oral Solicitations. An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would cause a delay detrimental to the Postal Service, or a standing price quotation is being verified. In these cases, Form 8203 is used as a purchase order.

4.3.3.b Standing Price Quotations. When it is the practice for suppliers to furnish standing price quotations on supplies or services required on a recurring basis, this information may be used instead of issuing a written solicitation for each purchase. In such cases, the contracting officer must ensure that the price information is current and that the Postal Service obtains the benefit of the suppliers’ trade discounts.

4.3.3.c Publicizing. See 3.5.3.

4.3.4 Receipt and Evaluation of Proposals and Quotations

4.3.4.a Receipt

1. Recording. Written and oral proposals or quotations must be clearly recorded in a format permitting ready comparison of prices and other details. The record must be placed in the purchase file.

2. Late Proposals and Quotations. Late proposals and quotations in response to written or oral solicitations may be considered when an award has not yet been made, if the purchase team determines that doing so is in the Postal Service’s interest.
4.3.4.b Evaluation

1. Offers will be evaluated in accordance with the performance evaluation factors contained in the solicitation. For many commercial items the supplier-specific performance evaluation factors and price should be sufficient to determine which supplier is offering the best value to the Postal Service.

2. When the solicitation adequately describes the item’s intended use, technical ability may be evaluated by how well the products meet the Postal Service requirements. Technical evaluation generally includes the examination of matters such as product literature, product samples (if requested), technical features and warranty provisions. Contracting officers must ensure that the instructions provided in Provision 4-1, Instructions to Offerors — Commercial Items, and the performance evaluation factors included in Provision 4-2, Evaluation — Commercial Items, are in agreement.

4.3.4.c Discussions. During the commercial purchasing process, discussions may be held as described in 4.2.5.c.

4.3.4.d Price. Before contract award, prices must be deemed fair and reasonable.

4.3.5 Contract Format and Contents

4.3.5.a General

1. Contracts for commercial items must, whenever practicable, include only those clauses:
   (a) Required to implement provisions of law or executive orders applicable to the purchase of commercial items; or
   (b) Determined to be consistent with customary commercial practices such as those affecting inspection, acceptance, and warranty.

2. Notwithstanding prescriptions contained elsewhere in the PM, contracts for commercial items should contain only the provisions and clauses prescribed in this part. These provisions and clauses may be revised, as necessary, to reflect the applicability of statutes and executive orders. In addition, depending on the particular purchase and the contract type, other PM clauses and provisions may be added when appropriate (see 4.3.6.g).

4.3.5.b Form 8203, Order/Solicitation/Offer/Award. When issuing written solicitations, awarding contracts, and placing orders for commercial items, contracting officers must use Form 8203, Order/Solicitation/Offer/Award. The form contains the information necessary for orders, solicitations and contracts for commercial items.

4.3.6 Provisions and Clauses

4.3.6.a General. Form 8203 contains the following clauses and provisions, and they must be included (however, see 4.3.7) in all solicitations and contracts for commercial items.
4.3.6.b  Provision 4-1, Instruction to Offerors — Commercial Items. This provision provides a single set of instructions to use when soliciting offers for commercial items. It may be incorporated in the solicitation by reference. This provision also requires past performance information from offerors. Depending on the particular purchase, this provision may be tailored to provide additional instructions to offerors (see 4.3.7).

4.3.6.c  Provision 4-3, Offeror Representations and Certifications — Commercial Items. This provision provides a single, consolidated list of certifications and representations for the purchase of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may be tailored in accordance with 4.3.7.

4.3.6.d  Clause 4-2, Contract Terms and Conditions — Commercial Items. This clause includes terms and conditions normally used in commercial purchasing such as those affecting inspection, acceptance and warranty and may be incorporated in the solicitation and contract by reference. Depending on the particular purchase, this clause may be tailored in accordance with 4.3.7.

4.3.6.e  Clause 4-3, Contract Terms and Conditions Required to Implement Statutes or Executive Orders — Commercial Items. This clause incorporates by reference those clauses required to implement laws or executive orders applicable to certain Postal Service purchases of commercial items, such as services covered under the Service Contract Act or repairs and alterations covered under the Davis-Bacon Act. Depending on the particular purchase, this clause is added to the solicitation and contract, indicating which of the additional clauses cited in (b) or (c) of Clause 4-3 apply. This clause may not be tailored.

4.3.6.f  Performance Evaluation Factors. When solicitations contain performance evaluation factors other than price and the supplier-specific factors, Provision 4-2, Evaluation — Commercial Items, or a similar provision containing the evaluation factors must be included.

4.3.6.g  Discretionary Use of PM Provisions and Clauses. Other PM clauses may be included in solicitations and contracts for commercial items. For example:

1. When an indefinite-delivery contract will be used, the clauses discussed in 4.6 may be added.
2. When the use of options is in the Postal Service’s interests, the provisions and clauses prescribed in 4.2.8 may be used for this purpose. If Provision 4-2, Evaluation — Commercial Items, is used, paragraph (b) provides for the evaluation of options.

4.3.7  Tailoring Provisions and Clauses

4.3.7.a  Policy. The provisions and clauses discussed in 4.3.6 are intended to address customary market practices when purchasing commercial items. However, because of the broad range of commercial items purchased by the Postal Service, variations in customary practices across markets, and the relative volume of Postal Service purchases in a specific market, contracting officers may, working with their purchase team and within the following limitations,
and after conducting appropriate market research and, if necessary, consultation with assigned counsel, tailor Provision 4.3.7.a, Instructions to Offerors — Commercial Items, and Clause 4-2, Contract Terms and Conditions — Commercial Items, to adapt to the market conditions for each purchase.

4.3.7.b Clause 4-2, Contract Terms and Conditions — Commercial Items

1. Mandatory Terms and Conditions. The following paragraphs of Clause 4-2, Contract Terms and Conditions — Commercial Items, implement statutory requirements and may not be tailored:
   (a) Paragraph b. Assignment.
   (b) Paragraph d. Disputes.

2. Paragraph a. Inspection and Acceptance
   (a) Paragraph a of Clause 4-2 assumes that the Postal Service will rely on the supplier’s assurances that the commercial item tendered for acceptance conforms to the contract requirements. Postal Service inspection of commercial items does not prejudice any other rights under this paragraph. Additionally, although the paragraph does not address the issue of rejection, the Postal Service always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Postal Service is acquiring noncomplex commercial items.
   (b) Other acceptance procedures may be more appropriate for the purchase of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer includes alternate inspection procedure(s) in an addendum and ensures that these procedures and post award remedies adequately protect the Postal Service’s interests. The contracting officer must carefully examine the terms and conditions of any express warranty and the effect it may have on the Postal Service’s available postaward remedies.
   (c) The purchase of commercial items on bases other than “as is” may also require acceptance procedures different from those contained in the clause. The contracting officer must consider the effect such circumstances may have on the acceptance paragraph as well as other paragraphs of the clause.

3. Termination Paragraphs
   (a) General. Clause 4-2 permits the Postal Service to terminate a contract for commercial items for either convenience or default. Contracting officers should use 6.9 and 6.10 as guidance.
   (b) Policy. The contracting officer should exercise the Postal Service’s right to terminate a contract for commercial items either for convenience or for default only when such termination would be in the best interest of the Postal Service. The contracting officer should consult with assigned counsel prior to termination for default.
(c) **Termination for Convenience.** When the contracting officer terminates for convenience a contract for commercial items, the supplier will be paid:

1. The percentage of the contract price reflecting the percentage of work performed prior to termination, and
2. Any charges the supplier can demonstrate directly resulted from the termination. The supplier may demonstrate such charges using its standard record keeping systems and is not required to comply with cost accounting standards or the contract cost principles in Chapter [5](#). The Postal Service does not have any right to audit the supplier’s records due solely to a termination for convenience.

(d) **Termination for Default**

1. Paragraph f, Excusable Delay, requires the supplier to notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a termination notice prior to terminating a contract. The contacting officer will send a termination notice prior to terminating a contract for reason other than late delivery.

2. The Postal Service’s rights following a termination for default will include all the remedies available to any buyer in the marketplace. The Postal Service’s preferred remedy will be to acquire similar items from another supplier and to charge the defaulted supplier with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

3. When a termination for default is appropriate, the contracting officer will send the supplier a written notification regarding the termination. As a minimum, this notification will:
   (i) Indicate the contract is terminated for default;
   (ii) Specify the reasons for the termination;
   (iii) Indicate which remedies the Postal Service intends to seek and provide a date by which the Postal Service will inform the supplier of the remedies; and
   (iv) State that the notice constitutes the final decision of the contracting officer and that the supplier has the right to appeal under Clause [B-9](#), Claims and Disputes.

(e) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Postal Service’s needs to obtain sufficient documentation to support payment against the goal of having a simple and expeditious settlement.
4. **Paragraph o. Warranty**
   (a) The Postal Service’s post award rights are the implied warranty of merchantability and that of fitness for a particular purpose contained in Paragraph o, and the remedies contained Paragraph a, Inspection and Acceptance.

   (b) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium grade quality and must be compatible in quality to those that will pass without objection in the trade or market for items of the same description.

   (c) The implied warranty of fitness for a particular purpose provides that an item is for use for the particular purpose for which the Postal Service purchased it. The Postal Service can rely upon an implied warranty of fitness for particular purpose when
      (1) The seller knows the particular purpose for which the Postal Service intends to use the item; and
      (2) The Postal Service relied upon the supplier’s skill and judgment that the item would be appropriate for that particular purpose.

   (d) Contracting officers should consult with assigned counsel prior to asserting any claim for a breach of an implied warranty.

5. **Express Warranties**
   (a) Contracting officers should take advantage of commercial warranties to the extent practicable. Solicitations for commercial items must require offerors to offer the Postal Service at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practices. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate to the Postal Service’s intended use of the item.

   (b) Any express warranty the Postal Service intends to rely on must meet the needs of the Postal Service. The contracting officer should analyze any commercial warranty to determine if:
      (1) The warranty is adequate to protect the needs of the Postal Service, e.g., items covered by the warranty and length of warranty;
      (2) The terms allow the Postal Service effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the supplier for repair or replacement, and collection of product performance information; and
      (3) The warranty is cost effective.

   (c) In some markets, it may be customary commercial practice for suppliers to exclude or limit the implied warranties contained in Clause 4-2 in the provisions of an expressed warranty. In such
cases, the contracting officer will ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable time after acceptance.

(d) Express warranties must be included in the contract by addendum.

4.3.8 Exemptions from Law

4.3.8.a General. This part lists provisions of laws that are not applicable to contracts or subcontracts for the purchase of commercial items. This part also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the purchase of commercial items.

4.3.8.b Applicability

1. This part applies to any contract or subcontract for the purchase of commercial items.

2. Nothing in this part authorizes the waiver of any provision of law with respect to any subcontract if the prime supplier is reselling or distributing commercial items of another supplier without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Postal Service sales.

4.3.8.c Contracts and Subcontracts

1. The PM prescription for the provision or clause for each of the laws listed below has been revised in the appropriate part to reflect its proper application to prime contracts for the purchase of commercial items.

2. For subcontracts for the purchase of commercial items or commercial components, Clause 4-3, Contract Terms and Conditions Required to Implement Statutes or Executive Orders — Commercial Items, reflects the clauses required to be included in a subcontract at any tier.

4.3.8.d Exemptions

1. The Walsh-Healey Act (41 U.S.C. 43) does not apply to the purchase of commercial items; nor do the contingent fee requirements discussed in 1.9.

2. The requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) has been eliminated for the purchase of commercial items.

3. The following laws are not applicable to subcontracts at any tier for the purchase of commercial items or components:
   (a) Walsh-Healey Act (41 U.S.C. 43);

4. The requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) has been
eliminated for subcontracts at any tier for the purchase of commercial items or components.

4.4 Design and Construction Purchasing

4.4.1 General

4.4.1.a Policy. Design and construction purchasing is the purchase of architect/engineer, construction and related services. This section covers the purchase of:
1. Services related to facilities design;
2. Construction; and
3. Construction management.

4.4.1.b Real Estate and Related Services. See 1.1.2 for information regarding the purchase of real estate and related services.

4.4.2 Architect-Engineer Services

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

4.4.2.b Applicability. Generally, Architect-Engineer (A/E) services contracts are awarded following the policies and procedures contained in 4.2. However, when the provisions of this section conflict with any other provision of this manual, the provisions of this section will govern.

4.4.2.c Definitions
1. A/E services are professional services requiring the performance or approval by a registered or licensed architect or engineer associated with the design or construction of real property, as well as incidental services that members of those professions may logically or justifiably perform in relation to construction, alteration, or repair of buildings, site improvements, roads or other kinds of real property. Such incidental services include master planning, architectural and engineering studies, investigations, surveys, reports, design development, drawings preparation, specification preparation, interior design, space planning, environmental services, and observation and reporting of the work performed during construction, alteration, or repair.

2. Environmental A/E services are those environmental services which require performance or approval by a registered or licensed architect or engineer. Environmental A/E services should be purchased using the procedures in this section. Other environmental services such as continuous monitoring and/or testing for environmental compliance at postal facilities do not require performance by a registered or licensed architect or engineer. These services should be purchased under the procedures contained in 4.6.
4.4.2.d Selection Procedures

1. Publicizing
   (a) For each contract for which the fee is expected to exceed $50,000, a notice of intention to contract for A/E Services must be published in the Commerce Business Daily. The notice must be prepared and transmitted in accordance with 3.5.3, and must solicit submission of Standards Forms (SF) 254, Architect/Engineer and Related Services Questionnaire and 255, Architect/Engineer and Related Services Questionnaire for Specific Project.
   
   (b) For each contract for which the fee is not expected to exceed $50,000, publicizing may be limited to the area in which the project will be performed.

2. A/E Selection Team
   (a) Contracting officers establish teams to evaluate and select A/E suppliers. Each selection team must be composed of at least two members with one member designated as the chairperson. Team members must be appointed from among professionally qualified Postal Service personnel who collectively have experience in architecture, engineering, construction, and purchasing. In some cases, staff limitations or project-specific considerations may require that individuals working under contract for the Postal Service be appointed to the selection team. These individuals may be appointed only on a case-by-case basis subject to approval of the contracting officer. Each project file must contain written certification by each evaluation team member that he or she has no conflict of interest that may impair their objectivity in the selection process (see 1.7.7).
   
   (b) Less complex, low dollar A/E projects may be awarded directly without the formation of an A/E Selection Team. For these projects, the contracting officer may appoint an individual from the A/E Selection Team to recommend three or more qualified suppliers from existing SF 254 and SF 255 information. If the number of known qualified suppliers is insufficient to provide a competitive review, then the project may be publicized within the area in which the project is to be performed.

3. Postal Service Cost Estimate. Before discussions of any proposed contract or contract modification is initiated, an independent Postal Service estimate of the cost for the required A/E services must be developed, based on a detailed analysis of the costs expected to be generated by the work. Consideration must be given to the estimated value of the services and to the scope, complexity, and nature of the project. The independent estimate must be revised as required during discussions to reflect changes in or clarification of the scope of the work to be performed. A fee estimate based on the application of percentage factors to cost estimates for the various segments of the project may be developed for comparison purposes, but such an estimate must not be used as a substitute for the independent Postal Service estimate. To
the extent necessary, the cost breakdown figures in the Postal Service estimate may be revealed during discussions provided that the overall amount of the Postal Service estimate is not disclosed. Any change in the Postal Service estimate during or after price discussions must be specifically but succinctly explained in the record of price discussions.

4. **Cost or Pricing Data.** The provisions of Chapter 5 relating to cost analysis, provision of cost or pricing data, and preparation of discussions memoranda apply to purchases of A/E services. Because of the procedures used to purchase A/E services and the lack of price competition, price analysis is normally insufficient.

5. **Fees for A/E Services.** The contracting officer is responsible for negotiating a fair and reasonable fee for the services to be performed. In determining a fair and reasonable fee, the contracting officer should compare the independent Postal Service estimate with the A/E supplier’s proposal. Also, the contracting officer should consider previous prices paid for similar services. Additional guidelines are contained in Handbook RE-14.

4.4.2.e **Discussions**

1. Discussions will be conducted initially with the A/E supplier given the highest technical ranking. If a mutually satisfactory contract cannot be achieved with that supplier, discussions must be terminated. Discussions will then be initiated with the supplier next in order of preference. This procedure must be repeated until a mutually satisfactory contract has been negotiated.

2. In lieu of the discussion procedures described above, the contracting officer may, at his or her discretion, compete A/E requirements under the general procedures set out in 4.2. In these instance, award will be made to the A/E supplier offering the best value to the Postal Service.

4.4.2.f **A/E Supplier Performance Evaluation.** The project manager responsible for monitoring the performance of an A/E supplier must complete an objective written evaluation of the supplier’s performance, including any environmental elements, using Forms 7477-A, A/E’s Performance Design Phase Evaluation and 7477-B, A/E’s Performance Construction Phase Evaluation. For further guidance see Handbook RE-14.

4.4.2.g **Indefinite-Quantity A/E Services Contracts**

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


4. **IQC A/E Supplier Performance Evaluation.** See 4.4.2.f.

### 4.4.3 Construction

#### 4.4.3.a Purchasing Construction

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

2. **Definition.** Construction means construction, alteration, repair (including painting and improvements of all types), environmental work (asbestos abatement, UST removal/replacement, etc.), and demolition of buildings, structures, and improvements of all types. The term does not include other investigative work such as engineering, environmental or other studies which is not part of the beginning of the construction process. Normally, construction does not include any construction work pursuant to a lease and performed by the lessor (see Handbook RE-1, Realty Acquisitions and Management).

3. **Purchase Method**
   
   (a) Generally, construction is purchased in accordance with 4.2. Suppliers should be prequalified (see 3.5.2).
   
   (b) Purchase or prequalification opportunities must be publicized in accordance with 3.5.3.
   
   (c) Repairs and alterations may be purchased in accordance with 4.3. However, commercial purchasing procedures do not apply to any new construction or expansion of buildings.
   
   (d) Alterations, repairs, and improvements to be accomplished by a lessor must be performed in accordance with this section to the extent practicable, but without reference to any requirement for publicizing or competition, provided the contracting officer determines that the price proposed by the lessor for the work offers the best value to the Postal Service.
   
   (e) The bonding requirements of chapter 7 must be met for all construction contracts.

4. **Contract Types**
   
   (a) Generally, contracts for construction should be firm-fixed price contracts. Such contracts may be:
      
      (1) Lump-sum contracts for the total work or for defined parts of it;
      
      (2) Unit-price contracts in which a unit price is paid for a specified quantity of work, such as cubic yards of earth or concrete or square yards of pavement; or
A combination of both.

(b) However, any contract type discussed in 2.4 may be used if approved by the contracting officer.

5. Specifications. See 2.3.1.a and Handbook RE-14 for further guidance.

6. Presolicitation Notices

(a) At the contracting officer’s discretion, a presolicitation notice may be issued for construction projects (see 3.5.3.b). Notices may be distributed to plan hold rooms, companies on solicitation mailing lists maintained by the purchasing office, and any other known interested parties within the Postal Service or members of the public.

(b) Any presolicitation notice issued must include a statement of the project’s magnitude in terms of physical characteristics and an estimated price range (for example, 30,000 sq. ft. building with an estimate cost range of $500,000 to $1,000,000 for the project). However, in no event may the statement disclose the Postal Service estimate.

7. Preproposal Conferences and Attendees. See 4.2.2.f and Handbook RE-14 for guidance. The design A/E must be available to help interpret plans and specifications.

8. Inspection of Construction Site and Data. Provision must be made for offerors to inspect the construction site. Also, offerors must be given the opportunity to examine data available to the Postal Service that may provide information affecting performance of the work, such as boring samples, and original boring logs. This information should be assembled in one place and be made available to all offerors in the same manner. When feasible, a record should be kept of the identity and affiliation of all offerors’ representatives inspecting the site or examining the data.

9. Performance Time

(a) In establishing the time for contract completion, the contracting officer must consider, among other things, the nature and complexity of the project, the construction seasons involved, the availability of equipment, labor and other factors and the increased cost for an aggressive project schedule.

(b) In any given contract, separate completion periods may be established for separable items of work. When such periods are shown, requests for time extensions must be evaluated for each item, and all affected completion periods must be modified when appropriate.

10. Liquidated Damages

(a) See 2.2.6. For additional information on calculating the liquidated damages rate for construction projects see the guidelines in Handbook RE-14.

(b) When different completion periods for separate parts or stages of the work are specified in the contract, the clause may be revised
to provide for liquidated damages for each separate part or stage in which delay will damage the Postal Service.

11. *Base and Alternate Prices*
   (a) Solicitations permitting alternate proposals must require the base proposal to include all features considered essential to a sound and adequate building design. Any alternates to be included in the specifications should represent significant amounts of work in relation to the base proposal, and they should generally be structured as “add,” or “deduct” alternates.

   (b) When accurate cost estimates are not available, a base proposal may be required for the minimum acceptable project, with add alternates for desired materials or equipment.

   (c) When budget constraints exist, a base proposal may be required for the plans and specifications as stated, with “deduct” alternates for desired materials or equipment to be used to bring proposals back within budget.

   (d) Solicitation documents calling for alternates must clearly state that the Postal Service reserves the right to accept or reject any and all alternate prices, as may be determined by the contracting officer to be in the Postal Service’s interests.

12. *Performance of Work by Supplier.* Unless the supplier is required to perform a significant part of the contract work with its own forces, it may be difficult to obtain adequate supplier supervision of the work. To address this problem, each Postal Service construction contract must contain Clause B-42, *Performance of Work by Supplier,* establishing the minimum percentage of the work that the supplier must perform, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work. The percentage may be increased for contracts with unusual requirements (i.e. environmental, mechanical).

13. *Solicitations*
   (a) *General.* See 4.2.2 and Handbook RE-14.

   (c) *Distribution.* Solicitations may be furnished (with plans and specifications) without charge to organizations that maintain plan hold rooms, or other types of organizations, for the benefit of suppliers, subcontractors, and material suppliers. The extent of this distribution (geographical or otherwise) may be determined on a case-by-case basis by the contracting officer.


15. *Award*
   (a) A notice of intent to make award must be furnished to the successful offeror no later than the time set for acceptance in the solicitation or any extension to which the offeror has agreed. The notice must advise the supplier of any required bonds and the date by which the supplier must execute and return such bonds.
4.4.3.b Indefinite-Quantity Construction Contracts

1. Use. The Postal Service requires a large number of small repair and alteration, environmental and other projects be performed each year. Indefinite-Quantity construction contracts permit a large number of projects to be accomplished at one or more facilities through the issuance of delivery (work) orders against a single contract rather than through individual solicitations.

2. Procedures
   (a) A solicitation must be used to request proposals based on a unit price schedule prepared by the Postal Service. Offerors must be required to submit a multiplier that will apply equally to all prices listed in the unit price schedule. The multiplier submitted by the offeror must not be more than two decimal places (e.g., 1.22 or 0.97).
   (b) Each indefinite-quantity contract is limited to a specific geographic area.

3. Limitations
   (a) Limitations regarding contract term, dollar limitations, and delivery (work) order limits are issued by the VP, P&M, or authorized designee.
   (b) Delivery (work) orders are limited to the geographic area described in the contract.
   (c) No new construction or building expansion work may be ordered under an Indefinite-Quantity construction contract, except for site preparation or foundation work for a pre-engineered building purchased directly from the manufacturer.
   (d) The contracting officer may request quotations from an Indefinite-Quantity construction supplier for work items not covered by the unit price schedule and order such items, in addition to ordering covered work. However, not more than 25 percent of the cost of any delivery (work) order may be for such uncovered work.
4.4.4 Design-Build Contracting

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

4.4.4.b Definition. Under design-build contracting, one entity or supplier performs both architecture-engineering and construction under one single contract providing single source responsibility for delivering the project design and construction. The design-build entity or supplier can assume several organization structures. Most common are suppliers possessing both design and construction resources in-house. Others are combinations of a joint venture between designer and supplier, a constructor-led team with the designer in a subcontract role, or a designer-led team with the constructor in a subcontractor role.

4.4.4.c Purchase Method. The policies contained in 4.2 and the procedures listed in Handbook RE-14 regarding publicizing, solicitations, and contracts apply to the purchase of design-build services. The prequalification procedures in 3.5.2 should ordinarily be used in connection with design-build services, regardless of contract type.

4.4.4.d Contract Types

1. Fixed-Price Design-Build Contract. Fixed-price design-build contracts are suitable for use on small, simple projects with well-defined scopes, for which design has been developed to at least the 30 percent level through Standard Plans or otherwise. The fixed-price is comprised of fixed fees for A/E services (which cover all costs of remaining design work and A/E construction services, plus associated overhead and profit) and a fixed-price to complete all construction work (which covers all construction overhead and profit). The contract is awarded based upon the procedures covering evaluation of technical and management and price proposals (see 4.2).

2. Cost-Reimbursable Design-Build Contracts

(a) Cost-reimbursable design-build contracts are suitable for use on all major projects for which the scope or complexity dictate the use of design-build construction delivery services. Cost-reimbursable design-build contracts must be based on a Guaranteed Maximum Price (GMP) which must be determined through competition or through discussions. The GMP is comprised of fixed fees for A/E services (which cover all costs of
remaining design work and A/E services during construction, plus associated overhead and profit), reimbursable direct construction costs, and a construction services fee (which covers all construction overhead and profit). If the supplier’s total fees and actual construction costs together exceed the GMP as adjusted for changes (if any), the adjusted GMP is the amount paid for complete performance; if they do not exceed the adjusted GMP, the Postal Service and the supplier share the savings in accordance with a contractually established ratio.

(b) Cost-reimbursable design-build contracts with a competitive Guaranteed Maximum Price (GMP) are suitable for use on projects for which design has been developed to at least the 30 percent level and a reliable estimate of the maximum cost to construct the facility can be made. The contract is awarded based upon the procedures covering evaluation of technical and management proposals and price proposals (see 4.2).

(c) Cost-reimbursable design-build contracts with a negotiated Guaranteed Maximum Price (GMP) are suitable for use on all major projects when factors such as significant ambiguities concerning the scope of the project, requirements for integration with fixed mechanization, or new types of projects prevent the development of a reliable estimate of the maximum cost to construct the facility. The Postal Service provides the offerors with design which is less than 30 percent developed (typically only 10 percent developed) along with a Construction Cost Limit (CCL). The CCL is the Postal Service budget estimate of the total cost to construct the facility including the offeror’s overhead and profit. These contracts are awarded through the following purchase process:

(1) Phase I covers the completion of design to the point where a GMP can be reasonably negotiated and is awarded based upon the procedures covering evaluation of technical and management proposals and price proposals.

(2) Phase II covers all remaining design and all construction work and is awarded based upon negotiation of a CCL within the GMP.

(3) If a CCL cannot be negotiated within the GMB, the Postal Service may require the supplier to redesign within the CCL at no cost to the Postal Service or may withdraw from the project. If the supplier withdraws, the Postal Service keeps the design and uses it to contract with a different supplier using a fixed-price design-build contract or a cost-reimbursable design-build contract with a competitive GMP.

3. Fixed-price contracts with economic price adjustment may be used. See 2.4 and Handbook RE-14 for further guidance.

4. Contracts with performance incentives may be used. See 2.4 and Handbook RE-14 for further guidance.
4.4.4.e **Solicitations For Design-Build Contracts.** Solicitations/Contracts for design-build are unique. Guidelines regarding applicable contract clauses and solicitation provisions are provided in Handbook RE-14.


4.4.4.g **Design-Build Supplier Performance Evaluations.** The project manager responsible for monitoring the performance of a design-build contract must complete an objective written evaluation of the supplier’s performance including any environmental elements. See 4.4.2.f.

4.4.5 **Construction Management Support Services**

4.4.5.a **Applicability.** Generally, Construction Management Support Services (CMSS) contracts are awarded following the policies and procedures contained in NO TAG.

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

4.4.5.c **Purchase Method.** The general policies set forth in NO TAG and other chapters of the PM and the procedures listed in Handbook RE-14, regarding publicizing, solicitations, and contracts apply to the procurement of construction management support services.

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

1. **Indefinite-Quantity Contracts.** In order to facilitate the expeditious assignment of CMSS suppliers to projects where their services are needed, construction management support services contracts are generally awarded as indefinite-quantity contracts requiring the CMSS supplier to provide a range of construction services for multiple construction contracts over a specified period of time and within a specified geographic area.

2. **Indefinite-Quantity Contract Duration and Cost Limits.** Limitations regarding contract term, dollar limitations, and (delivery) work order limits are issued by the VP, P&M, or an authorized designee.

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

Contents

4.4.5.f Solicitations for Construction Management Support Services Contracts. Guidelines regarding applicable contract clauses and solicitation provisions are provided in the Handbook RE-14 and must be followed.

4.4.5.g Selection Processes for Construction Management Support Services Contracts. See Handbook RE-14 for guidance on the evaluation and selection process.

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

4.4.5.i Contract Award. See Handbook RE-14 for guidance on the contract award process.

4.4.5.j Contract Management Support Services Supplier Performance Evaluations. The project manager responsible for monitoring the performance of a CMSS supplier must complete an objective written evaluation using Form 7477-A, A/E’s Performance Design Phase Evaluation and 7477-B, A/E’s Performance Construction Phase Evaluation, of the supplier’s performance, including any environmental elements, for each project. For further guidance see Handbook RE-14.

4.4.5.k Environmental Engineering Services. When the Postal Service requires environmental engineering services such as the design and/or monitoring of environmental mitigation, abatement, or clean-up measures, an engineering supplier should be retained using the procedures applicable to procurement of A/E services (see 4.5.2). In those cases where a supplier is hired to both design and perform environmental mitigation, abatement, or clean-up measures, the supplier should be retained using the procedures applicable to purchase of design-build services (see 4.4).

4.5 Mail Transportation Purchasing

4.5.1 General

4.5.1.a Policy. Mail transportation purchasing is the purchase of mail transportation and related services. This section addresses the purchase of mail transportation services authorized in Part V of Title 39, U.S. Code, and those authorized under applicable provisions of 49 U.S.C. 41904. It also addresses the purchase of ancillary services directly related to the transportation of mail.

4.5.1.b Purchasing Method. Generally, and depending on the item being purchased, mail transportation is purchased following the policies and procedures contained in 4.2 or 4.3. In case of any conflict between this section and another part of the PM, this section governs.

4.5.2 Administrative Officials. Administrative officials are Postal Service officials designated by a contracting officer to supervise and administer a supplier’s performance of mail transportation and related services. Officials so designated do not have the authority to make contract changes as described in 4.5.3.
4.5.3 Contracting Officer’s Representative

4.5.3.a Designation. A contracting officer may designate, by name and position title, Postal Service employees to serve as contracting officers' representatives (see 5.4 and 6.1.1.b). These individuals are authorized to take actions related to the award and administration of specified contracts. Designations must be in writing and must clearly specify the contracts or types of contracts over which the contracting officer’s representative has delegated authority. Designations remain in effect until:

1. Revoked by the contracting officer or the contracting officers’ successor; or
2. Revoked by the departure or reassignment of the individual designated.

4.5.3.b Authority and Limitations

1. A contracting officer’s representative is authorized to:
   (a) Review and grant contract adjustments when the annual compensation paid under the contract will not increase or decrease by more than ten percent.
   (b) Discuss, approve, and sign orders and contract modifications changing service schedules, provided that the annual compensation paid under the contract will not increase or decrease by more than ten percent; and
   (c) Review and sign contract modifications having no effect on cost or price.

2. A contracting officer’s representative may not award, agree to, or sign any contract or, except as authorized in subparagraph 1 above, any contract modification or termination notice. Only contracting officers have such authority.

4.5.3.c Restrictions. The following restrictions apply to the designation of contracting officers’ representatives:

1. They must be employed in the Executive and Administrative Schedule or the Postal Career Executive Service.
2. They may not redelegate their authority. They may, however, assign the performance of administrative tasks to their subordinates.

4.5.4 Mailing Lists

4.5.4.a Establishing Mailing Lists. It is Postal Service policy to use prequalified suppliers to the greatest extent practicable (see 3.5.2). If suppliers have not been prequalified, the contracting officer, working with the purchase team, must establish a list of potential suppliers for each solicitation, and must maintain lists of potential suppliers for services solicited on a recurring basis. Suppliers wishing to be included on the national mailing list may apply by submitting Form 5436, Mailing List Application — Mail Transportation Services, or by letter providing the information required by the purchase team.
4.5.4.b *Retention on Lists.* Suppliers must be retained on mailing lists for two years from the date of their application or the date of their most recent response to a solicitation, whichever is later. Those that have been removed from mailing lists may be reinstated by filing a new application.

4.5.4.c *Use of Mailing Lists.* The purchase team, using their knowledge of the marketplace and depending on the particular purchase, should solicit enough mailing list suppliers to ensure adequate competition.

4.5.4.d *Publicizing.* The contracting officer may have an announcement of the solicitation published in the Journal of Commerce. Announcements of solicitations may be made available to newspapers, other news media and trade journals at no cost to the Postal Service. Paid commercial announcements or advertisements may be used when determined by the contracting officer to be in the Postal Service’s interest. Unless precluded by urgency, any announcement published must appear at least 30 days before the date for receipt of proposals.

4.5.5 **Contracts**

4.5.5.a *Contract Type.* See 2.4.

4.5.5.b *Contract Term.* Except for air and terminal-handling contracts, the term of the contract must be one of the following:

1. *Regular Contract.* A fixed-term contract that cannot exceed four years unless warranted by special conditions or the use of special equipment. In these cases, the contract may be for a six-year term.
3. *Temporary Contract.* A short-term contract may not exceed two years, and that may be terminated by either party without entitlement or indemnity.

4.5.5.c *Use of Contracts*

1. Regular contracts should be used whenever possible.
2. Temporary contracts may be used only when (a) the need for the service is expected to be two years or less, or (b) the need for the service has been established, but the duration, frequency, or volume of mail are not certain. Temporary contracts must be replaced with regular contracts as soon as service requirements are firmly established.
3. Emergency contracts may be entered into only when an emergency exists, and must terminate when the emergency ceases and the Postal Service is able to obtain service otherwise pursuant to its contracting authority. No emergency contract may remain in effect more than six months without the approval of the manager, National Mail Transportation Purchasing. Circumstances under which emergency contracts may be appropriate include the following:
   (a) A catastrophic event has interrupted normal transportation operations.
4.5.5.d Purchasing Manual

(b) Strikes or other labor disputes are causing service interruptions.

c) A mail transportation supplier has been suspended or removed or a contract has been terminated.

d) A sole highway supplier has died or become incompetent and the estate representative will not continue service.

e) The generation of mail at unanticipated locations or an unexpected increase in mail volume at regular locations exceeds the mail hauling capacity of the Postal Service or regular suppliers.

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

1. Air Transportation

(a) Air Taxi. Air taxi contracts call for the transportation of mail by dedicated aircraft operating between two or more specified points. In most cases, these contracts also call for the exclusive use of the entire aircraft capacity for the transportation of mail. Handbook PO-513, Mail Transportation Handbook, and more specifically, Handbook PO-509, Air Taxi Contract Administration, provides guidelines and procedures in the purchase and administration of air taxi contracts. If any conflict occurs between the handbooks and the PM, the PM applies.

(b) Air Network. Air transportation network contracts call for the transportation of mail by air carrier, usually by dedicated aircraft between points where hub transfers are used.

(c) Air Segment. Air transportation segment contracts call for the transportation of mail by air carrier between an origin and a destination specified by the Postal Service.

(d) Air System

(1) Air system contracts call for the transportation of mail from, to and between any point(s) within the air carrier’s existing transportation system or network. The air carrier’s existing system may be modified from time to time as determined by the air carrier. An air carrier’s transportation system consists primarily of transportation by aircraft, but may include road feeder service (RFS) connections. Such contracts may be awarded either (1) through a competition in which price is a factor in the selection decision; or (2) on the basis of a uniform or common rate set by the Postal Service.

(2) If price is a factor in selecting air system suppliers, the purchasing procedures contained in 4.2 must be followed.

(3) If set rate contracts are solicited, the purchasing method used must be authorized by the manager, National Mail
Transportation Purchasing. The method used may deviate from those in 4.2, so long as those procedures (1) are reasonably adapted to negotiated, set rate contracting; and (2) are approved in writing, prior to issuance of a solicitation, by the manager, National Mail Transportation Purchasing.

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

(f) **Surface Airlift.** A surface airlift contract calls for the airlifting of surface mail to its destination.

2. **Ground Transportation**

(a) **Highway.** Highway transportation is the surface transportation of mail by means other than bus, rail or water. Service may be between either two or more designated points (over the road) or within a local metropolitan area (shuttle service). Highway transportation contracts may include requirements for the in-route distribution of mail in specially designed and equipped vehicles, box delivery, collections and other services similar to those provided by rural carriers. Under these contracts, another suitable means of transportation may be authorized when the use of a motor vehicle would prove impracticable.

(b) **Rail Transportation.** A rail transportation contract calls for the transportation of mail in rail carrier supplied or Postal furnished equipment by freight carriers or their subcontractors. These contracts may incorporate one or many origin/destination segments. Handbook PO-513, *Mail Transportation Handbook*, provides guidelines and procedures in the purchase and administration of rail contracts. If any conflict occurs between the handbook and the PM, the PM applies.

(c) **Amtrak Transportation.** An Amtrak transportation contract consists of mail movement from various origins to various destinations via Amtrak passenger train network. Mail is transported in either Mail Handling Cars (MHC), baggage cars or other equipment as specified in the requirements. Handbook PO-513, *Mail Transportation Handbook*, provides guidance and procedures for the purchase and administration of the Amtrak contract. If any conflict occurs between the handbook and the PM, the PM applies.
(d) **Intermodal Transportation.** Intermodal transportation is the transportation of mail in carrier supplied or Postal furnished equipment by the use of intermodal carriers or subcontractors. These Intermodal carriers include rail carriers, highway suppliers, or third party intermodal companies. Intermodal transportation is the combination of more than one mode of transportation to move mail between origin and destination (for example, the use of highway and rail transportation to complete one movement of mail from origin entry to destination arrival).

(e) **Bus.** Bus contracts call for the transportation of mail by passenger common carriers in passenger-carrying or other motor vehicles on the routes on which they are permitted to carry passengers. These contracts may either cover a segment of the particular bus service or may cover the entire bus system or network.

**Exhibit 4.5.5**
**International Ocean Transportation Schedule of Rates**

<table>
<thead>
<tr>
<th>Distance (Nautical Miles)</th>
<th>Rate (cents/lb)</th>
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</tr>
<tr>
<td>500–999</td>
<td>16.4</td>
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<td>1,000–1,499</td>
<td>16.7</td>
</tr>
<tr>
<td>1,500–1,999</td>
<td>17.1</td>
</tr>
<tr>
<td>2,000–2,499</td>
<td>17.4</td>
</tr>
<tr>
<td>2,500–2,999</td>
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<td>3,500–3,999</td>
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<td>22.2</td>
</tr>
<tr>
<td>9,500–9,999</td>
<td>22.6</td>
</tr>
</tbody>
</table>
3. **Water Transportation**

(a) *Domestic Inland Water.* A domestic inland water contract calls for the transportation of mail in vessels between points within the 48 contiguous states or between points within Alaska, Hawaii, or United States territories and possessions. Such a contract may include provisions requiring box delivery, collection and other services similar to those furnished by highway suppliers or rural carriers.

(b) *Domestic Offshore Water.* Domestic offshore water contracts call for the transportation of mail in vessels between points in the 48 contiguous states and offshore points and points in Alaska, Hawaii, or United States territories and possessions.

(c) *International Ocean.* An international water contract is a contract with United States or foreign-flag carriers for the transportation of mail by vessel from points in the United States or its territories and possessions to points in foreign countries.

4. **Ground Transportation Network.** Ground transportation network contracts call for the transportation of mail by ground truck operations and may include ancillary terminal handling or delivery requirements as determined by the Postal Service.

5. **Terminal Handling.** Terminal handling contracts call for the sorting, dispatching, loading, or unloading of mail into and out of transportation equipment. These services may be performed at the supplier or the Postal Service terminal handling facility and may or may not be ancillary in nature to the line-haul services performed by the same or other suppliers.

6. **Leased Trailer.** Leased trailer contracts call for the lease of trailers for transportation of mail within geographical areas designated by the Postal Service. These contracts may contain provisions for trailer maintenance and repair service and load restraint systems, and other
related requirements determined to be in the best interest of the Postal Service.

4.5.5.e Alternatives to Contracts. The following may be used to obtain mail transportation services:

1. Domestic Air Transportation Services. Transportation of mail between points within the state of Alaska performed by scheduled air carriers and paid for at rates of compensation established by the Department of Transportation in its service mail rate orders (30 U.S.C. 5402(f)).

2. International Ocean Transportation. International ocean transportation services may be obtained on a per-pound basis by tender. Mail of all classes and empty mail equipment may be tendered to U.S. and foreign-flag steamship companies for transportation in accordance with the scheduled rates at Exhibit 4.5.5, unless the responsible Manager has negotiated other rates. Mail may be tendered at postal facilities for transport by the steamship company to the pier, or at the carrier’s facility. The schedule or negotiated rates include any costs incurred for such transport.

3. International Air Transportation. International air transportation services other than those for which the Postal Service has contracting authority under Title 39 U.S.C. 5402(a) and (b) and 49 U.S.C. 1375(e)(5) must be obtained from carriers with permits and reimbursed pursuant to Department of Transportation service mail rate orders as long as it is required by law.

4.5.6 Renewal of Contracts

4.5.6.a General. Competitively awarded regular and temporary mail transportation contracts may be renewed by the mutual agreement of the Postal Service and the supplier. Regular or temporary highway and inland water contracts that have been wholly subcontracted less than six months before their expiration date (except those subcontracted by an immediate family member of a deceased or incompetent supplier) may not be renewed. Wholly subcontracted contracts that have been in effect for greater than six months are eligible for renewal and may be renewed by mutual agreement between the Postal Service and the subcontractor, by which the subcontractor becomes the prime supplier under the renewal contract.

4.5.6.b Characteristics of Renewal Contracts

1. Duration. The renewal term of a temporary contract may not exceed two years, and the renewal term of a regular contract may not exceed the greater of four years or the original contract term.

2. Service. The service provided at the beginning of the renewal term must be the same as that existing at the end of the previous contract term.

3. Contract Rate. The contract rate at the beginning of the contract renewal term must be the contract rate in existence at the end of the previous contract term.
4.5.6.c **Renewal Procedures**

1. **Establishing Requirements.** Before entering into discussions for the renewal of a contract, the purchase team must determine the need to be met by the renewal contract and a reasonable rate for the service which will meet that need.

2. **Determining Satisfactory Service.** Contracts should not be renewed with suppliers who are currently providing less than satisfactory service. Faults in service which do not rise to the level of deficiencies and thus would justify termination for default, may be sufficient to support a determination not to renew.

3. **Negotiating Service and Price.** Having determined that a contract is appropriate for renewal, the contracting officer with the assistance of the purchase team enters into discussions with the supplier on the terms of the renewal contract. Before agreeing to the final terms, the purchase team must determine that renewal offers the best value and most advantageous alternative to the Postal Service, price and other factors considered. For the purpose of this determination, “other factors” may include the benefits of continuity of service and the potential costs of disruption arising out of resolicitation.

4. **Contract Modifications, Renewal, Resolicitation.** If agreement is reached on the renewal terms, the existing contract is modified to reflect any adjustments in service and rates. If a contract will not be renewed, or terms for renewal cannot be agreed upon in whole or in part, any continuing service requirement may be the subject of a new competitive solicitation.

5. **Documentation.** The determinations made throughout the renewal process must be thoroughly documented in the contract renewal file.

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

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

4.5.7 **Extension and Short-Term Renewal of Contracts**

4.5.7.a When appropriate, contracting officers may issue modifications extending the term of a contract, as distinct from the renewal of a contract (see 4.6.6).

4.5.7.b The contract term may be extended in increments of up to one year, provided the extension does not result in a total term of more than two, four, or six years, whichever is the allowable maximum contract term. The extension must be made with the consent of the supplier by a supplemental agreement (see 6.5.1.c), and the need for the extension must be documented in the contract file.

4.5.7.c Pending full renewal in accordance with 4.5.6, an expiring contract that is eligible for renewal may be renewed for short terms of up to one year by mutual agreement of the parties. When the full renewal is approved, the short-term renewal may be converted into a full-term renewal to cover the full remaining term of the contract.
4.5.8 Contract Changes

4.5.8.a General

1. Contracting officers working with their purchase team may take action to discontinue, extend, or curtail contracts; to change and restate service required; and to increase or decrease frequencies.

2. The purchase team must carefully consider the effect of any proposed contract change. No change may be authorized that is contingent on or related to a change in another contract service without the concurrence of the contracting officer responsible for the other service.

4.5.8.b Termination for Convenience

1. A contract, or any part of a contract, must be terminated if it becomes unnecessary or if it is to be superseded by some other service. The supplier must be notified in writing of the termination and is entitled to the indemnity provided in the contract. If it is more advantageous to operate than to pay the indemnity, the service should be continued.

2. Discontinuance of service under the contract may, in some instances, be to the advantage of the supplier. In these instances, if the supplier is willing to waive the indemnity, the waiver must be included in a contract modification discontinuing the service. In the case of highway or inland domestic water routes, the waiver must be included in a supplemental agreement signed by the supplier.

3. It is the policy of the Postal Service to furnish suppliers as much advance notice as possible when a contract is to be terminated before the end of its term. Specific requirements for notice may be stated in the contract. A supplier may be notified by letter of intent to discontinue in advance of issuing a formal notice. In the case of highway, inland domestic water routes or air taxi, the termination must be approved by the manager, National Mail Transportation Purchasing prior to being issued.

4.5.8.c Service Changes

1. Highway or Domestic Inland Water Contracts

(a) Types. There are two general types of service changes: minor service changes and major service changes. They are effected by contract modification.

(b) Definitions

(1) Minor Service Change

(i) A minor service change is any change that results in a change in equipment type or termini; an extension; a curtailment; a change in line of travel; or a permanent increase in the frequency or number of trips which, either individually or in combination with previous changes, does not increase by more than 100 percent the mileage required at the beginning of the contract or renewal term.
(ii) An insignificant minor service change is one that increases the supplier’s rate of pay by no more than $2,500.

(iii) A significant minor service change is one that increases the supplier’s rate of pay by more than $2,500.

(2) **Major Service Change.** A major service change is any service change other than a minor service change.

(c) **Effecting Service Changes**

(1) **Insignificant Minor Service Change.** Insignificant minor service changes resulting in increased compensation to the supplier may be ordered by the contracting officer as a unilateral contract modification (see 6.5.1.c.2). They do not require the supplier’s approval. The contracting officer may authorize an equitable increase in compensation at the existing rate or at such other rates as the contracting officer determines to be fair and reasonable. If the supplier considers the amount of increase inequitable, the contracting officer must attempt to negotiate a mutually agreeable increase and incorporate it by contract modification. If time permits, the contracting officer may discuss the change and increase in compensation with the supplier; if an agreement on compensation is reached, the change may be made by contract modification. If agreement cannot be reached, the contracting officer may issue a unilateral contract modification and determine the amount of increased compensation, subject to Clause B-9, **Claims and Disputes.**

(2) **Significant Minor Service Change.** Significant minor service changes are made by contract modification, incorporating a price adjustment, with the agreement of the supplier.

(3) **Major Service Change.** Major service changes are discussed with the supplier and effected by contract modification. The contracting officer must obtain the approval of the manager, National Mail Transportation Purchasing before entering into discussions regarding major service changes. When determining whether or not to recommend or approve the negotiation of a major service change, the purchase team must take into consideration indemnity liability, the supplier’s experience in operating a service of the scope required, past performance, rate, and any factors that would indicate the proper course of action to take in the best interests of the Postal Service. When a major service change is not approved by the manager, National Mail Transportation Purchasing, the old service may be terminated and the new service purchased.

2. **Other Surface Contracts and Air Contracts.** Service changes for contracts other than those discussed in 4.5.8.c.1 may be made,
consistent with the terms of the contract, provided that these changes do not:

(a) Alter the original intent of the contract; or
(b) Transform the service into an entirely new service.

4.5.8.d Exceptional Service

1. Exceptional service is additional service to perform scheduled or backup route operations (such as extra trips, detour miles, and additional equipment). Exceptional service may be required only when an unanticipated increase in mail volume or other conditions arise that require the performance of additional service or equipment.

2. Whenever feasible, contracting officers should hold discussions with suppliers to establish the rate to be paid for exceptional service before its performance. When discussions in advance would delay the mail or otherwise not be feasible, the contracting officer or a designated representative may order the supplier to perform such service at pro-rata pay.

3. If no rate of pay for exceptional service has been negotiated in advance, the supplier may be paid a lump sum reimbursement for the difference between costs incurred as a direct result of performing exceptional service and pro-rata payment, provided that such costs are adequately supported by evidence satisfactory to the contracting officer. Claims for compensation above pro-rata pay for exceptional service must be filed in writing with the contracting officer, with full supporting documentation, no later than 90 days after the performance of the service.

4. Disputes regarding compensation are handled as provided in Clause B-9, Claims and Disputes.

4.5.8.e Schedule Changes for Highway or Domestic Inland Water Contracts

1. Improvement of mail service must be the primary consideration in ordering a schedule change. Schedules may not be changed for the convenience of suppliers, subcontractors, or drivers unless the change will in no way be detrimental to the Postal Service. The purchase team must consider the following before making schedule changes:

   (a) Financial effect on the supplier. Reversing a schedule or requiring an excessive layover might cause sufficient increase in cost of operation to provide the basis for a request for pay adjustment.

   (b) Hardship on suppliers or customers. Arbitrary action should be avoided and reasonable effort should be made to work out arrangements satisfactory to suppliers.

   (c) Schedule realism. Schedules may not be set that would require running times in violation of established speed limits.

2. The purchase team must ensure that schedule changes are coordinated with all those responsible for other affected services.
4.5.8.f **Emergency Contracts.** The service and rate of compensation under emergency contracts may not be changed unless specifically authorized in the contract or by the manager, National Mail Transportation Purchasing.

4.5.8.g **Clauses**

1. Clause B-71, *Termination for Convenience (Transportation)*, must be included in all regular and temporary highway and air taxi contracts.

2. Clause B-72, *Termination for Convenience — Emergency Contracts*, must be included in all emergency highway and air taxi contracts.

3. Clause B-67, *Changes (Transportation)*, must be included in all highway transportation regular and temporary contracts.

4.5.9 **Subcontracting**

4.5.9.a **Highway or Domestic Inland Water Contracts**

1. A subcontract for the transportation of mail is any agreement, other than an employer-employee agreement, between a party that has contracted with the Postal Service to transport mail and a third party, in which the latter agrees to provide all or part of the contract service. An employer-employee agreement is one under which the employee is subject to the continuing authority of the mail supplier to supervise and direct the manner of work performance of the employee. Such an employer-employee agreement is also characterized by, expressly or implied, the employer’s responsibility to pay compensation directly to the employee, to withhold taxes and amounts for social security benefits from the employees’ compensation for the work performed under the agreement. An agreement between a supplier and a third party for the latter to provide labor for service other than the transportation of mail is not a subcontract within the meaning of this section. When an owner-operator, who because of illness or temporary equipment failure, is required to obtain labor from another in order to continue performance of the service as required by the contract, the resultant transaction is not a subcontract within the meaning of this section.

2. A supplier may, without approval of the contracting officer, subcontract the whole or part of the contract with one or more owner-operators who provide and drive their own vehicles, provided that the service is for irregular mail movements such as plant loads. All other subcontracts, for either the whole route or any part of it, must be approved by the purchase team.

3. Subcontracting is an exceptional action and may be approved only when the supplier offers good and sufficient reasons. The supplier must request permission to subcontract in writing, giving the purchase team its reasons for subcontracting, the desired effective date, and the identity and qualifications of the proposed subcontractor.

4. Approval by the Postal Service and execution by a supplier of a subcontract does not release the supplier from its contractual obligations, nor from liability for damages.
5. Whenever the purchase team determines that a supplier has breached the contract by subletting the whole or part of the contract contrary to the requirements of this manual, the contracting officer may terminate the contract for default.

6. Subcontractors must meet the same responsibility and qualification requirements as the prime supplier.

7. If the whole contract is subcontracted, the subcontract must be for the full remainder of the contract term. The subcontractor’s initial rate of pay will be the same as the supplier’s, unless there is a change in operations costs resulting from a service change or from the enactment of a statute or ordinance or the adoption of lawful regulations by any federal, state, or local agency.

8. When a subcontract is terminated, the prime supplier may be required to take charge of the route. A subcontract may be terminated at the subcontractor’s request only with the prior approval of the contracting officer. Such approval may be given only for good cause, and must be in writing. Subcontracts are automatically terminated by death of the subcontractor or abandonment of the service by the subcontractor.

9. When a subcontractor fails to meet the terms of a contract, the contracting officer must notify the prime supplier of the subcontractor irregularities. The contracting officer may (1) require removal of the subcontractor for failure to perform, and require the prime supplier to resume route operations, (2) terminate the prime contract for default.

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

4.5.10 Release of Supplier

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

4.5.11 Service Deficiencies

4.5.11.a Damages. The contracting officer may make deductions from the payment due suppliers for failure to perform contractually required service, and may assess damages for delinquencies with regard to any contractual requirements as provided in the terms of the contract. The contracting officer may also change or remit deductions and damages. Suppliers are also answerable in damages to the Postal Service for the proper care and
transportation of the mail. Such damages, as determined by the contracting officer, may be withheld by the Postal Service from compensation otherwise due the supplier. Suppliers are accountable to the Postal Service for loss or damage to the mail or any part thereof due to (1) loss, rifling, damage, wrong delivery, depredation, or other mistreatment of the mail by the supplier or any of the supplier’s officers, agents, or employees, or (2) the failure of the supplier or any of the supplier’s officers, agents, or employees to exercise due care in the custody, handling, or transportation of the mail.

4.5.11.b Breach Not Warranting Termination. When a supplier has committed a breach of the contract not sufficiently serious to warrant termination, the supplier may be assessed damages in an amount determined by the contracting officer, in accordance with the terms of the contract.

4.5.11.c Loss or Damage to Mail. When a supplier, or supplier’s agent or employee, permits loss or damage to the mail, the contracting officer may withhold from the supplier’s compensation as damages the value of the mail lost or damaged plus administrative costs of handling the irregularity.

4.5.11.d Supplier with Several Contracts. When a supplier holding several contracts is subject to a fine or assessment for damages on one contract, the contracting officer may withhold compensation due under other contracts held by the supplier until such fines and damages have been recovered.

4.5.12 Death or Incompetence of Supplier

4.5.12.a Individual

1. The procedures below are to be followed upon the death or legally adjudged incompetence of an individual contracting in his or her own name (sole proprietorship), or in the name of a corporation all of whose stock is substantially owned by the individual (closely-held corporation) and the supplier is a highway or inland domestic water supplier. These procedures do not apply when the death or incompetence of an owner or officer of a corporation does not significantly impair the corporation’s ability to perform the contract service.

2. The contracting officer must act to maintain continuity of service. If a prime contract is affected, the representative of the estate (administrator, executor, or immediate family member) must be contacted to ascertain whether the estate wishes to continue to perform the service. If a subcontract is affected, the subcontract may be terminated and the prime supplier is responsible for performance of the service.

3. The death of a sole proprietor terminates the contract, and the estate has no obligation to continue to provide the service.

4. The representative of the estate may operate the route with the consent of the contracting officer. If there is reason to deny consent, the contracting officer must prompt display a full written report to the manager, National Mail Transportation Purchasing for determination. The contracting officer must document the file with evidence of the
representative’s authority to represent and assume control of the supplier’s business.

5. When an individual regains competence during the performance of the contract by a representative, the individual may apply to the contracting office for reinstatement as supplier. Any such application must be approved by the manager, National Mail Transportation Purchasing before reinstatement.

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

4.5.12.c Estate Representatives

1. When the representative of an estate assumes a route, the contract rate remains the same. Pending pay adjustment requests are processed under instructions in effect at the time of adjustment. The operator of the route is entitled to all benefits of the adjustment.

2. The representative of an estate may subcontract all or part of the route in accordance with 4.5.9.

3. If a contract expires while being performed by the representative of an estate, the contract cannot be renewed, unless the representative is the surviving spouse or child of the deceased, in which case the contract may be renewed in that individual’s name.

4. If the representative of an estate does not want to continue the service, or if consent is denied for the representative to continue the service, the contracting officer should purchase emergency service and issue a solicitation for a new permanent service contract.

5. Procedures for processing payments to deceased or incompetent supplier are described in Handbook PO-513.

4.5.13 Eligibility Requirements

4.5.13.a Eligibility Requirements for Suppliers. Any individual 21 years of age or older, any partnership in which at least one partner is 21 years of age or older, and any corporation in which at least one of the officers is 21 years of age or older may hold mail transportation contracts. See 1.7.3 for restrictions concerning contracts with Postal Service employees and business organizations substantially owned or controlled by Postal Service employees or their immediate families. Solicitations may establish other eligibility requirements as needed.

4.5.13.b Service Employees

1. The following persons are ineligible to perform services under a contract:

   (a) Persons on parole or under suspended sentence for commission of a felony.
(b) Persons with known criminal records that involve convictions for offenses involving moral turpitude or dishonesty.
(c) Persons who associate with convicted felons.
(d) Persons known to engage in the illegal use, possession, sale, or transfer of narcotics or other drugs.
(e) Persons who knowingly submit false data or conceal data for the purpose of gaining employment.
(f) Persons whose traffic records indicate that their driving motor vehicles would be hazardous (applies only to drivers and assistants).
(g) Pilots with unsatisfactory aircraft operations safety performance records.
(h) Persons who through their abusive or disruptive behavior would pose a danger to fellow workers.

2. Supplier employees engaged as drivers of vehicles with a GVW of 10,001 lbs. or more must be at least 21 years old. All other drivers must be at least 18 years old.

4.5.13.c Screening
1. ID Cards. No supplier, subcontractor, or employee of a supplier or subcontractor may be allowed access to mail matter or postal operational areas unless he or she displays a valid identification card issued by the Postal Service.

2. Screening. Except for those categories of persons identified in paragraph d below, the Postal Service will not issue the identification cards described above to individuals until they have been screened to determine their suitability for that access. Forms and procedures for screening are as set forth in Handbook PO-508 and in any applicable Management Instruction.

4.5.13.d Exceptions
1. Persons employed by suppliers whose own security screening procedures have been approved by the contracting officer and reviewed by the Inspector-in-Charge.
2. Persons who are civil service personnel otherwise subject to investigation under Executive Order 10450.
3. Persons previously screened under another contract with a break in service of less than one year.
4. Persons hired for service in an emergency of not more than 15 days. (This does not exempt regular relief or substitute employees or those repeatedly hired on an emergency basis.)
5. Persons employed to transport plant-load mail, but only if such mail is not generated with regularly recurring frequency.

4.5.13.e Notification of Supplier. The contracting officer will notify the supplier of the grounds on which any person has been denied access to the mails under the procedure set out herein. Any decision as to whether a supplier,
subcontractor, or contract or subcontract employee is to be denied access to the mail or precluded from operating a vehicle transporting mail must be made by the contracting officer in accordance with the eligibility requirements of 4.5.13.a and 4.5.13.b.

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

4.5.14 Contract Administration

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

4.5.14.b Unsatisfactory Service. The purchase team under the direction of the contracting officer must take necessary action to correct any problem caused by unsatisfactory supplier performance. If the remedies and damages provided in 4.5.11 are insufficient, termination for default should be considered.

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

4.6 Special Categories of Purchases

4.6.1 General

Certain Postal Service purchases must by nature receive distinctive treatment, and therefore are purchased under policies and procedures distinct from those contained in the PM. This section identifies those types of purchases, and addresses some of them in detail, providing policies and procedures supplementing those contained in other chapters and sections of the PM. In turn, the policies and procedures contained in this section may be supplemented by other such issuances as discussed in 4.6.2.

4.6.2 Supplemental Policies and Procedures

Under delegations issued by the Vice President, Purchasing and Materials, these policies and procedures are originated and developed by individuals within the organizations housing the distinct requirement. Exhibit 4.6.2, Supplemental Policy and Procedure Authority, shows, by requirement category, the Postal Service policy-originating officials delegated this authority, subject to the review and approval of the approving official identified in the exhibit.
### Supplemental Policy and Procedural Authority

<table>
<thead>
<tr>
<th>Requirement Category</th>
<th>Policy-Originating Organization</th>
<th>Approving Official</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting and Financial Audit Services</td>
<td>Finance</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Advertising</td>
<td>Marketing &amp; Sales</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Appraisal Services</td>
<td>Facilities</td>
<td>VP Facilities</td>
</tr>
<tr>
<td>Arbitration Services</td>
<td>Labor Relations</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Architect-Engineer Services</td>
<td>Purchasing &amp; Materials</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Banking Services</td>
<td>Finance</td>
<td>VP Finance</td>
</tr>
<tr>
<td>Brokerage Services</td>
<td>Facilities</td>
<td>VP Facilities</td>
</tr>
<tr>
<td>Construction</td>
<td>Purchasing &amp; Materials</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Fiscal Services</td>
<td>Finance</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Fuel</td>
<td>Policies, Planning &amp; Diversity</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Information Services</td>
<td>Information Systems</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>International Postal Agreements</td>
<td>International</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Law Enforcement</td>
<td>Chief Inspector</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Leasing</td>
<td>Facilities</td>
<td>VP Facilities</td>
</tr>
<tr>
<td>Legal Services</td>
<td>General Counsel</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Licensing of Non-Postal-Owned Rights for Postal Use</td>
<td>Policies, Planning &amp; Diversity</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Licensing of Postal Rights</td>
<td>Marketing &amp; Sales</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Literary and Artistic Works</td>
<td>Corporate Relations</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Mail Transportation Services</td>
<td>Purchasing &amp; Materials</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Medical Services</td>
<td>Employee Relations</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Postal Rate Commission Purchases</td>
<td>Postal Rate Commission</td>
<td>Postal Rate Commission</td>
</tr>
<tr>
<td>Printing</td>
<td>Printing Purchasing</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Real Estate and Related Services</td>
<td>Facilities</td>
<td>VP Facilities</td>
</tr>
<tr>
<td>Research &amp; Development</td>
<td>Engineering</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Revenue-Producing Contracts</td>
<td>Policies, Planning &amp; Diversity</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Stamp Design</td>
<td>Customer Service Support</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
<tr>
<td>Structured Contracts</td>
<td>Policies, Planning &amp; Diversity</td>
<td>VP Purchasing &amp; Materials</td>
</tr>
</tbody>
</table>
4.6.3 Professional/Technical and Consultant Services

4.6.3.a Policy. It is the policy of the Postal Service to contract for professional/technical and consultant services when doing so makes good business sense in light of available personnel resources. For example, short-term expertise may be necessary to assist in the development of new customer service programs or to manage spikes in operational workload. In other cases, long-term contracts for these services may prove more fiscally and technically beneficial than the use of career employees. When contemplating contracting for these services, and for personal services (see 4.6.4), purchase teams must consider the financial commitment and potential return on investment. For certain requirements, such as those affecting craft positions and duties, additional reviews and approvals are required; these include meeting legal and labor agreement obligations set forth in Federal regulations and labor union agreements. In these cases, purchase teams must consult with Strategic Initiatives at Headquarters. In addition, reviews and approvals are required for contracts with former Postal Service officers, executives, and employees, regardless of whether these individuals are contracted with directly or are employed or proposed to be employed by a supplier (see 1.7.13).

4.6.3.b Conflicts of Interest. When purchasing professional/technical or consultant services, purchase teams must pay particular attention to the potential for organizational conflicts of interest and consider using Clause 1-8, Organizational Conflicts of Interest, or a similar clause in the contract (see 1.7.7).

4.6.3.c Professional and Technical Services

1. Definitions. Generally, professional services are those performed by individuals or firms of recognized status, in fields such as accounting, engineering, law, and the sciences. Technical services are provided by individuals or firms who are expert in a given field, such as information technology, training, writing and editing, purchasing, marketing and demographics, and other such areas. These services may be used to: (1) provide needed expertise on an individual or group basis; (2) to supplement the career workforce as required by workload; and (3) to provide turn-key services in support of postal operations.

2. Licenses. When prequalifying or purchasing professional services for which individuals are normally required to be licensed (such as medical, legal, accounting, and architecture), licenses must be required as a prerequisite to prequalification or contract award. Acceptable licenses
may be limited to those issued by a particular state or entity, but only when local expertise is necessary to successful performance.

3. **Required Clauses.** All contracts for professional/technical services must include the following clauses:
   
   (a) **Clause 4-4, Nondisclosure (Professional Services).** This clause may be modified with the approval of the policy-originating official designated in Exhibit 4.6.2 and assigned counsel.
   
   (b) **Clause 4-5, Inspection of Professional Services.** This clause provides for inspection of the supplier’s work product and acceptance of only those products that meet reasonable professional standards. The clause is to be used in lieu of, and not in addition to, the standard inspection and acceptance clauses prescribed in 2.2.
   
   (c) **Clause 4-7, Records Ownership.** This clause gives the Postal Service ownership of contract files, including copies of all supplier work papers. While this clause is mandatory for professional service contracts, purchase teams have to decide whether to include it or not in technical service contracts, depending on the nature of the service.

4. **Other Clauses.** Depending on the particular purchase, the following clauses should be included in contracts for professional/technical services:
   
   (a) **Clause 4-6, Invoices (Professional Services).** This clause is included in all non-fixed price contracts for professional/technical services. The clause requires presentation of invoices showing who performed the services, the hours and partial hours of service provided each day, and the services provided each hour or partial hour. Suppliers may be allowed to set minimum charges for partial hours or days.
   
   (b) **Clause 4-8, Key Personnel.** This clause requires use of the key personnel identified in the supplier’s proposal, unless the purchase team approves substitution, and provides for contract termination for failure to comply.
   
   (c) **Clause 1-1, Privacy Protection, must be included as applicable.** See 1.7.5.

4.6.3.d **Consultant Services**

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

4.6.4 **Personal Services Contracts**

4.6.4.a **Definition.** A personal services contract is a contract with an individual under the terms of which the individual will: (1) work under the direct supervision of postal personnel; (2) work on postal premises and use postal equipment; and (3) perform duties similar in nature to those of postal employees. A personal services contract may create the appearance of an employee–employer relationship, and may result in additional costs, such as tax withholding. For this reason, purchase teams should strive to use contracting vehicles other than personal services contracts, but, when deemed appropriate and effective, they may be used, subject to the reviews and approvals described in 1.7.13.

4.6.4.b **Use.** Personal services contracts may be awarded for professional/technical services but may not be awarded for consultant services.

4.6.4.c **Contracts.** All personal services contracts should be written to ensure that the Postal Service does not incur unnecessary costs or liabilities. Purchase teams should work with assigned counsel to ensure that the interests of the Postal Service are protected in areas such as taxes, unemployment liability, etc.

4.6.5 **Information Technology**

4.6.5.a **Definitions**

1. Commercial Software. See 4.3.2.l.
5. **Information Technology (IT).** Encompasses all types and categories of computer, networking, and telecommunications systems (where voice and/or data may be transmitted by cable, telephone, or wireless), and all associated hardware, firmware, software, and services. This includes emerging technologies such as wireless handheld data collection devices, information kiosks, transaction machines, electronic commerce services, distance learning systems, World Wide Web sites, multimedia, and office equipment such as FAX machines and copiers. IT also includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. IT does not include any equipment that contains embedded technology that is used as an integral part of the product but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of
4.6.5.b Purchasing

Contents

1. General. Even small-dollar information technology purchases may involve questions of system compatibility, expansion potential, and other complex issues. Information Systems researches, tests, and evaluates information systems and components to ensure quality and intersystem communication capability. Therefore, it is the policy of the Postal Service to acquire information technology in accordance with the technical standards established by Information Systems and concurred in by the VP, Purchasing & Materials.

2. Accessibility

(a) Section 508 of the Rehabilitation Act as amended in 1998 requires the Postal Service to ensure that information technology (IT) purchased by the Postal Service allows employees with disabilities and individuals with disabilities who are members of the public to have access to and use of information and data that is comparable to the access and use of information by employees and members of the public who do not have disabilities, unless doing so would impose an undue burden (see below).

(b) Applicability

(1) General. Unless an exception applies, purchases of IT must meet the applicable accessibility standards at 36 CFR part 1194. Exception determinations are required prior to contract award, except for indefinite delivery contracts and the other circumstances enumerated at subparts (3)(a) through (3)(d) below.

(2) Indefinite Delivery Contracts. Exception determinations are not required prior to award of indefinite delivery contracts,
except for requirements that are to be satisfied by initial award. Contracting officers who award indefinite delivery contracts must indicate to requiring and ordering activities which IT the supplier indicates as compliant and show where full details of compliance can be found (e.g., supplier’s or other exact web site location). Before task or delivery orders are issued, requiring and ordering activities must ensure IT meets the applicable accessibility standards at 36 CFR part 1194, unless an exception applies. Accordingly, indefinite delivery contracts may include noncompliant IT items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

(3) The accessibility standards at 36 CFR part 1194 do not apply to:
(a) Taking delivery for items ordered prior to June 21, 2001.
(b) Within-scope modifications of contracts awarded before June 21, 2001.
(c) Exercising unilateral options for contracts awarded before June 21, 2001.
(d) Multiyear contracts awarded before June 21, 2001.

(c) Exceptions
(1) General. The requirements of Section 508 of the Rehabilitation Act as amended do not apply to IT that —
(a) Is acquired by a supplier incidental to a contract.
(b) Is located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.
(c) Is being acquired as IT that is available in the commercial marketplace, and the IT meets all the accessibility standards that can be met within time to meet the Postal Service’s delivery requirements.
(d) Would impose an undue burden on the Postal Service.

(2) Basis. In determining whether compliance with all or part of the accessibility standards in 36 CFR part 1194 would be an undue burden, the Postal Service must consider the difficulty or expense of compliance.

(3) Documentation
(a) Undue Burden. The requiring or ordering activity must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.
(b) Commercial Items. When acquiring commercial items, the requiring or ordering activity must document in
writing, for provision to the contracting officer for inclusion in the contract file, the extent to which commercial items fail to meet specific accessibility standards and a description of the market research performed to establish the extent of the commercial IT’s noncompliance.

3. Information Systems Guidance
   (a) Technical Standards. Information Systems periodically issues standards, policies, and general guidance by means of management instructions, handbooks, and technical bulletins, in order to supplement guidance in terms of updated standards and policy interpretations. The core technical standards which guide information technology purchases are contained in Handbook AS-820, Postal Computing Environment. To ensure compliance with these standards, Provision 4-7, Postal Computing Environment and ITK Compliance, must be included in all information technology solicitations and resultant contracts.
   (b) Technical Appraisals. Information Systems conducts market research and technical appraisals of the information technology marketplace and potential suppliers. Information Systems conducts technical appraisals of potential suppliers at various points during the purchasing process, particularly during the presolicitation phase. The objective is to proactively ensure seamless integration into the Postal Service’s computing environment. Companies interested in having their products or services appraised by Information Systems must submit a request to that organization. Additionally, contracting officers should encourage requirements organizations to seek a similar review by Information Systems of their current and future requirements. Lastly, prequalification of suppliers should be considered for all information technology purchases (see 3.5.2).

4. Security Considerations
   (a) Systems and Software Security. Handbook AS 805, Information Systems Security, delineates the types of systems security relevant to purchases of information technology. Contracting officers should pay particular attention to this matter during the purchasing planning phase, and should coordinate their efforts in this area with the requirements organization.
   (b) Contractor Personnel Security. Many technical support services contracts require contractor personnel to work on Postal Service premises or to access Postal Service networks or databases containing highly sensitive corporate information. Therefore, contracting officers must ensure that contractor personnel are screened as discussed in Administrative Support Manual (ASM) 272.3. See 1.7.10 for further information regarding security clearances.
5. **Year 2000 Compliance.** All contracts for information technology must include either Clause 1-12, Year 2000 Warranty - Commercial Items, or Clause 1-13, Year 2000 Warranty - Noncommercial Items (see 1.7.14).

### 4.6.5.c Technological Substitutions and Enhancements

1. **General.** Due to the rapid changes in technology, it may be advisable to provide for such changes in Postal Service contracts (1) to conform to commercial market conditions so suppliers are not forced to maintain continued production of obsolete goods, and (2) to enable internal customers the flexibility to upgrade their respective infrastructures along the lines of currently available technology.

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

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

### 4.6.5.d Sources

1. **Postal Service Sources.** See 3.3.2.

2. **General Services Administration (GSA) Sources**
   (a) GSA provides multiple-award schedule contracts (MASCs) annually in three categories: Schedule A for general-purpose hardware and commercial software, Schedule B for general-purpose (off-line) peripherals, and Schedule C for end-user hardware and software. These schedules do not contain maximum order limitations and are available from:
   
   **GSA SCHEDULE DIVISION (KESA)**
   **FEDERAL SUPPLY SERVICE**
   **1941 JEFFERSON DAVIS HIGHWAY**
   **ARLINGTON VA  22202**
(b) In addition to MASCs, GSA maintains national requirements contracts and area contracts. Current schedules for teleprocessing services may be obtained from:

GSA TELECOMMUNICATIONS PROCUREMENT
DIVISION (KET)
18TH AND F STREETS NW
WASHINGTON DC  20405-0001

3. Commercial Sources. Commercial purchasing methods may be used to purchase commercially available information technology, if it meets the requirements of Handbook AS-820. See 4.3.1.n.

4.6.5.e Solicitation Provisions

1. Provision 4-4, Demonstrability, must be included in solicitations for commercial hardware or software when a system test using Postal Service test data is required.

2. Provision 4-5, Functional Demonstration, must be included in solicitations for commercial hardware or software when a functional demonstration of one or more products is required.

3. Provision 4-6, System Integrity, must be included in contracts for third-party software installed on all computer systems in the possession of the Postal Service, with the exception of personal computers.

4. Provision 4-7, Postal Computing Environment, must be included in solicitations for commercial hardware or software so as to ensure that standard solutions emerge from the solicitation to the greatest degree possible. This provision also requires the identification of nonstandard solutions by prospective offerors to the contracting officer.

4.6.5.f Clauses

1. Clause 4-9, Inspection and Acceptance — Systems, must be included in contracts for computers with a unit price greater than $50,000. This clause is to be used in lieu of, not in addition to, the inspection clauses prescribed in 2.2. If a computer contract covers other supplies or services also, one of the standard inspection clauses prescribed in 2.2 must be included for the other supplies or services.

2. Clause 4-10, Liquidated Damages — Industrial Supply or Service Items Not Ready for Use, filled in appropriately, must be included in systems contracts when the use of this clause is justified as prescribed by 2.2.

3. Clause 4-11, Use of Hardware or Software Monitors, must be included in contracts whenever monitors will be attached to a computer system.

4. Clause 4-12, Site Preparation, must be included in contracts whenever the Postal Service must specially prepare a site for installation of an information system.

5. Clause 4-13, Software License Warranty and Indemnification, must be included in contracts whenever software is procured by license from the contractor.

6. Clause 4-14, Software Development Warranty, must be included in contracts for customized software.
7. Clause 4-15, *Warranty Exclusion and Limitation of Damages*, must be included in all contracts for information systems.

8. Clause 4-16, *Substitution of Information Technology Equipment*, must be included in solicitations and contracts for information technology in which the supplier will be afforded the opportunity to replace the product line(s) being purchased with equivalent items that are newer technology provided the pricing is equal to or less than the items being replaced.

9. Clause 4-17, *Technology Enhancement*, must be included in all solicitations and contracts which require the supplier to propose newer, more effective and more economical products on a continuous basis that the Postal Service may incorporate to keep pace with changing technological environments.

10. Clause 4-18, *Information Technology Accessibility Standards*, must be included in all information technology contracts (see 4.6.5.b.2).

11. Clause 1-1, *Privacy Protection*, must be included as applicable. See 1.7.5.

### 4.6.6 Research and Development

#### 4.6.6.a Definitions

1. **Applied Research.** A study concentrated on limited areas and directed toward specific practical ends.

2. **Basic Research.** A systematic, intensive study directed toward fuller scientific knowledge or understanding and prompted primarily by the desire to pursue knowledge for its own sake rather than for any immediate practical application.

3. **Research Announcement.** A general announcement of the Postal Service’s research interests, including criteria for selecting proposals and soliciting participation of all offerors capable of satisfying the Postal Service’s needs.

4. **Development.** Reduction to a useful form — such as a material, device, system, or method — of the findings and understandings derived from research. It includes the design and testing of prototypes and new processes to achieve specific functional requirements and characteristics.

5. **Educational Institution.** Any corporation, foundation, trust, or state or local government entity operated primarily as an institution of higher learning that offers a course of general studies leading to the granting of academic degrees.

6. **Engineering.** The effort to refine the materials, devices, systems, methods, prototypes, and processes derived from research and development, in order to apply them to specific uses and technologies.

7. **Nonprofit Organization.** Any corporation, foundation, trust, or other entity that is operated for scientific, educational, or medical purposes and is not organized for profit. No private shareholder or individual may profit from such a corporation’s net earnings.
4.6.6.b  General Policy

1. It is the policy of the Postal Service to encourage firms and entrepreneurs in solving technological problems and advancing postal technology.

2. When in the interest of the Postal Service, appropriate incentives may be provided to the industrial community to develop new products or equipment through its own resources.

3. The use of educational institutions and nonprofit organizations as contractors is encouraged, when appropriate, to further scientific and technological advancements that will modernize and streamline postal operations. University research organizations should be considered a primary source for basic research; they should also be solicited, whenever feasible, for applied research requirements.

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

4.6.6.c  Prequalification

1. Due to the highly specialized nature of research and development, potential suppliers should always be prequalified before issuing solicitations (see 3.5.2).

2. In addition to past performance, the following evaluation factors should be used when evaluating proposals:
   (a) Understanding of the statement of work, as shown by the scientific, technical, or analytical approach proposed;
   (b) Competence and experience of proposed professional personnel;
   (c) Innovative ideas pertinent to the requirement;
   (d) Availability and planned use of facilities;
   (e) Willingness to devote resources to the proposed work; and
   (f) Proposed management and organizational structure.

4.6.6.d  Solicitations

1. Types. When the solicitation format prescribed in Appendix A is not suitable and use of a short form research contract (see 4.6.6.e) is not authorized, the contracting officer may use individually addressed letters, circulars, or notices, provided that they contain the terms, conditions, and other provisions required by this Purchasing Manual.

2. Research Announcements
   (a) The Postal Service uses research announcements with peer or scientific review for the purchase of basic and applied R&D. Research announcements may be used to fulfill requirements for...
4.6.6.e Contract Type

1. **Indefinite Delivery Contracts.** Generally, indefinite delivery contracts should be used for R&D services (see 4.6).

2. **Short Form Research Contracts (SFRCs)**

   a. **Use.** The following procedures should be used for procurement of basic or applied research when a research announcement is used to publicize the R&D requirement, or a noncompetitive contract will be awarded.

   b. **Solicitation**

      (1) The contracting officer must solicit sources in accordance with 4.7.6.d, using a short form research contract format, which states a research problem and requires offerors to propose a statement of the work to be done.

      (2) The solicitation must require that the statement of work include a breakdown showing the amount of effort to be devoted to the contract by each principal investigator and any associate.

      (3) The solicitation must require that proposals describe any property to be furnished by the Postal Service or acquired by the contractor for performance of the work. Offerors must state the estimated or known cost of each item; items costing less than $1,000 may be grouped by category. When facilities are to be acquired using contract funds, offerors must explain why that is necessary. All descriptions must be sufficiently detailed to enable the contracting officer to determine whether the property should be furnished by the Postal Service or whether the contractor should be authorized to acquire it.

      (4) The solicitation must include the following applicable solicitation provisions (see Appendix A):


         ii. Provision A-7, *Restriction on Disclosure and Use of Data*.
4.6.6.g  Educational Institutions and Nonprofit Organizations

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

Organizational conflicts of interest (see 1.7.7) can occur when applied research follows basic research, when development follows applied research, when production follows R&D, or when a study is followed by another study of similar scope or emphasis. Contracting officers must take care to prevent actual or apparent organizational conflicts of interest in these situations. If it appears that an organizational conflict of interest might arise, the contracting officer must include Clause 1-8, Organizational Conflict of Interest, in the solicitation and include it or a negotiated alternative in the resulting contract.

4.6.7 Utility Services

4.6.7.a Definitions

1. Utility Services. Refers primarily to electricity, gas, water, steam, sewerage, and regulated telecommunications services available to the general public and performed by governmental agencies or by private companies ordinarily subject to regulation. Other services, such as trash removal, may also be considered utility services when performed by governmental agencies or by private companies subject to regulation.

2. Connection Charge. A payment for facilities that are needed in order to make connection with a point of supply and that are installed and owned by the utility supplier.

3. Termination Liability. An obligation to pay a portion of the cost of connecting facilities with a point of supply installed and owned by the utility supplier, if the Postal Service terminates the contract before its term expires. The initial amount of the obligation is not more than the agreed cost of connecting the facility, less net salvage when material costs are included. This amount decreases under an amortization formula stated in the contract, until it ultimately reaches zero.

4.6.7.b Policy

1. Orders Under GSA Contracts. Utility services should be obtained under available GSA areawide contracts, unless they can be obtained more efficiently or at a lower cost under Postal Service contract.

2. Postal Service Contracts

(a) Forms

(1) The terms and conditions under which utility suppliers will agree to furnish services vary from area to area. Flexibility in the use of contract forms and provisions is therefore necessary.

(2) If a utility supplier refuses to execute a formal contract with the Postal Service, the contracting officer may purchase the utility services in accordance with (c) below, provided that:

(i) A definite refusal is received in writing from a corporate officer of the supplier; and
(ii) The manager, Policies, Planning, and Diversity, is given notice and documentation of the refusal, including the record of discussions.

(3) When a utility supplier refuses to execute a contract, the services may be obtained by purchase order or by use of the utility supplier’s commercial forms and clauses. When the utility supplier’s commercial forms and clauses are used, the contracting officer must delete any language contrary to federal law and Postal Service regulation.

(b) **Clauses.** The clauses prescribed in this manual must be included in all Postal Service utility contracts, unless the utility supplier objects to their inclusion and the procedures outlined in 4.6.7.b.2(a) above are followed.

(c) **Applicable Rules and Procedures.** When a federal, state, or local governmental agency has issued regulations or established procedures affecting cost allowability, pricing, rates, and other matters, it is Postal Service policy, as a matter of comity rather than law, to comply with those regulations or procedures, subject to judicial appeal. When no regulations or procedures of a regulatory agency are applicable, Postal Service rules and the general practices of the utilities industry must be followed.

(d) **Taxes**

(1) Utility contracts do not contain any of the tax clauses prescribed in 7.3.4, and utility invoices often identify taxes as separate line items. Postal Service exemption from such taxes, if any, must be determined on a case-by-case basis.

(2) Questions on tax charges must be referred to assigned counsel.

(3) Charges indicated as taxes on utility bills must be paid until assigned counsel advises that payment is not necessary. Refunds may be claimed for amounts improperly paid.

(e) **Connection Charges**

(1) A connection charge may be paid only when reasonable attempts to negotiate the contract without the charge have failed.

(2) When some obligation is necessary to secure the required facilities, a termination liability is ordinarily to be preferred over a connection charge.

(3) When the supplier’s rules and procedures require payment of an unrefundable fee for connection, in addition to or in lieu of a connection charge, the contracting officer may pay the fee.

(f) **Applicability of Construction Standards.** Ordinarily, the work performed by a utility in installing connecting facilities is not considered construction work for purposes of the policies in 9.1.4. However, such work may be considered construction if the contract also calls for other construction work, such as installation...
of utility distribution liens and equipment within a facility. When such additional work is required, a construction contract (see 4.4) should be used.

4.6.8 Structured Contracts and Controlled Contracts

4.6.8.a Definitions and Examples

1. Structured contract and structured contracting. A contract and its associated solicitation, award, and administration process using special procedures, solicitation provisions, and clauses, under the authority of 4.6.8.b.

2. Controlled contract and controlled contracting. A contract and its associated solicitation, award, and administration process for which authority is restricted and special procedures, forms, solicitation provisions, and clauses are used, under the authority of 4.6.8.b. Controlled contracts are used in such areas as law enforcement, international postal agreements, and revenue production.

4.6.8.b Policies and Procedures

1. Policy-originating officials may, with the approval of the manager, Policies, Planning, and Diversity, establish structured contract policies and procedures for any category of contracts under their authority as described in Exhibit 4.6.2.

2. The manager, Policies, Planning, and Diversity, may designate any category of contract as controlled.