

Chapter 12

Mail Transportation

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Chapter 12 Mail Transportation

SECTION 1 APPLICABILITY

12.1.1 General

- 12.1.1.a This chapter governs the procurement by contract 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. 1375(e)(2). It also governs the procurement by contract of ancillary services directly related to the transportation of mail.
- 12.1.1.b Procedural guidance necessary to implement and supplement this chapter is issued by the VP, Purchasing and Materials (P&M), in the *Mail Transportation Procurement Handbook* (MTPH). References in other chapters of this manual to the *Procurement Handbook* are not applicable.
- 12.1.1.c Requirements in other chapters of this manual for the use of specific solicitation provisions, contract clauses, or forms are not applicable. The forms in appendix C contain solicitation provisions and contract clauses for mail transportation procurement.
- 12.1.1.d In case of any conflict between this chapter and another part of this manual, this chapter will govern.
- 12.1.1.e Exhibit 12.1.1 lists the other chapters, sections, and parts of this manual that are applicable to the procurement of mail transportation, and those that are not. PM references to inapplicable chapters, sections, or parts have no effect. Deviations from the applicability requirements of Exhibit 12.1.1 may be obtained following the procedures in 1.4.2.

12.1.2 Other Publications

The VP, P&M, or his or her designee, may issue policies, procedures, and information concerning the procurement of mail transportation and related services in the *Transportation Services Bulletin* and other publications as an interim measure, pending incorporation in this chapter or the MTPH.

Applicability of Procurement Manual to Mail Transportation

PM Section	Subject	Applicability	Reference
1.1	Authority and Responsibility	Yes	PM 12.3, MTPH 1.1.1, 1.1.1.
1.2	PM Publication	Yes	MTPH 1.1.2
1.3	PM Changes	Yes	MTPH 1.1.2
1.4	PM Deviations	Yes	MTPH 1.1.2
1.5	Procurement Authority	Yes	PM 12.3.4
1.6	Definitions	Yes	PM 12.2
1.7.2	Competition	Yes	None
1.7.3	Contracts with Postal Service Employees	Yes	MTPH 1.1.5
1.7.4	Release of Information	Yes	None
1.7.5	Protection of Privacy	Yes	None
1.7.6	Advance and Progress Payments	No	None
1.7.7	Conflicts of Interest	No	None
1.7.7	Officials Not To Benefit	Yes	None
1.7.8	Standards of Conduct	Yes	MTPH 1.1.5
1.7.9	Gratuities	Yes	MTPH 1.1.5
1.8	Anticompetitive Practices	Yes	PM 12.4.1, MTPH 1.1.6
1.9	Contingent Fees	Yes	None
1.10	Administrative Matters	No	None
2.1	Procurement Planning	No	PM 12.4.2, MTPH 1.2
2.2	Planning Considerations	No	None
2.3	Specifications	No	MTPH 1.4.1-B, 1.4.2-A
3.1	Sources	No	PM 12.4.3, 12.4.4
3.2	Publicizing Procurements	No	See 12.4.5
3.3	Contractor Qualifications	Yes	PM 12.5, MTPH 1.3
4.2	Negotiated Purchasing	Yes	MTPH 1.4.2
4.3	Simplified Purchasing	No	None
4.4	Noncompetitive Purchasing	Yes	MTPH 1.4.2
4.5	Price Negotiation	Yes	MTPH 1.4.2
4.6	Protests	Yes	PM 12.4.8, MTPH 1.4.4
5.1	Types of Contracts	Yes	MTPH 1.5.1
5.2	Cost Principles	Yes	None
5.3	Price Evaluation	Yes	MTPH 1.5.2
6.1.1	Contracting Officer's Representative	No	PM 12.3.5, MTPH 1.1.4
6.1.2	Contract Administration Functions	Yes	PM 12.6
6.2	Contract Performance	Yes	MTPH 1.6.1
6.3	Quality Assurance	No	None
6.4	Payments and Financing	Yes	MTPH 1.6.2, 2.3, 3.3, 4.3, 5.3, 7.3
6.5	Contract Modifications	Yes	PM 12.4.12, MTPH 1.6.3
6.6	Postal Service Property	No	None
6.7	Subcontracting	No	PM 12.4.13
6.8	Claims and Disputes	Yes	MTPH 1.6.4
6.9	Contract Termination	Yes	PM 12.4.12, MTPH 1.6.5
6.10.1	Remedies	Yes	None
6.10.2	Damages	No	PM 12.4.15
7.1	Bonds	No	None
7.2	Insurance	No	None
7.3	Taxes	Yes	None
Chapter 8	Special Categories of Contracts	No	None
Chapter 9	Patents and Data Rights	No	None

Applicability of Procurement Manual to Mail Transportation Exhibit 12.1.1

Applicability of Procurement Manual to Mail Transportation

PM Section	Subject	Applicability	Reference
10.1	Small, Minority-owned and Woman-owned Businesses	Yes	PM 12.4.9, MTPH 1.7.1
10.2	Labor Policies	Yes	MTPH 1.7.2
10.3	Buy American	No	None
10.4	Clean Air and Water	No	None
10.5	Drug-Free Workplace	Yes	None
Chapter 11	Facilities and Related Services	No	None
Appendix A	Solicitations	No	None
Appendix B	Contract Clauses	No	None
Appendix C	Forms and Formats	Yes	None
Appendix D	Rules of Practice — Debarment and Suspension	Yes	None
Appendix E	Rules of Practice — Board of Appeals	Yes	None

Applicability of Procurement Manual to Mail Transportation (cont.)

Exhibit 12.1.1

SECTION 2 MEANINGS OF WORDS AND TERMS

12.2.1 General

In addition to the definitions in 1.6.2, the words and terms defined in this section have the meanings given whenever used in this chapter or the MTPH.

12.2.2 Definitions

- 12.2.2.a *Administrative official.* Any Postal Service official designated by a contracting officer to supervise and administer the performance of mail transportation and related services by contractors. Officials so designated do not have the authority of contracting officer's representatives as described in 12.3.5.
- 12.2.2.b *Advertised contract.* A contract awarded through sealed bidding procedures (see 12.7).
- 12.2.2.c *Bid.* An offer submitted under sealed bidding procedures.
- 12.2.2.d *Higher-level contracting authority.* The next higher-level contracting authority for contracts awarded by Distribution Network and Headquarters contracting officers is the manager of National Mail Transportation Purchasing or is or her designee.
- 12.2.2.e *Negotiated contract.* A contract awarded using the procedures in 4.2 or 4.4, as they may be modified by this chapter.

SECTION 3 RESPONSIBILITY AND AUTHORITY

12.3.1 Responsibility of Contracting Officers

Contracting officers must:

- 12.3.1.a Ensure that all procurements subject to this chapter are made in accordance with the requirements of this chapter; and
- 12.3.1.b Maintain surveillance over all phases of procurement performance to ensure adequacy of organizational structure, staffing, and training.

12.3.2 Authority of Contracting Officers

- 12.3.2.a Contracting officers are authorized to enter into and administer contracts on behalf of the Postal Service for mail transportation and related services subject to the limitations specified in this section. Any contracting action in violation of the limitations prescribed is of no effect unless ratified by a contracting officer with the authority to perform the action.
- 12.3.2.b Only a contracting officer is authorized to commit the Postal Service contractually.

12.3.3 Requirements to Be Met Before Entering into Contracts

Any solicitation or contract made using other than approved forms, and any novel or unusual procurement action, must be coordinated with the contracting officer's assigned counsel, and concurred in by the next-higher level of contracting authority.

12.3.4 Delegations of Authority

Through the issuance of a Certificate of Appointment, the VP, P&M, or an individual delegated contracting officer appointment authority, appoints contracting officers, and delegates to them the authority to make, enter into, and approve advertised and negotiated regular, temporary, and emergency contracts of the modes specified in the Certificate. A contracting officer so appointed (that is, by the VP's Certificate of Appointment) may temporarily assign contracting authority to another individual within the Transportation organization. Unless otherwise specified, the appointment will be without dollar limitation. The appointment may not be redelegated.

12.3.5 Contracting Officer's Representative

- 12.3.5.a *Designation.* A contracting officer may designate, by name and position title, responsible employees as authorized representatives to take actions related to the award and administration of specified contracts. Employees so designated must be in the contracting officer's organization or an organization subordinate to the contracting officer. Designations must be in writing and evidenced by an appropriate certificate or authority. The designation must clearly specify the contracts or types of contracts over which the contracting officer's representative

has authority. A designation of a contracting officer's representative remains in effect until:

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

12.3.5.b *Authority and Limitations*

1. A contracting officer's representative may not be empowered to award, agree to, or sign any contract or, except as authorized in subparagraph 2 below, any contract modification or termination notice. Only the contracting officer may sign such documents.
2. A contracting officer's representative is authorized to:
 - (a) Review and grant contract adjustments when the annual compensation paid under the contract will not be increased or decreased by more than ten percent.
 - (b) Negotiate, approve, and sign orders and contract modifications changing service schedules, provided that the annual compensation paid under the contract will not be increased or decreased by more than ten percent; and
 - (c) Review and sign contract modifications having no effect on cost or price.

12.3.5.c *Restrictions.* The following restrictions apply to the designation of contracting officer's representatives:

1. Contracting officer's representatives must be employed in the Executive and Administrative Schedule or the Postal Career Executive Service.
2. Contracting officer's representatives designated by a contracting officer at USPS Headquarters level must be employed in the same organization as the contracting officer. Contracting officer's representatives designated by other contracting officers must be employed in a capacity responsible for mail transportation procurement, contract administration, or logistics (including dispatch and routing).
3. Contracting officer's representatives may not redelegate their authority. They may, however, assign the performance of administrative tasks to their subordinates.

SECTION 4 GENERAL POLICIES

12.4.1 **Anticompetitive Practices**

In accordance with 1.8.2, any suspected anticompetitive practice must be reported through normal management channels (appropriate functional manager) to the manager of National Mail Transportation Purchasing. The manager of National Mail Transportation Purchasing must forward the report to the VP, P&M, with a recommendation as to whether the matter should be reported to the Inspection Service.

12.4.2 Procurement Planning

There must be an annual review of anticipated procurements to identify high dollar value or complex requirements needing market research, individual plans, or source selection plans. Requirements and procedures for procurement planning, specifications, and source selection are contained in the MTPH. Proposal evaluation criteria must be established in accordance with 2.1.7.c.

12.4.3 Sources

Section 1 of chapter 3 is not applicable. Mail transportation and ancillary services are procured from commercial sources under contract, with exceptions noted in 12.4.6.f.

12.4.4 Solicitation Mailing Lists

- 12.4.4.a *Establishing Lists.* The contracting officer must establish a list of potential offerors for each solicitation, and must maintain lists of potential sources for services solicited on a recurring basis. Those wanting to be included on mailing lists may apply by submitting Form 5436, *Mailing List Application — Mail Transportation Services*, or by letter providing the information required by the contracting officer.
- 12.4.4.b *Retention on Lists.* Offerors 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.
- 12.4.4.c *Use of Mailing Lists.* Mailing lists should be used in a way that will promote competition commensurate with the dollar value of the procurement. When the number of concerns on a mailing list is excessive for a particular procurement, the list may be reduced by the use of a presolicitation notice. A solicitation must be sent to any concern requesting it, whether on the mailing list or not.
- 12.4.4.d *Presolicitation Notice.* Before issuing a solicitation, the contracting officer may send a presolicitation notice to concerns on the mailing list for a procurement, seeking to identify those that are qualified and interested in responding to the solicitation. The notice should describe the service and equipment requirements, summarize applicable qualification requirements, announce any presolicitation conference to be held, and specify a date by which the notice must be returned to ensure inclusion on the solicitation mailing list.
- 12.4.4.e *Presolicitation Conference.* The contracting officer may hold a presolicitation conference when appropriate to explain complex or unusual requirements and to identify potential sources. The conference must be announced through a presolicitation notice or a "sources sought" notice.
- 12.4.4.f *"Sources Sought" Notice.* The contracting officer may publish a "sources sought" notice in the *Journal of Commerce* when there are not enough potential offerors on a mailing list to provide adequate competition. The notice should describe the service and equipment requirements, summarize applicable qualification requirements, announce any presolicitation conference to be held and request that a statement of capabilities and interest be returned by a specified date.

- 12.4.4.g *Release of Mailing Lists.* Solicitation mailing lists must be made available to the public in accordance with 1.7.3 and subchapter 350 of the *Administrative Support Manual*. However, no information concerning the use of lists in a particular solicitation, or identification of sources solicited, may be made available to the public prior to award. When it is necessary to dispatch identical information by means of electronic transmission to prospective bidders or offerors, the electronically transmitted message, when released for communications handling, must be marked "Book Message — Transmit a Single Address Message" to prevent addressees from learning the names of others solicited.

12.4.5 Publicizing and Distribution of Solicitations

- 12.4.5.a *General.* Solicitations for competitive procurements must be distributed and publicized in accordance with the requirements of this part 12.4.5. Section 2 of chapter 3 is not applicable, and no other PM requirements for publication of a notice in the *Commerce Business Daily* are applicable.
- 12.4.5.b *Solicitation Notice.* A solicitation notice must be issued for each solicitation, and must be posted in accordance with paragraph d below. The solicitation notice must describe the service and equipment requirements, summarize applicable qualification requirements, state the date and time set for receipt of bids or proposals, and tell how to obtain the complete solicitation package.
- 12.4.5.c *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 bids or proposals.
- 12.4.5.d *Posting*
1. A solicitation notice must be posted for a minimum of 30 days before the date for receipt of bids or proposals, unless precluded by urgency. In case of urgency, the notice must be posted for a minimum of 15 days before the date for receipt of bids or proposals, and must contain a prominent notice stating: "Because of urgency, this notice will be posted for less than 30 days."
 2. For highway or inland domestic water transportation services, the notice must be posted at the route termini, and at any intermediate points. For other modes, the notice must be posted at the facilities served, to the extent practicable, and at such other places as the contracting officer considers appropriate in the interest of obtaining competition.
- 12.4.5.e *Distribution.* The contracting officer must mail the solicitation, or a solicitation notice, to all potential bidders or offerors on the solicitation mailing list (see 12.4.4). The complete solicitation package must be mailed to (1) any incumbent contractor, whether that contractor is performing on a regular, temporary, or emergency contract; (2) any previous bidders or offerors, if the solicitation is a reissuance of a cancelled solicitation; and (3) those requesting the solicitation in response to a notice of availability. For treatment of concerns that are debarred, suspended, or ineligible, see 3.3.2.d.

12.4.6 Procurement Methods

12.4.6.a *Contract Type.* All mail transportation contract types must be one of those listed in 5.1.

12.4.6.b *Contract Term*

1. Except for air and terminal-handling contracts, the term of the contract must be one of the following:
 - (a) *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.
 - (b) *Emergency Contract.* A contract entered into for the duration of an emergency under the authority of 39 U.S.C. 5001.
 - (c) *Temporary Contract.* A short-term contract other than an emergency contract. It may not exceed two years, and may be terminated by either party without entitlement or indemnity.
 - (d) *Seasonal Contract.* During periods such as the Christmas season, seasonal regular and temporary contracts may be awarded. The term of a seasonal contract may encompass less time than a regular or temporary contract.
2. Regular contracts must be used whenever possible.
3. 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 competitively awarded regular contracts as soon as service requirements are firmly established.
4. 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. Emergency contracts are awarded through competition and negotiation, or may be negotiated noncompetitively following the procedures in Management Instruction AS-710-95-7, *Noncompetitive Purchases*. No emergency contract may remain in effect more than six months without the approval of the next-higher level of contracting authority. Circumstances under which emergency contracts may be appropriate include the following:
 - (a) A catastrophic event has interrupted normal transportation operations.
 - (b) Strikes or other labor disputes are causing service interruptions.
 - (c) A mail transportation contractor has been suspended or removed or a contract has been terminated.
 - (d) A sole highway contractor 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 contractors.

12.4.6.c *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 service such as stevedoring, terminal handling, ground drayage between postal facilities and the contractor's facilities, and the like. 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 utilization of the entire aircraft capacity for the transportation of mail. Air taxi contracts are entered into under the authority of 39 U.S.C. 5402(b).
- (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.* Air system contracts call for the transportation of mail to any point within the air carrier's existing transportation system or network.
- (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 or price- related factors, 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 of 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 railroad or highway equipment when the equipment is transported primarily by rail. These contracts may either cover a segment of the particular rail service or may cover the entire rail system or network.
- (c) *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.

International Ocean Transportation Schedule of Rates

Distance (Nautical Miles)	Rate (cents/lb)
0–499	16.0
500–999	16.4
1,000–1,499	16.7
1,500–1,999	17.1
2,000–2,499	17.4
2,500–2,999	17.8
3,000–3,499	18.1
3,500–3,999	18.4
4,000–4,499	18.8
4,500–4,999	19.1
5,000–5,499	19.5
5,500–5,999	19.8
6,000–6,499	20.2
6,500–6,999	20.5
7,000–7,499	20.8
7,500–7,999	21.2
8,000–8,499	21.5
8,500–8,900	21.9
9,000–9,499	22.2
9,500–9,999	22.6
10,000–10,499	22.9
10,500–10,999	23.2
11,000–11,499	23.6
11,500–11,999	23.9
12,000–12,499	24.3
12,500–12,999	24.6
13,000–13,499	25.0
13,500–13,999	25.3
14,000–14,499	25.7
14,500–14,999	26.1

International Ocean Transportation Schedule of Rates

Exhibit 12.4.6

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 contractors 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. *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 contractor or the Postal Service terminal handling facility and are ancillary in nature to the line-haul services performed by other contractors.
5. *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.

12.4.6.d *Procedures*

1. *Competitive Procedures.* Contracts may be entered into using the negotiation procedures listed in 4.2 as modified in this chapter and by sealed bidding under the procedures in 12.7. Contracts awarded using these procedures are competitively awarded.
2. *Noncompetitive Procedures.* Noncompetitive procurements must be justified in writing and approved in accordance with Management Instruction AS-710-95-7, *Noncompetitive Purchases*.
3. *Limited Competitive Procedures.* With the approval of the next higher-level of authority, contracting officers may solicit sealed bids for additional service exclusively from contractors currently serving common termini, providing service to the same intermediate points, from contractors affected by Postal Service operational changes, or from transportation companies with special security clearances.

12.4.6.e *Discussions.* In conducting discussions regarding surface or air contracts involving multiple segments, when segments are evaluated individually or discussions with offerors are conducted sequentially, cut-off dates for receipt of best and final offers (see 4.2.5.g.4) may be staggered to reflect the sequence of discussions.

12.4.6.f *Alternatives to Contracts*

1. *Domestic Air Transportation.* 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 12.4.6, 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 certificated carriers and reimbursed pursuant to Department of Transportation service mail rate orders.

4. *Set-Rate Ordering Agreements.* Set-rate ordering agreements are used when a number of contractors agree to provide specified services at a common rate established by the Postal Service. These agreements may be established as unpriced or prepriced BPAs (see 4.3.5) or as discussed in 5.1.8, and the contracting officer should order services using the most advantageous delivery terms under the circumstances.

12.4.7 **Mistakes in Bids or Proposals**

Procedures for considering mistakes in sealed bids before and after award are set forth in 12.7.6. The procedures in 4.2.3 apply to mistakes in proposals; for mistakes in proposals asserted after award, see 6.5.1.g.

12.4.8 **Protests**

In addition to the requirements of 4.6, the contracting officer must do the following:

- 12.4.8.a Furnish a copy of any protest filed with the contracting officer or the General Counsel, with any accompanying or additional documents received in the course of the protest, to the responsible functional Manager, and the Manager, Transportation Policies and Procedures.
- 12.4.8.b Obtain the concurrence of the responsible functional Manager, and the VP, Transportation, before determining a protest to be without merit.

12.4.9 **Small, Minority-owned and Woman-owned Businesses**

Contracting officers must encourage the participation of small, minority-owned and woman-owned businesses in accordance with 10.1 (except 10.1.4.c) and current Postal Service policy directives.

12.4.10 **Renewal of Contracts**

- 12.4.10.a *General.* Competitively awarded regular and temporary mail transportation contracts including seasonal contracts (see 12.4.6.b.1) may be renewed in accordance with this section by the mutual agreement of the Postal Service and the contractor. Emergency contracts (see 12.4.6.b.1) and 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 contractor) may not be renewed. Wholly subcontracted contracts that are eligible for renewal may be renewed by agreement between the Postal Service and the subcontractor, by which the subcontractor becomes the prime contractor under the renewal contract.
- 12.4.10.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 that existing at the end of the previous contract term.
3. *Contract Rate.* The contract rate at the beginning of the contract term must be the contract rate in existence at the end of the previous contract term.

12.4.10.c *Procedures for Renewal*

1. *Establishing Requirements.* Before entering into negotiations for the renewal of a contract, the contracting officer 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.* Contracting officers should not renew contracts with contractors who are currently providing less than satisfactory service. Faults in service which do not rise to the level of deficiencies which 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 enters into negotiations with the contractor on the terms of the renewal contract. Before agreeing to the terms arrived at in negotiation, the contracting officer 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 (and, in the case of temporary contracts, the next higher-level of contracting authority is obtained), the existing contract is modified to reflect any adjustments in service and rates before the contract is renewed. 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.

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

12.4.11 **Extension of Contracts**

- 12.4.11.a A contract modification extending the term of a contract, as distinct from the renewal of a contract (see 12.4.10), is authorized when determined appropriate by the contracting officer.
- 12.4.11.b The contract term may be extended in increments of up to 180 days, 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 contractor by a supplemental agreement (see 6.5.1.c), and the need for the extension must be documented in the contract file.
- 12.4.11.c Pending full renewal in accordance with 12.4.10, an expiring contract that is eligible for renewal may be renewed for short terms of up to one year by agreement of the parties. The renewal must be made with the consent of the contractor by a written contract modification. 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.

12.4.12 Contract Changes

12.4.12.a General

1. Contracting officers may take action to discontinue, extend, or curtail contracts; to change and restate service required; and to increase or decrease frequencies.
2. The contracting officer must carefully consider the effect of any proposed contract change. The contracting officer may not authorize any change contingent on or related to a change in another contract service without the concurrence of the contracting officer responsible for the other service.

12.4.12.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 contracting officer must provide notice in writing to the contractor. The contractor 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 contractor. In these instances, if the contractor 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 contractor.
3. It is the policy of the Postal Service to furnish contractors 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 contractor may be notified by letter of intent to discontinue in advance of issuing a formal notice. In the case of highway or inland domestic water routes, the termination notice must indicate that the termination may be appealed to the next-higher level of contracting authority.

12.4.12.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 or decrease 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 or decreases the contractor's rate of pay by no more than \$1,000.
- (iii) A significant minor service change is one that increases or decreases the contractor's rate of pay by more than \$1,000.

- (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 contractor may be ordered by the contracting officer as a unilateral contract modification (see 6.5.1.c.2). They do not require the contractor'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 contractor 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 contractor; 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 the Claims and Disputes Clause.
 - (2) *Significant Minor Service Change.* Significant minor service changes are made by contract modification, incorporating a price adjustment, with the agreement of the contractor.
 - (3) *Major Service Change.* Major service changes are negotiated with the contractor and effected by contract modification. The contracting officer must obtain the approval of the next higher-level of contracting authority, before negotiating major service changes. When determining whether or not to recommend or approve the negotiation of a major service change, the contracting officer and the next higher-level of contracting authority must take into consideration indemnity liability, the contractor'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 next higher-level of contracting authority, the old service may be terminated and the new service procured.
1. *Other Surface Contracts and Air Contracts.* Service changes for contracts other than those discussed in subparagraph c.1 above 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.

12.4.12.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 negotiate with contractors to establish the rate to be paid for exceptional service before its performance.

When negotiation in advance would delay the mail or otherwise not be feasible, the contracting officer or a designated representative may order the contractor to perform such service at pro-rata pay.

3. If no rate of pay for exceptional service has been negotiated in advance, the contractor 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 the *Claims and Disputes* clause.

12.4.12.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 contractors, subcontractors, or drivers unless the change will in no way be detrimental to the Postal Service. The contracting officer must consider the following before making schedule changes:
 - (a) *Financial effect on the contractor.* 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 contractors or customers.* Arbitrary action should be avoided and reasonable effort should be made to work out arrangements satisfactory to contractors.
 - (c) *Schedule realism.* Schedules may not be set that would require running times in violation of established speed limits.
2. The contracting officer must ensure that schedule changes are coordinated with all those responsible for other affected services.

12.4.12.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 next-higher level of contracting authority.

12.4.13 **Subcontracting**

12.4.13.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 contractor 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 contractor 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 contractor 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 contracting officer.
3. Subcontracting is an exceptional action and may be approved only when the contractor offers good and sufficient reasons. The contractor must request permission to subcontract in writing, giving the contracting officer 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 contractor of a subcontract does not release the contractor from its contractual obligations, nor from liability for damages.
5. Whenever the contracting officer determines that a contractor 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 contractor.
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 contractor'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. No further increased operation costs may be recognized as the basis for adjusting compensation during the first seven accounting periods after the effective date of the subcontract.
8. When a subcontract is terminated, the prime contractor 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 contractor of the subcontractor irregularities. The contracting officer may (1) require removal of the subcontractor for failure to perform, and require the prime contractor to resume route operations, (2) terminate the prime contract for default.

- 12.4.13.b *Other Surface Contracts and Air Contracts.* For other surface contracts and air contracts whose terms permit subcontracting, the contractor must give the contracting officer advance notice of its intent to subcontract. The contractor 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.

12.4.14 **Release of Contractor**

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

12.4.15 **Service Deficiencies**

- 12.4.15.a *Damages.* The contracting officer may make deductions from the compensation due contractors 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. Contractors 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 contractor. Contractors 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 contractor or any of the contractor's officers, agents, or employees, or (2) the failure of the contractor or any of the contractor's officers, agents, or employees to exercise due care in the custody, handling, or transportation of the mail.
- 12.4.15.b *Breach Not Warranting Termination.* When a contractor has committed a breach of the contract not sufficiently serious to warrant termination, the contractor may be assessed damages in an amount determined by the contracting officer, in accordance with the terms of the contract.
- 12.4.15.c *Loss or Damage to Mail.* When a contractor, or contractor's agent or employee, permits loss or damage to the mail, the contracting officer may withhold from the contractor's compensation as damages the value of the mail lost or damaged plus administrative costs of handling the irregularity.
- 12.4.15.d *Contractor with Several Contracts.* When a contractor 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 contractor until such fines and damages have been recovered.

12.4.16 **Death or Incompetence of Contractor**

- 12.4.16.a *Individual.* 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). 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.

1. 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 contractor is responsible for performance of the service.
 2. The death of a sole proprietor terminates the contract, and the estate has no obligation to continue to provide the service.
 3. The representative of the estate may operate the route with the consent of the contracting officer. If there is reason to deny consent, the contracting officer must promptly submit a full written report to the next-higher level of contracting authority for determination. The contracting officer must document the file with evidence of the representative's authority to represent and assume control of the contractor's business.
 4. 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 contractor. Any such application must be approved at the next-higher level of contracting authority before reinstatement.
- 12.4.16.b *Partnership.* When the contractor 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.
- 12.4.16.c *Administration*
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 12.4.13.
 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 must procure emergency service and issue a solicitation for a new contract for permanent service.
 5. Procedures for processing payments to deceased or incompetent contractor are described in the MTPH.

SECTION 5 CONTRACTOR QUALIFICATIONS

12.5.1 Eligibility Requirements for Contractors

- 12.5.1.a 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 contracts entered into under this chapter.
- 12.5.1.b 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.
- 12.5.1.c Solicitations may establish other eligibility requirements as needed.

12.5.2 Service Employees

- 12.5.2.a The following persons are ineligible to perform services under a contract:
 1. Persons on parole or under suspended sentence for commission of a felony.
 2. Persons with known criminal records that involve convictions for offenses involving moral turpitude or dishonesty.
 3. Persons who associate with convicted felons.
 4. Persons known to engage in the illegal use, possession, sale, or transfer of narcotics or other drugs.
 5. Persons who knowingly submit false data or conceal data for the purpose of gaining employment.
 6. Persons whose traffic records indicate that their driving motor vehicles would be hazardous (applies only to drivers and assistants).
 7. Pilots with unsatisfactory aircraft-operations safety- performance records.
 8. Persons who through their abusive or disruptive behavior would pose a danger to fellow workers.
- 12.5.2.b Contractor employees engaged in the performance of services under a contract must meet the following requirements:
 1. Drivers of vehicles with a GVW of 10,000 lbs. or more must be at least 21 years old. All other drivers must be at least 18 years old.
 2. Employees other than drivers must be of suitable age for the duties required.
 3. They must be of good character, reliable, and trustworthy.
 4. They must be sufficiently educated to enable them to perform all required duties in a satisfactory manner.

12.5.3 Screening

- 12.5.3.a No contractor, subcontractor, or employee of a contractor 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.
- 12.5.3.b Except for those categories of persons identified in paragraph c 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 the MTPH and in any applicable Management Instruction.

12.5.3.c *Exceptions*

1. Persons employed by contractors 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.

12.5.3.d The contracting officer will notify the contractor of the grounds on which any person has been denied access to the mails under the procedure set out herein.

12.5.3.e Any decision as to whether a contractor, 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 12.5.1 and 12.5.3.

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

SECTION 6 CONTRACT ADMINISTRATION

12.6.1 **General**

The contracting officer is responsible for monitoring contract performance in a manner appropriate to ensure that the contractor provides all services and equipment required under the terms of the contract (see 6.1.2).

12.6.2 **Unsatisfactory Service**

The contracting officer must take necessary action to correct any problem caused by unsatisfactory contractor performance. If the remedies and damages provided in 12.4.15 are insufficient, termination for default should be considered.

12.6.3 **Major Irregularity**

A major irregularity is an action or service deficiency requiring summary suspension or removal of the contractor 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 contractor. Suspension may be with or without pay, as provided in the contract.

SECTION 7 ADVERTISED CONTRACTS

12.7.1 General

This section contains special requirements for advertised contracts. The procurement of mail transportation services by advertising for sealed bids is usually appropriate when the specifications are clear and uncomplicated and a fixed-price contract will be awarded on the basis of the lowest evaluated price submitted by a responsible bidder whose bid is responsive to the terms of the solicitation. Advertised procurement may not be used when only one source is known to be available in the geographic area covered by the transportation requirement to be solicited. The contracting officer must document the file showing that only one source is available.

12.7.2 Disclosure of Procurement Information

12.7.2.a *Before Solicitation.* Information concerning proposed procurements must not be released outside the Postal Service before solicitation of bids, except for information disclosed in resolicitation notices, "sources sought" notices, or presolicitation conferences (see 12.4.4.d-f). Within the Postal Service, such information must be restricted to those having a legitimate interest.

12.7.2.b *After Solicitation*

1. After issuance of a solicitation, only the contracting officer, the contracting officer's superiors having contractual authority, and others they specifically authorize may communicate or transmit information concerning the solicitation.
2. Any information given to a prospective bidder concerning a solicitation must be furnished promptly to all other prospective bidders as an amendment to the solicitation, if the information is needed for the preparation of bids or if lack of it would be prejudicial to uninformed bidders.
3. General information that would not give any prospective bidder an advantage over others may be furnished upon request, such as an explanation of a clause, a procedural requirement, or a provision of the solicitation. If it becomes apparent that an ambiguity must be clarified or an error corrected, the solicitation must be amended.

12.7.3 Solicitations

12.7.3.a *Forms.* Solicitations must be issued using Form 7435, *Solicitation for Transportation Services Contract*. A solicitation package, consisting of the

solicitation and all specifications, forms, and informational documents needed to enable the preparation of a responsive bid, must be furnished to any prospective bidder upon request (see 12.4.4 and 12.4.5).

12.7.3.b *Contents.* Solicitations must contain the following information, as applicable, and any other information needed for a particular procurement:

1. Solicitation number, date of issuance, and name and address of issuing activity.
2. Date, hour, and place of opening.
3. Specifications describing the services and equipment to be furnished, and delivery or performance requirements.
4. Permission, if any, to submit telegraphic bids (see subparagraph d.1 below).
5. A notice that bids may not allow less than 60 days for acceptance, using a provision substantially as follows:

Bid acceptance period. Bids offering less than 60 days for acceptance by the Postal Service from the date set for opening will be considered nonresponsive and will be rejected.
6. A statement of any special bidder qualification requirements.
7. Directions for obtaining any specifications or other documents incorporated by reference.
8. Place, methods, and conditions of inspection by the Postal Service.

12.7.3.c *Bidding Time.* Consistent with Postal Service needs, all solicitations must allow sufficient time between the date of issuing a solicitation and the date and time set for receipt of bids to permit prospective bidders to prepare and submit bids. Except in cases of urgency, bidding time should be no less than 30 days.

12.7.3.d *Telegraphic and Facsimile Bids*

1. *Telegraphic Bids.* When the bidding time will not allow sufficient time for bidders to prepare and submit bids on the prescribed forms, telegraphic bids may be authorized. When telegraphic bids are authorized, the solicitation must contain the following provision:

Telegraphic bids. Telegraphic bids may be submitted in response to this solicitation. Telegraphic bids must be received in this office not later than the date and time specified for receipt of bids. Such bids must specifically refer to this solicitation; must include the item or sub-items, quantities, and unit to this solicitation; must include the item or sub-items, quantities, and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the solicitation together with a statement that the bidder agrees to all the terms, conditions, and provisions of the solicitation. Failure to furnish, in the telegraphic bid, the representations and information required by the solicitation may result in rejection of the bid. Signed bids on the prescribed forms must be furnished in confirmation of telegraphic bids.

2. *Facsimile Bids.* The electronic transmission of bids, bid modifications, and withdrawals of bids to the purchasing office by facsimile equipment are not authorized. Electronically transmitted bids, bid modifications, and withdrawals of bids that are hand-delivered to the purchasing office may be accepted, provided that signed forms are furnished in confirmation.

- 12.7.3.e *Amendment of Solicitations.* If it becomes necessary to make changes in a solicitation in matters such as specifications, delivery requirements, or date for receipt of bids, or to clarify or correct ambiguities or defects, a solicitation amendment must be issued. A solicitation amendment must be issued in sufficient time to permit bidders to consider it in submitting or modifying their bids. When it is necessary or desirable to give preliminary notification of a change by telephone or telegram, confirmation by written amendment must follow. The amendment must be sent to all prospective bidders that received the solicitation, and must be posted in the bid room and the same places as the solicitation.
- 12.7.3.f *Cancellation Before Opening.* A solicitation may not be canceled unless cancellation is necessary in the interest of the Postal Service, as when there is no longer a requirement for the services, or when amendments to the solicitation would be of such magnitude that a new solicitation would be preferable. A notice of cancellation must be sent to all prospective bidders receiving the solicitation, explaining the reasons for cancellation. Any bids received must be returned to the bidders unopened.

12.7.4 **Bids**

- 12.7.4.a *Responsiveness.* To be considered for award, bids must comply in all material respects with the solicitation requirements. Bids must be completed, signed, and submitted in accordance with instructions contained in the solicitation.
- 12.7.4.b *Time of Submission.* Bids must be submitted so as to be received in the office designated in the solicitation not later than the exact time set for receipt of bids. When telegraphic bids are authorized, a telegraphic bid received in the designated office by telephone from the receiving telegraph office not later than the time set for receipt of bids may be considered if such bid is confirmed by the telegraph company by sending a copy of the telegram that formed the basis for the telephone call.
- 12.7.4.c *Late Bids.* Bids received in the office designated in the solicitation after the exact time set for receipt are late bids, and may be considered for award only in the following circumstances (as provided in the *Late Submissions, Modifications, and Withdrawals* provision of the solicitation):
1. Bids and modifications or withdrawals of bids received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless they are received before award is made and either:
 - (a) They were sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt;
 - (b) They were sent by Express Mail service (post office to addressee) not later than the second calendar day (excluding Saturdays, Sundays, and federal holidays) before the date specified for receipt; or
 - (c) They were sent by mail (or telegram if authorized), or delivered by other means to the precise depository prescribed in the solicitation, and it is determined by the contracting officer that the late receipt was due solely to mishandling after receipt by the office designated to receive bids.
 2. The only acceptable evidence to establish:
 - (a) The date of mailing under 1(a) above is a legible, original postmark supplied and affixed on the date of mailing by Postal Service employees on the bid wrapper or on the original receipt given therefor;

- (b) The date of mailing under 1(b) above is the date entered on the Express Mail label by the post office receiving clerk; or
 - (c) The time of receipt under 1(c) above is the date/time stamp of the receiving activity on the bid wrapper or other contemporary, documentary evidence of receipt maintained by the activity.
 - 3. Notwithstanding the above, a modification of an otherwise successful bid that makes its terms more favorable to the Postal Service will be considered at any time it is received and may be accepted.
- 12.7.4.d *Notification of Late Bidders.* When a late bid is received and it is clear that under paragraph c above it cannot be considered for award, the contracting officer must promptly notify the bidder that it was received late and will not be considered. However, when a late bid is transmitted by registered or certified mail or Express Mail service and is received before award, but it is not clear from available information whether it can be considered, the late bid must be left unopened and the bidder must be promptly notified that the bid cannot be considered for award unless the contracting officer receives:
 - 1. In the case of registered or certified mail, the original post office receipt showing a date of mailing not later than the fifth calendar day before the date specified for receipt; or
 - 2. In the case of Express Mail post office to addressee service, the Express Mail service customer receipt endorsed by the post office receiving clerk to show a date of mailing not later than the second calendar day (excluding Saturdays, Sundays, and federal holidays) before the date specified for receipt.
- 12.7.4.e *Disposition of Late Bids.* A late bid that is not being considered for award must be held unopened until after award and then returned to the bidder (unless other disposition is requested or agreed to by the bidder). However, an unidentified late bid may be opened solely for purposes of identification as provided in paragraph i below.
- 12.7.4.f *Late Bid Record.* The following must, if available, be included in the solicitation file for each late bid:
 - 1. The date and hour of mailing or filing.
 - 2. The date and hour of receipt.
 - 3. A determination of whether or not the late bid was considered for award, with supporting facts.
 - 4. A statement of the disposition of the late bid.
 - 5. The envelope, or other evidence, if the late bid was considered for award.
- 12.7.4.g *Modification or Withdrawal of Bids*
 - 1. Bids may be modified or withdrawn by written or telegraphic notice submitted so as to be received in the office designated in the solicitation not later than the exact time set for the receipt of bids. A telegraphic modification or withdrawal of a bid received in the designated office by telephone from the receiving telegraph office not later than the time set for the receipt of bids may be considered if the telephone message is confirmed by the telegraph company by sending a copy of the telegram that formed the basis for the telephone call. Modifications received by telegram, including a record of those telephoned by the telegraph company, must be sealed in an envelope by a representative of the contracting officer, who must write on the envelope the date and time of receipt and by whom, the solicitation number, and his or

her signature. No information concerning modifications or withdrawals of bids may be disclosed before the date and time set for the receipt of bids.

2. A bid may be withdrawn in person by a bidder or the bidder's authorized representative, provided his or her identity is made known and he or she signs a receipt for the bid, but only if the withdrawal is before the exact time set for receipt of bids.

12.7.4.h *Late Modifications and Withdrawals.* Modifications and withdrawals of bids received in the office designated in the solicitation after the exact time set for the receipt of bids are late and subject to the rules for late bids in paragraph c above. However, a late modification of the otherwise successful bid must be opened whenever received; if the late modification makes the terms of the bid more favorable to the Postal Service, it must be considered. Notification of bidders sending late modifications and withdrawals must be given in the same manner as for late bids (paragraph d above).

12.7.4.i *Unidentified Bids.* Whenever an unidentified or incorrectly identified envelope is found to contain a bid, the person opening the bid must immediately deliver it to a bid custodian (see paragraph j below). The custodian must (1) write on the envelope an explanation of the opening, the date and time opened, and the solicitation number; (2) sign the envelope and reseal it; and (3) place it in the bid storage container.

12.7.4.j *Receipt and Safeguarding of Bids.* The contracting officer must designate two responsible Postal Service employees who perform little or no travel, and who are not responsible for day-to-day administration of contracts, to receive and maintain custody of bids before their release to the opening committee. A suitable container with key or combination lock must be used to store the bids. Access to the container must be restricted to the two custodians, one of whom must:

1. Note the time of receipt and the solicitation expiration date on the bid envelopes. If envelopes are received damaged or open, seal them and mark *damaged* or *open when received*, as appropriate. If tampering is indicated, submit the facts with the envelope to the postal inspector in charge. When envelopes are not properly endorsed, open them and determine the intended solicitation, reseal, and complete the envelope endorsement. If outer envelopes are marked to indicate that they contain bids for several solicitations, open them and complete the envelope endorsement for each bid on its inner envelope. Place all envelopes in the locked container.
2. Prevent unauthorized opening of envelopes endorsed as containing bids and the disclosure of bids while in their custody.
3. Not accept bids presented in person unless sealed in an envelope properly endorsed; not examine such bids while the solicitation is pending.
4. When a solicitation is canceled, return any bids received, unopened, with a copy of the cancellation notice.
5. When a written withdrawal notice is received from a bidder before the date and time set for the receipt of bids, return the bid unopened and retain the withdrawal notice with the remaining bids. Accept any substitute bid presented by the withdrawer before the date and time set for the receipt of bids and treat it as any other bid received.
6. Furnish bids, unopened, only to the opening committee (see 12.7.5.a) on the date of opening, with Form 7436, *Abstract of Bids or Proposals Received—Transportation Services Contract*.

12.7.5 Opening of Bids

12.7.5.a *Opening Committee.* The contracting officer must appoint a committee of three or more responsible Postal Service employees, at least one of whom must be from the office of the contracting officer, to open bids in the presence of bidders and other interested persons. Two or more members of the committee must, after the exact time set for the receipt of bids, open all bids received before that time, and when practicable, read them aloud to the persons present and have them recorded. The original of each bid must be carefully safeguarded until the abstract of bids has been made and its accuracy validated.

12.7.5.b *Postponement of Opening*

1. A bid opening may be postponed without advance notice when:
 - (a) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (such as flood, fire, accident, weather conditions, or strikes);
 - (b) An emergency or unanticipated events interrupt normal Postal Service operations so that the conduct of the bid opening as scheduled is impracticable; or
 - (c) The contracting officer determines that there are other circumstances warranting postponement of the bid opening in the interest of the Postal Service.
2. Whenever the contracting officer determines to postpone a bid opening for the reasons in subparagraphs 1(a) or (c) above, an announcement of the determination must be publicly posted and, if practicable, communicated to prospective bidders likely to attend the rescheduled bid opening, in addition to issuing a solicitation amendment.
3. If events of the sort contemplated by subparagraph 1(b) above occur, but the bid opening committee determines that the delay incident to the postponement of bid opening by amendment or notice is not in the interest of the Postal Service, the committee may proceed with the bid opening as soon as practicable after the time set for receipt of bids without amendment or notice to bidders. In such a case, the time set for receipt of bids will be deemed to be the actual time of bid opening for the purpose of determining late bids (see 12.7.4.c).

12.7.5.c *Recording of Bids*

1. The bid custodians (see 12.7.4.j) must complete Form 7436, *Abstract of Bids or Proposals Received — Transportation Services Contract*, except for names of bidders and their rates, and furnish it, with all bids received, to the opening committee at the time set for bid opening.
2. The opening committee must open and read aloud the bids and complete Form 7436 by entering on it the names of the bidders and their rates. For air-taxi solicitations, they must also record each bidder's Federal Aviation Administration certificate number, the name and title of the person signing the bid, and the name, model, and any modification of the aircraft proposed for use. After the abstract of bids has been completed and its accuracy verified, examination of the abstract by persons present at the bid opening is permitted if it does not unduly interfere with or delay the conduct of Postal Service business; the bids themselves may not be examined by the public.

The committee members must sign the abstract and turn it and the bids over to the contracting officer.

- 12.7.5.d *Distribution of Abstract.* After ensuring its accuracy, the contracting officer must mail a copy of Form 7436 to each bidder. Copies of the abstract furnished to the bidders, and to other members of the public requesting it, must not contain annotations or information regarding debarment, suspension, or ineligibility of bidders; failure to meet standards of responsibility or other qualifications; apparent collusion or other misconduct; the reasons for rejecting a low bid; or other information not proper for disclosure.

12.7.6 Mistakes in Bids

- 12.7.6.a *Minor Informalities or Irregularities.* A minor informality or irregularity is one that is merely a matter of form or is some immaterial variation from the exact requirements of the solicitation, having no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of the bidders or be otherwise prejudicial to them. The contracting officer must either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive any such deficiency when it is to the advantage of the Postal Service. Examples of minor informalities or irregularities include the following:

1. Failure of a bidder to return the number of copies of signed bids required by the solicitation.
2. Failure of a bidder to sign its bid, but only if:
 - (a) The firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature; or
 - (b) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission with the bid of a letter signed by the bidder referring to and clearly identifying the bid itself.
3. Failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if the bid clearly indicates that the bidder received the amendment or the amendment clearly would have no effect or negligible effect on price, quality, quantity, performance, or the relative standing of bidders.

12.7.6.b Mistakes

1. *Mistakes Discovered Before Award.* After the opening of bids, the contracting officer must examine all bids for mistakes. In cases of apparent mistakes, and when the contracting officer has reason to believe that a mistake may have been made, he or she must request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter must be handled as in subparagraphs 2 and 3 below, before award of a contract.
2. *Apparent Clerical Mistakes Discovered Before Award.* Any clerical mistake apparent on the face of a bid, such as an obvious error in placement of a decimal point, may be corrected by the contracting officer before award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. Correction of the bid must be made

by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction must be made on the face of the bid and reflected in the award document. The contracting officer must annotate the abstract of bids, Form 7436, to show the correction.

3. *Other Mistakes Discovered Before Award*

- (a) The contracting officer is authorized to make the following administrative determinations in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and before award:
 - (1) When the bidder requests permission to withdraw a bid and clear and convincing evidence establishes the existence of a mistake, a determination permitting the bidder to withdraw the bid may be made.
 - (2) However, if the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.
 - (3) When the bidder requests permission to correct a mistake in its bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, if such correction would result in displacing one or more lower bids, the determination may not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the solicitation and the bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw its bid may be made.
 - (4) When the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.
- (b) If the contracting officer has reason to believe that a mistake may have been made, he or she must immediately contact the bidder in question calling attention to the suspected mistake, and request verification of the bid. The action taken to verify bids must be sufficient to either (1) reasonably assure the contracting officer that the bid as confirmed is without error, or (2) elicit the anticipated allegation of a mistake by the bidder. To ensure that the bidder concerned is put on notice of a mistake suspected by the contracting officer, the bidder must be advised, as appropriate, of (1) the fact that its bid is so much lower than the other bids or the Postal Service estimate as to indicate a possibility of error, (2) important or unusual characteristics of the specifications, (3) changes in requirements from previous similar procurements, or (4) other data proper for disclosure to the bidder giving notice of the suspected mistake. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer must request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time, the bid must be considered as originally submitted.

- (c) If the bid is verified, the contracting officer must consider the bid as originally submitted. If the bidder alleges a mistake either voluntarily or as a result of the contracting officer's inquiry, the contracting officer must instruct the bidder to make a written request indicating its desire to withdraw or modify the bid. The request must be supported by statements describing the alleged mistake and must include all pertinent evidence such as the bidder's original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published rates, and any other evidence that conclusively establishes the existence of the mistake, the manner in which it occurred, and the bid actually intended.
- (d) If the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer must consider the bid as submitted, except that the bid must be rejected if:
 - (1) The amount is so far out of line with the amounts of other bids received, with the Postal Service estimate, or an amount determined by the contracting officer to be reasonable, that award would be unfair to the bidder or to other bidders; or
 - (2) There are other indications of error so clear as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bidders, or that the price is so unrealistic as to endanger performance.

The contracting officer must take into account the bidder's competence and experience in making a determination under this subparagraph (d). The attempts made to obtain the information required and the action taken must be fully documented.

- (e) The contracting officer's proposed determination must be submitted for review by assigned counsel and approval by the next-higher level of contracting authority before issuance. The contracting officer must forward the proposed determination for review together with the following:
 - (1) A signed copy of the bid involved.
 - (2) A copy of the solicitation and any specifications relevant to the alleged mistake.
 - (3) A copy of the abstract of bids, Form 7436.
 - (4) A written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and evidence (such as worksheets or other data used in preparing the bid) supporting (i) the existence of the mistake; (ii) the manner in which it occurred; and (iii) the bid actually intended.
 - (5) A written statement by the contracting officer setting forth (i) a description of the equipment and services involved; (ii) the expiration date of the bid in question and of the other bids submitted; (iii) specific information as to how and when the mistake was alleged; (iv) a summary of the evidence submitted by the bidder; (v) if only one bid was received, as statement as to the most recent contract price for the equipment and services involved, or, in the absence of a recent contract, the contracting officer's estimate of a fair price; and (vi) any additional evidence considered pertinent.

4. *Mistakes Alleged After Award*

- (a) When a mistake in bid is not alleged until after the award, the mistake may be corrected by an appropriate contract modification, if correcting the mistake would make the contract more favorable to the Postal Service without changing the essential requirements of the specifications.
- (b) The contracting officer, subject to the review and approval requirements of subparagraph (d) below, may rescind or modify a contract to correct or mitigate the effect of a mistake when the evidence is clear and convincing that:
 - (1) A mistake in the bid was made by the contractor; and
 - (2) The mistake was mutual or the contracting officer was, or should have been, on notice of the mistake before the award; and notice of the mistake is received by the contracting officer before final payment.
- (c) When a mistake in bid is alleged after award, the contracting officer must instruct the contractor to support the alleged mistake by written statements and by all pertinent evidence, such as original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published rates, and any other material that will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.
- (d) The contracting officer's proposed determination must be submitted for review by assigned counsel and approval by the next-higher level of contracting authority. The proposed determination must be accompanied by (1) all evidence furnished by the contractor, (2) a copy of the contract and any change orders or supplemental agreements, (3) the information required by subparagraph 3(e) above as it pertains to mistakes discovered after award, and (4) the contracting officer's opinion as to whether a bonafide mistake was made and whether the contracting officer was, or should have been, on notice of any mistake in the bid before award, together with supporting reasons and information.
- (e) If the contracting officer proposes to deny, in whole or in part, a claim of mistake asserted after award, the matter must be handled in accordance with the *Claims and Disputes* clause of the contract.

12.7.7 **Evaluation and Award**

12.7.7.a *General*

1. Unless all bids are rejected, award must be made by the contracting officer, within the specified time for acceptance, to the responsible bidder whose bid, conforming to the solicitation, provides the lowest rate to the Postal Service. Notification of award must be made by mailing or otherwise furnishing to the bidder a copy of the contract form and a properly executed copy of Form 7409, *Notice of Acceptance — Transportation Services Bid or Proposal*. Form 7409 must be accompanied by such documents, and distributed in such manner, as specified in the MTPH for the particular type of contract awarded.

2. If award must be delayed beyond the bid acceptance period, the several lowest bidders must be requested, before expiration of their bids, to extend the bid acceptance period in writing, to avoid any need for resolicitation.
3. The contracting officer must annotate Form 7436, *Abstract of Bids or Proposals Received — Transportation Services Contract*, to explain the basis for any award to other than the bidder offering the lowest rate.

12.7.7.b *Equal Low Bids*

1. When the lowest acceptable bids are at the same rate, award must be made in the following order of preference:
 - (a) To the incumbent contractor.
 - (b) To the bidder currently providing similar services satisfactorily.
 - (c) To the bidder that has satisfactorily provided the same or similar services within the previous 12 months.
 - (d) To the bidder that is a minority-owned or woman-owned business.
 - (e) To the bidder that is a small business.
2. If application of the rule in subparagraphs a–e above does not break the tie, selection for award must be by a drawing of lots, witnessed by at least three Postal Service employees. The drawing may be attended by the bidders or their representatives.
3. The contracting officer must annotate the abstract of bids, Form 7436, to show the basis used for breaking the tie. If the award is determined by a drawing of lots, the names and titles of the three witnesses and the person supervising the drawing must be entered on the abstract.

12.7.7.c *All-or-None Qualifications.* Unless the solicitation provides otherwise, a bid is made nonresponsive by the fact that the bidder specifies that award will be accepted only on a specified group of the segments of service included in the solicitation.

12.7.7.d *Rejection of Individual Bids*

1. Any bid that fails to conform to the essential requirements of the solicitation must be rejected (see 12.7.4.a). A bid must be rejected if the bidder imposes conditions that would modify any substantive solicitation requirement, limit the bidder's liability, or limit the Postal Service's rights. See 12.7.6.a for handling of minor informalities or irregularities not requiring rejection of bids.
2. Any bid from a person or concern determined to be nonresponsive (see 3.3.1.e), including any person or concern that is debarred, suspended, or ineligible (see 3.3.2), must be rejected.
3. Any bid that is excessive in amount must be rejected. For a bid to be considered excessive, it must state a rate that is unreasonably high for the service called for in the solicitation. Rate reasonableness should be determined by comparison with prevailing rates for similar service in the same area, and with the cost of the service currently being operated on the route, all as adjusted to reflect any unique or changed circumstances.
4. When a bid is rejected, the contracting officer must give the bidder prompt written notification, in no event later than the date of contract award, stating the reason for rejection.
5. The original copy of any rejected bid, and the contracting officer's written reason for rejection, must be retained in the solicitation file.

12.7.7.e *Cancellation of Solicitation After Opening*

1. To preserve the integrity of the advertised sealed bidding system, award must be made to the responsible bidder submitting the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. Every effort must be made to ensure that changes in requirements so significant as to require cancellation of a solicitation are identified in advance of the bid opening, so that the solicitation may be canceled before the bidders' rates are disclosed. Consistent with this, a solicitation may be canceled after the opening of bids only when the contracting officer with the concurrence of the next higher level of contracting authority determines in writing that:
 - (a) Inadequate or ambiguous specifications were cited in the solicitation;
 - (b) Specifications have been revised;
 - (c) The services being procured are no longer required;
 - (d) All otherwise acceptable bids received are excessive in amount (see subparagraph d.3 above);
 - (e) There are indications that the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see 1.8.2 for required report); or
 - (f) For other reasons, cancellation is clearly in the interest of the Postal Service.
2. Cancellation of a solicitation after opening must be accomplished by issuance of a solicitation amendment stating the reason for the cancellation.

- 12.7.7.f *Notification of Bidders.* The contracting officer must mail a notice to all unsuccessful bidders at the time of contract award, identifying the successful bidder and the annual rate, in the format illustrated in the MTPH. See subparagraph d.4 above for notification requirements for rejected bids.

12.7.8 **Records**

The solicitation, the solicitation mailing list, the abstract of bids, the original copies of all rejected and unsuccessful bids, a copy of the successful bid, any written determinations regarding late bids, mistakes in bids, and rejection of bids, and copies of any notifications to bidders and other correspondence, must be retained by the contracting officer in the solicitation file, and must be made available for inspection by the Inspection Service.