

Chapter 4

Purchasing Methods

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Chapter 4 Purchasing Methods

SECTION 1 TYPES OF PURCHASING METHODS

4.1.1 Standard Purchasing

Standard purchasing is the competitive procurement of goods and services made under procedures other than those applicable to simplified or local buying procedures. Further exceptions may be made for the categories of contracts described in chapters 8, 11, and 12, as provided in those chapters.

4.1.2 Simplified Purchasing

Simplified purchasing procedures should be used as described in 4.3.

4.1.3 Local Buying

Local buying is the local purchase of, and payment for, day-to-day operational needs. Local buying authorities are shown in exhibit 1.5.2.c. Procedures are discussed in Administrative Support Manual (ASM) 713.

4.1.4 Noncompetitive Purchasing

Noncompetitive purchasing is the purchase of goods and services from one source without competition (see 4.4).

SECTION 2 STANDARD PURCHASING

4.2.1 General

4.2.1.a *Policy.* Purchases must be made on the basis of adequate competition whenever feasible (see 1.7.2).

4.2.1.b *Applicability.* This section applies to all purchases except those made using (1) simplified procedures (see 4.3); (2) using noncompetitive procedures (see 4.4); and (3) using local buying procedures (see ASM 713).

4.2.2 Solicitations

- 4.2.2.a *Preparation of Solicitations.* Solicitations must be prepared in accordance with appendix A.
- 4.2.2.b *Proposal Time.* Consistent with specific purchase requirements, all solicitations must allow sufficient time for offerors to prepare and submit proposals, normally not less than 15 days when purchasing standard commercial products and not less than 30 days in other cases.
- 4.2.2.c *Telegraphic Proposals.* When the date for receipt of proposals will not allow offerors sufficient time to prepare and submit proposals on the prescribed forms, or when prices are subject to frequent changes, telegraphic proposals may be authorized by including Provision A-17, *Telegraphic Proposals*, in the solicitation.
- 4.2.2.d *Method of Solicitation.* Solicitations must be mailed or otherwise provided to prospective offerors on the mailing list (see A.3), including, for a follow-on procurement, the incumbent contractor.
- 4.2.2.e *Posting and Synopsis.* Solicitations must be posted in the public area of the purchasing activity and synopsized in the *Commerce Business Daily* in accordance with 3.2.2.
- 4.2.2.f *Availability of Solicitations.* Except as provided in paragraph g below, the purchasing office must maintain a reasonable number of copies of solicitations to be provided to prospective offerors upon request as long as they are available. When competition is restricted (see 3.1.6.b and c), solicitations must be provided upon request, but firms not meeting the eligibility criteria must be informed of the restrictions on the competition. Solicitations must be furnished to publishers, trade associations, information services, and others upon request, as long as copies are available.
- 4.2.2.g *Voluminous Solicitations.* When a solicitation package is so voluminous that it is impracticable to reproduce copies for distribution to all those requesting it, a limited number of copies must be made available for sale for a fee amounting to the cost of reproduction. If the solicitation is synopsized, the synopsis must identify a location at which the solicitation package may be examined, and the fee to be paid to obtain a copy.
- 4.2.2.h *Preproposal Conference.*
1. Whenever circumstances suggest that it would be useful, such as when a solicitation has complicated specifications or requirements, a preproposal conference may be held to brief prospective offerors.
 2. If the need for a preproposal conference is foreseen, notice of the conference should be given in the solicitation. Otherwise, all prospective offerors that received the solicitation must be given written notice of the time, place, nature, and scope of the conference. If time allows, prospective offerors should be instructed to submit written questions in advance, so that prepared answers can be distributed at the conference.
 3. The contracting officer or a designated representative must conduct the conference, with the assistance and participation of technical and legal personnel as appropriate.
 4. A record of the conference must be furnished to all prospective offerors that received the solicitation.

5. Conferees must be informed that statements and explanations at the conference do not change any terms, specifications, or other requirements of the solicitation, which may be changed only by a written amendment.

4.2.2.i *Amendment of Solicitations*

1. If it becomes necessary to make changes in a solicitation in matters such as quantity, specifications, delivery schedule, or date for receipt of proposals, or to clarify or correct ambiguities or defects, a solicitation amendment must be issued. As to amendments affecting a Technical Data Package (TDP), see 2.3.3.
2. An amendment must be issued in sufficient time to permit affected offerors to consider it in submitting or modifying their proposals. When it is necessary to give notification of a change by telephone or telegram, confirmation by written amendment must follow.
3. In deciding which offerors are affected by a change, the contracting officer must consider the stage of the procurement, as follows:
 - (a) If proposals are not yet due, the amendment must be sent to all prospective offerors that received the solicitation, and posted in the same place as the solicitation.
 - (b) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment must be sent to the responding offerors.
 - (c) If the competitive range (see 4.2.5.g.2) has been established, and the amendment would have no effect on the basis for establishing the competitive range, only those offerors within the competitive range must be sent the amendment.

4.2.2.j *Cancellation of Solicitations.* Solicitations may not be cancelled unless circumstances make cancellation essential, such as when there is no longer a requirement for the supplies or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed. Written notice of the cancellation must explain the reason for cancellation, and must be sent to all prospective offerors that received the solicitation. If the solicitation is cancelled before the date for receipt of proposals, any proposals received must be returned unopened to the offerors.

4.2.2.k *Disclosure and Use of Information*

1. *Before Solicitation.* Information concerning proposed purchases must not be released outside the Postal Service before solicitation of proposals, except for information publicized through briefings, announcements, or notices in accordance with 2.1.2. Within the Postal Service, such information must be restricted to those having a legitimate interest.
2. *After Solicitation*
 - (a) After issuance of a solicitation, only the contracting officer, the contracting officer's superiors having contracting authority, and others specifically authorized may communicate or transmit information concerning the solicitation.
 - (b) Any information given to a prospective offeror concerning a solicitation must be furnished promptly to all other prospective offerors as an amendment to the solicitation, if the information is needed for the preparation of proposals or if lack of it would be prejudicial to uninformed offerors.

- (c) General information that would not give any prospective offeror 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.
3. *After Receipt of Proposals*
- (a) Information concerning the content of proposals or the number or identity of offerors must not be disclosed outside the Postal Service, except when necessary for proposal evaluation, or to anyone in the Postal Service not having a legitimate interest.
 - (b) During the preaward period, only the contracting officer, the contracting officer's superiors having contracting authority, and others specifically authorized may transmit technical or other information and conduct discussions with offerors. Information must not be furnished to any offeror if, alone or together with other information, it may afford that offeror an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.
 - (c) Offerors may place restrictions on the disclosure and use of data in proposals, in accordance with Provision A-7, *Restriction on Disclosure and Use of Data*. The portions of the proposal that are so restricted (except for information obtainable from another source without restriction) must be used only for evaluation and must not be disclosed outside the Postal Service, except when necessary for proposal evaluation, without permission of the offeror.
4. *Release of Solicitation Mailing Lists*. When a procurement is deemed highly competitive (i.e., five or more potential offerors), and no harm to competition is anticipated from releasing the specific source list, the contracting officer may consider it advantageous to the Postal Service to release the source list to anyone who is sent a copy of that solicitation. If the source list has not been released and is requested under the Freedom of Information Act (FOIA), it is not necessary to release it to all prospective offerors, but only to the specific FOIA requestor. The source list, in this instance, is considered general information that should not give the recipient any advantage over other offerors.

4.2.3 Receipt of Proposals

- 4.2.3.a *Handling*. Proposals must be marked with the date and time of receipt, and kept secure until opened and recorded.
- 4.2.3.b *Opening and Recording*. After the time established for receipt, the contracting officer must open and record the proposals. The source selection plan (see 2.1.7) may require that separate cost or price proposals be kept unopened until after evaluation of technical proposals, then opened and recorded.
- 4.2.3.c *Modification and Withdrawal*. Proposals may be modified or withdrawn by written or telegraphic notice. A proposal modification must be received by the date and time set for receipt of proposals. Notice of withdrawal of a proposal must be received before award.

4.2.3.d *Late Proposals and Modifications*

1. Proposals and modifications of proposals are late if received after the date and time established in the solicitation for receipt of proposals. This does not include the normal revisions of proposals made during negotiations by the offerors selected for discussions.
2. Late proposals and modifications may be considered in accordance with Provision A-4, *Late Submissions and Modifications of Proposals*. It is normally in the interest of the Postal Service to consider a late proposal when doing so would cause no delay in the evaluation process, or the proposal was late because of mishandling after receipt, or the proposal offers a significant cost, quality, or technical benefit. It is not in the interest of the Postal Service to consider any proposal received so late that consideration of the proposal would jeopardize, or give the appearance of jeopardizing, the integrity of the competitive process.
3. When a late proposal or modification is not considered, the offeror must be given written notification that its proposal or modification was received late and was not considered.
4. Each late proposal and modification must be retained in the solicitation file with a statement as to whether it was considered, with the reasons.

4.2.3.e *Failure to Acknowledge Amendments*. If a solicitation has been amended (see 4.2.2.i), proposals lacking acknowledgement of the amendment, or clear indication of receipt of the amendment, must be disregarded if award is to be without discussions (see 4.2.5.f) and the amendment affects price, quantity, quality, or delivery. If discussions are held (see 4.2.5.g), uncertainties regarding the amendment may be resolved through discussions.

4.2.3.f *Mistakes in Proposals*. Contracting officers must examine proposals for mistakes. Communication with an offeror concerning mistakes is clarification, not discussion. However, if correction of a mistake requires reference to documents, worksheets, or other data outside the solicitation to establish the existence of the mistake or the intended proposal, the mistake may be corrected only through discussions. See 4.2.5.f.5 concerning mistakes in contracts awarded without discussions.

4.2.4 **Evaluation of Proposals**

4.2.4.a *General*. Proposal evaluation is an assessment of both the proposal and the offeror's ability, as demonstrated by the proposal, to perform the prospective contract successfully. Proposals must be evaluated in accordance with procedures established in the source selection plan (see 2.1.7) and the evaluation factors specified in the solicitation.

4.2.4.b *Price or Cost Evaluation*. Prices or estimated costs must be evaluated in accordance with chapter 5. Price or cost analysis is necessary to determine the reasonableness and validity of a proposed price or cost estimate, and to assist in determining an offeror's understanding of the work and ability to perform the contract.

4.2.4.c *Evaluation of Other Factors*. Each proposal must be examined to determine whether it meets the requirements of the solicitation. Beyond that, the specific purchase requirements, the evaluation factors, and the source selection plan determine the extent of the required analysis. The evaluation must be documented to include:

1. The basis for evaluation;
 2. An analysis of the acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the solicitation requirements;
 3. A narrative statement of the major strengths and weaknesses of the various proposals;
 4. A summary, matrix, or quantitative ranking of each proposal in relation to the best rating possible; and
 5. A summary of findings, as well as each evaluator's independent findings.
- 4.2.4.d *Only One Proposal.* If only one proposal is received in response to a competitive solicitation, it may be evaluated and considered for award.

4.2.5 **Contractor Selection Award**

4.2.5.a *Definitions*

1. *Selection.* The selection of an offeror for contract award, with or without discussion of proposals, or for final negotiations leading to contract award following discussion of proposals.
2. *Clarification.* Communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in proposal.
3. *Discussion.* Any oral or written communication between the Postal Service and an offeror (other than communications conducted for the purpose of clarification) that is initiated by the Postal Service and (a) involves information essential for determining the acceptability of a proposal or (b) provides the offeror an opportunity to revise its proposal.
4. *Negotiation.* The process of reaching agreement on final contract terms and conditions with the offeror selected.

4.2.5.b *General*

1. The contract will be awarded to the offeror whose proposal offers the best value to the Postal Service, considering the price, price-related and other evaluation factors identified in the solicitation.
2. The contracting officer must make the contractor selection decision, and is responsible for trade-off judgments involving cost and other evaluation factors. Contractor selection must be made in accordance with the solicitation's stated evaluation factors and must be documented. The documentation must include a determination by the contracting officer that the price is fair and reasonable, and the basis for determination.
3. The contracting officer must consider any rankings and ratings, and any recommendations if specifically requested, prepared by evaluation and advisory groups. However, the findings of the technical and price evaluators are only guides for the final selection decision, and must be presented in sufficient depth to permit the intelligent weighing of alternatives and the making of trade-off judgments by the contracting officer.
4. The supporting documentation prepared for the selection decision must show the relative differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation must include the basis and reason for the decision.

5. Award may be made only after the contracting officer makes an affirmative determination of responsibility (see 3.3.1).

4.2.5.c *Discussions*

1. A contractor may be selected and award made with or without discussing proposals with the offerors, depending upon the circumstances of the purchase, such as the complexity of the requirement, the extent of competition, and the quality of the proposals received (see paragraph f below).
2. Whenever price or price-related factors are the most important or the only evaluation factors, award will normally be made without discussions if adequate competition exists, to ensure that offerors submit their most favorable proposals at the outset. However, even when award will be based on price alone, discussions may be held as necessary to determine that the price is fair and reasonable.
3. The decision to make an award without discussions, based on initial proposals, or to make an award based on revised proposals following written or oral discussions, must be made by the contracting officer.

4.2.5.d *Cost-Reimbursement Contracts.* In awarding a cost-reimbursement contract, the cost proposal is not controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or lowest total proposed cost plus fee. Proposed costs must be evaluated for realism in terms of the work to be done. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration must be which offeror offers the best value to the Postal Service as determined by evaluation of proposals according to the established evaluation factors.

4.2.5.e *Rejection of All Proposals.* All proposals received must be rejected if the contracting officer determines that:

1. Prices proposed are unreasonable and discussions have not resulted in a reasonable price or prices;
2. All proposals are technically unacceptable;
3. Proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see 1.8.2 for required reports); or
4. The solicitation must be cancelled as provided in 4.1.2.j.

4.2.5.f *Award Without Discussions*

1. Award may be made without discussion of proposals whenever the existence of adequate competition or price analysis (see 5.3.3) makes it clear that acceptance of the most favorable initial proposal will result in a reasonable price. (See A.2.3, which requires that Provision A-9, *Award Without Discussions*, be included in all solicitations.)
2. Whenever there is uncertainty as to the pricing, technical, or other aspects of the most favorable initial proposal, award may not be made without discussions, unless the uncertainty can be resolved by clarification. Discussions must be held under such circumstance even if the solicitation contains Provision A-19, *Notice of Intent to Award Without Discussions* (see A.2.3.b.4).

3. If the proposal offering the best value to the Postal Service involves a significant departure from the solicitation requirements, all offerors must be given an opportunity to submit new or revised proposals on a comparable basis, but only if that can be done without disclosing the solution proposed in the departure or any other information entitled to protection.
4. If equal low prices are proposed, and the solicitation specifies no other evaluation factors, selection of the proposal offering the best value to the Postal Service may be based on factors such as experience, record of performance, or other factors in the Postal Service's interest. Award may be determined by drawing lots only if there is no other basis for selection.
5. This procedure may be used to resolve mistakes without discussions:
 - (a) The contracting officer informs the offeror of the suspected mistake, identifying the mistake and requesting verification. The contracting officer points out the circumstances giving rise to the suspicion of mistake (such as unusual solicitation requirements, changes from the requirements of previous purchases, or significant differences of the offeror's price from the Postal Service estimate or with other prices proposed) without disclosing other offers or the Postal Service estimate. If a mistake is alleged, the offeror may withdraw its proposal or seek its correction.
 - (b) If the offeror verifies its proposal, the proposal is evaluated as submitted.
 - (c) If the offeror requests correction of a mistake, the contracting officer, with the concurrence of assigned counsel, may permit the correction without discussion if both the existence of the mistake and the proposal actually intended are clearly ascertainable from the solicitation and the proposal. If there is insufficient evidence to permit the correction without discussions and discussions will not be held, the offeror must be given a final opportunity to withdraw its proposal. If not withdrawn, the proposal is evaluated as submitted.
 - (d) Verification, withdrawal or correction under this procedure does not constitute discussion. Mistakes may also be resolved through discussions; see paragraph 2 above.

4.2.5.g *Award With Discussions*

1. *Written or Oral Discussions.* Whenever appropriate, written or oral discussions may be held with offerors to resolve uncertainties in their proposals, to give them an opportunity to correct deficiencies, and to give them an opportunity to revise their proposals. If discussions are held with one offeror, discussions must be held with all offerors in the competitive range.
2. *Competitive Range*
 - (a) The competitive range must be determined by the contracting officer following evaluation of proposals. The competitive range must be determined on the basis of the evaluation factors stated in the solicitation and must include all proposals that have a reasonable chance of being selected for award, either as submitted or as revised following discussions.
 - (b) The competitive range may not be established in advance on the basis of an arbitrary standard, but must reflect the chances of the competing proposals as evaluated, and the potential for improving the competitive position of the proposals through revision following discussions. Even if

a proposal has a potential for significant improvement, it may be excluded from the competitive range if, relative to other proposals, it has no real chance of selection for award. When there is uncertainty as to whether a proposal is in the competitive range, it must be included.

- (c) The contracting officer must send prompt written notification to those offerors not in the competitive range and to those eliminated from the competitive range as a result of discussions.

3. *Conduct of Discussions*

- (a) The contracting officer is responsible for the conduct of discussions, with the assistance or participation of technical, accounting, or legal specialists as necessary or appropriate. The content, form, and extent of the discussions is a matter of the contracting officer's judgment.

Discussions must be conducted so as to:

- (1) Advise the offeror of deficiencies in its proposal, in terms of Postal Service requirements, but not deficiencies relative to other proposals, nor deficiencies resulting from the offeror's lack of diligence or competence;
 - (2) Attempt to resolve uncertainties concerning aspects of the proposal;
 - (3) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offeror's proposals or the evaluation process (see 4.1.2.k); and
 - (4) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.
- (b) The contracting officer must ensure that no one involved in the discussions engages in:
 - (1) Leveling (helping an offeror bring its proposal up to the level of other proposals by coaching or providing solutions or approaches described by the Postal Service);
 - (2) Transfusion (disclosure of technical or other information pertaining to one proposal that results in improvement of a competing proposal); or
 - (3) Auction techniques, such as:
 - (i) Indicating to an offeror a cost or price that it must meet to obtain further consideration; or
 - (ii) Furnishing information about other offerors' prices or advising an offeror of its price standing relative to another offeror. (However, it is permissible to inform an offeror that the Postal Service considers its cost or price too high or unrealistic.)

4. *Best and Final Offers*

- (a) Upon completion of discussions, the contracting officer must issue to all offerors still in the competitive range a request for best and final offers. Oral request for best and final offers must be confirmed in writing.
- (b) The request must include:
 - (1) Notice that discussions are concluded;

- (2) Notice of the opportunity to submit best and final offers in the form of revisions to any aspect of the solicitation or original proposals; and
 - (3) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers.
- (c) After receipt of best and final offers, the contracting officer must not reopen discussions unless it is clearly necessary in the Postal Service's interest to do so, as when information available does not provide adequate basis for contractor selection and award. If discussions are reopened, the contracting officer must issue an additional request for best and final offers to all offerors still within the competitive range.

5. *Selection and Negotiation*

- (a) Following evaluation of best and final offers, the contracting officer must select for award the best and final offer offering the best value to the Postal Service, on the basis of the solicitation's stated evaluation factors.
- (b) Any uncertainties or deficiencies remaining in the proposal selected must be clarified or corrected through negotiations leading to a definitive contract. Negotiations must include the disclosure and resolution of all deficiencies and all unsubstantiated areas of cost and price, but no changes may be made in the Postal Service's requirements or in the proposal that, if made before contractor selection, would have affected the basis for selection.

4.2.5.h *Contract Award*

1. Contract award may be made by written acceptance of a proposal, or by execution of a contract by both parties.
2. If a proposed award requires higher-level approval or delegation of contracting authority, award may not be made until the approval or delegation has been obtained.
3. When more than one award results from any single solicitation, separate award documents must be executed, each suitably numbered. When an award is made to an offeror for fewer than all items that may be awarded to that offeror, and additional items are being withheld for subsequent award, the first award to that offeror must state that the Postal Service may make subsequent awards on additional items within the proposal acceptance period, if applicable. When two or more awards are made to a single offeror under a solicitation, the original copy of the proposal must be attached to the retained office copy of the first award, and duplicate copies attached to succeeding awards.

4.2.5.i *Award Notification*

1. Promptly after award, the contracting officer must send all offerors that submitted proposals a written notice including:
 - (a) The number of proposals received;
 - (b) The name and address of each offeror receiving an award;
 - (c) The items, quantities, and unit prices of each award, or the total of estimated cost and fee for cost-reimbursement contracts;
 - (d) If award was made without discussions, a statement to that effect; and
 - (e) A brief statement of the basis for the selection decision.

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

4.2.5.j *Debriefing*

1. Unsuccessful offerors, upon their written request, must be debriefed and told the basis for selection decision and contract award. Prompt and forthright debriefings tend to reduce protests.
2. The contracting officer or a designated representative must conduct the debriefing, with the assistance and participation of technical and legal personnel, as appropriate.
3. Debriefing information must include the Postal Service's evaluation of the significant weak or deficient factors in the proposal, but point-by-point comparisons with other offerors' proposals must not be made. The identity and relative ranking of the offerors, the overall evaluation scores if proposals were scored, and the prices proposed may be disclosed if requested.
4. Information must not be disclosed to any offeror as to another offeror's:
 - (a) Trade secrets;
 - (b) Privileged or confidential manufacturing processes and techniques;
 - (c) Business and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; or
 - (d) Unique or innovative concepts contained in a proposal.
5. The contracting officer must include a summary of the debriefing in the solicitation file.

- 4.2.5.k *Synopsis.* Contract awards involving significant subcontracting opportunities must be synopsisized in the *Commerce Business Daily* in accordance with 3.2.2.

SECTION 3 SIMPLIFIED PURCHASING

4.3.1 General

- 4.3.1.a *Applicability.* The simplified purchasing procedures established in this section are for use in making fixed-price purchases up to the ceiling amount in paragraph b below, except:

1. Orders under indefinite-delivery contracts (see 5.1.5);
2. Orders under Postal Supply Schedules (see 3.1.4) or from other government sources (see 3.1.5);
3. Purchases from workshops for people who are blind or severely disabled (see 3.1.3);
4. Purchases from Federal Prison Industries, Inc. (see 3.1.5.a);
5. Procurement of mail transportation (see chapter 12); and
6. Purchases for which specific procedures are prescribed elsewhere in this manual.

4.3.1.b *Ceiling.* The general ceiling for simplified purchasing procedures is \$100,000. If the dollar value of a prospective contract for standard commercial products or services is within a contracting officer's delegated contracting authority, he or she may decide to use simplified procedures for that particular contract when circumstances of competition and price reasonableness justify a higher ceiling. However, if the dollar value of the prospective contract equals or exceeds \$1 million, simplified purchasing procedures may not be used. The suitability of a purchase for simplified procedures should be determined in the planning phase. Any special terms or clauses needed to protect the Postal Service or required by law or regulation must be added to the contractual document.

4.3.1.c *Limitations.* The ceilings are based on the requisition estimate, which must include all requirements that would properly be grouped together in a single solicitation. Requirements aggregating more than the ceiling may not be split or broken down into several purchasing procedures.

4.3.1.d *Competition*

1. The competitive threshold is ten percent of the simplified purchasing ceiling.
2. Competition must be sought to the extent practicable for purchases above the competitive threshold. Proposals or quotations must be solicited from a sufficient number of qualified sources (normally at least three) to ensure that the price is fair and reasonable. Adequate competition for simplified purchases can normally be obtained without soliciting outside the local trade area of the purchasing office or receiving activity. If sources outside the local trade area are solicited, source lists must be maintained in accordance with A.3.
3. Solicitations may be limited to one source if the contracting officer determines that only one source is available, subject to the requirements of section 4.4.
4. For purchases under the competitive threshold, competition is not required if the contracting officer determines that prices received are reasonable. Where practicable, noncompetitive purchases must be distributed equitably among qualified suppliers, and a quotation must be obtained from other than the previous supplier before placing a repeat order.

4.3.1.e *Basis for Award*

1. *Policy.* Simplified purchases are awarded to the proposer or quoter who offers the best value to the Postal Service. Depending on the product or service being purchased and the needs of the requiring organization, best value is obtained by basing the award on price or a combination of price with price-related factors, other evaluation factors, or both.
2. *Price-based awards.* Awards based solely on price are made to the responsible proposer or quoter who submits the lowest price. This method is normally used for standard commercial products or services of acceptable quality for which there is adequate competition (see also 4.3.2.c).
3. *Awards based on price and price-related factors.* Awards based on price and price-related factors are made to the responsible proposer or quoter whose submitted price, after taking into account stated price-related factors such as transportation charges (if appropriate), administrative costs associated with multiple awards, life cycle utility costs, etc., yields the lowest evaluated price. This basis may be only used when the price-related factors can be identified and quantified (assigned a cost) for the product or service being purchased.
4. *Awards based on price and other evaluation factors*

- (a) *General.* Awards based on price and other evaluation factors are made to the responsible proposer or quoter who submits the most advantageous proposal or quotation taking into account price and other stated evaluation factors which are of value or concern to the requiring organization, such as quality, experience, delivery schedule, maintainability, ease of operation, size, weight, etc. Award is determined by comparing differences in the evaluation of the other factors with differences in price to the Postal Service. This method should be used when price, or price and price-related factors, may not provide the best overall value to the Postal Service. Simplified procedures should not normally be used when the other evaluation factors are highly complex and will require lengthy or detailed submissions by the proposers or quoters. In such situations, standard purchasing procedures should be used (see 4.2).
- (b) *Evaluation strategy.* The use of other evaluation factors in simplified purchasing requires the development of an evaluation strategy. The evaluation strategy should be developed by the requirements organization or the procurement specialist, in close coordination with the requirements organization, and must be approved by the contracting officer prior to solicitation. The evaluation strategy must identify (1) the need to use other evaluation factors, (2) the evaluation factors to be used and their order of importance, (3) the relative overall importance of the other evaluation factors to price (i.e., greater than, equal to, less than), and (4) the individual or individuals who will perform the evaluation.

5. *Awards based on price, price-related, and other evaluation factors*

- (a) *General.* An award based on price, price-related, and other evaluation factors will be made on the basis of the most advantageous proposal or quotation, taking price-related factors into account in evaluating relative price, and taking other factors into account in relation to price in accordance with the pre-established evaluation strategy (see 4.3.1.e.4.(b)).
- (b) *Evaluation strategy.* An award based on this combination of factors requires an evaluation strategy (see 4.3.1.e.4.(b)).

- 4.3.1.f *Prequalification.* The contracting officer may restrict competition to approved sources or prequalified contractors (see 3.1.6) when necessary to ensure that quality requirements will be met.

4.3.2 **Solicitations**

- 4.3.2.a *General.* Solicitation of proposals or quotations may be done in writing or orally, at the discretion of the contracting officer.
- 4.3.2.b *Solicitations*
 1. *Written Solicitations.* Because written solicitations provide a clearer understanding of the requirement, they should be used whenever practicable.
 2. *Oral Solicitations*
 - (a) *General.* An oral solicitation may be used when a written solicitation would be impracticable, as when processing a written solicitation would

cause a delay detrimental to the Postal Service, or a standing price quotation is being verified.

- (b) *Detailed specification or statement of work.* Whenever an oral solicitation is used for a requirement with a detailed specification or statement of work, the specification or statement of work must be given, in writing, to each potential proposer or quoter.
 - (c) *Large number of items or tasks.* Whenever an oral solicitation is used for a requirement with a large number of items or tasks, the detailed list of items or tasks must be given, in writing, to each potential proposer or quoter.
 - (d) *Price-related factors.* Whenever price-related factors are used in an oral solicitation, they must be clearly identified for each potential proposer or quoter. Also, it must be made clear that the purchasing office will add any cost associated with a price-related factor to a proposal or quotation and that the proposer or quoter must not include that cost in their proposal or quotation.
 - (e) *Other evaluation factors.* Whenever other evaluation factors are used in an oral solicitation, they must be clearly identified. These factors must be communicated to each potential proposer or quoter in descending order of importance and the proposer or quoter must be informed as to their overall relation to price (i.e., greater than, equal to, or less than). Proposers or quoters must then provide their response, either orally or in writing, to these evaluation factors. Procedures for communicating evaluation factors and receiving responses are in the relevant handbook.
 - (f) *Recording.* The purchase file must clearly indicate the basis for award and any price-related or other evaluation factors that were used.
- 4.3.2.c *Standing Price Quotations.* When it is the practice for suppliers to furnish standing price quotations on supplies or services required on a recurring basis, this information may be used instead of issuing a written solicitation for each purchase. In such cases, the contracting officer must ensure that the price information is current and that the Postal Service obtains the benefit of the suppliers' trade discounts. Standing price quotations may be used only for price-based awards.
- 4.3.2.d *Preparation of Solicitations.* Detailed procedures for written and oral solicitations are in the relevant handbook.
1. For written solicitations, a combination solicitation, proposal, and award document is used. A signed proposal becomes a contract when the award portion is completed and signed by the contracting officer within the acceptance period specified.
 2. A written request for quotations is used to solicit standing price quotations.
- 4.3.2.e *Posting and Synopsis.* Written solicitations for purchases over \$100,000 must be posted in the public area of the purchasing activity and synopsisized in the *Commerce Business Daily* in accordance with 3.2.2.
- 4.3.2.f *Availability of Solicitations.* Written solicitations, and information concerning oral solicitations, must be given to anyone requesting them.
- 4.3.2.g *Amending Solicitations.* If, after issuance of a written solicitation, changes must be made in quantity, specifications, or delivery schedule, or if corrections are needed, an amendment to the solicitation must be issued. The purchase file must

be documented to show the reason for any amendment. As to amendments affecting Technical Data Packages (TDPs) see 2.3.3.

4.3.3 Receipt and Evaluation of Proposals and Quotations

4.3.3.a Receipt

1. *Recording.* Written and oral proposals or quotations must be clearly recorded in a format permitting ready comparison of prices and other details. The record must be placed in the purchase file.
2. *Late Proposals and Quotations.* Late proposals and quotations in response to written or oral solicitations may be considered when an award has not yet been made, if the contracting officer determines that doing so is in the Postal Service's interest.

4.3.3.b Evaluation. Evaluation must be made on the basis of best value to the Postal Service, taking into account price or a combination of price with price-related factors, or other evaluation factors, or both. Regardless of the basis of award, a price reasonableness determination must be made in accordance with section 5.3.

1. *Price-based.* Award will be made to the responsible proposer or quoter who submits the lowest price.
2. *Price-related factors.* Award will be made to the responsible proposer or quoter whose submitted price is lowest after the contracting officer's application of the stated price-related factors.
3. *Other evaluation factors.* Award will be made to the responsible proposer or quoter who submits the combination of price and other evaluation factors offering the best overall value to the Postal Service. This will be determined by comparing differences in the evaluation of other factors with differences in price to the Postal Service. The contracting officer must make the contractor selection decision and is responsible for trade-off judgments involving price and other evaluation factors. Contractor selection must be made in accordance with the evaluation strategy (i.e., price and other evaluation factors) and must be clearly noted in the purchase file.
4. *Price-related and other evaluation factors.* Award will be made to the responsible proposer or quoter who submits the combination of price, price-related, and other evaluation factors offering the best value to the Postal Service. Price-related factors will be taken into account in the evaluation of price, and other factors will be taken into account in relationship to price, as set out in paragraphs 2 and 3 above.

4.3.3.c Equal Proposals or Quotations. When two or more offerors meeting the requirements of the solicitation are evaluated as equally low, the contracting officer must select between them on the basis of performance record, experience, or other factors in the Postal Service's interest. Award may be determined by drawing lots only if there is no other basis for selection.

4.3.3.d Negotiation. The contracting officer may negotiate with offerors when necessary to ensure that prices are reasonable or to ensure that Postal Service requirements will be met.

4.3.3.e Contractor Responsibility. General standards of responsibility (see 3.3.1) apply, but the extent of review may be limited to readily available information. The

contracting officer must make a determination of responsibility for purchases over \$100,000, but a determination of nonresponsibility is required whenever the contracting officer finds that a prospective contractor is not responsible.

4.3.4 Ordering Methods

Supplies and services may be ordered using any of the following methods, and by orders under basic pricing agreements (see 4.3.5):

- 4.3.4.a *Acceptance of Proposal.* When written solicitations are used (see 4.3.2.b.1 and 4.3.2.d), orders are issued by completing and signing the award portion of the solicitation.
- 4.3.4.b *Purchase Order.* A purchase order is used to place orders when quotations have been obtained in response to an oral solicitation or a request for quotations (see 4.3.2.d.2), and for unpriced purchase orders (see 4.3.7). Because a quotation is not a proposal subject to acceptance by the Postal Service, a purchase order issued in response to a quotation does not become a binding contract until the contractor either begins performance of the work or accepts the purchase order in writing (see 4.3.9.b).
- 4.3.4.c *Local Purchase Order*
 1. Form 7444, *Local Purchase Order*, is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases. It should be used only when a supplier requests it, and it may be used only for local purchase of supplies and services of \$2,000 or less and when payment will be made locally (see the relevant handbook for local payment methods and procedures).
 2. Form 7444 may not be used for:
 - (a) Purchase of supplies or services for which there is an existing contract;
 - (b) Communications services, fuel, and utility services, unless authorized;
 - (c) Purchase of supplies and services for vehicle operations (except in emergencies described in Handbook PO-701, *Fleet Management*); or
 - (d) Purchases of capital equipment items.

4.3.5 Basic Pricing Agreements

- 4.3.5.a *General.* A Basic Pricing Agreement (BPA) is an ordering agreement (see 5.1.8) which permits individuals designated by name or title to place orders by telephone, over-the-counter, or in writing. BPAs permit consolidated invoicing (usually monthly) for all purchases made. Establishing BPAs with suppliers from which frequent, repetitive purchases are made can significantly reduce paperwork and administrative costs. Although there is a ceiling for individual orders (see f.4) there is no limit on the aggregate value of orders under a BPA.
- 4.3.5.b *Types*
 1. There are two types of BPA: priced and unpriced.
 2. Prepriced BPAs establish prices for orders of supplies or services during the term of the BPA.
 3. Unpriced BPAs do not establish prices. Prices are established when an individual order is made.

- 4.3.5.c *Use.* BPAs are used when:
1. A wide variety of items in a broad class of supplies (like hardware, electrical supplies or fuel) may be available from suppliers but quantities and delivery requirements are not known in advance and may vary considerably. BPAs may also be used for services.
 2. The preparation of numerous written orders and processing of invoices can be avoided; or
 3. There is a need to provide commercial sources of supply for ordering by offices that do not have other purchasing authority.
- 4.3.5.d *Sources.* BPAs should be established with suppliers from which numerous individual purchases will likely be made in a given period. For example, if past experience shows that certain suppliers are dependable and consistently lower in price than other suppliers, and if numerous small purchases are made from them, it would be advantageous to establish BPAs with them. BPAs should also be established with small, minority and woman-owned businesses.
- 4.3.5.e *Multiple BPAs.* Unpriced BPAs for the same class of supplies or services should be established concurrently with more than one supplier. This allows competition to be obtained before orders are placed.
- 4.3.5.f *Restrictions.* The following restrictions apply to BPAs:
1. BPAs may not be made for supplies or services required to be obtained or purchased from sources specified in 3.1.
 2. BPAs may not be used for new construction or for repairs or alterations.
 3. The term of a BPA may not exceed two years.
 4. Individual orders may not exceed \$10,000 (except for fuel, where the ordering limit is tank capacity). Local organizations may establish lower ceilings.
 5. When using unpriced BPAs, competition must be obtained when placing orders over the competitive threshold (see 4.3.1.d); competition may be limited to suppliers holding BPAs. If competition is not obtainable, the purchase file must show the reason, and the order is subject to the requirements of 4.4.
 6. Price reasonableness must be determined in accordance with 5.3.3.b.
- 4.3.5.g *Establishing BPAs.* BPAs, both priced and unpriced, are established in accordance with requirements for ordering agreements (see 5.1.8). For procedural guidance, see the relevant handbook.
- 4.3.5.h *Ordering.* Orders placed under BPAs are usually made orally. Written orders may be by letter or purchase order. Documentation of orders should be limited to essential information.
- 4.3.5.i *Review.* Contracting officers must review BPA files at least annually to ensure that authorized procedures are being followed and that continued use is justified.

4.3.6 **Delivery Agreements**

- 4.3.6.a *General.* A Delivery Agreement (DA) is an agreement under a Defense Fuel Supply Center (DFSC) contract, which allows the Postal Service to place delivery orders by telephone call, over-the-counter request, or letter instead of by written order. The DFSC contract generally describes the product which can be ordered,

the prices or method for determining the prices, delivery terms and conditions, or specifies how they will be determined.

4.3.6.b *Authorization*

1. The DFSC contracting officer is the only person authorized to negotiate with the contractor to change or terminate the DFSC contract.
2. Individuals authorized to place orders pursuant to the DA are identified either by name or by position title.

4.3.6.c *Use.* The use of DAs should be considered when repetitive orders are anticipated since they can significantly reduce paperwork and administrative costs.

4.3.6.d *Restrictions*

1. The term of a DA cannot exceed the term of the DFSC contract.
2. Individual orders and maximum orders may not exceed the limits established in the DFSC contract.

4.3.7 Unpriced Purchase Orders

4.3.7.a *General.* An unpriced purchase order is an order for supplies or services issued before a price is established. Unpriced purchase orders may be used only when it is impossible to establish a reasonable price before issuing the order. If a price cannot be established before delivery or completion of work, the contracting officer must ensure that the amount invoiced is reasonable before approving payment.

4.3.7.b *Price Ceiling.* Any unpriced purchase order must contain Clause 4-1, *Notice to Suppliers*, filled in with a realistic monetary limitation.

4.3.7.c *Examples.* Examples of situations in which unpriced purchase orders may be used are as follows:

1. Repairs to equipment that must be disassembled to determine the nature and extent of repairs needed. The contracting officer should attempt to establish basic hourly labor rates, an estimate of total hours for the job, and a parts price limitation, in addition to the price ceiling.
2. Services that must begin before the extent or the exact scope of work is known. The contracting officer should attempt to establish basic hourly rates and an estimate of the total hours or days for the job, in addition to the price ceiling.
3. Supplies needed from a catalog that may not be current, when there is not enough time to verify current prices before ordering.

4.3.8 Debriefings

There is no requirement to notify unsuccessful offerors or quoters. If an unsuccessful offeror or quoter requests an explanation of why it did not receive an award, a debriefing may be accomplished in person or by telephone. The contracting officer should:

- 4.3.8.a Explain the basis for award in a way that leaves no doubt that the award decision was made fairly, impartially, and objectively; and
- 4.3.8.b Take care not to disclose any offeror's confidential business data (the price offered by the successful offeror is not confidential business data).

4.3.9 Administration

4.3.9.a *General.* Purchases must be administered in accordance with the terms and conditions of the order or agreement. The requirements of chapter 6 are applicable except as qualified in this section 4.2.

4.3.9.b Cancellation

1. An order placed by accepting a proposal is a contract that may be cancelled or terminated by the parties only according to its terms unless the parties mutually agree to the action. See 6.9.2 (termination for convenience), 6.9.3 (termination for default), and 6.9.1.c (no-cost cancellation).
2. A purchase order is an offer by the Postal Service to purchase that may be cancelled or withdrawn by the Postal Service in whole or part before acceptance by the contractor. Acceptance of a purchase order occurs when:
 - (a) A written acceptance is mailed or otherwise furnished by the contractor; or
 - (b) The contractor begins performance of the work called for by the purchase order. If a contractor does not accept a notice of cancellation and presents satisfactory evidence that acceptance of the purchase order had occurred before receipt of the notice, the contracting officer must either proceed to terminate the contract for convenience or allow performance to continue.
3. Examples of situations in which cancellation may be necessary include administrative error and changed requirements.
4. Cancellation must be done in writing, by letter or telegram, or by amendment of the solicitation.

SECTION 4 NONCOMPETITIVE PURCHASING

4.4.1 General

4.4.1.a *Definition.* A noncompetitive purchase is any purchase of supplies or services from one source without competition.

4.4.1.b *Limitations on Use.* Noncompetitive purchasing methods may be used only when competitive purchasing is not feasible or appropriate.

4.4.1.c *Applicability.* This section applies to all purchases except:

1. Orders placed against mandatory national and area contracts (see 3.1.4).
2. Purchases from a single approved source (where only one source is approved; see 3.1.6.b).
3. Orders placed under indefinite-delivery contracts (see 5.1.5).
4. Purchases not exceeding the competitive threshold (see 4.3.1.d).
5. Orders placed against GSA's Federal Supply Schedules and from other non-GSA government sources, including Federal Prison Industries (see 3.1.5). Group 70 and Group 58 IRMS FIPS schedule contracts (see 3.1.5.b.3) do not fall within this exception.

6. Purchases of supplies and services from qualified workshops (as determined by the Committee for Purchase from People who are Blind or Severely Disabled) who are employing people who are blind or severely disabled (see 3.1.3).
7. Contracts with any federal, state, or local government agencies.
8. Contracts with firms that provide supplies or services (such as utilities and passenger or general freight transportation services, but not including the transportation of mail) subject to uniform tariff, government regulation or areawide rates.
9. Institutional memberships authorized by Employee and Labor Relations Manual (ELM) 750, exhibition fees, booth space, and attendance at outside conferences.
10. Subscriptions and renewals of subscriptions to periodicals and serial publications (includes electronic information service subscriptions).
11. Advertisements.
12. Certain repurchases against a defaulted contractor's account (see 6.10.1.b.3).
13. Modifications within the scope of a contract or the exercise of contractual options, such as lease extensions and renewal options.
14. Modifications, enhancements, upgrades, maintenance, and renewals of licenses or leases for previously purchased commercial computer software.
15. Architect-Engineering contracts (see 11.3).
16. Repairs and improvements to leased postal facilities when performed pursuant to provisions of the lease.
17. Acquisitions and sales of real estate.
18. Contracts with Federally Funded Research and Development Centers (FFRDCs) and similar nonprofit organizations, for theoretical analysis, exploratory studies, experiments in any field of science and technology, and for engineering or developmental work applying investigative findings and theories of a scientific or technical nature.

4.4.2 Justification

4.4.2.a *Circumstances.* Circumstances under which noncompetitive purchasing may be appropriate and justified include:

1. Demonstration, after adequate investigation, of the existence of only one source capable of meeting Postal Service requirements;
2. Spare parts or replacements of specified makes and models when required for standardization or when specifications or data needed for competition are lacking;
3. Unusual and compelling urgency, when delay would seriously harm the Postal Service;
4. Requirement of a brand-name commercial product for authorized resale;
5. Acceptance of an unsolicited proposal; and
6. When competitive purchasing would not be in the interest of the Postal Service.

4.4.2.b *Reference.* Every noncompetitive purchase must be justified in writing and approved in accordance with Management Instruction AS-710-95-7, *Noncompetitive Purchases*.

4.4.3 **Procedures**

4.4.3.a The same procedures as those required for award with discussions (see 4.2.5.g) are used, except that solicitation may be by letter, the restrictions on conduct of discussions do not apply, no best and final offer is required, and contractor selection will normally have been justified and documented in the procurement plan (see 2.1.4) or the requisition.

4.4.3.b Particular attention must be given to pricing in a noncompetitive purchase, and cost analysis may be required in addition to price analysis (see 5.3.3). Price negotiations must be fully documented (see 4.3.3), and the contracting officer must make a written determination of price reasonableness, fully explaining the basis for the determination.

4.4.3.c Contract awards must be synopsisized in the *Commerce Business Daily* in accordance with 3.2.2.d.

SECTION 5 PRICE NEGOTIATION

4.5.1 **Prenegotiation Objectives**

4.5.1.a Whenever negotiations are to be held to reach agreement on price, fee, and contract terms and conditions (whether for an initial contract award or contract modification), the contracting officer must establish written prenegotiation objectives commensurate with the dollar value and complexity of the contract or contract modification. If the dollar value exceeds the contracting officer's authority, the prenegotiation objectives must be approved at the next higher level having the necessary authority.

4.5.1.b The process of determining prenegotiation objectives helps the contracting officer to judge the overall reasonableness of the price proposed and to negotiate a fair and reasonable price or cost fee. In setting the prenegotiation objectives, the contracting officer must analyze the offeror's or contractor's proposal, taking into account any advisory reports received and other pertinent data such as independent cost estimates and price histories. This process may include prenegotiation fact-finding sessions with the offeror or contractor when the contracting officer deems them appropriate.

4.5.1.c The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. when cost analysis is required, the analysis must address:

1. The pertinent issues to be negotiated;
2. The cost objectives; and
3. A profit or fee objective.

4.5.2 Negotiation

- 4.5.2.a Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it might not be possible to negotiate a price that accords with all advisory opinions or with the contracting officer's prenegotiation objectives. The contracting officer is responsible for exercising the necessary judgment and is solely responsible for the final pricing decision. The recommendations of auditors and other specialists are advisory only; however, the contracting officer must include explanatory comment in the memorandum of negotiation when significant audit or other specialist recommendations are not adopted.
- 4.5.2.b The negotiation of contract type and price are related and should be considered together with the issues of risks and uncertainty to the contractor and the Postal Service. Therefore, the contracting officer should not become preoccupied with any single element, but should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Postal Service and the contractor. Because profit or fee is only one of several interrelated variables, the contracting officer must not agree on profit or fee without concurrent agreement on cost and type of contract.
- 4.5.2.c If the offeror or contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and no other source is available, the contracting officer must refer the matter to the VP, P&M, for resolution.

4.5.3 Memorandum of Negotiation

Following any negotiation of an initial or revised price, the contracting officer must promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum must be included in the contract file and must contain at least the following information:

- 4.5.3.a The purpose of the negotiation.
- 4.5.3.b A description of the purchase, or contract modification, with identifying number.
- 4.5.3.c The name, position, and organization of each person representing the offeror or contractor and the Postal Service in the negotiation.
- 4.5.3.d If cost or pricing data have been obtained, the extent to which the contracting officer:
 - 1. Relied on the cost or pricing data submitted, and used them in negotiating the price; and
 - 2. Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the offeror or contractor as a result; and the effect of the defective data on the price negotiated.
- 4.5.3.e A summary of the offeror's or contractor's proposal, any advisory report recommendations, and the reasons for any significant variances from the advisory recommendations.
- 4.5.3.f The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price, including an explanation of any significant differences between the two positions.

- 4.5.3.g The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

SECTION 6 PROTESTS

4.6.1 **Applicability**

This section applies to all protests against Postal Service contracting procedures and awards, including special categories of contracts described in other chapters of this manual. The General Accounting Office (Comptroller General) does not have jurisdiction to consider protests arising out of Postal Service contracting practices. See 10.2.5.i for protests involving eligibility under the Walsh-Healey Public Contracts Act.

4.6.2 **Definitions**

- 4.6.2.a *Protest.* A written objection by any interested party concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract.
- 4.6.2.b *General Counsel.* The Senior Counsel, Contract Protests and Policies, who has been designated as the General Counsel's representative to consider and decide protests and to take any other action that this section requires to be done by the General Counsel.
- 4.6.2.c *Working days.* This excludes Saturdays, Sundays, and federal holidays.

4.6.3 **Filing**

- 4.6.3.a A protest must be in writing and filed with the contracting officer or with the General Counsel. It must identify the solicitation or contract protested and set forth a complete statement of the alleged defects or grounds that make the solicitation terms or the award or proposed award defective. Mere statement of intent to file a protest is not a protest.
- 4.6.3.b If an initial protest is sent both to the contracting officer and to the General Counsel, it will be considered to have been intended for consideration by the primary addressee. For example, if a protest is addressed to the contracting officer, and it indicates that a copy is being furnished to the General Counsel, the protest is for consideration by the contracting officer in accordance with 4.6.6 below. If the primary addressee cannot be determined, the protest will be considered to be intended for the General Counsel, and will be handled in accordance with 4.6.7 below.

4.6.4 **Timeliness**

- 4.6.4.a The Postal Service intends to complete its purchasing actions in a timely fashion while ensuring fair treatment to firms and individuals. A protester must furnish any protest to the contracting officer or the General Counsel in a manner that will

ensure its timely receipt. Protests received by the contracting officer or the General Counsel after the time limits prescribed by this section 4.6 will not be considered.

- 4.6.4.b Protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals.
- 4.6.4.c Protests of alleged deficiencies in the solicitation after the receipt of initial proposals must be received not later than the next closing date and time for the receipt of proposals.
- 4.6.4.d In all other cases, protests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.
- 4.6.4.e If a protest has been filed initially with the contracting officer, any subsequent protest to the General Counsel received within ten working days of the protester's formal notification of, actual knowledge of, or constructive knowledge of initial adverse action by the contracting officer will be considered, provided the initial protest was received in accordance with the time limits in paragraphs b through d above.

4.6.5 **Contract Award**

- 4.6.5.a When a timely protest has been filed with either the contracting officer or the General Counsel before contract award, award may not be made until the matter has been resolved, unless the responsible VP, after consulting with counsel, determines that the Postal Service will be seriously injured, financially or otherwise, by delaying award until the protest has been resolved, and that the award should be made without awaiting the decision. When authorized to make an award before a protest is resolved, the contracting officer must, at the time of or before the award, give notification of the award to the protester, any other commenting parties, and the General Counsel (if the protest is before the General Counsel).
- 4.6.5.b When a protest filed after award is eligible for consideration under this section 4.6, the contracting officer must immediately furnish to the contractor a notice of the protest and the basis for it. The contracting officer, with the advice of assigned counsel, must determine whether it would be in the interest of the Postal Service to allow the contractor to proceed, seek a mutual agreement with the contractor to suspend performance on a no-cost basis, issue a unilateral stop-work order, or take other appropriate action.

4.6.6 **Protests Received by Contracting Officers**

- 4.6.6.a Contracting officers must consider all timely protests received, except any that are being considered by the General Counsel in accordance with 4.6.3.b. The protester must be notified in writing of the contracting officer's decision.
- 4.6.6.b A contracting officer's decision on a protest must be issued within ten working days after receipt of the protest. If a contracting officer determines that a protest is obviously meritorious, the contracting officer may take such action as is appropriate.

- 4.6.6.c The contracting officer, if unable to conclude that a protest is obviously meritorious, may, within the time allowed for a decision:
3. Refer the protest to the General Counsel for resolution in accordance with 4.6.7 below; or
 4. With the concurrence of assigned counsel, determine that the protest is obviously without merit and advise the protester in writing accordingly.

4.6.7 **Protests Received by the General Counsel**

- 4.6.7.a Promptly after receiving a protest filed with the General Counsel, the General Counsel must notify the contracting officer by telecommunication of its receipt and, unless a copy has been furnished, send the contracting officer a copy of the protest together with any accompanying documents other than those already in the contract file. Any additional statements or documents received by the General Counsel in the course of the protest must be furnished to the contracting officer unless it appears that the contracting officer has previously been furnished them.
- 4.6.7.b Within five working days after referring a protest to the General Counsel or receipt of notification that a protest has been filed with the General Counsel, the contracting officer must:
1. In the case of a protest against the terms of a solicitation, notify the known prospective offerors that a protest has been filed and of the basis for the protest; or
 2. In case of any other protest, notify the offerors that might be affected that the protest has been filed and of the basis for the protest.
- 4.6.7.c The notices to the offerors must state that they may, if they wish, submit their opinions and relevant information on the protest if, within five working days of receipt of the notice, they advise the General Counsel (with a copy to the contracting officer) of their intention to make such a submission, and they make the submission within a reasonable time.
- 4.6.7.d Material submitted by a protester will not be withheld from any interested party that may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation (see 1.7.4 and 4.2.5.j.4). If a protester considers that a protest contains material that should be withheld, a statement to that effect should be contained in the protest and the alleged proprietary information identified wherever it appears. If, because of such a claim or for other reasons, copies of the protest cannot be furnished to affected offerors, the contracting officer's notification of the basis for the protest will be as detailed as practicable in order to allow the offerors the opportunity to comment substantively on the protest.
- 4.6.7.e Within ten working days of referring a protest to or receiving notification of a protest from the General Counsel, the contracting officer must send the General Counsel a report that includes:
1. The contracting officer's statement of the circumstances relevant to the protest, including specific responses to each allegation in the protest and the contracting officer's findings, determinations, and conclusions; and
 2. Copies (unless originals have been specifically requested) of any documents relevant to the protest, including as many of the following as might be applicable:
 - (a) The solicitation (including the specifications or relevant parts);

- (b) The proposal submitted by the protester and the proposal against which the protest is directed;
 - (c) The evaluation of proposals; and
 - (d) Any other documents, statements, or materials necessary to determine whether the protest is valid.
- 4.6.7.f The contracting officer should seek the assistance of assigned counsel in preparing the statement and report.
- 4.6.7.g Concurrent with furnishing the report to the General Counsel, the contracting officer must also furnish a copy of the statement (see subparagraph e.1 above) and copies of any other documentation necessary to give a full and clear understanding of the issue to the protester and any interested party who has indicated a desire to comment on the protest. When the protester, or the interested party, indicates that the protester or the party is represented by counsel, a copy of the statement must be provided to that counsel. The contracting officer must include, in the material furnished to the General Counsel, a statement that this distribution has been made and must identify the parties to which they have been sent.
- 4.6.7.h The protester, or any interested party, may submit comments on the contracting officer's statement. Such comments will be considered timely if received within five working days of the commenter's receipt of the statement. Any rebuttal to any such comments a protester, other participant, or the contracting officer may care to make will be considered if received within five working days after the party's receipt of the comments to which the rebuttal is directed. The failure of a party to comply with these time limits may result in the resolution of the protest without consideration of the untimely comments.
- 4.6.7.i When it is necessary to obtain a clear understanding of the protest, the General Counsel may ask the contracting officer for additional information with respect to issues raised by the protest or by comments of other parties. Contracting officers must respond to such requests within ten working days. The contracting officer must distribute copies of such responses, as well as of any rebuttal submitted under paragraph h above, in the manner indicated in paragraph g above.
- 4.6.7.j The protester, or any interested party, may request a conference with the General Counsel in connection with any protest under consideration by the General Counsel. The requests must be received within the time allowed for commenting on the contracting officer's statement. When more than one party to a protest requests a conference, separate conferences will be held. Any written comments to be submitted as the result of a conference must be received within five working days of the date of the conference.
- 4.6.7.k If the time for acceptance of proposals may expire before a protest will be resolved by the General Counsel, the contracting officer should request an extension of the time for acceptance of proposals (with the consent of sureties, if any) from each offeror whose proposal may be eligible for acceptance.
- 4.6.7.l The General Counsel has established a goal of 15 working days after receipt of all information submitted by all parties and the conclusion of all conferences for issuing a decision on a protest.
- 4.6.7.m The General Counsel's decision on a protest disposes of the matter. Copies of the General Counsel's decision must be furnished to the contracting officer, the responsible VP, the protester, and any other participant in the protest. The General Counsel maintains a file of all protest decisions. Requests to be added to

the mailing list for all protest decisions of the General Counsel should be directed to the Senior Counsel, Contract Protests and Policies.

- 4.6.7.n The protester, any interested party that submitted comments on the protest, or the contracting officer may request reconsideration of a protest decision. The request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered. A request for reconsideration of a decision must be received by the General Counsel not later than ten working days after the basis for reconsideration is known or should have been known, whichever is earlier, but in no case more than 20 working days after the issuance of the protest decision.
- 4.6.7.o The General Counsel may decline to decide any protest when the matter involved is the subject of litigation in any court of competent jurisdiction or has been decided on the merits in such a court. The foregoing does not apply when the court requests, expects, or otherwise expresses interest in the General Counsel's decision.
- 4.6.7.p Notwithstanding any other provision of this section, when a protest is clearly without legal merit or is not reviewable by the General Counsel under these procedures, the protest may be summarily denied or dismissed without a report from the contracting officer. When the propriety of summary denial or dismissal becomes clear only after information is provided by the contracting officer or otherwise obtained by the General Counsel, the protest may be denied or dismissed at that time.