

# Chapter 3

## Sources

<b>Section 1</b>	<b>Supplies and Services</b> .....	65
	3.1.1 Priority of Sources .....	65
	3.1.1.a Existing assets .....	65
	3.1.1.b Workshops for people who are blind or severely disabled .....	65
	3.1.1.c Mandatory national and area contracts and ordering agreements .....	65
	3.1.1.d Other Postal Service, government, and commercial sources (including educational and nonprofit institutions) .....	65
	3.1.2 Existing Assets .....	65
	3.1.3 Workshop for People who are Blind or Severely Disabled .....	65
	3.1.3.a General .....	65
	3.1.3.b Procurement Lists .....	65
	3.1.3.c Ordering .....	66
	3.1.3.d Exceptions .....	66
	3.1.3.e Compliance with Orders .....	66
	3.1.4 National and Area Contracts and Ordering Agreements .....	67
	3.1.4.a Definitions .....	67
	3.1.4.b General .....	67
	3.1.4.c Systems Contracts .....	67
	3.1.4.d Other Contracts .....	67
	3.1.4.e Area Ordering Agreements .....	68
	3.1.5 Other Government Sources .....	68
	3.1.5.a Federal Prison Industries, Inc. (UNICOR) .....	68
	3.1.5.b General Services Administration (GSA) .....	68
	3.1.5.c Defense Logistics Agency .....	70
	3.1.5.d Defense Fuel Supply Center .....	70
	3.1.5.e Veterans Administration .....	70
	3.1.5.f Government Printing Office .....	70
	3.1.6 Commercial Sources .....	71
	3.1.6.a General .....	71
	3.1.6.b Approved Sources .....	71
	3.1.6.c Prequalified Contractors .....	71
<b>Section 2</b>	<b>Publicizing Purchase Actions</b> .....	71
	3.2.1 Policy .....	71
	3.2.2 Methods of Publicizing .....	71
	3.2.2.a Synopses of Solicitations .....	71
	3.2.2.b Posting .....	72
	3.2.2.c Announcements and Advertisements .....	72
	3.2.2.d Synopses of Contract Awards .....	72
<b>Section 3</b>	<b>Contractor Qualifications</b> .....	72
	3.3.1 Responsible Prospective Contractors .....	72
	3.3.1.a Policy .....	72
	3.3.1.b General Standards .....	72
	3.3.1.c Special Standards .....	73

3.3.1.d Subcontractor Responsibility .....	73
3.3.1.e Determining Responsibility and Nonresponsibility .....	73
3.3.1.f Disclosure of Information .....	74
3.3.2 Debarment, Suspension, and Ineligibility .....	74
3.3.2.a General .....	74
3.3.2.b Definitions .....	74
3.3.2.c Establishment and Maintenance of Lists .....	75
3.3.2.d Treatment of Contractors on Postal Service List .....	75
3.3.2.e Causes for Debarment .....	76
3.3.2.f Conditions for Debarment .....	76
3.3.2.g Period of Debarment .....	77
3.3.2.h Procedural Requirements for Debarment .....	77
3.3.2.i Causes for Suspension .....	78
3.3.2.j Conditions for Suspension .....	78
3.3.2.k Notice of Suspension .....	78
3.3.2.l Restrictions on Suspended Contractors .....	79
3.3.2.m Rules of Practice .....	79

# Chapter 3 Sources

## SECTION 1 SUPPLIES AND SERVICES

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### 3.1.1 Priority of Sources

Supplies and services must be obtained from the sources described in this chapter in the following descending order of priority:

- 3.1.1.a Existing assets.
- 3.1.1.b Workshops for people who are blind or severely disabled.
- 3.1.1.c Mandatory national and area contracts and ordering agreements.
- 3.1.1.d Other Postal Service, government, and commercial sources (including educational and nonprofit institutions).

### 3.1.2 Existing Assets

To the extent possible, supplies must be obtained from existing Postal Service assets. Procedures for identifying and obtaining Postal excess serviceable property, requisitioning supplies from inventory, requisitioning supplies from the material distribution centers and Mail Equipment Shops, and obtaining excess personal property from other government agencies are described in Handbook AS-701, *Material Management*.

### 3.1.3 Workshop for People who are Blind or Severely Disabled

- 3.1.3.a *General.* The Javits-Wagner-O'Day Act (41 U.S.C. 46–48), requires that federal government agencies, including the Postal Service, purchase certain supplies and services from qualified workshops employing people who are blind or severely disabled. The Committee for Purchase from People who are Blind or Severely Disabled determines what supplies and services are covered and their prices.
- 3.1.3.b *Procurement Lists.* Supplies and services provided by people who are blind or severely disabled are listed in the Committee's Procurement List. This is published annually in the *Federal Register*, and additions and deletions are published as they occur. It may be obtained by submitting GSA Form 457, *FSS Publications Mailing List Application*, to:

GSA CENTRALIZED MAILING LISTS SERVICE  
819 TAYLOR STREET  
PO BOX 17077  
FORT WORTH TX 76102-0077

3.1.3.c *Ordering*

1. *General.* Except as provided in paragraph d below, the supplies and services must be ordered from the central nonprofit agency designated on the Procurement List, or from the workshops concerned (see subparagraph c.4 below).
2. *Allocation.* The ordering office must first submit a letter requesting an allocation (designation of a workshop to manufacture the supplies or perform the services). The allocation must be requested in time for the agency to reply, for the order to be placed, and for the workshop to produce the supplies or perform the services. The request for allocation must include the following:
  - (a) *Supplies.* Name, stock number, specification, quantity, unit price, and place and time of delivery. Packing, packaging or marking instructions, if other than provided in the Procurement List, must be agreed to between the central nonprofit agency and the ordering office, and any cost difference must be set forth separately in the order.
  - (b) *Services.* Type of services required, work to be performed, estimated volume, and time for completion.
3. *Revision of Delivery Schedule.* Any request by a central nonprofit agency for revision of the Procurement List delivery schedule should be granted if feasible. If the requested revision cannot be granted, the central nonprofit agency must be notified immediately and a purchase exception requested to purchase from commercial sources.
4. *Waiver of Allocation.* The designated agency may authorize the ordering office to order specified commodities directly from the workshops concerned without requesting an allocation for each order. The agency must be furnished a copy of any order issued directly to a workshop concerned.
5. *Order.* Upon receipt of an allocation or upon authorization to order without allocation, the ordering office may place an order. Orders must be recorded as obligations upon issuance. If the requirement is cancelled or issuance of an order is delayed more than 15 days, the ordering office must advise the central nonprofit agency and the workshop concerned.

3.1.3.d *Exceptions.* Supplies and services on the Procurement List may be purchased from commercial sources only if authorized in writing by the designated central nonprofit agency or the Committee for Purchase from People who are Blind or Severely Disabled. The Committee will grant a purchase exception when the central nonprofit agency cannot furnish the required supplies or services within the period specified, but commercial sources can. It may also grant a purchase exception when the quantity involved is insufficient for economic production by the workshop. If a purchase exception is granted because of required delivery time, the ordering office must initiate the purchase within 15 days, unless additional time is allowed by the central nonprofit agency. The ordering office must also send a copy of the solicitation to the agency.

3.1.3.e *Compliance with Orders.* If a workshop fails to comply with the terms of an order, and the problem cannot be resolved with the workshop, the order must be cancelled. Problems regarding quality that cannot be resolved with the workshop must be referred to the central nonprofit agency. When an order is cancelled, the central nonprofit agency must be notified and requested to reallocate the order if practicable. If reallocation is not practicable, a purchase exception will be given by the agency.

### 3.1.4 National and Area Contracts and Ordering Agreements

#### 3.1.4.a Definitions

1. *Postal Supply Schedule.* A list of indefinite delivery contracts (see 5.1.5) or ordering agreements (see 5.1.8) under which purchasing activities may place orders. A schedule identifies contractors, supplies and services available, contract and agreement numbers, ordering procedures and limitations, and other requirements.
2. *Systems contract.* A requirements contract (see 5.1.5.e) with a single source to provide a wide range of inexpensive items through catalog and telephoned orders.

#### 3.1.4.b General

1. The Postal Service encourages the establishment of contracts and ordering agreements for use on a national or area basis in order to:
  - (a) Reduce administrative effort;
  - (b) Simplify the supply of common-use items; and
  - (c) Obtain discounts for buying in volume.
2. Each such contract or ordering agreement, or accompanying instructions, must designate the activities authorized to place orders and state whether use is mandatory or optional.
3. Supplies and service available under mandatory contracts and ordering agreements must be ordered under those contracts and ordering agreements.
4. Flexibility in purchasing arrangements is needed in order to meet Postal Service customer service requirements through rapidly changing technologies. Therefore, use of national and area contracts and ordering agreements must not be made mandatory unless there are clear price or other advantages.

#### 3.1.4.c Systems Contracts

1. Purchasing organizations establish systems contracts in order to provide local activities with a simple method of obtaining common-use items.
2. Systems contracts are awarded to qualified sources after competition. Purchasing and Material's Field Customer Support and Policies, Planning, and Diversity organizations provide guidance in the establishment of systems contracts.

#### 3.1.4.d Other Contracts

1. Contracting officers may establish contracts for use Postal Service-wide or on a limited geographical or organizational basis. Under these contracts, contractors agree to provide supplies or services for stated periods of time.
2. Contract use may be made mandatory or optional.
3. Each contract must be awarded using competitive procedures (see 4.1) resulting in:
  - (a) Award to single source; or
  - (b) Award to multiple sources.
4. Because the contracts have been awarded through competition, there are no requirements for publicizing, obtaining competition, conducting cost or price

analysis, or determining contractor responsibility before placing delivery orders.

5. Contract and ordering information must be published in Postal Supply Schedules.

3.1.4.e *Area Ordering Agreements*

1. Purchasing Service Centers are encouraged to negotiate ordering agreements with contractors that are frequent suppliers to the area but are not under a systems or other national contract.
2. Before entering into an area ordering agreement, the contracting officer must give Policies, Planning, and Diversity at least 15 days' notice. Policies, Planning, and Diversity may direct the contracting officer to negotiate an ordering agreement covering additional purchasing activities, or direct that negotiations be carried out at the national level.

### 3.1.5 **Other Government Sources**

3.1.5.a *Federal Prison Industries, Inc. (UNICOR)*

1. *Policy*

- (a) It is Postal Service policy to use Federal Prison Industries, Inc. (FPI) as a source of supply for:
  - (1) Mailbag requirements exceeding the capacity of the Mail Equipment Shops; and
  - (2) Other products and services available from FPI.
- (b) Price and delivery terms must be reasonable and competitive with those of commercial sources (as determined by catalog or market prices or other means not involving obtaining competitive proposals).

2. *Ordering.* Supplies and services available from FPI are listed in their Schedule of Products brochure. This brochure and individual product and service catalogs (which provide detailed ordering instructions) are available from:

UNICOR CORPORATE DIVISION  
FEDERAL PRISON INDUSTRIES INC  
320 FIRST ST NW  
WASHINGTON DC 20534-0001

3.1.5.b *General Services Administration (GSA)*

1. *GSA Supply System.* GSA depots stock supplies commonly used by government agencies, as described in the GSA Supply Catalog and the GSA Stores Stock Catalog, which may be ordered by using GSA Form 457, *Publications Mailing List Application*. Ordering procedures are described in Handbook AS-701, *Materiel Management*. Price and delivery terms must be reasonable and competitive with commercial sources (as determined by market prices or other means besides obtaining competitive proposals).

## 2. Federal Supply Schedules

(a) *General.* Federal Supply Schedules (FSSs) are summaries of ordering contracts negotiated by GSA's Federal Supply Service. They include Single-Award, Multiple-Award, and New Item Introductory Schedules. GSA (FSSs) terms and conditions, rather than those used by the Postal Service, apply to orders placed against FSSs. Purchasing organizations may order against FSSs when they meet their quality and delivery requirements. Additional competition is not required when using FSSs.

### (b) *Types of Schedules*

(1) *Single-Award Schedules.* Single-award schedules cover contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. Most schedules contain all information necessary for placing orders. Some schedules specify that the contractor's catalog must be used for additional ordering information to aid in the selection of variables such as fabrics and colors.

(2) *Multiple-Award Schedules.* Multiple-award schedules cover contracts made with more than one supplier for comparable supplies and services. Contracts are awarded to suppliers of the same generic type of items at varying prices for delivery within the same geographic area. Contractor catalogs and price lists must be used with the schedules to prepare delivery orders. The catalogs and price lists contain information such as item description, prices and discounts, order limitations, and delivery terms.

(3) *New Item Introductory Schedule.* The New Item Introductory Schedule summarizes new or improved products, listing brand names of products available from various suppliers. Ordering offices must refer to contractor catalogs and price lists to prepare orders.

(c) *Information Available.* The "Federal Supply Schedules Program" section of the GSA Supply Catalog provides a list of the supplies and services available on the schedules. Copies of schedules may be ordered by sending GSA Form 457, *Publications Mailing List Application*, to:

GSA CENTRALIZED MAILING LISTS SERVICE  
DENVER FEDERAL CENTER BLDG 41  
DENVER CO 80225-0001

GSA's Federal Supply Schedule Program Guide (which includes a list of schedules and information on their use) may be obtained from the same address.

(d) *Ordering.* Orders are made directly from FSS contractors following the specific ordering instructions contained in the applicable schedule.

### (e) *Oral Orders*

(1) of \$100,000 or less may be made by oral order, provided that the contractor agrees to furnish, for each shipment, a delivery ticket containing the following information:

- (i) Contract number.
- (ii) Order number under the contract.
- (iii) Date of the order.
- (iv) Name and title of person placing the order.
- (v) Itemized list of supplies or services furnished.
- (vi) Signature of person receiving the item.

- (2) Invoices must be accompanied by receipted copies of related delivery tickets.
- (f) *Administration of Orders.* GSA is responsible for administering FSS contracts, and the Postal Service may not change, terminate, or otherwise undertake administration of an FSS contract. However, purchasing offices are responsible for contract administration functions on individual orders, in accordance with the terms and conditions of the GSA schedule contract, and must deal directly with the contractor. Such functions include:
  - (1) Inspecting and accepting supplies and services;
  - (2) Making or arranging for payment;
  - (3) Modifying orders;
  - (4) Terminating orders for default and charging contractors with resulting excess costs;
  - (5) Terminating orders for the convenience of the Postal Service; and
  - (6) Resolving disputes in accordance with the disputes clause of the schedule contract.
- 1. *Information Resources Management Service (IRMS Nonmandatory Schedule Contracts for Federal Information Processing (FIP) Resources.* Nonmandatory schedule contracts for Federal Information Processing (FIP) Resources are established by GSA's Information Resources Management Service (IRMS). FIP resources include telecommunications and FIP equipment, software, support services, maintenance, related supplies, and systems. GSA refers to these contracts as "Group 70 Schedule Contracts (ADP Equipment)" and "Group 58 Schedule Contracts (Telecommunications Equipment)." GSA contract terms and conditions, rather than those used by the Postal Service, apply to orders placed against these contracts. Orders must be competed, and orders above \$50,000 must be synopsized.
- 3.1.5.c *Defense Logistics Agency.* Supplies available from the Defense Logistics Agency (DLA) are described in the Federal Supply Catalog for Civil Agencies, published by DLA and available upon written request from:
 

COMMANDER  
DEFENSE LOGISTIC SERVICE CENTER (DLSC-APPP)  
BATTLE CREEK MI 49016-3412

 Ordering procedures are discussed in Handbook AS-701, *Materiel Management*.
- 3.1.5.d *Defense Fuel Supply Center.* Under an interagency agreement between the Postal Service and the Defense Fuel Supply Center (DFSC), Postal activities must purchase fuel (gasoline, gasohol, diesel fuel, heating fuel, and kerosene) from DFSC contractors if their annual requirement is 20,000 gallons or more per product at any given location. See the relevant handbook for procedures.
- 3.1.5.e *Veterans Administration.* The Veterans Administration makes medical supplies and equipment available to designated Postal Service installations having health units headed by a physician or registered nurse. Ordering procedures are described in Handbook AS-701, *Materiel Management*.
- 3.1.5.f *Government Printing Office.* Printing not done in-house by the Postal Service may be purchased from the Government Printing Office (GPO), GPO's Regional Printing Procurement Offices, authorized printing plants of other government agencies, or commercial sources. See subchapter 370, *Administrative Support Manual*.

### 3.1.6 Commercial Sources

- 3.1.6.a *General.* Supplies and services may be obtained from commercial sources (including educational and nonprofit institutions) following the procedures in chapters 4, 8, 11, or 12, as applicable.
- 3.1.6.b *Approved Sources.* The approved sources purchasing program provides for prequalification of standard commercial products or modified commercial products offered by manufacturers or distributors. Supply categories included in the program are listed in the *Postal Bulletin*. Supplies in those categories may be ordered only from those firms whose products have been tested for compliance with Postal Service requirements and approved for purchase. Potential sources are periodically solicited through notice in the *Commerce Business Daily* and provide an opportunity to submit their products for qualification. When national agreements have been negotiated with approved sources, they are listed in Postal Supply Schedules (see 3.1.4); otherwise, contracts are negotiated using competitive purchasing procedures, but competition is restricted to approved sources. Procedures for defining requirements, qualifying sources, negotiating agreements, and ordering supplies are described in the relevant handbook.
- 3.1.6.c *Prequalified Contractors*
1. Prequalified contractors are firms or institutions that have previously demonstrated their ability to perform consistently to high standards of quality and reliability.
  2. The consideration of proposals only from prequalified contractors ensures that selection for award can be made primarily on the basis of price proposals without undue performance risk.
  3. The contracting officer may decide to restrict to prequalified contractors any purchase within his or her delegated authority.

## SECTION 2 PUBLICIZING PURCHASE ACTIONS

### 3.2.1 Policy

- 3.2.1.a All solicitations valued at over \$100,000 must be publicized unless (1) precluded by urgency, (2) they fall within the exceptions dealing with leased space set out in chapter 11, (3) advance notice of services sought was previously published in the market research phase of the procurement, or (4) approval has been given to use simplified procedures for the procurement.
- 3.2.1.b To promote competition in subcontracting, the Postal Service publicizes awards of contracts, competitive or noncompetitive, having significant subcontracting opportunities.

### 3.2.2 Methods of Publicizing

- 3.2.2.a *Synopses of Solicitations.* Except for leases (see 11.4.2.b) and mail transportation procurements (see chapter 12), solicitations must be synopsized in the *Commerce Business Daily*, a Department of Commerce publication listing government agency solicitations and contract awards. The synopsis must be

forwarded to the *Commerce Business Daily* as early as possible, but not later than the date of issuing the solicitation. See the relevant handbook for format and other guidance.

- 3.2.2.b *Posting.* Solicitations must be posted in the public area of the purchasing activity.
- 3.2.2.c *Announcements and Advertisements.* Announcements of proposed purchases may be made available to newspapers, trade journals, and magazines for publication. Paid commercial advertisements may be used when determined by the contracting officer to be in the Postal Service's interest.
- 3.2.2.d *Synopses of Contract Awards.* Contracts having significant subcontracting opportunities must be synopsisized in the *Commerce Business Daily*. Although a matter of judgement, these are normally contracts over \$100,000 with individual subcontract opportunities over \$50,000. See the relevant handbook for format and other guidance.

## SECTION 3 CONTRACTOR QUALIFICATIONS

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### 3.3.1 Responsible Prospective Contractors

- 3.3.1.a *Policy.* Contracts may be awarded only to responsible prospective contractors. The award of a contract based on price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. For joint ventures, each party to the venture must demonstrate its responsibility.
- 3.3.1.b *General Standards.* Certain key areas must be considered in determining an offeror's responsibility. (At times the same areas may be used as evaluation factors. In such instances, the factors must be clearly stated in the solicitation and evaluated in accordance with its terms and conditions; see 2.1.7.c.3). To be determined responsible, a contractor must:
  1. Have financial resources adequate to perform the contract;
  2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commitments (including awards pending);
  3. Have a good performance record;
  4. Have a sound record of integrity and business ethics;
  5. Have a sound quality control program that complies with solicitation requirements or the ability to obtain one;
  6. Have the necessary organization, experience, accounting and operational controls, technical skills, and production and property controls, or the ability to obtain them;
  7. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
  8. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

- 3.3.1.c *Special Standards.* When they are considered necessary for a particular purchase or class of purchases, the contracting officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for satisfactory contract performance. The special standards must be set forth in the solicitation and must apply to all offerors.
- 3.3.1.d *Subcontractor Responsibility*
1. Generally, prospective contractors are responsible for determining the responsibility of their prospective subcontractors (but see 3.3.2 regarding debarred, ineligible, or suspended firms). Matters of prospective subcontractor responsibility may affect the determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.
  2. When it is in the Postal Service's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility, using the same standards as used to determine a prime contractor's responsibility.
- 3.3.1.e *Determining Responsibility and Nonresponsibility*
1. *Determination.* The contracting officer must make an affirmative written determination of responsibility before awarding any contract, except contracts of \$100,000 or less awarded using simplified procedures (see 4.2.3.e). In the absence of information clearly showing that a prospective contractor meets applicable standards of responsibility, the contracting officer must make a written determination of nonresponsibility.
  2. *Documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, must be included in the contract file.
  3. *Obtaining Information.* Before making a determination of responsibility, the contracting officer must possess or obtain information sufficient to be satisfied that a prospective contractor currently meets applicable standards of responsibility. Sources of information include:
    - (a) The list of debarred, suspended, and ineligible contractors (see 3.3.2.c), and GSA's consolidated list of contractors debarred, suspended, or declared ineligible by other government agencies;
    - (b) Records and experience data, including verifiable knowledge of personnel in purchasing offices, audit offices, and other contracting offices;
    - (c) The prospective contractor—including proposal information, questionnaire replies, financial data, information on production equipment, and personnel information; and
    - (d) Suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.
  4. *Discussion.* Communication with a prospective offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not "discussion" as defined in 4.1.5, and does not require that discussions be held with all those in the competitive range (see 4.1.5.g.1).

### 5. *Preaward Surveys*

- (a) If available information does not provide an adequate basis for determining the responsibility or nonresponsibility of a prospective contractor, the contracting officer must perform a preaward survey, obtaining the assistance and participation of specialists as needed. The extent of the survey must be consistent with the dollar value and complexity of the purchase, and may include any or all of the following:
  - (1) Data on hand or from other government agencies or commercial sources.
  - (2) Examination of financial statements and records.
  - (3) On-site inspection of plant and facilities to be used for contract performance.
- (b) Each participant in the survey must make a written report of his or her findings to the contracting officer, which must be retained with the contracting officer's determination. The contracting officer should require a consolidated survey report if there would otherwise be numerous individual reports.
- (c) The contracting officer may discuss preaward survey information with the prospective contractor being surveyed.

3.3.1.f *Disclosure of Information.* Information obtained for purposes of determining the responsibility of a prospective contractor must not be disclosed outside the Postal Service, unless disclosure is required by the Freedom of Information Act (see 1.7.4).

### 3.3.2 **Debarment, Suspension, and Ineligibility**

3.3.2.a *General.* Purchasing offices may not solicit proposals from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible contractors.

#### 3.3.2.b *Definitions*

1. *Vice President.* The VP, P&M.
2. *General Counsel.* This includes the General Counsel's authorized representative.
3. *Judicial Officer.* This includes the acting Judicial Officer.
4. *Debarment.* An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.
5. *Suspension.* A disqualification from contracting and subcontracting for a temporary period because a contractor is suspected upon adequate evidence of engaging in criminal, fraudulent, or other seriously improper conduct.
6. *Ineligible.* This means excluded from contracting and subcontracting under statutes, Executive orders, or regulations of government agencies, such as the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, or the Environmental Protection Acts and Executive orders.

7. *Affiliates.* Contractors so related that one either directly or indirectly controls or has the power to control the other, or a third party controls or has the power to control both.

3.3.2.c *Establishment and Maintenance of Lists*

1. The VP, P&M, establishes, maintains, and distributes to purchasing offices a consolidated list of contractors debarred, suspended, or ineligible for contracts or subcontracts.
2. The list contains:
  - (a) The names of debarred, suspended, and ineligible contractors, in alphabetical order, with cross-references when more than one name is involved in a single action;
  - (b) The basis for each action;
  - (c) The extent of restrictions imposed; and
  - (d) The termination date for each listing.
3. Copies of debarment notices (3.3.2.h), suspension notices (3.3.2.k), and Judicial Officer decisions (appendix D, section 957.21), and any order removing a debarment or suspension, must be sent to the VP, Purchasing and Materials, through Policies, Planning, and Diversity.
4. The General Services Administration (GSA) compiles and maintains a consolidated list of all contractors debarred, suspended, or declared ineligible by the Executive agencies and the General Accounting Office. GSA revises and distributes the list monthly, and issues weekly supplements. Within the Postal Service, the GSA list is for information only, and does not replace or supplement the list maintained by the Postal Service. However, the listing of a contractor by GSA may be the basis for debarment or suspension by the Postal Service (see 3.3.2.e and 3.3.2.j.1).
5. In order to ensure that both the GSA and the Postal Service lists are accurate, current, and complete, the VP, Purchasing and Materials, must:
  - (a) Arrange to receive contractor debarment, suspension, and ineligibility information from GSA; and
  - (b) Furnish GSA notice of any debarment or suspension determination made by the Postal Service and any changes in the status of contractors on the Postal Service list.

3.3.2.d *Treatment of Contractors on Postal Service List*

1. Debarred or suspended contractors are excluded from receiving contracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or (when the contract provides for such consent) consent to subcontracts with such contractors, unless the VP, P&M, determines in writing that there is a compelling reason for such action in the interest of the Postal Service.
2. Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Contracting officers may not solicit proposals or quotations from, award contracts to, or (when the contract provides for such consent) consent to subcontracts with such contractors under those conditions and for that period.

3. The debarment, suspension, or ineligibility of a contractor does not of itself affect the rights and obligations of the parties to any existing contract. However, except for service changes under mail transportation contracts, the contracting officer may not add new work to the contract by supplemental agreement or by exercise of an option unless the VP, P&M, makes a determination as required under subparagraph d.1 above.

3.3.2.e *Causes for Debarment.* The VP, P&M, is authorized, with the concurrence of the General Counsel, to debar a contractor in accordance with procedures in this part for causes such as the following:

1. Conviction for commission of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.
2. Conviction under the Federal antitrust statutes arising out of the submission of bids or proposals.
3. Violations of a Postal Service contract so serious as to justify debarment action, such as:
  - (a) Willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit provided in the contract;
  - (b) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered a basis for debarment;
  - (c) Violation of a contract clause concerning the maintenance of a drug-free workplace.
  - (d) Violation of a contractual provision against contingent fees; or
  - (e) Acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.
4. Any other cause of such serious and compelling nature, affecting responsibility as a contractor, as may be determined by the Postal Service to warrant debarment.
5. Debarment by another Executive agency or department.

3.3.2.f *Conditions for Debarment*

1. The existence of any of the causes in paragraph e above does not necessarily require that a contractor be debarred. The decision to debar is within the discretion of the VP and must be made in the best interest of the Postal Service. All mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, and in deciding whether debarment is warranted.
2. The existence of any of the causes in subparagraph e.1 or e.2 above must be established by criminal conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment must be removed upon the request of the contractor unless other causes for debarment exist.
3. The existence of any of the causes in subparagraph e.3 or e.4 above must be established by evidence that the Postal Service determines to be clear and convincing.

4. The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when a grave impropriety was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of the firm. Likewise, when a firm is involved in criminal, fraudulent, or seriously improper conduct, any person involved in the commission of the grave impropriety may be debarred.
5. Debarment for the cause set forth in subparagraph e.5 above (debarment by another agency) requires that one of the causes for debarment set forth in subparagraphs e.1 through e.4 above was the basis for debarment by the original debarring agency.

#### 3.3.2.g *Period of Debarment*

1. When statutes, Executive orders, or controlling regulations of other agencies provide a specific period of debarment, they are controlling. In other cases, debarment by the Postal Service must be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment may not exceed three years, but consistent with the Congressional finding in the Drug-Free Workplace Act of 1988, a debarment for violation of Clause 10-20, *Drug-Free Workplace*, may not exceed five years. When debarment for an additional period is deemed necessary, notice of the proposed additional debarment must be furnished to the contractor as in the case of original debarment.
2. Except as precluded by statute, Executive order, or controlling regulations of another agency, debarment may be removed or the period may be reduced by the VP, P&M, upon submission of an application by the debarred contractor. The application must be supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The VP may, as a matter of discretion, deny any application for removal of debarment or for reduction of its period or may refer the application to the Judicial Officer for hearing and final Postal Service determination. In any case in which a debarment is removed or the debarment period is reduced, the VP approving the removal or reduction must transmit to the Judicial Officer, for filing, a notice and statement of the reasons for the removal of the debarment or the reduction of the period of debarment.

#### 3.3.2.h *Procedural Requirements for Debarment*

1. The VP, P&M, must initiate a debarment proceeding by sending to the contractor a written notice of proposed debarment. The notice must be served by sending it to the last known address of the contractor by certified mail, return receipt requested. A copy of the notice must be furnished to the Inspection Service. The notice must state:
  - (a) That debarment is being considered;
  - (b) The reasons for the proposed debarment;
  - (c) The period of debarment and the proposed effective date;
  - (d) That the debarment will not become effective until after a hearing, if a hearing is requested within 20 days following the receipt of the notice of the proposed debarment; and

- (e) That any request for a hearing is to be accompanied by a statement setting forth the grounds upon which the proposed debarment will be contested, and that if no hearing is requested, the action of the VP, P&M, becomes the final Postal Service determination.
2. A contractor served with a notice of proposed debarment may request a hearing by addressing a request to the Judicial Officer through the VP, P&M. The hearing will be governed by rules of procedure promulgated by the Judicial Officer and set forth in appendix D. Except as provided in subparagraph h.3 below, the Judicial Officer must hear the matter and determine on the basis of the record whether the proposed debarment action should be sustained. The decision of the Judicial Officer is the final Postal Service decision. The VP, P&M, is represented by the General Counsel.
  3. When the VP, P&M, proposes to debar a contractor already debarred by another government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from the other agency or upon such facts and additional facts. In such cases the facts obtained from the other agency must be considered as established, but the party to be debarred must have an opportunity to present information to the Judicial Officer and to explain why debarment by the Postal Service should not be imposed.
- 3.3.2.i *Causes for Suspension.* The VP, P&M, may, when the interest of the Postal Service requires, with the concurrence of the General Counsel, suspend any contractor:
1. Upon adequate evidence of or indictment for:
    - (a) Commission of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract;
    - (b) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or
    - (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility as a contractor; or
  2. For other cause of such serious and compelling nature, affecting responsibility as a contractor, as may be determined by the VP, P&M, to warrant suspension. A pending hearing for debarment may be such a cause.
- 3.3.2.j *Conditions for Suspension*
1. A suspension invoked by another government agency may be the basis for the imposition of a concurrent suspension by the VP, P&M.
  2. Any contractor suspended that believes its suspension has not been in accordance with these rules, or with applicable laws and regulations, may appeal to the Judicial Officer for a review of the suspension. The Judicial Officer must, upon the basis of the papers submitted or upon other appropriate opportunity to be heard, expeditiously rule upon the validity of the suspension.
- 3.3.2.k *Notice of Suspension*
1. The VP, P&M, must cause a notice of the suspension to be served upon the contractor to be suspended. The notice must be sent by certified mail, return receipt requested, within ten days after its effective date. A copy of the notice must be furnished to the Inspection Service. The notice must state that:

- (a) The suspension is based:
    - (1) On information that the contractor has committed irregularities of a serious nature in business dealings with the Postal Service; or
    - (2) On irregularities that seriously reflect upon the propriety of further dealings of the contractor with the Postal Service (the irregularities must be described in general terms without disclosing the Postal Service's evidence);
  - (b) The suspension is for a temporary period pending the completion of an investigation and such other proceedings as may follow; and
  - (c) Proposals will not be solicited from the contractor and, if received, will not be considered for award, unless it is determined by the Postal Service to be in its interest to do so.
2. Answers to all inquiries concerning the suspension of any contractor must be coordinated by the VP, P&M, with the General Counsel or must be made by the General Counsel. When a matter has been referred to the Department of Justice, the Postal Service will not furnish in answer to inquiries any more information than is contained in the notice until the Department of Justice has agreed to the furnishing of additional information.
3. No suspension may exceed 120 days. A suspension, while in effect, may be extended for an additional period of 120 days upon written determination of the reasons and necessity for the extension. Notice of any extension of suspension must be served upon the contractor in the manner set forth in subparagraph k.1 above. In no event may a suspension plus its extensions exceed in the aggregate a period of one year, unless a debarment proceeding or a prosecutive action is pending, in which case successive additional periods of suspension may be imposed until the proceeding in question has been completed. The termination of a suspension, however, may not prejudice a debarment proceeding that was pending or that may be brought for the same reasons that led to the suspension.
- 3.3.2.i *Restrictions on Suspended Contractors.* Suspended contractors are subject during the period of suspension to the restrictions, conditions, and penalties set forth in paragraphs a and d above.
- 3.3.2.m *Rules of Practice.* The Postal Service Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting are set forth in appendix D.