REGIONAL ATTORNEYS' MANUAL

PART 4

RESOURCES AND TECHNICAL ASSISTANCE

OFFICE OF
GENERAL COUNSEL

APRIL 2005

PART 4. RESOURCES AND TECHNICAL ASSISTANCE

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PART 4

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SECTION I

OBTAINING EXPERT AND OTHER SERVICES

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OBTAINING EXPERT AND OTHER SERVICES

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A. INTRODUCTION: OBTAINING EXPERTS AND OTHER SERVICES

One of the most important initial steps in the litigation process is identifying the litigation support needs of each case. As soon as practicable after being assigned a case for litigation, and whenever possible prior to filing the complaint, the trial attorney should consult with his/her supervisory trial attorney, the Regional Attorney, and, if necessary, OGC Litigation Management Services (LMS) and/or Research and Analytic Services (RAS), to determine the services needed to support the litigation.

Litigation support services fall into two basic categories: nonexpert and expert services. Nonexpert litigation support services may include such items as: (1) court reporter services; (2) copying services; (3) services that assist in identifying and locating claimants and/or witnesses; (4) database construction services; and (5) process and subpoena servers. Expert services involve the retention of individuals to testify at trial and/or to consult during trial preparation. Experts may be medical doctors, psychologists, statisticians, economists, sociologists, or individuals with other areas of expertise. Some litigation support services are available internally, while others may only be obtained through a contract with an outside vendor.

The purpose of Part 4, section I of the *Manual* is to describe what litigation support services are available and how the trial attorney can obtain them. Some services are available internally, through RAS in OGC and through the Office of Research, Information and Planning (ORIP). Trial attorneys may be able to obtain nonexpert services through an agreement between the EEOC and the Department of Justice. Finally, this section of the *Manual* sets forth the federal and EEOC procedures for procuring nonexpert and expert contracts in some detail. Each subsection of Part 4, section I of the *Manual* is summarized below:

1. Services Provided by Research and Analytic Services

RAS is an arm of OGC with a small staff. Its staff members (who have advanced degrees in the fields of social science, psychology, economics, and statistics) are available to testify as trial or consulting experts in selected cases brought by the Commission and to provide assistance generally in their areas of expertise. RAS staff members are also skilled in analyzing data, and creating and managing large computerized databases. For more information about the services that RAS can

provide and how to obtain them, please refer to *Manual* Part 4, section I.B., *Services Provided by Research and Analytic Services*.

2. Services Provided by the Office of Research, Information and Planning

ORIP also provides analytic and technical support to Commission staff. ORIP generally provides support to Commission staff conducting class investigations, not litigation. For more information about ORIP's services, please refer to *Manual* Part 4, section I.C., *Services Provided by the Office of Research, Information and Planning*.

3. Litigation Support Services Provided by Department of Justice Contractors

Many of the nonexpert litigation support services that trial attorneys need in class cases, such as data input and analysis and mass mailings, can be obtained under an agreement between the EEOC and the Department of Justice (DOJ). On large cases, particularly where the cost of the services will exceed $25,000, attorneys should contact RAS to find out if the nonexpert services they require can be obtained through the EEOC-DOJ agreement. The EEOC-DOJ contract may also sometimes be the most efficient means of obtaining services for smaller cases; for example accounting or finance services, translation services, or trial support services in cities without an EEOC office. If the required services are available, and if the price for those services is reasonable, using the EEOC-DOJ contract will save the trial attorney the time ordinarily required to contract with a vendor using federal acquisition procedures. *Manual* Part 4, Section I.D., *Litigation Support Services Provided by Department of Justice Contractors,* describes the procedures for obtaining nonexpert support services through the EEOC-DOJ agreement.

4. EEOC Procedures for Procuring Expert Litigation Support Services

Except where available in-house through RAS[*], the Commission must contract for expert litigation support services using the federal acquisitions process. The steps for obtaining an expert contract are described in *Manual* Part 4, Section I.E., *EEOC Procedures for Procuring Expert Litigation Support Services*. Legal staff who have

[*] In the unusual case, an attorney may be able to obtain expert services from another federal agency. *See* Part 4, Section I.E.2.b., at note 2.

been employed at EEOC since prior to 1994 may remember that competitive bidding was once required for most expert contracts. At that time, an attorney was not allowed to discuss the facts of the case with prospective experts. The Acquisitions Streamlining Act of 1994 simplified the expert procurement process and did away with the requirement for "full and open competition" in procuring litigation experts. The procedures for obtaining an expert contract for $25,000 or less are quite simple and can be completed in the legal unit, generally in a few days. When the expert contract is for more than $25,000, the procurement package must go through a headquarters review process. Such contracts will generally take more than 30 business days (about six weeks) to complete.

5. EEOC Procedures for Procuring Nonexpert Litigation Support Services

Except where the legal unit obtains nonexpert litigation support services through the EEOC-DOJ agreement described above, the legal unit must contract for them using the federal acquisitions process. The basic steps for contracting for nonexpert support services are described in *Manual* Part 4, Section I.F., *EEOC Procedures for Procuring Nonexpert Litigation Support Services*. The usual EEOC nonexpert contract is bid competitively, unless it is for $2,500 or less. The procedures for obtaining a nonexpert support services contract for $25,000 or less are quite simple and can be completed in the legal unit, generally in a few days. When the nonexpert support services contract is for more than $25,000, the procurement package must go through a lengthy headquarters review process and the procurement procedures will generally take more than 100 business days (five months) to complete. Section I.F. also explains the narrow exceptions to the requirement for "full and open competition" for nonexpert services over $25,000 and how the procurement procedures change when an attorney seeks to invoke the "sole source" exception to this requirement.

B. SERVICES PROVIDED BY RESEARCH AND ANALYTIC SERVICES

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B. SERVICES PROVIDED BY RESEARCH AND ANALYTIC SERVICES

1. RAS Expertise and Services

Research and Analytic Services (RAS) was primarily established to provide analytic support for Title VII, EPA, and ADEA class and pattern or practice cases in litigation and enforcement. The unit was originally created as one of three divisions in the Office of Systemic Programs in 1979. Since then, RAS has provided "case-in-chief" experts to testify at trial as well as both consulting and rebuttal experts. The primary focus of RAS has always been on large, complex, class cases and charges.

RAS senior staff typically consists of social scientists, such as psychologists, economists, statisticians and social science analysts; the support staff primarily consists of research and statistical assistants. All of the senior staff have one or more advanced degrees and the majority of them have Ph.D.s. In addition to the specialized areas of expertise of the RAS staff, most are highly skilled in obtaining, creating, processing and managing large, computerized data bases. RAS staff are also highly skilled in analyzing data and in presenting their results through graphs and charts, expert reports, and deposition and trial testimony.

2. Obtaining RAS Services

Before developing a formal request for expert or other technical services, begin the process with preliminary discussions with the Director of RAS as to (1) what types of experts or other support might be needed for a case or charge, (2) what time-frames might be expected, and (3) what costs might be incurred. These discussions should occur at the earliest time possible, irrespective of whether or not RAS would be expected to provide the expert or other support services. For years, RAS had a requirement that requests for expert services in support of litigation be discussed with RAS at least three months prior to the close of discovery. The principle of discussing analytic proof and support issues with RAS at the earliest possible time is still good practice. This advice is particularly true for the development of interrogatories and requests for the production of documents.

After the initial discussions, a Regional Attorney, Assistant General Counsel, or field office manager must submit a written request to the Director of RAS for all services expected to require more than 16 hours of support. Only those requests requiring less

than 16 hours of assistance can be accepted orally. Written requests for RAS services for either cases or charges must (1) state the name of the defendant or respondent; (2) provide an outline of the legal issues or theories; (3) estimate the time-frames for developing the analytic proof; and (4) indicate any due dates, such as those already set by the court. The remainder of the request should be devoted to presenting the basic facts of the case or charge and suggesting how RAS might most effectively contribute to the enforcement effort.

After receiving the request for expert or other services, RAS will discuss the legal issues and possible analytic approaches to the case or charge with the attorneys and/or investigators assigned to it. Based on RAS' (1) understanding of the case or charge; (2) an initial assessment of the availability of RAS staff; (3) an evaluation of the financial requirements for the case or charge; and (4) a review of the expected time-frames, RAS will develop a Memorandum of Understanding (MOU). This document will be developed by RAS in coordination and consultation with the requesting legal or enforcement unit. The MOU will (1) identify the RAS expert or experts to be assigned to the case or charge, (2) specify the tasks that they or the support staff are to perform, (3) identify the records and other information that are to be obtained or created for the experts, and (4) specify tentative steps and completion dates for each of the major sub-tasks for the requested services. Before any work is to be done by RAS, the MOU must be signed by the Regional Attorney, Associate General Counsel or field office manager and returned to RAS. If there are any major changes in expectations or time-frames and in required information or resources after the initial discussions, the effect of these differences will have to be discussed and resolved prior to the development of an initial or, perhaps, subsequent MOU.

The basic intent of this guidance is to help ensure that legal and enforcement units requiring the development of analytic proof begin the planning for this process at an early stage in the case or charge and that both RAS and the legal or enforcement unit will know what to expect from each other during the development of the case or charge.

3. Procedures for the Review of Tests and Other Selection Procedures

Attorneys and investigators should consult the industrial/organizational psychologists in RAS when employment tests or other selection procedures are at issue in a case or charge. These include any selection procedures which appear to have had an adverse impact against members of a protected group. Typical examples include

written tests, physical ability tests, structured interviews, and other procedures or criteria used to rank or exclude applicants.

The psychologists in RAS are available to consult with EEOC staff regarding the validation of selection procedures and statistical methods for determining adverse impact. The selection procedures must be validated when adverse impact has been demonstrated. The RAS psychologists can also consult on disparate treatment resulting from the use of tests. They work with attorneys as consultants and expert witnesses during employment litigation and review adverse impact data and test validation studies during EEOC investigations.

RAS psychologists review charges that arise from the use of tests or other selection procedures. There should be an initial review of available data to determine whether the test has an adverse impact against a protected group. In a multi-stage selection process, each individual component as well as the total selection procedure should be examined for adverse impact.

For a given charge or case, the requesting office may, if it prefers, perform its own statistical adverse impact analyses. All EEOC offices should have copies of the **EEOSTAT** software package of statistical programs related to employment discrimination. The **AVAIL** and **SQUARE** programs contained within **EEOSTAT** provide simple statistical analyses of data from class-based discrimination claims. In most situations involving the use of tests, where either applicant flow data or testing pool data are available, either the **SQUARE** or **AVAIL** procedures might be used, where appropriate. Contact your local computer specialist for details for information on obtaining and using **EEOSTAT**. Also, if necessary, RAS will perform the required adverse impact analyses upon request.

If significant adverse impact is found, the respondent or defendant should be asked for evidence which demonstrates that the selection procedure is job related. The evidence provided will typically take the form of a validation report. The report should be examined to see whether it contains a separate "job analysis" section which, in most instances, should be included. After receiving the validation report, it is recommended that the investigator or attorney discuss it with an RAS psychologist. If no significant adverse impact is found, there is usually no need to request a validity report or a validity review.

The technical standards for the review of validation reports are those of the 1978 Uniform Guidelines on Employee Selection Procedures (UGESP), at 29 C.F.R. § 1607, as well as current generally accepted professional testing standards, such as the 1999

Standards for Educational and Psychological Testing and the 1987 Principles for the Validation and Use of Personnel Selection Procedures. The Uniform Guidelines are intended to be consistent with professional standards (UGESP, Section 5C).

Attorneys and investigators are encouraged to contact RAS psychologists informally to discuss selection procedures at issue in their cases. To make a formal request for RAS assistance in conducting adverse impact analyses and validity reviews, follow the procedures in section I.A.2. of Part 4 of the *Manual*. Memoranda to the Director of RAS requesting services should note any prior discussions with RAS psychologists. Copies of the validation reports and other pertinent documents should be made and forwarded to RAS. Upon receipt of the validation report, the Director of RAS will refer the case to an RAS psychologist. If the psychologist assigned to the case concludes that the validity evidence is incomplete, there may be a need to obtain additional data and information from the employer.

During an EEOC investigation, the RAS psychologist will review the validation report and provide conclusions and recommendations in a memorandum, through the Director of RAS, to the person who requested the review. If the psychologist concludes that the validity evidence does not satisfy the technical standards, additional requests may need to be made of the respondent. If the psychologist concludes that the validity report satisfies the technical standards, and there is no evidence of another selection procedure with equal or greater validity and less adverse impact, the psychologist will conclude that the respondent has satisfied the requirements of the Uniform Guidelines.

If a validity review is requested during litigation, the RAS psychologist will provide consultation and/or expert services, depending upon the needs of the Regional Attorney. In most instances, a Memorandum of Understanding (MOU) between the Regional Attorney and the Director of RAS will need to be drafted and signed. Upon receipt of a litigation-related request, RAS will draft an MOU and submit it to the Regional Attorney for approval. For cases in litigation, the RAS psychologist may provide conclusions and recommendations either in consultation with attorneys or in expert reports and testimony.

The EEOC does not provide prior approval of tests or other selection procedures and does not recommend specific selection procedures. However, a negotiated settlement agreement may require review and approval by an EEOC psychologist.

4. Opposing and Defending Expert Admissibility

Few areas of law affecting OGC litigation have changed as much over the past few years, and continue to evolve as dynamically, as the admissibility of expert testimony. Since 1993, the Supreme Court has issued three major decisions that interpret the Federal Rules of Evidence covering experts (*Daubert, Joiner*, and *Kumho Tire Co*). In February 2000, the Court reiterated that attorneys proffering experts must be aware of the exacting standards of reliability such evidence must meet (*Weisgram*). In December 2000, revised Fed. R. Evid. 702 went into effect, codifying the Court's expert jurisprudence. The revised Rule reflects Congressional concurrence with the importance of the trial judge's role in evaluating proposed expert testimony. As a "gatekeeper," a district judge is responsible for determining whether a purported expert's testimony is based on principles and methods applied reliably to the at-issue facts.

RAS has closely followed the development of federal court decisions on admissibility of expert testimony and is available to consult with legal units on these issues. Thus, RAS can provide pretrial technical assistance regarding defendants who: (1) challenge the admissibility of experts retained by OGC or (2) seek to admit experts who are unqualified to address the questions at issue or whose opinions will not assist the trier of fact. This assistance may include, but is not limited to, identifying the most current circuit and district court precedent interpreting various admissibility issues. The assistance may also include reviewing OGC strategic options regarding defensive and offensive strategies, drafting memoranda, reviewing draft memoranda supporting motions prepared by OGC staff, and reviewing memoranda supporting defendants' motions and replies. If after initial discussions with RAS, a legal unit requires more extensive assistance, the Regional Attorney must submit a written request to the Director of RAS, similar to what is required for other RAS services pursuant to subsection A.2., above.

In sum, OGC suggests that attorneys unfamiliar with this rapidly developing area of law seek technical assistance from RAS. Because each expert admissibility problem is highly case-specific and idiosyncratic, such direct assistance can save valuable time in the litigation process.

5. Web Resources

Title	Description and Web Address
29 C.F.R. § 1600, et seq.	Index to the Commission's regulations (29 C.F.R. Parts 1600 through 1691) on EEOC's Web site with links to each Part on the Government Printing Office's (GPO's) web site. The Uniform Guidelines on Employee Selection Procedures (UGESP) are at 29 C.F.R. § 1607. http://www.eeoc.gov/policy/regs/index.html
Uniform Guidelines on Employee Selection Procedures: Questions and Answers	The EEOC's Questions and Answers on the Uniform Guidelines on Employee Selection Procedures. http://www.uniformguidelines.com/questionandanswers.html

C. SERVICES PROVIDED BY THE OFFICE OF RESEARCH, INFORMATION AND PLANNING

The Office of Research, Information and Planning (ORIP) fulfills the following functions: it disseminates data collected in employer work force surveys (described below) to Commission officials at headquarters and in the field, to Congress, to employers, to state and local government officials, to researchers, and to the media; it maintains necessary data and keeps abreast of automated technology for the storage, analysis and dissemination of data; it provides analytic support for investigations which involves the construction of large analytic databases and the construction of statistical evidence; it conducts research and studies relating to the impact of Commission programs; it serves as back up to survey processing; and it serves as a statistical research source for other areas of the Commission.

ORIP's analytic support for investigations runs the gamut of technical support necessary to conduct a class investigation.

1. Provision of Work Force Data

Nearly every employer in the United States with 100 or more employees is required to file an Equal Employment Survey with the Commission. Private employers file an EEO-1, referral unions file an EEO-3, state and local governments file an EEO-4, elementary and secondary level school districts file an EEO-5, and institutions of higher education currently file an IPEDS report with the Department of Education serving as our EEO-6 report. Therefore a report describing the work force of any large employer is available upon request.

Aggregate statistics or availability data can be obtained from ORIP through the summary of any of the reports mentioned above or through the 2000 Census data. All of this data, the EEO-1 through EEO-6 and the Census data, are available for various labor market parameters, including job categories and geographic area. ORIP will prepare special computer-generated reports upon request. Additionally, a great deal of this data is aggregated by various labor market characteristics and published annually for private employers and biennially for state and local governments in our *Job Patterns* books. ORIP also provides technical assistance in assessing EEO-1 data using the EEO-1 Desktop application.

2. Assessment of Targets

ORIP will assist field offices in comparing an employer's profile to aggregated data. This helps predict the possible impact of potential Commissioner Charges, directed age investigations, and charges being considered for expansion to a class investigation. Assistance includes determining appropriate labor markets and applying appropriate statistical significance tests.

3. Development of Requests for Information

ORIP is available to assist in framing initial requests for work force information stored on computer systems, and interpreting those responses. ORIP relies on existing Commission guidance in adopting a two-step approach that first requests a description of the respondent's computer system and then requests specific computerized data. ORIP will recommend language for the initial request, will provide detailed assistance in interpreting the system description, and will assist in drafting the request for the actual information.

4. Construction of Analytic Databases

Class investigations most often involve large employers. A large work force necessitates the use of complex computerized personnel files. ORIP will provide assistance in converting the data from its raw form or widely used software to databases that can be readily analyzed. Initially this most often involves reading and copying computer tapes and verifying the accuracy of the transfer. The data is then converted into a SAS database.

5. Data Analysis

ORIP will develop descriptive and inferential statistics that can serve to bolster the evidence developed in the investigation. The statistics range from the simple displays of data, calculation of means, and construction of frequency distributions to the conduct of statistical significance tests.

ORIP attempts to provide services in a manner most compatible with the needs and resources of the field office. Any number of approaches can be developed. For

example, ORIP can provide independent analysis of specified issues. At the other extreme, ORIP can provide very detailed on-the-job training to enable investigators to independently develop statistical evidence in the future. Inquiries and requests can be directed to Ron Edwards, Social Science Research Specialist, at (202) 663-4949.

6. Web Resources

Title	Description and Web Address
EEO-1 Survey	Information on filing EEO-1 report for current year on EEOC's Web site. http://www.eeoc.gov/eeo1survey/index.html
Standard Form 100 Instruction Booklet	Instructions for filling out EEO-1 Report on EEOC's Web site. http://www.eeoc.gov/stats/jobpat/e1instruct.html
Information on the Census 2000 Special EEO File	Information on the Census 2000 Special EEO File, on EEOC's Web site. http://www.eeoc.gov/stats/census/index.html
Job Patterns for Minorities and Women in Private Industry	Five years of data for private employers from EEO-1 reports in aggregated format for major geographic areas and by industry group on EEOC's Web site. http://www.eeoc.gov/stats/jobpat/jobpat.html

D. LITIGATION SUPPORT SERVICES PROVIDED BY DEPARTMENT OF JUSTICE CONTRACTORS

Since 1995, EEOC has had an interagency agreement with the Environment and Natural Resources Division of the Department of Justice (DOJ), to obtain litigation support services through DOJ contractors. EEOC field legal units and Research and Analytic Services (RAS) in OGC, have used the vendors to:

- Prepare and send a large mailing for a stage two payout procedure. The vendor also prepared a computerized database of claimants and assisted with followup work.
- Prepare a computerized index to electronically locate documents in a large class case.
- Subcontract with local vendors for support services at trial in a location with no EEOC office (photocopying and FAX machines, copying service).
- Assist in a mailing to potential members of a very large class; computerize and process the responses to conform to the defendant's request.
- Code documents and conduct data entry (keypunching).
- Contact potential class members via telephone and mail. Search for current addresses and phone numbers.

Other types of services available through the DOJ vendors include (1) any clerical task, including telephoning, (2) scanning of paper documents to create machine-readable files, (3) database creation and other computer-related tasks, (4) projects requiring the services of paralegal specialists, accountants, financial analysts, or librarians, and (5) on a cost-plus basis, leasing of equipment and space, purchasing of equipment and supplies, and providing interpreters and translators. The work done through DOJ contractors must be related to cases in litigation. Generally, use of the DOJ vendors is most beneficial for tasks costing more than $25,000. The major advantages of using this process are the short time needed to process and begin work

on requests, the flexibility of the vendors, and centralized funding through OGC headquarters.*

To obtain the services of a DOJ vendor, the field legal unit should first provide RAS with a short Statement of Work that describes the case and the work to be performed. Second, RAS will transmit the Statement of Work to DOJ. Third, DOJ will obtain a cost estimate and a work plan from the vendor and forward them to RAS. Finally, RAS will request approval from OGC. If OGC approves the request, then Administrative and Technical Services Staff will prepare the obligating document. Work can begin after the appropriate signatures are obtained.

For additional information, contact Elvira Sisolak of RAS at (202) 663-4762.

* Compare the procedure for obtaining litigation support services using a DOJ vendor to the procedure for obtaining such services through the EEOC's routine nonexpert procurement process, discussed in Part 4, section I.F. of the *Manual*.

E. OGC PROCEDURES FOR PROCURING EXPERT LITIGATION SUPPORT SERVICES

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E. OGC PROCEDURES FOR PROCURING EXPERT LITIGATION SUPPORT SERVICES[1]

1. Introduction

A significant number of litigation support procurement requests are for obtaining expert services. The Commission usually retains experts to testify in plaintiff's case-in-chief at trial, to consult during trial preparation, and/or to testify as a rebuttal witness at trial. Over the years, the legal units have worked with experts in diverse fields, including medical doctors, psychologists, statisticians, economists, individuals with expertise in various aeronautical specialties, etc. This section therefore addresses the procurement processes applicable to the acquisition of those expert services. While there are more similarities to -- than differences from -- the procurement process for nonexpert litigation support services, described in Part 4, section I.E, the entire process is described here to avoid confusion.

EEOC Order 360.001, EEOC Acquisition Policy, Guidelines, and Procedures, dated July 1, 1986, as amended, defines a "contract" as "a mutually binding legal relationship . . . obligating the seller [the contractor] to furnish supplies or nonpersonal services and the buyer [the Commission] to pay for them."[2] The typical EEOC contract is a two-signature document in which the selected contractor signs first ("the offer") and the authorized Commission official signs second (the "acceptance"), resulting in a binding legal relationship. Another form of EEOC contract is a purchase order. With a

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[1] Since this section was originally written, the Commission has begun using the Interior Department Electronic Acquisition System - Procurement Desktop (IDEAS - PD) to prepare, process, and track procurement documents. In addition, the Commission has required use of the Integrated Financial Management System (IFMS) since October 2002 for all purchases of $2,500.00 and more and for any purchases (awards, purchase requisitions, contracts, and inter-agency agreements) made with purchase orders. This subsection does not address any changes to the procurement process made subsequent to Commission adoption of IDEAS-PD and IFMS.

[2] See EEOC Order 360.001, pp. 1-2. While this discussion is intended to assist OGC staff in understanding and navigating the sometimes complex area of federal procurement procedure, all OGC staff whose job duties may include involvement in the procurement process should become familiar with EEOC Order 360.001.

purchase order, the authorized EEOC official signs first ("the offer"). The purchase order becomes binding when the selected contractor accepts in writing or performs the requested services (the "acceptance"). Contracts and purchase orders for less than $100,000 are called "simplified acquisitions." The procurement process is the same for both, although some of the forms differ.

Subsection 2., below, addresses the initial steps in the procurement process for all expert services contracts. Subsection 3. describes the required paperwork and procurement process for requests for $25,000 or less (which are approved at the field office level). This is a relatively simple process, which can be completed in several business days. Subsection 4. describes the procurement process for requests for more than $25,000 (which require headquarters approval). This process is somewhat more complicated than the former. Headquarters processing of these requests takes 30 business days (six weeks) or longer.

2. Initial Steps in Expert Procurement Process

Before the trial attorney can prepare the paperwork required to start the expert contract process, the trial attorney will determine what expert services are needed and identify potential experts. These two steps will be the same regardless of the estimated cost of the contract.

a. Identifying the Need for Expert Services

Regardless of whether the request is for $25,000 or less or for more than $25,000, the first step in the procurement process is initiated at the field office level. The trial attorney should as soon as practicable after being assigned a case for litigation, and whenever possible prior to filing the complaint, consult with his/her supervisory trial attorney, the Regional Attorney, and, if necessary, OGC Litigation Management Services (LMS) and/or Research and Analytic Services (RAS), to determine the need for consulting or trial experts.

b. Identifying Potential Experts

Once the trial attorney has decided that an expert is needed, the trial attorney will next identify experts who will be able to perform the needed services. As discussed above, the trial attorney will benefit from discussing the case with legal unit staff and other Commission staff for help in identifying prospective experts. Other potential sources of help with identifying experts include federal law enforcement agencies,

individuals and organizations involved in similar civil rights litigation, bar organizations, local colleges and universities, etc.

When the trial attorney anticipates needing expert services, s/he should first check with Research and Analytic Services (RAS) in OGC to see if an in-house expert is available.[3] See Part 4, section I.B. of the *Manual* for a discussion of the services available from the RAS staff. Legal units should always consider using RAS staff as consulting experts when outside experts are retained to testify. OGC should make full use of this important in-house source of expertise.

For many years, government attorneys were required to retain experts through a "full and open competition" process. The only permissible deviation from that competitive process was known as the "sole source" exception. The Acquisition Streamlining Act of 1994, however, simplified the expert procurement process. Federal government attorneys are no longer required to competitively bid expert contracts;[4] attorneys can now discuss the facts of the case with potential experts and retain experts on an other than "full and open competition" basis.[5]

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[3] Occasionally, it may be possible to obtain expert services through other federal agencies. This will save Commission resources and obviate the need for using the procurement process described here. For example, in the early 1980s the EEOC needed an expert in jet flight simulator testing for an action against a major airline. By contacting the Federal Aviation Administration (FAA), the trial attorney was able to obtain the services of a highly competent flight simulator expert with a commercial pilot's license, whose experience before joining the FAA included managerial jobs in the commercial airline industry. This expert worked with the EEOC sporadically for several years until his services were no longer needed. The only costs that the EEOC bore were for travel, lodging, meals, and incidentals. Consider whether a federal government expert could be an asset to your case.

[4] This has also eliminated the requirement to follow the sole-source contracting procedures discussed in Part 4, section I.F.4.b., *supra*, when retaining experts, in virtually all circumstances.

[5] The authority for EEOC to use "other than full and open competition" when the agency retains expert services for any current or anticipated litigation or dispute is provided by 41 U.S.C. § 253(c)(3)(C) and Federal Acquisition Regulation 6.302-3. The statute provides that noncompetitive procedures may be used:

While the Acquisition Streamlining Act of 1994 eliminates the need for "full and open competition" in the procurement of experts, the Act nevertheless requires government attorneys to promote competition to the maximum extent possible. Therefore, to meet this requirement and ensure selection of a well qualified expert, trial attorneys should attempt to identify at least two or three potential experts who likely would be able to perform the required tasks.

When contacting potential testifying experts, the trial attorney should not limit the discussion to the substantive issues in the case. The trial attorney should assess each potential testifying expert's ability to communicate effectively with a judge and jury. In addition, the attorney should ask each potential expert to provide the following information:

- Relevant qualifications (including references), experience and publications;
- Availability and willingness to do the necessary work, including travel, reports, exhibits, testimony, meeting court-imposed deadlines, etc.;
- Resources available to accomplish the required tasks;
- Use of subcontractors, graduate students, and other support personnel for portions of the work;
- The amount of time the expert expects the work to take;[6]

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to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify.

[6] If the legal unit interviewing the expert knows, based on past experience, the hours that it expects will be needed to perform each of the tasks that will be part of the expert's work, these estimates should be discussed with the expert to determine whether he or she concurs with this assessment. It will also be important to determine

- Past litigation experience (including prior testimony on the same or related areas or topics) and attorney references regarding that litigation;

- Potential conflicts of interest (current or prior work with the defendant or an entity related to the defendant or with the defense law firm(s));

- The hourly or daily fee the expert has charged in other, similar litigation, including fees for deposition and trial testimony;[7]

- What increase in the hourly or daily fee the expert might seek in the event the contract must be extended beyond the proposed initial period of performance; and

- Willingness to sign a confidentiality agreement.

3. Procurement Packages for $25,000 or Less

The remaining steps in the procurement process for expert services for $25,000 or less all take place in the field office. The trial attorney prepares the paperwork for the Regional Attorney's approval and then the administrative unit processes the paperwork and issues the purchase order.

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whether there are any other tasks the expert believes will be required for the expert to perform the role expected (for example, tests performed by someone other than the expert or his or her staff).

[7] If the expert has not testified in a similar case, the legal unit should attempt to determine the expert's rate for comparable services in other litigation.

a. Preparing the Procurement Request

(1) EEOC Form 123, Requisition for Supplies, Equipment, Services, Furniture

Requests for expert litigation support services are initiated by using an EEOC Form 123, *Requisition for Supplies, Services, Equipment, Furniture*. (See appendix1 for a copy of a blank Form 123). The Form 123 must contain the following information:

(a) A brief description of the services requested.

(b) The estimated date by which the services are needed.

(c) The name, office, and telephone number of the proposed Contract Monitor, who will be the Commission's point of contact with the selected vendor. As discussed below in Part 4, section II. of the *Manual (Contract Monitors' Duties and Responsibilities*), the Contract Monitor is responsible for reviewing the selected expert's performance under the contract and certifying the acceptability of the services rendered. The Contract Monitor usually will be the supervisory trial attorney or trial attorney.

(d) Whether the request is for a new service or a modification to an existing contract.

(e) The proposed duration of the contract or modification.

(f) The estimated cost of the proposed contract.

(g) Name and identifying information for the proposed expert (or experts).

(h) The signature of the requestor, usually the supervisory trial attorney or trial attorney.

(2) Statement of Work (SOW)

A Statement of Work (SOW) is a clear and comprehensive description of the work to be performed and the contract performance standards to be met. The SOW is the most critical part of the procurement request, as it serves as the foundation for the resultant contract. The tasks set out in the SOW should be specified in sufficient detail

that the Contract Monitor will have no difficulty in determining whether the selected expert has complied with the contract. At a minimum, the SOW should contain the following:

(a) An introduction identifying the Commission, the case for which the request is made, and the principal issues in the case.

(b) The purpose of the proposed contract, including the reasons the Commission needs the expert services.

(c) A detailed description of the expert services to be performed. For contracts for $25,000 or less in which the expert will only be required to complete one or two concise, easily identified, tasks, the supervisory trial attorney, after consultation with the Regional Attorney, may determine that a detailed SOW is unnecessary.

(d) The period of performance for the proposed contract.

(e) The quantity and/or due date of all deliverables, such as any reports by the expert on the progress of the work, deposition testimony, final expert report, trial exhibits, and trial testimony.

(f) The identification of the proposed Contract Monitor.

(g) The estimated cost of the contract. Specifically describe the types of services the expert will perform (*e.g.,* review of relevant background documents, deposition preparation, assisting attorney at trail), estimate the number of hours each type of service will take, provide the expert's hourly rate, and calculate a total price for each service. Separately estimate projected travel and lodging costs. Estimates of tasks to be performed and hours required may be revised based on discussions of the proposed work with the potential expert. Where litigation will be protracted, the contract should be divided into phases to avoiding tying up limited Commission resources. Each contract will contain a clause that will provide the Commission with the option to extend the contract's period of performance, if necessary. Therefore, the cost estimates in the SOW should also include any estimated rate increases that would occur should the Commission need to exercise one or more option(s) to extend the period of performance.

(h) Name and identifying information for the proposed expert(s).

(3) Market Survey

Although, as noted earlier, legal units no longer need to competitively bid for expert services procurements, legal units are nevertheless required to promote competition to the maximum extent possible. The procurement package must include a completed Market Survey indicating what steps were taken to identify prospective experts and whether any particular expert is recommended. (See appendix 2, *Market Survey Form*.) Where legal units have solicited written proposals from a number of potential experts, the legal units prepare evaluation criteria which contain the standards for selecting the expert.

b. Regional Attorney Review and Approval

The Regional Attorney should play an active role in selecting experts. The Regional Attorney should review and approve each request for an expert services contract, regardless of the cost, to ensure that the needed services are correctly identified and the proposed contract costs are reasonable. When the expert services requested are $25,000 or less, the Regional Attorney has authority to approve the contract.

c. Field Office Processing and Issuance of Purchase Order

Once the Regional Attorney approves a request for expert services for $25,000 or less, the package should be forwarded to the field office administrative officer or budget analyst (collectively referred to here as "administrative officer") for processing. In the usual case, where the trial attorney has recommended that a specific expert be awarded the contract, the administrative officer will contact the proposed expert to confirm his/her availability and the costs of the various services that the expert is expected to provide. The administrative officer will then obtain the signature of the Commission's Contracting Officer -- for contracts for $25,000 or less, this is usually the Office Director – and will issue the purchase order.

While it is unusual, the trial attorney may instead identify more than one potential expert without making a specific recommendation. Where this occurs, the administrative officer should prepare a request for proposal (RFP) and forward it to each of the potential experts identified by the trial attorney. Typically the experts will be given five business days to submit their proposals. The administrative officer should then submit the potential experts' proposals to the trial attorney, who will evaluate them and recommend which expert to select to the Regional Attorney. The administrative officer will then complete the contracting process.

4. Procurement Packages for More Than $25,000

Preparing a request for expert services for more than $25,000 is more time consuming than requesting a contract for $25,000 or less. Unlike the expert contract for $25,000 or less, headquarters must approve the expert contract for more than $25,000. In the wake of the simplifications to the federal acquisition process embodied in the Acquisition Streamlining Act of 1994, headquarters approval of these expert contracts usually takes a little bit more than 30 business days (or about six weeks), which is substantially less time than it takes to obtain approval of a nonexpert services contract for a like amount.

a. Trial Attorney Prepares the Procurement Request

The procurement package for more than $25,000 contains the same elements that are required for the expert contract for $25,000 or less, described in subsection 3.a., above, with two permutations. First, when the contract is for more than $25,000, the signature of the requestor on the Form 123 must be that of the Regional Attorney, instead of the supervisory trial attorney or trial attorney. Second, all expert contract requests for more than $25,000 will require a detailed Statement of Work (SOW).

b. Regional Attorney Reviews and Approves Request

Where the legal unit is seeking expert litigation support services for more than $25,000, the Regional Attorney must still review and approve the package. Thereafter, the package must be submitted to headquarters for approval.

c. Office of General Counsel Reviews and Approves Request

After obtaining Regional Attorney approval, the legal unit should forward the request for expert services to OGC's Administrative and Technical Services Staff (ATSS). ATSS is responsible for coordinating procurement requests throughout the process to ensure their timely completion, and questions concerning the process should be addressed to ATSS. The procurement package should be submitted to ATSS in electronic format as well as hard copy.

ATSS will first review the procurement package to ensure that it is complete. ATSS will return an incomplete package to the field office legal unit for completion.

After ATSS's Program Officer approves the procurement package, ATSS will transmit it to LMS and/or RAS[8] for review.

LMS and/or RAS will review the procurement package for sufficiency. This will include determining whether the tasks described in the SOW are appropriate and the estimated costs are reasonable. In the event ATSS, LMS, or RAS determines that the procurement package is incomplete or requires modification, ATSS, LMS or RAS will consult with the Regional Attorney or his/her designee concerning the recommended steps to complete or modify the package. The Regional Attorney or designee should expeditiously complete or modify the procurement package.

Once LMS and/or RAS determines that the procurement package is satisfactory, it will submit a written statement about the appropriateness of the tasks in the SOW and the reasonableness of costs to the Deputy General Counsel. The Deputy then will review the statement and either approve or disapprove the procurement request. Where the Deputy approves the request, ATSS will submit the procurement package to the Procurement Management Division of the Office of the Chief Financial Officer and Administrative Services (PMD), accompanied by the Deputy General Counsel's authorization.

Normally the OGC review process described above takes six business days, four days for the ATSS and LMS/RAS review, including any necessary modifications to the package, and another two days for the Deputy General Counsel's review.

d. Commission Votes to Approve Request, Where Required

Most requests for expert contracts do not require Commission approval. However, the Commission must vote to approve any request for a contract for $100,000 or more. Obtaining Commission approval will take ten to 15 business days.

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[8] If the request is for expert services outside RAS' areas of expertise, the request likely will be reviewed solely by LMS. RAS' areas of expertise include economics; labor economics, particularly in the areas of constructing labor markets and availability estimates; data base conversion or construction; computerized data analysis; psychology, including industrial/organizational and personnel psychology; general social science research, such as racial/age stereotyping or sexual harassment; statistics, particularly complex or multivariate analyses; and financial analysis, such as estimating the value of businesses.

e. PMD Reviews Procurement Request and Prepares Request for Proposal

PMD reviews the procurement package, prepares a Request for Proposal (RFP), and solicit proposals from prospective experts within seven business days. During its review of these documents, PMD will consult with the ATSS Program Officer on questions regarding the SOW and on any changes to the procurement package PMD believes are necessary. OGC and/or the Regional Attorney or designee will be required to make any necessary changes before PMD can complete processing of the procurement package. Once PMD is satisfied that the procurement package is satisfactory, it will prepare and submit an RFP to the proposed expert or experts. The RFP contains the SOW and any additional information required by federal acquisition law and Commission policy or otherwise necessary for the expert to respond to the RFP.

f. Experts Submit Proposals

Once PMD forwards the RFP to the proposed expert, PMD normally allows five business days for the expert to submit his or her proposal based on the tasks, estimated number of hours and the other requirements listed in the RFP. If the trial attorney will need an expedited procurement action, s/he should contact PMD, and it in turn will arrange for submission of the proposal in a shorter time.

g. Trial Attorney Evaluates Proposals

Once PMD receives it, PMD will submit the expert's proposal to the trial attorney, who will have three days to review and evaluate it. If the trial attorney is not available during the evaluation period, the Regional Attorney should appoint an alternate evaluator. Using the evaluation criteria contained in the SOW, the trial attorney will evaluate the prospective expert's technical and cost proposals, including travel and other direct costs (*e.g.*, copying and costs to create exhibits) to determine whether they are appropriate. The trial attorney must submit his/her evaluation of the proposal -- including any questions about direct costs -- to PMD in writing.

h. Final PMD Approval and Contract Preparation

Once PMD receives the trial attorney's written evaluation, PMD will have three business days to review it, determine that the proposed labor rates are reasonable, and award the contract. An additional three days may be required if negotiations with an expert are necessary. PMD will confer with the Deputy General Counsel to determine

whether the Deputy General Counsel wishes to participate in negotiations on technical or cost matters.

Where the expert services will be provided by a corporation or partnership, the contract should contain "key personnel" clauses that: (1) identify names and/or categories of all personnel considered essential to the work being performed; (2) make all such personnel subject to government review in accordance with the defined labor categories; (3) require the contractor to provide qualified personnel within a set number of days after the contract award; and (4) require that invoices identify hours worked by various personnel either by name or by labor category.

i. OLC Review

Following its approval, PMD will submit the proposed contract to OLC, which has two days to review the proposed contract for legal and technical sufficiency.

j. PMD Execution of the Contract

PMD will have four days from the completion of OLC's review to mail the contract to the selected expert for signature. Once returned, PMD will cause the Commission Contracting Officer -- for contracts for more than $25,000, this is the Director of PMD or his/her designee -- to sign the contract on behalf of the Commission. The contracting process is completed when PMD notifies ATSS of the expert's acceptance of the contract terms and forwards a copy of the executed contract to the trial attorney and/or the Contract Monitor listed in the SOW.

The following is a timetable, beginning with submission of the expert services request to OGC for review and ending with execution of the contract.

Schedule		Allotted Days
1.	OGC review and approval. ATSS, LMS and/or RAS review and approve expert request and send statement on sufficiency, appropriateness and reasonableness to Deputy General Counsel. Deputy General Counsel recommends to PMD that contract be approved.	6
2.	Commission approval (only required with contracts for $100,000 or more).	0 -15

Schedule		Allotted Days
3.	PMD reviews requisition and supporting documentation and develops RFP.	7
4.	Experts submit proposals.	5
5.	Trial attorney evaluates proposals.	3
6.	PMD reviews evaluation, determines reasonableness of cost, selects contractor and prepares contract for award.	3-6
7.	OLC reviews contract for legal and technical sufficiency.	2
8.	PMD mails contract to expert for signature. EEOC signs contract.	4
Total business days to award		30 - 50

As part of its monitoring function, ATSS will be responsible for notifying the Deputy General Counsel and the field office legal unit submitting the procurement request of any significant delay beyond the times outlined in the expert procurement schedule set forth above.

APPENDIX 1:

EEOC FORM 123:

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

INSTRUCTIONS. (See reverse for instructions on completing this form)		**FOR PROCUREMENT USE ONLY**
(1) TO: *(Indicate appropriate action office)*	(2) REQUESTING OFFICE	(3) CONTACT *(Name/Division/Phone)*
(4) DELIVER TO: *(Shipping Address)* *(Inside Delivery)* Yes ( ) No ( )	(5) SUGGESTED VENDOR(S) *(Name/Address/Phone No.)*	
(6) DATE ITEM/SERVICE REQUIRED	(a) ( ) SOLE SOURCE *(Justification Required, if over $2,500)* (b) ( ) COMPETITIVE *(Attach list of 3 Names, if over $2,500)*	

(7) ACCOUNTING / APPROPRIATION DATA

The item(s) listed on this request are properly chargeable to the following allotments; the available balances of which are sufficient to cover the cost thereof, and funds have been committed.

(a) REQUISITION NO.	(b) APPROPRIATION CODE	(c) AMOUNT COMMITTED *(Check applicable boxes)* ( ) ORIGINAL ( ) INCREASE ( ) DECREASE ( ) CURRENT YEAR FUNDING ( ) PRIOR YEAR FUNDING	
(d) NAME/SIGNATURE OF ADMINISTRATIVE OFFICER	DATE	(e) NAME/SIGNATURE OF FISCAL OFFICER *(Prior Year Funding ONLY)*	DATE

(8) DESCRIPTION

(a) LINE ITEM	(b) DESCRIBE SUPPLIES/SERVICES/EQUIPMENT REQUIRED: *(Include all pertinent data e.g., Size, Model, Color, Serial No., Type of Material etc.)*	(c) QUANTITY	(d) UNIT	(e) UNIT PRICE	(f) ESTIMATED COST
		(g) TOTAL ESTIMATED COST			

(9) JUSTIFICATION AND SPECIAL INSTRUCTIONS *(Use additional sheet(s) if necessary)*

(10) TYPED NAME/SIGNATURE OF REQUESTOR	DATE	(11) TYPED NAME/SIGNATURE OF OFFICE/PROGRAM DIRECTOR	DATE
(12) SPECIAL ITEM APPROVAL *(Filing Equipment, Copiers, Word Processors, Library Subs., (See EEOC Order 360.001)*	DATE	(13) OTHER APPROVAL *(Specify Name/Title)*	DATE

INSTRUCTIONS FOR COMPLETING EEOC FORM 123

A. PREPARATION (Numbers correspond to block numbers on face of form)

(1) Enter the name of the office to receive and act upon the request.

(2) Enter the office name requesting the service/item.

(3) Enter the name, office breakdown, and telephone number of the contact person to call for additional information.

(4) Enter the complete address, including room number of the office to which the goods/services are to be delivered. Check appropriate block to indicate if inside delivery is required.

(5) Enter the name, complete address, and telephone number of suggested vendor. Such entry does not mean that the vendor will be chosen.

(a) If the request is for a sole source requirement costing $2,500 or more, attach a justification explaining the need for the noncompetitive procurement.

(b) Competitive requirements exceeding $2,500 should include at least three (3) sources, if available. Provide name, address and telephone number (if known) for each source. Otherwise Procurement Management Division (PMD) will obtain names of vendors.

(6) Enter the latest date that the items/services can be delivered.

(7) To be completed by the designated person responsible for the office's cuff records. Failure to include these items will result in the return of the requisition to the requesting office for completion.

(a) Assign a requisition number for identification control and coding purposes.

(b) Enter the appropriation code consisting of a one-digit numerical code indicating the fiscal year office's Constant Data Code (CDC), and a four-digit sub-object class code to identify what CDC funds will be charged and for what purpose. (See EEOC Order 450.001, Coding Procedures for Financial Transactions and Personnel Actions).

(c) Indicate if the amount committed is an original request or an increase/decrease to the original request. Also check if request is current year funding or prior year funding.

(d) Enter the typed name, signature, and date signed of the person certifying the availability of funds.

(e) If the request is charged to a previous year's funding then the Agency Fiscal Officer's name and signature is required.

(8) Each request shall contain a complete description of the supplies, material or services required in order to process the request.

(a) Use this column to list different line items from the same vendor. If the services or item is from a different vendor use a separate Form 123 for each type of service or item needed.

(b) Describe the specific services or items to be procured, including the model number, serial number of items to be repaired, color, size, type of material, etc.

(c) Enter the total quantity desired for each item listed.

(d) Enter the unit (single issue) of the quantity desired i.e., ea. for each, doz. for dozen, ctn. for carton, copy for copy, etc.

(e) Enter the estimated cost for one item of issue (e.g., $1,000 each).

(f) Enter the estimated cost for each line item (quantity x unit price = estimated cost).

(g) Enter total estimated cost of all the items listed in column (8)(f).

(9) Provide a detailed justification for all procurement actions for example:

(a) Request for typewriters.

(1) Number of typewriters on hand.
(2) Number of clerical positions.
(3) Serial number and age of trade-in.
(4) Service history of trade-in, if unit is less than 12 years.

(b) Request for copiers.

(1) Estimated monthly volume.
(2) Number and kind of current copier, if any, on hand.

(c) Request for procured (cost) services.

(1) Reason for need of service.
(2) If service is listed as sole source, submit a justification with the request. (See EEOC Order 360.001, EEOC Acquisition Policy, Guidelines, and Procedures).

(10) Enter typed name/signature and date of person requesting the service/item.

(11) Enter the name/signature and date of Director attesting to his/her operating budget, specifically, a district director or one of headquarter's office/service directors.

(12) Enter the name of the appropriate office responsible for approving special items as required by EEOC Order 360.001, i.e., filing equipment, copiers, word processors, micrographics equipment, other specialized equipment, library publications/subscriptions, ADP equipment, etc.

(13) Enter typed name, title and signature of other officials required to approve the request before procurement action can be taken. For example, litigation/systemic support items require approval by the Office of General Counsel.

B. ROUTING OF FORM 123

(1) Request for supplies/services charged to the requesting office account shall be routed, if applicable, through the appropriate approving official(s) described in paragraphs 3 and 4 below, to PMD for processing.

(2) Requests for supplies, services, equipment, furniture, library publications/subscriptions, EEOC specialty forms, and purchased forms to be charged to Headquarters 2311 account shall be forwarded to the Director, Financial and Resource Management Services for approval and certification of funds. Upon approval, the request will be routed to PMD for procurement action.

(3) Requests for filing equipment, word processors, copiers, and other specialized equipment must be approved by FRMS, or if ADP equipment, by Information Resource Management Services, before procurement action can be taken.

(4) Requests for litigation/systemic services require approvals as provided by EEOC Order 360.001, before Procurement action can be taken.

(5) Prepare Original and (2) copies. Original to Action Office, 1 copy to Administrative Officer, and 1 copy to Requestor.

APPENDIX 2:

MARKET SURVEY FORM

State which of the following procedures were followed in selecting the particular expert(s). If item one (1) is selected, item two (2) need not be addressed. Item (3) requires a response.

__ 1. The recommended expert is uniquely qualified to perform the expert services in this case (e.g., the expert is the treating physician in a disability case, the expert has developed a database relevant to his or her testimony in this case). If this box checked, please discuss.

__ 2. The legal unit has surveyed the expert services market. Describe all efforts made to contact different experts and/or any other attempts to promote competition (e.g., explored other experts with OGC's RAS or LMS; spoke with other attorneys in the Commission, in other Federal Government Agencies or in the private sector; reviewed trade journals; spoke with potential experts at educational institutions).

__ 3. What efforts were made to obtain the services of minority or women contractors? Please discuss.

F. OGC PROCEDURES FOR PROCURING NONEXPERT LITIGATION SUPPORT SERVICES

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F. OGC PROCEDURES FOR PROCURING NONEXPERT LITIGATION SUPPORT SERVICES[1]

1. Introduction

The trial attorney is likely to need one or more of the following nonexpert support services in prosecuting each case: (1) court reporter services; (2) outside copying services; (3) assistance with identifying and locating claimants or witnesses; (4) database construction services; and (5) process and subpoena servers. Other nonexpert services may also be required from time to time. Generally, the trial attorney will obtain these services through a contract negotiated using the federal and EEOC acquisitions process described in this subsection of the *Manual*.

a. Contract Authority

The EEOC derives its contracting authority from several federal acts and from the Federal Acquisition Regulation or FAR, 48 C.F.R. Chapter 1, the principle regulation governing federal executive branch agencies, that was jointly issued by the Defense Department, NASA, and the General Services Administration. The EEOC has promulgated internal orders governing various aspects of the contracting process. They are:

- EEOC Order 360.001, *EEOC Acquisitions Policy Guidelines*, as amended (July 27, 1994). *See* Appendix A to the Order, *Acquisitions Policies and Procedures Handbook.*

- EEOC Order 360.002, *Small Purchase Procedures Handbook* (Oct. 1, 1993). *See* Appendix A to the Order, which is also called *Small Purchase Procedures Handbook.*

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[1] Since this section was originally written, the Commission has begun using the Interior Department Electronic Acquisition System - Procurement Desktop (IDEAS - PD) to prepare, process, and track procurement documents. In addition, the Commission has required use of the Integrated Financial Management System (IFMS) since October 2002 for all purchases of $2,500.00 and more and for any purchases (awards, purchase requisitions, contracts, and inter-agency agreements) made with purchase orders. This subsection does not address any changes to the procurement process made subsequent to Commission adoption of IDEAS-PD and IFMS.

- *EEOC Commercial Purchase Card User Guide* (revised June 2000).

b. Contract Officers

In accordance with federal acquisition law and Commission policy, only officially designated contracting officers may enter into, administer, and/or terminate contracts. The FAR vests EEOC's contracting authority in the Chairperson, who in turn has redelegated it to contracting officers. In the field, Office Directors are the contracting officers, with delegated authority to enter into contracts for $25,000 or less. For contracts over $25,000 the Commission's contracting officer typically is the Director, Procurement Management Division, or his designee. Purchases of under $2,500 may be made without the signature of a contract officer. Any EEOC employee with authority to use a government purchase card may make a purchase of less than $2,500.

c. "Contract" Defined

EEOC Order 360.001, *EEOC Acquisitions Policy Guidelines*, defines a "contract" as "a mutually binding legal relationship . . . obligating the seller [the contractor] to furnish supplies or nonpersonal services and the buyer [the Commission] to pay for them." Appendix A thereto, *Acquisitions Policies and Procedures Handbook*, at p. 1-2. The typical EEOC contract is a two-signature document in which the selected contractor signs first ("the offer") and the authorized Commission Contract Officer signs second (the "acceptance"), resulting in a binding legal relationship. Another form of EEOC contract is a purchase order. With a purchase order, the EEOC Contract Officer signs first ("the offer"). The purchase order becomes binding when the selected contractor accepts in writing or performs the requested services (the "acceptance").

Under the FAR, executive branch agencies must contract through competitive procedures, using what is known as "full and open competition," 41 U.S.C. § 253(a), unless the contract is for less than $2,500 in services or other narrow exceptions apply.

d. Contract Lingo: Micro Purchases, Small Purchases, and Simplified Acquisitions

In its contract guidance, the EEOC uses different terminology to describe contracts, based on contract size (dollar amount) and Contract Officer authority:

- contracts for less than $2,500 are called "micro purchases,"

- contracts for $25,000 or less are called "small purchases," and
- contracts for more than $25,000 and less than $100,000 are called "simplified acquisitions"

e. Overview of this Subsection

This subsection of the *Manual* describes how to obtain nonexpert litigation support service contracts as efficiently as possible.[2] Subsection 2., below, addresses the initial steps in the procurement process for all nonexpert services contracts, identifying the services needed and the potential vendors. Subsection 3. describes two simple ways to purchase services of less than $2,500, which are exempted from the "full and open competition" rule. Section 4. describes the required paperwork and procurement process for requests for $25,000 or less (small purchases). These contracts can be completed within the field office within several business days. Subsection 5. describes the procurement process for contracts for more than $25,000. This is a more cumbersome process and headquarters approval alone may take more than 100 business days (five months). When the trial attorney anticipates needing nonexpert services for more than $25,000, s/he may wish to first find out whether the services are available through the EEOC-DOJ agreement (discussed in Part 4, section I.D.), since the services of DOJ vendors can be secured more quickly and with less paperwork.

2. Initial Steps in Nonexpert Procurement Process

Before preparing the paperwork required to start the contracting process, the trial attorney must determine what nonexpert litigation support services are needed and identify potential vendors. These two steps will be the same regardless of the estimated cost of the contract, although advanced planning is more important for the contracts for more than $25,000 since approval will take more time.

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[2] While this discussion is intended to assist Regional Attorneys and legal unit staff understand and navigate the sometimes complex area of federal procurement procedure, all legal unit staff members whose job duties may include involvement in the procurement process should become familiar with EEOC Order 360.001 and EEOC Order 360.002. These Orders are available in all EEOC field office libraries.

a. Identifying the Need for Nonexpert Litigation Support Services

Regardless of whether the request is for $25,000 or less or for more than $25,000, the first step in the procurement process is initiated at the field office level. The trial attorney should as soon as practicable after being assigned a case for litigation, and whenever possible prior to filing the complaint, consult with his/her supervisory trial attorney, the Regional Attorney, and, if necessary, OGC Litigation Management Services (LMS) and/or Research and Analytic Services (RAS), to determine the need for nonexpert litigation support services.

b. Identifying Potential Vendors

Once the trial attorney has identified the needed services, the trial attorney will next identify possible sources for the services. Federal procurement rules and EEOC policy require that a certain percentage of EEOC contracts over the $2,500 micro purchase ceiling and under the $25,000 small purchase ceiling, be reserved for small businesses, including businesses owned by minorities, women, or economically or socially disadvantaged individuals. The Small Business Administration (SBA) and the General Services Administration (GSA) have electronic databases which include vendors meeting these criteria.

As with expert services, the trial attorney will benefit from discussing the requirements of the case with legal unit staff and other Commission staff, and if necessary outside organizations, who should be helpful in identifying prospective vendors.

SBA is also a source of potential vendors. The SBA is responsible for establishing small business standards within each industry, setting size standards by number of employees or millions of dollars. See 13 C.F.R. § 101. SBA also has a program for identifying minority businesses and businesses located in historically underdeveloped zones (HUBZone). Profiles of SBA-certified small businesses (including identification of the business, organization and ownership information, products and services, and the business' performance history) are available on the

Central Contractor Registration (CCR) database,[3] at www.ccr.gov. These businesses can be searched by Standard Industrial Classification, business type, location, etc.

GSA is another source of potential contractors. GSA contracts with firms to provide products and services for federal government use through its Multiple Award Schedules Program and various other contracting vehicles at prices associated with volume buying. Currently more than 79 percent of FSS Multiple Award Schedule contractors are small businesses. The small businesses with which GSA contracts include those with minority, veteran, and women business owners, as well as businesses employing blind and disabled employees and HUBZone businesses. EEOC legal units might contract for litigation support services (such as temporary clerical services, document technology services, and foreign language interpretation services) through FSS. See GSA's Web page on Services for more information.

In sum, when the attorney expects that a contract will fall into the small purchase range ($2,500 to $25,000), the attorney should find out whether any of the small businesses listed on the SBA or GSA lists are available and qualified to perform the needed services. If so, bids should be solicited from these small businesses. If a responsible small business is not available, the EEOC contract officer may waive the small business set aside. Chapter 4 of the Commission's *Acquisitions Policies and Procedures Handbook* has more information on the small business program.

3. Micro Purchases (Services of Less than $2,500)

The process of contracting for services of less than $2,500 is quite simple and can be done in the field office. The FAR exempts micro purchases from the requirement for "full and open competition." Therefore, the attorney need identify only one vendor, as long as the vendor's price is reasonable. *See EEOC Small Purchase Procedures Handbook*, p. A-8.

The attorney may make a micro purchase by using a government commercial purchase card or by filling out Optional Form 347, *Order for Supplies or Services.* The government commercial purchase credit card, which is different from the credit card

[3] CCR was developed by the Defense Department (DOD). However, the SBA, GSA, and the Office of Management and Budget, are working with DOD to merge their separate databases into CCR, making it into an integrated database of small businesses that want to do business with the government.

most EEOC employees have received for travel expenses, has been issued to all Directors and field office administrative officers and will be issued to all Regional Attorneys in the near future. Attorneys should ask the Regional Attorney or the field office administrative officer for authority to use a commercial purchase credit card for nonexpert litigation support services for under $2,500. Use of commercial purchase credit cards is governed by the *EEOC Commercial Purchase Card Program User's Guide*. The alternative to using the government commercial purchase credit card is filling out Optional Form 347. A copy of Optional Form 347, *Order for Supplies or Services*, is attached as appendix 1.

4. Small Purchases (Services of $2,500 to $25,000)

Procuring a nonexpert services contract for $2,500 to $25,000 is also simple and can usually be completed within a few weeks or less. The trial attorney prepares the paperwork for the Regional Attorney's approval and then the legal unit support staff or administrative unit solicits price quotations and completes the contracting process.

a. Preparing the Procurement Request

The trial attorney will prepare EEOC Form 123, *Requisition for Supplies, Services, Equipment, Furniture*, to request nonexpert litigation support services.[4] EEOC Form 123, *Requisition for Supplies, Services, Equipment, Furniture* is attached in appendix 2. The Form 123 must contain the following information:

(1) A brief description of the services or supplies requested (e.g., the estimated total number of pages to be copied or the estimated number of depositions to be taken and total deposition pages to be transcribed).

(2) The estimated date by which the services are needed.

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[4] Generally a Statement of Work (SOW) is not required for contracts for $25,000 or less. However, if the proposed contract would require the vendor to perform multiple tasks, such as different types of copying or data inputting, the supervisory trial attorney, after consulting with the Regional Attorney, may ask the trial attorney to prepare a SOW to explain the requested services in more detail. If so, the trial attorney should follow the procedures in subsection 5. a. (1) (b), below, in preparing the SOW.

(3) The name, office, and telephone number of the proposed Contract Monitor, who will be the Commission's point of contact with the selected vendor. As discussed below in Part 4, section II. of the *Manual (Contract Monitors' Duties and Responsibilities*), the Contract Monitor is responsible for reviewing the selected vendor's performance under the contract and certifying the acceptability of the services or supplies rendered. The Contract Monitor usually will be the supervisory trial attorney or trial attorney.

(4) Whether the request is for a new service or a modification to an existing contract.

(5) The proposed duration of the contract or modification.

(6) The estimated cost of the proposed contract.

(7) A list of suggested vendors.[5] Generally, at least three suggested vendors should be identified to promote competition to the maximum extent practicable. Trial attorneys may contact possible vendors to determine if they could provide the services. Trial attorneys should also ask each vendor to provide an oral estimate of costs. The trial attorney may use the vendors' estimates to calculate the approximate cost of the proposed contract. However, the trial attorney should leave solicitation of price quotations to the legal unit support staff or field office administrative officer, who will solicit price quotations only after the Regional Attorney has approved the procurement package. If only one source is reasonably available, an office may limit its request for quotations to a single source. In this event, the office must prepare a detailed memorandum to the file (called a "Justification for Noncompetitieve Purchase") explaining why only one source was solicited and how the contracting officer determined that the price was fair and reasonable. *EEOC Small Purchase Procedures Handbook* at p. A-9.

(8) The signature of the requestor, usually the supervisory trial attorney or trial attorney.

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[5] *See* subsection 2.b., *supra*, which discusses the Commission's policy to award a certain percentage of its contracts in the $2,500 to $25,000 range to small businesses.

b. Regional Attorney Review and Approval

The Regional Attorney should review and approve each nonexpert support services request, regardless of the cost, to ensure that the needed services are correctly identified and the proposed contract costs are reasonable.

c. Field Office Processing and Issuance of Purchase Order

Once the Regional Attorney approves a request for nonexpert support services for $25,000 or less, the legal unit support staff or field office administrative officer will solicit cost quotations from the suggested vendors , generally by telephone. If the contract is expected to be for $10,000 or more, the FAR requires the administrative officer to post the proposed acquisition in a "public place," such as on EEOC's Web page or in the field office's public reception area, for a minimum of 10 days. This requirement promotes the goal of competition. The legal unit support staff or field office administrative officer will analyze the bids -- including any from vendors who responded to the posting -- to determine the most reasonable price. Next, the trial attorney will review the vendors' quotations and will make a recommendation. The administrative officer will then prepare a purchase order using Optional Form 347, *Order for Supplies or Services*, for the signature of the Office Director -- the contracting officer for contracts for $25,000 or less -- and will issue the purchase order to the selected vendor. A copy of Optional Form 347, *Order for Supplies or Services,* is attached as appendix 1.

5. Simplified Acquisitions (Services of More Than $25,000)

From start to finish, the process of contracting for nonexpert litigation support services for more than $25,000 (a simplified acquisition) takes more time than that of contracting for services of $25,000 or less. First, the paperwork that the legal unit must prepare is more detailed. Second, the request must be processed and approved by OGC, the Procurement Management Division (PMD) of the Office of the Chief Financial Officer and Administrative Services, and the Office of Legal Counsel (OLC). The headquarters approval process alone may take more than 100 business days (five months). Finally, because federal acquisition law requires "full and open competition" when contracting for nonexpert litigation support services, unless justified, 41 U.S.C. § 253(a), an agency may use noncompetitive procedures for such contracts only if it can invoke narrow exceptions. The procurement process differs depending upon whether the trial attorney is seeking a competitive or a noncompetitive contract. Competitive and noncompetitive procurements are discussed separately below.

a. Soliciting Contracts through "Full and Open Competition"

As stated above, federal procurement law requires "full and open competition" for almost all nonexpert contracts. This is the process:

(1) Trial Attorney Prepares Procurement Request

The procurement request is more detailed than for the contract for $25,000 or less, described in subsection 4.a. It contains:

(a) EEOC Form 123, Requisition for Supplies, Equipment, Services, Furniture

The Form 123 will contain all of the information listed in subsection 4.a. However, with requests for more than $25,000, the signature of the requestor will usually be the Regional Attorney's rather than the trial attorney's or STA's. The Form 123 must also state that the request is competitive.

(b) Statement of Work (SOW)

A Statement of Work (SOW) is a clear and comprehensive description of the work to be performed and the contract performance standards to be met. The SOW is the most critical part of the procurement request, as it serves as the foundation for the resultant contract. The tasks set out in the SOW should be specified in sufficient detail that the Contract Monitor will have no difficulty in determining whether the selected vendor has complied with the contract. At a minimum, the SOW should contain the following:

(i) An introduction identifying the Commission and the case for which the request is made.

(ii) The purpose of the proposed contract, including the reasons the Commission needs the services.

(iii) A detailed description of the services to be performed or the supplies to be obtained.

(iv) The period of performance for the proposed contract.

(v) The quantity and/or due date of all deliverables, such as any reports by the vendor on the progress of the work.

(vi) The identification of the proposed Contract Monitor.

(vii) The estimated cost of the contract. Specifically describe the types of services the vendor will perform (*e.g.,* copying, court reporting, data input). Separately estimate the cost for each type of service described. As discussed above, the trial attorney may obtain assistance in estimating costs from legal unit staff (including the Regional Attorney, STAs, and others with experience with similar contracts), other Commission staff (including RAS, LMS, and Systemic Litigation Services), and if necessary outside organizations. Where litigation will be protracted, the contract should be divided into phases to avoiding tying up limited Commission resources. Each contract will contain a clause that will provide the Commission with the option to extend the contract's period of performance, if necessary.

(viii) The Evaluation Criteria. The solicitation should generally describe how the government will evaluate proposals, providing enough information to allow vendors to compete intelligently. Evaluation criteria can include price, technical capability, management capability, prior experience, key personnel and past performance of the offeror. Cost or price must always be considered. The RFP may state the order of importance of the evaluation criteria, and may include numerical points to be assigned to each evaluation factor. Evaluation criteria should be chosen to enable the evaluator of the bids to choose the best bid for the government. In some acquisitions, an evaluation panel is established to consider and rate the proposals submitted by offerors. In all instances, the individual or panel evaluating bids must follow the evaluation criteria established in the RFP.

(ix) List of suggested vendors, if known.

(2) Regional Attorney Review and Approval

Where the legal unit is seeking nonexpert litigation support services for more than $25,000, the Regional Attorney must still review and approve the package. Thereafter, the package must be submitted to headquarters for approval.

(3) Office of General Counsel Review and Approval

After the Regional Attorney has approved the request for nonexpert support services for more than $25,000, the legal unit should forward the request to OGC's Administrative and Technical Services Staff (ATSS). The procurement package should be submitted to ATSS in electronic format as well as hard copy. ATSS is responsible for coordinating procurement requests throughout the process to ensure their timely completion, and questions concerning the process should be addressed to ATSS.

ATSS will first review the procurement package to ensure that it is complete. ATSS will return an incomplete package to the field office legal unit for completion. After ATSS's Program Officer approves the procurement package, ATSS will transmit it to LMS and/or RAS (if the request involves areas within RAS' expertise such as database construction) for review.

LMS and/or RAS will review the procurement package for sufficiency, including whether the tasks described in the SOW are appropriate and the estimated costs are reasonable. In the event ATSS, LMS, or RAS determines that the procurement package is incomplete or requires modification, ATSS, LMS or RAS will consult with the Regional Attorney or his/her designee concerning the recommended steps to complete or modify the package. The Regional Attorney should expeditiously complete or modify the procurement package.

Once LMS determines that the procurement package is satisfactory, it will submit a written statement about the appropriateness of the tasks in the SOW and the reasonableness of costs to the Deputy General Counsel. The Deputy then will review LMS's statement and either approve or disapprove the procurement request. Where the Deputy approves the request, ATSS will submit the procurement package to PMD, accompanied by the Deputy General Counsel's authorization.

Normally the OGC review process described above takes six business days, four days for the ATSS and LMS review, including any necessary modifications to the package and another two days for the Deputy General Counsel's review. Throughout the entire procurement process, ATSS will be responsible for notifying the Deputy General Counsel and the field office legal unit of any significant delays.

(4) Commission Approval, Where Required

Ordinary requests for contracts for nonexpert support services for less than $100,000 do not require Commission approval, as long as they are bid competitively. But the Commission must vote to approve all requests for contracts for $100,000 or more. Obtaining Commission approval will take 10 to 15 business days.

(5) PMD Reviews Procurement Request, Publishes Notice of Intent to Contract, and Prepares Request for Proposal

PMD's initial role in the procurement process is to review the procurement package, obtain the names of vendors who may be interested in bidding on the contract, and prepare a draft Request for Proposal (RFP). During its review of the procurement package, PMD will consult with the ATSS Program Officer on questions regarding the SOW and on any changes to the procurement package PMD believes are necessary. OGC and/or the Regional Attorney or designee will be required to make any necessary changes before PMD can complete processing of the procurement package.

Once PMD is satisfied that the procurement package is sufficient, PMD will publish an electronic notice of intent to contract in *Federal Business Opportunities* (*FedBizOps*)[6] for a 30-day period. The notice will summarize the proposed contract and ask prospective vendors to contact PMD if they are interested in receiving a RFP.

During the notice period, PMD will prepare the RFP using Standard Form 33, *Solicitation, Offer, and Award* and a number of attachments. The RFP typically contains the following major items:

(a) Standard Form 33, *Solicitation, Offer and Award*. Form 33 states when proposals are due, and identifies the Commission contact person who is always the Contracting Officer or Contract Specialist assigned by PMD.

(b) The Statement of Work.

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[6] Recently *FedBizOps* was designated in the FAR as the universal electronic point of public access on the Internet to government-wide federal procurement opportunities that exceed $25,000. *See* 66 Fed. Reg. 27,407 (May 16, 2001). As of October 1, 2001, all public notices of procurement actions above $25,000 must appear in *FedBizOps*. Previously, notices were to be placed in the *Commerce Business Daily*.

(c) Contract clauses required by law.

(d) Instructions on how to submit proposals.

(e) Evaluation Criteria.

(f) Description of all other information that prospective vendors are required to furnish to permit a meaningful and fair evaluation of the vendors' proposals.

(6) OLC Reviews Draft RFP

PMD then submits the draft RFP to the Office of Legal Counsel (OLC), which is responsible for reviewing the RFP for legal and technical sufficiency.

(7) PMD Issues RFP

After PMD and OLC have approved the RFP, PMD will mail the RFP to all of the prospective vendors who responded to the notice of intent to contract during the 30 days since it appeared in *FedBizOps*.

(8) Vendors Submit Proposals

Prospective vendors have 30 days to submit their proposals to PMD.

(9) Trial Attorney Evaluates Proposals

Once PMD receives the proposals from the prospective vendors, it will evaluate them to make sure that the proposals are responsive and that the vendors are responsible before forwarding the proposals to the attorney. Using the evaluation criteria contained in the SOW, the attorney will evaluate the prospective vendors' technical and cost proposals and make a recommendation as to which vendor should receive the award. The trial attorney will have 15 days to submit a memorandum to PMD that contains a written evaluation of each prospctive vendor and the attorney's recommendation. If the trial attorney is not available during the evaluation period, the Regional Attorney should appoint an alternate evaluator.

(10) PMD Prepares Contract

Once PMD receives the trial attorney's written evaluation and recommendation, PMD will have 14 days to review it and determine which vendor will be awarded the contract. In the event that negotiations with one or more prospective vendors are necessary to resolve differences between the RFP and the proposals, PMD will have approximately 10 to 15 days in which to conduct such negotiations and to receive and review the final revised proposals. PMD's Contracting Officer always leads the negotiation team, and generally is assisted by the trial attorney and an attorney from OLC.

(11) OLC Reviews Proposed Contract

Following its selection of the vendor, PMD prepares the proposed contract and submits it to OLC, which has ten days to review it for legal and technical sufficiency.

(12) PMD Secures Executed Contract

After OLC completes its legal and technical sufficiency review, PMD will have15 days to mail the contract to the selected vendor for signature. Once the vendor signs and returns the contract to PMD, the Contract Officer in PMD will sign the contract on behalf of the Commission. The contracting process is completed when PMD notifies ATSS of the vendor's acceptance of the contract terms and forwards a copy of the executed contract to the trial attorney and/or the Contract Monitor listed in the SOW.

b. Soliciting Contracts through Noncompetitive Procedures

An agency may use noncompetitive procedures (or enter into "sole source" contracts) for nonexpert support services contracts only when:

> (1) the . . . services needed by the executive agency are available from only one responsible source and no other type of . . . services will satisfy the needs of the executive agency; [or]
>
> (2) the executive agency's need for the . . . services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals.

41 U.S.C. § 253(c) (exceptions generally inapplicable to EEOC omitted); *see also EEOC Acquisition Policies and Procedures Handbook*, at pp. 2-4 to 2-8.

Because the exceptions are stringent, sole source contracts for nonexpert litigation support services are the exception rather than the rule. Rarely is there only one vendor (i.e., "responsible source") with the requisite skills, experience, staffing, and equipment to provide the required services. It would also be unusual for the need for nonexpert services to meet the "unusual and compelling urgency" standard.[7] Because of the unusual nature of this procedure in EEOC contracting, only the differences between the procedures for described above and the procedures for noncompetitive (or "sole source") contracts and are discussed below.

(1) Trial Attorney Prepares Procurement Request

The Form 123 will contain all of the information discussed above, except that it must state that the request is noncompetitive (other than "full and open competition"). The Statement of Work will remain unchanged. The trial attorney must also include an EEOC Form 615, *Justification for Other Than Full and Open Competition,* as a part of the procurement package. (A blank copy of EEOC Form 615, *Justification for Other Than Full and Open Competition*, is appendix 3, hereto). The Justification will contain the following information:

(a) The name of the litigation.

(b) A description of the required services, including their estimated costs.

(c) The identification of the statutory authority under which the request is made (the "only responsible source" or "unusual and compelling urgency" standard).

(d) A demonstration that the proposed vendor is the "only responsible source" or the Commission's need is of "unusual and compelling urgency."

(e) A description of the market survey that was conducted to ascertain whether other qualified sources capable of providing the services exist. The

[7] Lack of litigation planning by the field office legal unit or the potential loss of fiscal year funding will not justify invoking an exception to the requirement for "full and open competition." *See EEOC Acquisition Policies and Procedures Handbook*, at p. 2-5.

market survey usually may be conducted through written or telephonic contacts with persons knowledgeable about the required services.

(f) Any other facts that may support use of noncompetitive procedures.

(g) Certification that the facts supporting noncompetitive procedures are complete and accurate.

(2) Headquarters Processing of Request, Including Justification

PMD will review the Justification for Other Than Full and Open Competition. If PMD disagrees with the Justification, PMD will return the request to the field office legal unit with appropriate comments and recommendations. If PMD agrees with the Justification, it will submit it to OLC for a legal sufficiency ruling. If OLC approves the Justification, PMD will submit the RFP and Justification to the Commission for its approval.

Once the Commission has approved the RFP and Justification, PMD will publish a notice in the FedBizOps stating that the Commission intends to contract for the requested services through other than "full and open competition". The notice must run for 30 days. Before PMD determines if the procurement will be pursued through other than "full and open competition", PMD and the requesting office will consider any responses to the notice. If other than "full and open competition" will be used, the Contracting Officer will certify that the Justification is accurate and complete and PMD will mail the RFP to the proposed vendor.

6. Resources on the Web

Title	Description and inSite or Web Address
Central Contractor Registration	Central Contractor Registration (CCR) - integrated database of small businesses available to contract with federal government agencies. CCC combines the former databases of the Small Business Administration (SBA), Department of Defense, Office of Management and Budget, and the General Services Administration (GSA). http://www.ccr.gov/

Title	Description and inSite or Web Address
Commerce Business Daily Net	Until January 2002, Commerce Business Daily Net (CBD Net) was the electronic database of public notices of government-wide federal procurement opportunities for amounts over $25,000. It has been superceded by FedBizOpps. Maintained by U.S. Government Printing Office. http://cbdnet.access.gpo.gov/index.html
Federal Business Opportunities	As of January 2002, FedBizOpps superceded CBD Net as the electronic database of public notices of government-wide federal procurement opportunities for amounts over $25,000. Maintained by GSA. www.fedbizopps.gov
Federal Acquisition Regulation Net	Federal Acquisition Regulation Net (FAR Net) is a Web site that contains the federal regulations governing acquisitions. It is maintained by the Office of Federal Procurement Policy. http://www.arnet.gov/far
GSA Services	GSA's Web page on services has links to information on the various services and products available to federal government agencies under the GSA Schedules and other programs. http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=3

APPENDIX 1

OPTIONAL FORM 347:

ORDER FOR SUPPLIES OR SERVICES

ORDER FOR SUPPLIES OR SERVICES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER

2. CONTRACT NO. (If any)

3. ORDER NO.

4. REQUISITION/REFERENCE NO.

5. ISSUING OFFICE (Address correspondence to)

6. SHIP TO:

f. SHIP VIA
INSIDE DELIVERY

7. TO:

PAYMENT ADDRESS EFT

TIN:

8. TYPE OF ORDER

☐ a. PURCHASE - Reference your

Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.

☐ b. DELIVERY – Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA

FUNDS COMMITTED AND OBLIGATED

10. REQUISITIONING OFFICE

11. BUSINESS CLASSIFICATION (Check appropriate box(es))

☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED

12. F.O.B. POINT

13. PLACE OF

a. INSPECTION

b. ACCEPTANCE

14. GOVERNMENT B/L NO.

15. DELIVER TO F.O.B. POINT ON OR BEFORE (DATE)

16. DISCOUNT TERMS

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
	THE INVOICE RECEIPT DATE WILL BE CONSIDERED TO BE THE DATE PROPER INVOICE IS RECEIVED BY THE PAYMENT OFFICE LISTED IN BOX 21. A PROPER INVOICE MUST REFERENCE THE PURCHASE ORDER NUMBER SHOWN IN BOX 3.					

SEE BILLING INSTRUCTIONS ON REVERSE

18. SHIPPING POINT

19. GROSS SHIPPING WEIGHT

20. INVOICE NO.

17(h) TOT. (Cont. pages)

17(l) GRAND TOTAL

21. MAIL INVOICE TO:

EEOC FINANCIAL MANAGEMENT DIVISION
1801 L STREET NW, ROOM 2005
WASHINGTON, DC 20507

22. UNITED STATES OF AMERICA BY (Signature)

23. NAME (Typed)

TITLE: CONTRACTING/ORDERING OFFICER

SUPPLEMENTAL INVOICING INFORMATION

If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement (signed and dated) is on (or attached to) the order: "Payment is requested in the amount of $_____. No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided; contract number (if any), order number, item number(s), description of supplies or service, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been: ☐ inspected, ☐ accepted, ☐ received

by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT	PARTIAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	DATE
NUMBER	FINAL				
TOTAL CONTAINERS		GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

APPENDIX 2

EEOC FORM 123:

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

INSTRUCTIONS. (See reverse for instructions on completing this form)		**FOR PROCUREMENT USE ONLY**
(1) TO: *(Indicate appropriate action office)*	(2) REQUESTING OFFICE	(3) CONTACT *(Name/Division/Phone)*
(4) DELIVER TO: *(Shipping Address)* *(Inside Delivery)* Yes ( ) No ( )	(5) SUGGESTED VENDOR(S) *(Name/Address/Phone No.)*	
(6) DATE ITEM/SERVICE REQUIRED	(a) ( ) SOLE SOURCE *(Justification Required, if over $2,500)* (b) ( ) COMPETITIVE *(Attach list of 3 Names, if over $2,500)*	

(7) ACCOUNTING / APPROPRIATION DATA

The item(s) listed on this request are properly chargeable to the following allotments; the available balances of which are sufficient to cover the cost thereof, and funds have been committed.

(a) REQUISITION NO.	(b) APPROPRIATION CODE	(c) AMOUNT COMMITTED *(Check applicable boxes)* ( ) ORIGINAL ( ) INCREASE ( ) DECREASE ( ) CURRENT YEAR FUNDING ( ) PRIOR YEAR FUNDING	
(d) NAME/SIGNATURE OF ADMINISTRATIVE OFFICER	DATE	(e) NAME/SIGNATURE OF FISCAL OFFICER *(Prior Year Funding ONLY)*	DATE

(8) DESCRIPTION

(a) LINE ITEM	(b) DESCRIBE SUPPLIES/SERVICES/EQUIPMENT REQUIRED: *(Include all pertinent data e.g., Size, Model, Color, Serial No., Type of Material etc.)*	(c) QUANTITY	(d) UNIT	(e) UNIT PRICE	(f) ESTIMATED COST
		(g) TOTAL ESTIMATED COST			

(9) JUSTIFICATION AND SPECIAL INSTRUCTIONS *(Use additional sheet(s) if necessary)*

(10) TYPED NAME/SIGNATURE OF REQUESTOR	DATE	(11) TYPED NAME/SIGNATURE OF OFFICE/PROGRAM DIRECTOR	DATE
(12) SPECIAL ITEM APPROVAL *(Filing Equipment, Copiers, Word Processors, Library Subs., (See EEOC Order 360.001)*	DATE	(13) OTHER APPROVAL *(Specify Name/Title)*	DATE

INSTRUCTIONS FOR COMPLETING EEOC FORM 123

A. PREPARATION (Numbers correspond to block numbers on face of form)

(1) Enter the name of the office to receive and act upon the request.

(2) Enter the office name requesting the service/item.

(3) Enter the name, office breakdown, and telephone number of the contact person to call for additional information.

(4) Enter the complete address, including room number of the office to which the goods/services are to be delivered. Check appropriate block to indicate if inside delivery is required.

(5) Enter the name, complete address, and telephone number of suggested vendor. Such entry does not mean that the vendor will be chosen.

(a) If the request is for a sole source requirement costing $2,500 or more, attach a justification explaining the need for the noncompetitive procurement.

(b) Competitive requirements exceeding $2,500 should include at least three (3) sources, if available. Provide name, address and telephone number (if known) for each source. Otherwise Procurement Management Division (PMD) will obtain names of vendors.

(6) Enter the latest date that the items/services can be delivered.

(7) To be completed by the designated person responsible for the office's cuff records. Failure to include these items will result in the return of the requisition to the requesting office for completion.

(a) Assign a requisition number for identification control and coding purposes.

(b) Enter the appropriation code consisting of a one-digit numerical code indicating the fiscal year office's Constant Data Code (CDC), and a four-digit sub-object class code to identify what CDC funds will be charged and for what purpose. (See EEOC Order 450.001, Coding Procedures for Financial Transactions and Personnel Actions).

(c) Indicate if the amount committed is an original request or an increase/decrease to the original request. Also check if request is current year funding or prior year funding.

(d) Enter the typed name, signature, and date signed of the person certifying the availability of funds.

(e) If the request is charged to a previous year's funding then the Agency Fiscal Officer's name and signature is required.

(8) Each request shall contain a complete description of the supplies, material or services required in order to process the request.

(a) Use this column to list different line items from the same vendor. If the services or item is from a different vendor use a separate Form 123 for each type of service or item needed.

(b) Describe the specific services or items to be procured, including the model number, serial number of items to be repaired, color, size, type of material, etc.

(c) Enter the total quantity desired for each item listed.

(d) Enter the unit (single issue) of the quantity desired i.e., ea. for each, doz. for dozen, ctn. for carton, copy for copy, etc.

(e) Enter the estimated cost for one item of issue (e.g., $1,000 each).

(f) Enter the estimated cost for each line item (quantity x unit price = estimated cost).

(g) Enter total estimated cost of all the items listed in column (8)(f).

(9) Provide a detailed justification for all procurement actions for example:

(a) Request for typewriters.

(1) Number of typewriters on hand.
(2) Number of clerical positions.
(3) Serial number and age of trade-in.
(4) Service history of trade-in, if unit is less than 12 years.

(b) Request for copiers.

(1) Estimated monthly volume.
(2) Number and kind of current copier, if any, on hand.

(c) Request for procured (cost) services.

(1) Reason for need of service.
(2) If service is listed as sole source, submit a justification with the request. (See EEOC Order 360.001, EEOC Acquisition Policy, Guidelines, and Procedures).

(10) Enter typed name/signature and date of person requesting the service/item.

(11) Enter the name/signature and date of Director attesting to his/her operating budget, specifically, a district director or one of headquarter's office/service directors.

(12) Enter the name of the appropriate office responsible for approving special items as required by EEOC Order 360.001, i.e., filing equipment, copiers, word processors, micrographics equipment, other specialized equipment, library publications/subscriptions, ADP equipment, etc.

(13) Enter typed name, title and signature of other officials required to approve the request before procurement action can be taken. For example, litigation/systemic support items require approval by the Office of General Counsel.

B. ROUTING OF FORM 123

(1) Request for supplies/services charged to the requesting office account shall be routed, if applicable, through the appropriate approving official(s) described in paragraphs 3 and 4 below, to PMD for processing.

(2) Requests for supplies, services, equipment, furniture, library publications/subscriptions, EEOC specialty forms, and purchased forms to be charged to Headquarters 2311 account shall be forwarded to the Director, Financial and Resource Management Services for approval and certification of funds. Upon approval, the request will be routed to PMD for procurement action.

(3) Requests for filing equipment, word processors, copiers, and other specialized equipment must be approved by FRMS, or if ADP equipment, by Information Resource Management Services, before procurement action can be taken.

(4) Requests for litigation/systemic services require approvals as provided by EEOC Order 360.001, before Procurement action can be taken.

(5) Prepare Original and (2) copies. Original to Action Office, 1 copy to Administrative Officer, and 1 copy to Requestor.

APPENDIX 3

EEOC FORM 615:

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
FINANCIAL AND RESOURCE MANAGEMENT SERVICES
PROCUREMENT MANAGEMENT DIVISION

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (FOR ALL NONCOMPETITIVE CONTRACT ACTIONS EXCEEDING $25,000)

(NOTE: TO COMPLETE THIS FORM, PLEASE SEE INSTRUCTIONS ON PAGE 4. SEPARATE SHEETS MAY BE ATTACHED WHEN ADDITIONAL SPACE IS REQUIRED TO PROVIDE SUFFICIENT BACKGROUND INFORMATION. EACH SHEET MUST CLEARLY IDENTIFY THE APPLICABLE ITEM NUMBER(S).

1. REQUIRING ACTIVITY:

2. NATURE AND DESCRIPTION OF ACTION BEING APPROVED:

3. DESCRIPTION AND ESTIMATED VALUE OF SUPPLIES/SERVICES REQUIRED:

4. STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION (CHECK APPROPRIATE ITEM):

___ (a) 41 U.S.C. 253(c)(1); FAR 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements. (NOTE: This authority should not be used if 4(b) or 4(c) is applicable).

___ (b) 41 U.S.C. 253(c)(2); FAR 6.302-2 Unusual and Compelling Urgency. Full and open competition is impractical because any delay in award of this procurement would result in serious injury, financial or other, to the Government. This authority requires offers from as many potential sources as practical under the circumstances.

___ (c) 41 U.S.C. 253(c)(5); FAR 6.302-5 Authorized or Required by Statute. A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, e.g., SBA Section 8(a), Purchases from the Blind and Other Severely Handicapped, or Federal Prison Industries (UNICOR) and Government Printing and Binding. This Authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically: (1) identifies the entity involved; (2) refers to Section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions; and (3) states that award to that entity shall be made in contravention of the merit-based selection procedures in Section 303(h) of the FPR Act.

5. DEMONSTRATION THAT THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED:

6. DESCRIPTION OF ANY EFFORTS MADE TO ENSURE OFFERS WERE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE:

7. DETERMINATION THAT ANTICIPATED COST IS FAIR AND REASONABLE:

8. DESCRIPTION OF MARKET SURVEY CONDUCTED AND RESULTS (If a market survey was not conducted, please state reason):

9. OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION:

10. LIST OF SOURCES EXPRESSING WRITTEN INTEREST IN THIS ACQUISITION, IF ANY:

11. STATEMENT OF ACTIONS THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE TAKING ANY SUBSEQUENT ACQUISITION FOR THE SUPPLIES OR SERVICES:

12. CONTRACTING OFFICER/TECHNICAL CERTIFICATION

I CERTIFY THAT THE ABOVE JUSTIFICATION IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

12A. Contracting Officer Certification/Approval:

_____ **DATE:**_____

(Signature of Contracting Officer)

12B. Technical Official Certification:

_____ **DATE:**_____

(Signature of Technical Official)
(If Applicable)

INSTRUCTIONS FOR COMPLETING EEOC FORM 615

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (FAR 6.302)

BLOCK 1 REQUIRING ACTIVITY. Identify Agency Organization, i.e., service, division and/or program office, for which action is being procured.

BLOCK 2 NATURE AND DESCRIPTION OF ACTION BEING APPROVED. State basis for noncompetitive action, i.e., purchase request from authorized agency personnel and FAR citation of proposed action.

BLOCK 3 DESCRIPTION OF SUPPLIES/SERVICES REQUIRED. Provide a brief narrative description of the specific supplies or services to be procured (Include estimated value).

BLOCK 4 STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION. Check appropriate item (a, b, or c). Item must be completed. (NOTE: Selection must meet the criteria relative to circumstances with respect to authority cited under FAR 6.302, permitting the use of other than full and open competition. See FAR 6.303 covering requirements for justifications to support the use of these authorities).

BLOCK 5 DEMONSTRATE THAT THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED. Provide background data to support the authority cited. For Item (a), describe the unique characteristics of the services or supplies justification, i.e., why these characteristics are essential or mandatory; and why no other source can satisfy the agency needs; For Item (b), demonstrate by time-line and other factors reason there is insufficient time to permit use of full and open competition; For Item (c) cite the specific statute that authorizes or requires this procurement be awarded to the specified source. (NOTE: Lack of advanced planning should not be used to justify use of other than full and open competition.)

BLOCK 6 DESCRIPTION OF ANY EFFORTS MADE TO ENSURE OFFERS WERE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE. Describe action taken to identify sources that can provide comparable or compatible items. Include whether a Commerce Business Daily (CBD) notice was or will be publicized or, if not, which exception under FAR 5.202 applies. When using 4(b), identify other sources solicited or justify reason only one source was solicited.

BLOCK 7 DETERMINATION THAT ANTICIPATED COST IS FAIR AND REASONABLE. (To be completed by Contracting Officer) State basis for determining price is fair and reasonable.

BLOCK 8 DESCRIPTION OF MARKET SURVEY CONDUCTED AND RESULTS. State whether other qualified sources capable of satisfying the government's minimum needs exist in the commercial marketplace and indicate method used, i.e., written or telephonic to conduct the survey. When a survey is impractical, i.e., unusual and compelling urgency, please explain.

BLOCK 9 OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION. Provide any additional facts not included in Block 5 which support the authority selected. For example, for 4(a), explain why specifications were not developed for competitive solicitation or for 4(b) provide data, estimated cost or other description of the extent and nature of the harm to the government if full and open competition is used.

BLOCK 10 LIST OF SOURCES EXPRESSING WRITTEN INTEREST IN THIS ACQUISITION, IF ANY. List the complete name and address of sources who have indicated, in writing, an interest in providing the required supplies/services.

BLOCK 11 STATEMENT OF FUTURE ACTIONS TO OVERCOME COMPETITIVE BARRIERS. Identify actions, if any, to be taken before subsequent acquisition to reduce or remove any factors, i.e., restricted specifications, that preclude a full and open competitive procurement.

BLOCK 12 CERTIFICATION AND APPROVAL SIGNATURES

12A Contracting Officer Signature and Date required.

12B Technical Official Signature and Date required, if applicable. Signature(s) by Technical or Requirement personnel certifies that any supporting technical data upon which this justification is based, (e.g., verifying agency minimum needs; schedule requirements and/or the rationale for other than full and open competition) is accurate and complete.

REGIONAL ATTORNEYS' MANUAL

PART 4

RESOURCES AND TECHNICAL ASSISTANCE

SECTION II

CONTRACT MONITOR

SECTION II
CONTRACT MONITOR

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CONTRACT MONITOR'S DUTIES AND RESPONSIBILITIES

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CONTRACT MONITOR'S DUTIES AND RESPONSIBILITIES[1]

One of the most important aspects of the procurement process occurs after the actual award of a contract; that is, the monitoring of contracts that have been made by the Government.

1. Definition of Contracting Officer

Contracting Officers are agents of the federal government empowered to execute contracts and obligate government funds. The Contracting Officer has authority delegated from the Chair or Management Director according to Federal Acquisition Regulation 1.603. The Contracting Officer's authority is governed by procurement law, executive orders, regulations and other applicable procedures, clearances and approvals. Only a Contracting Officer is authorized to obligate agency funds. The EEOC's Contracting Officer is located in headquarters in the Office of the Chief Financial Officer and Administrative Services, Procurement Management Division (PMD).[2] The Procurement Management Division Director can be contacted to answer any questions regarding procurement laws or regulations.

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[1] Since this section was originally written, the Commission has begun using the Interior Department Electronic Acquisition System - Procurement Desktop (IDEAS - PD) to prepare, process, and track procurement documents. (See IDEAS-PD *User's Guide*). In addition, the Commission has required use of the Integrated Financial Management System (IFMS) since October 2002 for all purchases of $2,500.00 and more and for any purchases (awards, purchase requisitions, contracts, and inter-agency agreements) made with purchase orders. This subsection does not address any changes to the procurement process made subsequent to Commission adoption of IDEAS-PD and IFMS.

[2] For contracts processed at the field office level (those of $25,000 or less), PMD designates the Office Director as the Contracting Officer.

2. Definition of Contract Monitor

A Contract Monitor is a qualified technical representative recommended by a Program Director for designation by the Contracting Officer to a particular contract. A Contract Monitor is EEOC's point of contact with the Contractor and as such has specific responsibilities. **Neither the Contract Monitor nor any other OGC employee has the authority to obligate agency funds for any purpose.** A detailed description of the Contract Monitor's responsibilities and duties is provided below. All questions concerning the Contract Monitor's duties and responsibilities should be directed to PMD, at (202) 663-4222.

3. Responsibilities of Contract Monitor

OGC in the past has experienced problems with monitoring expert witness procurements. The areas of concern range from the Contract Monitor's failure to request in a timely manner that the Commission exercise its option to extend a period of performance, to the unauthorized commitment of funds. Court imposed litigation deadlines are never a sufficient reason for failing to follow proper procurement procedures.

The Contract Monitor is responsible for the following:

a. Reviewing and assuring the contractor's compliance with the technical requirements of the contract, including providing the Contractor with technical direction, which must remain within the scope of the contract as it is written.

b. Inspecting and certifying acceptability of the services rendered throughout the period of performance in terms of quantity, quality, timeliness and cost as these terms are defined in the contract.

c. Making sure that the Contractor is fully aware of the following:

(1) That the contract shall not cover charges for any items that are not specifically provided for by the contract. The Contractor is to be cautioned that if he or she provides services/supplies during the performance of the contract that are not specifically set forth as priced items in the contract, regardless of who requests them (including the Contract Monitor), payment will not be made for them under the contract;

(2) That the Contractor must notify the Contract Monitor when less than 20% of a particular phase's funds remain unused, and when it is necessary to obtain additional funds for a particular phase.

d. Ensuring that his or her supervisor is informed/consulted when:

(1) The Contractor reports or materials are to be rejected;

(2) The Contractor's performance is not satisfactory or problems with the contractor are anticipated;

(3) The Contractor desires to propose changes to the contract.

[Note: In the case of litigation support contracts for over $25,000, the Deputy General Counsel and the Director, ATSS, must be sent copies of all billing and contract-related information provided to supervisors.]

4. Duties of Contract Monitor

The Contract Monitor acts on behalf of the Contracting Officer by performing the following specific duties:

a. Reviews and approves reports and all materials provided by the Contractor as called for by the contract. Notifies the Contracting Officer and Supervisor if reports or other items submitted are to be rejected and states the basis for rejection.

b. Completes and forwards timely progress reports, and final reports to the Contracting Officer.

c. Certifies the Contractor's invoices for payment, including any credit due the Government. This includes the authority to request the Contractor to make corrections and/or submit new invoices when clerical or other errors are detected.

[Note: The Prompt Payment Act requires notification to the Contractor within 7 days of receipt of an invoice containing errors, and suitable documentation of such notification.]

d. Keeps detailed records of the Contractor's performance, and if it is not satisfactory or if problems are anticipated, notifies the Contracting Officer and

supervisor, in writing, as to the cause and recommends a course of action from a technical standpoint. Immediate notification is essential to assure that the Contracting Officer takes timely and appropriate action to protect the Government's rights under the contract.

e. Provides copies of all correspondence between the Contract Monitor and the Contractor relating to contract issues to the Contracting Officer and supervisor.

f. Prepares memoranda for the record covering all meetings/discussions between the Contract Monitor and the Contractor and forwards copies to the Contracting Officer and supervisor. It is critically important to keep the Contracting Officer informed of the context of all communications with the Contractor to prevent misunderstandings or situations that could affect the contract terms or conditions and become the basis of future claims against the Government.

g. Advises the Contractor that in the event the Contractor desires to propose a change, he or she should submit the request in writing to the Contract Monitor and specifically identify the effect that the proposed change(s) will have on the terms of the contract (technically and/or monetarily). The Contract Monitor will review the proposed change(s) and if he or she agrees that the changes are necessary to achieve the desired outcome, he or she will recommend to the Contracting Officer and supervisor, in writing, that the proposed change(s) should be incorporated into the contract.

h. Assures that changes in work under the contract are not implemented before written authorization or a contract modification is issued by the Contracting Officer. Costs for work performed may not be allowed if not authorized under the contract. No change or commitment should be directed without prior written authorization by the Contracting Officer.

i. Recommends, in writing, to the Contracting Officer through the supervisor any changes in the contract required by the Government with detailed justification for the proposed change.

j. Makes site visits, when appropriate, to the Contractor's facility and checks contractor performance to include:

(1) Actual performance versus scheduled and reported performance. The Contracting Officer and supervisor should be informed of any adverse conditions noted;

(2) Changes in technical performance which may affect the Contractor's financial status, create personnel or labor difficulties, overextend facilities, etc.;

(3) Verification that the employees charged to the contract are actually performing work under the contract;

(4) Verification that all Government Furnished Property (GFP) is being used strictly for the contract and that proper safeguards are in place to protect all GFP from theft or damage.

k. Ensures timely notification by the Contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

l. Advises the Contracting Officer through the supervisor on the status of the following at the completion of the contract:

(1) Whether all articles and services required to be furnished or performed under the contract have been technically accepted;

(2) The disposition of all Government Furnished Property or materials;

(3) Any other outstanding technical issues.

m. Prepares requests to (i) fund each contract phase, (ii) obtain additional funding, if necessary, for each phase, and (iii) exercise the option contained in most expert services contract to extend the period of performance to ensure successful completion of the expert's services. Before extending the period of performance, the Contract Monitor should confer with the Contractor to determine whether the Contractor intends to exercise an option to increase his or her hourly rates. If so, the Contract Monitor should request additional funding to cover future rate increases. This request shall include a document certifying that funds are available and shall be submitted at least 90 days before the period of performance expires.

n. Although the Contracting Officer is ultimately responsible for the following, the Contract Monitor shall also provide technical support, when requested, in the following areas:

(1) Approving premium overtime;

(2) Debriefing unsuccessful offerors;

(3) Resolving post-award disputes/protests;

(4) Resolving terminations and claims;

(5) Negotiating/issuing time extensions;

(6) Approving key personnel changes;

(7) Issuing suspensions/stop work orders;

(8) Assessing/approving liquidated damages;

(9) Negotiating/issuing equitable adjustments;

(10) Documenting/issuing Contracting Officer's final decisions;

(11) Preparing appeal files;

(12) Determining whether a conflict of interest exists; and

(13) Preparing data/responses for audit/Congressional inquiries.

5. Procedures

The procedures to be used to inspect and accept the work of the Contractor for conformance with terms of the contract are determined by the Contract Monitor. If the goods or services are acceptable, an EEOC Form 112, *Delivery Receipt*, should be prepared immediately and forwarded to:

Financial Management Division
1801 L Street, N.W., Room 2005
Washington, D.C. 20507

A copy of the Form 112 should be sent to ATSS.[3]

An invoice cannot be paid without the delivery receipt. The Prompt Payment Act requires agencies, in the absence of contractually specified payment dates, to pay a proper invoice within 30 days of initial receipt by PMD. OMB Circular A-125, Prompt Payment, requires agencies to make payments as close as possible to, but not later than, the due dates, or if approved, the discount date. Payment will be based on receipt of proper invoices and satisfactory performance of contract items. If an agency takes a discount after the expiration of the discount period or fails to make timely payment, interest penalties must be paid from the funds available for the administration or operation of the program for which the penalty was incurred. The interest penalty must be paid whether the Contractor requests it or not. If the goods or services are unacceptable, the Contracting Officer must be contacted for instructions.

A copy of EEOC Form 112, *Delivery Receipt*, is appendix 1, hereto.

6. Reports

Copies of certified invoices and/or any correspondence dealing with the contract should be sent to:

U.S. Equal Employment Opportunity Commission
Financial Management Division
P.O. Box 33459
Washington, D.C. 20033-0459

7. Reviews

a. For cost-reimbursable type contracts, the Contract Monitor should review weekly the costs of services being provided to determine if the costs will exceed the amount obligated by the contract. Since invoices are usually received long after the fact, monitors have an obligation to request estimated costs from the vendor if it appears that the obligated funds will be exhausted. In those cases where, after review, it appears that the costs will exceed the amount obligated by the contract, the Contract

[3] In the case of litigation support contracts not exceeding $25,000, a copy of Form 112 should be sent to the field office Administrative Officer.

Monitor should immediately prepare an EEOC Form 123, *Requisition for Supplies, Services, Equipment, Furniture*, requesting a contract modification, and transmit the Form 123 to the Contracting Officer. The request for modification must contain adequate justification for the increased costs.

b. For firm-fixed price type contracts, the Contract Monitor, on a regular basis, should review the costs of services being provided to ensure they do not exceed the amount obligated by the contract. In those cases where after review it appears that a change in the scope/requirements of the contract is necessary, the Contract Monitor should immediately prepare an EEOC Form 123 requesting a contract modification, and transmit the Form 123 to the Contracting Officer. The request must contain adequate justification for the requested modification.

c. Contract Monitors are also responsible for continually determining whether the contract is on schedule, estimating whether the work will be completed within the contractually specified performance period, and requesting time extensions, when appropriate, well in advance of the contract termination date.

A copy of EEOC Form 123, *Requisition for Supplies, Services, Equipment, Furniture*, is appendix 2, hereto.

8. Modifications

The EEOC Contracting Officer is the only person who can authorize a modification to the contract. Requests to alter the contract in any manner must be in writing and must be sent to the Contracting Officer. Changes to the contract cannot be honored unless there is a copy of Standard Form 30, *Amendment of Solicitation/Modification of Contract*, signed by both the Contracting Officer for EEOC and, if necessary, an official of the Contractor.

All requests for modifications, especially those involving increased costs, should be submitted as soon as possible. Federal regulations forbid payments in excess of the amount obligated on the procurement documents. Payments in excess of the existing obligation cannot be made even though services have been received unless a modification has been processed obligating the additional amount of money.

A copy of Standard Form 30, *Amendment of Solicitation/Modification of Contract*, is appendix 3, hereto.

APPENDIX 1

FORM 112

DELIVERY RECEIPT

DELIVERY RECEIPT

TO	FROM

DELIVERY				VENDOR	PURCHASE ORDER NO.
	PARTIAL		COMPLETE		

DELIVERED ITEM(S)

ITEM NO.	DESCRIPTION *(Include Item Serial No.)*	QUANTITY ORDERED	QUANTITY RECEIVED	DATE RECEIVED

REMARKS

I certify that the item(s) and/or services listed above have been received/rendered and accepted as of this date: _____

_____ _____

(Typed Name, Title, Address and Telephone No.) **(Signature)**

APPENDIX 2

EEOC FORM 123

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

REQUISITION FOR SUPPLIES, EQUIPMENT, SERVICES, FURNITURE

INSTRUCTIONS. (See reverse for instructions on completing this form)

FOR PROCUREMENT USE ONLY

(1) TO: *(Indicate appropriate action office)*	(2) REQUESTING OFFICE	(3) CONTACT *(Name/Division/Phone)*

(4) DELIVER TO: *(Shipping Address)* *(Inside Delivery)* Yes ( ) No ( )	(5) SUGGESTED VENDOR(S) *(Name/Address/Phone No.)*
(6) DATE ITEM/SERVICE REQUIRED	(a) ( ) SOLE SOURCE *(Justification Required, if over $2,500)* (b) ( ) COMPETITIVE *(Attach list of 3 Names, if over $2,500)*

(7) ACCOUNTING / APPROPRIATION DATA

The item(s) listed on this request are properly chargeable to the following allotments; the available balances of which are sufficient to cover the cost thereof, and funds have been committed.

(a) REQUISITION NO.	(b) APPROPRIATION CODE	(c) AMOUNT COMMITTED *(Check applicable boxes)* ( ) ORIGINAL ( ) INCREASE ( ) DECREASE ( ) CURRENT YEAR FUNDING ( ) PRIOR YEAR FUNDING

(d) NAME/SIGNATURE OF ADMINISTRATIVE OFFICER	DATE	(e) NAME/SIGNATURE OF FISCAL OFFICER *(Prior Year Funding ONLY)*	DATE

(8) DESCRIPTION

(a) LINE ITEM	(b) DESCRIBE SUPPLIES/SERVICES/EQUIPMENT REQUIRED: *(Include all pertinent data e.g., Size, Model, Color, Serial No., Type of Material etc.)*	(c) QUANTITY	(d) UNIT	(e) UNIT PRICE	(f) ESTIMATED COST
		(g) TOTAL ESTIMATED COST			

(9) JUSTIFICATION AND SPECIAL INSTRUCTIONS *(Use additional sheet(s) if necessary)*

(10) TYPED NAME/SIGNATURE OF REQUESTOR	DATE	(11) TYPED NAME/SIGNATURE OF OFFICE/PROGRAM DIRECTOR	DATE
(12) SPECIAL ITEM APPROVAL *(Filing Equipment, Copiers, Word Processors, Library Subs., (See EEOC Order 360.001)*	DATE	(13) OTHER APPROVAL *(Specify Name/Title)*	DATE

INSTRUCTIONS FOR COMPLETING EEOC FORM 123

A. PREPARATION (Numbers correspond to block numbers on face of form)

(1) Enter the name of the office to receive and act upon the request.

(2) Enter the office name requesting the service/item.

(3) Enter the name, office breakdown, and telephone number of the contact person to call for additional information.

(4) Enter the complete address, including room number of the office to which the goods/services are to be delivered. Check appropriate block to indicate if inside delivery is required.

(5) Enter the name, complete address, and telephone number of suggested vendor. Such entry does not mean that the vendor will be chosen.

(a) If the request is for a sole source requirement costing $2,500 or more, attach a justification explaining the need for the noncompetitive procurement.

(b) Competitive requirements exceeding $2,500 should include at least three (3) sources, if available. Provide name, address and telephone number (if known) for each source. Otherwise Procurement Management Division (PMD) will obtain names of vendors.

(6) Enter the latest date that the items/services can be delivered.

(7) To be completed by the designated person responsible for the office's cuff records. Failure to include these items will result in the return of the requisition to the requesting office for completion.

(a) Assign a requisition number for identification control and coding purposes.

(b) Enter the appropriation code consisting of a one-digit numerical code indicating the fiscal year office's Constant Data Code (CDC), and a four-digit sub-object class code to identify what CDC funds will be charged and for what purpose. (See EEOC Order 450.001, Coding Procedures for Financial Transactions and Personnel Actions).

(c) Indicate if the amount committed is an original request or an increase/decrease to the original request. Also check if request is current year funding or prior year funding.

(d) Enter the typed name, signature, and date signed of the person certifying the availability of funds.

(e) If the request is charged to a previous year's funding then the Agency Fiscal Officer's name and signature is required.

(8) Each request shall contain a complete description of the supplies, material or services required in order to process the request.

(a) Use this column to list different line items from the same vendor. If the services or item is from a different vendor use a separate Form 123 for each type of service or item needed.

(b) Describe the specific services or items to be procured, including the model number, serial number of items to be repaired, color, size, type of material, etc.

(c) Enter the total quantity desired for each item listed.

(d) Enter the unit (single issue) of the quantity desired i.e., ea. for each, doz. for dozen, ctn. for carton, copy for copy, etc.

(e) Enter the estimated cost for one item of issue (e.g., $1,000 each).

(f) Enter the estimated cost for each line item (quantity x unit price = estimated cost).

(g) Enter total estimated cost of all the items listed in column (8)(f).

(9) Provide a detailed justification for all procurement actions for example:

(a) Request for typewriters.

(1) Number of typewriters on hand.
(2) Number of clerical positions.
(3) Serial number and age of trade-in.
(4) Service history of trade-in, if unit is less than 12 years.

(b) Request for copiers.

(1) Estimated monthly volume.
(2) Number and kind of current copier, if any, on hand.

(c) Request for procured (cost) services.

(1) Reason for need of service.
(2) If service is listed as sole source, submit a justification with the request. (See EEOC Order 360.001, EEOC Acquisition Policy, Guidelines, and Procedures).

(10) Enter typed name/signature and date of person requesting the service/item.

(11) Enter the name/signature and date of Director attesting to his/her operating budget, specifically, a district director or one of headquarter's office/service directors.

(12) Enter the name of the appropriate office responsible for approving special items as required by EEOC Order 360.001, i.e., filing equipment, copiers, word processors, micrographics equipment, other specialized equipment, library publications/subscriptions, ADP equipment, etc.

(13) Enter typed name, title and signature of other officials required to approve the request before procurement action can be taken. For example, litigation/systemic support items require approval by the Office of General Counsel.

B. ROUTING OF FORM 123

(1) Request for supplies/services charged to the requesting office account shall be routed, if applicable, through the appropriate approving official(s) described in paragraphs 3 and 4 below, to PMD for processing.

(2) Requests for supplies, services, equipment, furniture, library publications/subscriptions, EEOC specialty forms, and purchased forms to be charged to Headquarters 2311 account shall be forwarded to the Director, Financial and Resource Management Services for approval and certification of funds. Upon approval, the request will be routed to PMD for procurement action.

(3) Requests for filing equipment, word processors, copiers, and other specialized equipment must be approved by FRMS, or if ADP equipment, by Information Resource Management Services, before procurement action can be taken.

(4) Requests for litigation/systemic services require approvals as provided by EEOC Order 360.001, before Procurement action can be taken.

(5) Prepare Original and (2) copies. Original to Action Office, 1 copy to Administrative Officer, and 1 copy to Requestor.

APPENDIX 3:

STANDARD FORM 30

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES

2. AMENDMENT/MODIFICAITON NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicble)

6. ISSUED BY	CODE	7. ADMINISTERED BY (If other than Item 6)	CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)	(X)	9A. AMENDMENT OF SOLICIATION NO.
		9B. DATED (SEE ITEM 11)
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED (SEE ITEM 11)
CODE / FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a)By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPIRATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

(b) Item 3 (Effective date).

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.

(3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the contacting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

(c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

(d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

(e) Item 9, (Amendment of Solicitation No. - Dated), and 10, (Modification of Contract/Order No. - Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.

(f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries.

(1) Accounting classification _____
Net increase $ _____

(2) Accounting classification _____
Net decrease $ _____

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".

(g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)

(h) Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:

(i) Total contract price increased by $ _____

(ii) Total contract price decreased by $ _____

(iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to --

(i) A reference to the letter determination; and

(ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

(i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting offier's signature is normally affixed last on supplemental agreements.