

ATTACHMENT 5

A GUIDE FOR FEDERAL EMPLOYEE MEDIATORS

**A SUPPLEMENT TO AND ANNOTATION OF THE
MODEL STANDARDS OF CONDUCT FOR MEDIATORS**

ISSUED BY

THE AMERICAN ARBITRATION ASSOCIATION

THE AMERICAN BAR ASSOCIATION

AND

THE ASSOCIATION FOR CONFLICT RESOLUTION

**FEDERAL INTERAGENCY ADR WORKING GROUP
STEERING COMMITTEE**

FOREWORD

This Guide, promulgated by the federal Interagency Alternative Dispute Resolution Working Group ("IADRWG") Steering Committee, builds upon the September 2005 Model Standards of Conduct for Mediators ("Model Standards") issued by a joint committee of three major nationwide organizations, the American Arbitration Association ("AAA"), the American Bar Association ("ABA") and the Association for Conflict Resolution ("ACR") and approved by all three organizations. The Model Standards are set forth in their entirety below. This document provides further explication through a number of Federal Guidance Notes, set out in italics following the Standards to which they apply. This Guide is intended to provide practical ethical guidance for federal employee mediators tailored to mediation practice within the federal government. Non-federal mediators involved in federal mediations may wish to agree to adhere to the Model Standards and to use of this Guide, as part of their mediation employment agreements executed for such federal mediations.

NOTE: *This Guide applies to the internal management of the federal executive branch and is intended to provide helpful advice on potentially difficult questions. It is not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Questions regarding interpretations of this Guide should be brought to the Office of the General Counsel or Legal Counsel in each department or agency. In addition, federal employee mediators must look to agency rules, regulations, directives and policies to obtain guidance in conducting proceedings for their agency. Regardless of their status as mediators, as federal employees, they are responsible for being aware of and complying with a variety of statutory and regulatory requirements, including certain reporting requirements. Should they have questions regarding any of these requirements and how they may relate to their obligations as mediators, it is incumbent on them to contact appropriate personnel within their respective agencies to resolve such questions.*

The Model Standards of Conduct for Mediators
September 2005

The *Model Standards of Conduct for Mediators* was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

The use of the term "shall" in a Standard indicates that the mediator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term "mediator" is understood to be inclusive so that it applies to co-mediator models.

¹ The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

² Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

³ The 2005 revisions to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association for Conflict Resolution on August 22, 2005, and the Executive Committee of the American Arbitration Association on September 8, 2005.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority, do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

- A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
 - 1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.
 - 2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

Federal Guidance Notes:

1. *If, in a federal employee mediator's informed judgment, an agreement desired by the parties will contravene federal law or regulation, the mediator should raise the issue for the parties to consider. If the parties cannot satisfy the mediator's concerns and nevertheless insist on executing such an agreement, the mediator should withdraw from the mediation immediately.*

2. *Certain federal agencies have instituted workplace mediation programs that require managers and supervisors to participate initially in mediation. These programs do not violate this self-determination standard, because the agency, as one of the parties, has elected voluntarily to participate in the mediation, with the manager or supervisor attending as the agency party's representative.*

3. *To the extent it does not interfere with the self-determination of the parties, and so long as the parties and sponsoring agency programs authorize the mediator to do so, a mediator may offer a party his or her evaluation of that party's position as a means of assisting the party realistically to assess the strength of its positions and the risks associated with proceeding with any litigation.*

STANDARD II. IMPARTIALITY

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A mediator should not act with partiality or prejudice based on a participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
 - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

Federal Guidance Notes:

1. *If a federal employee mediator determines he/she is unable to maintain and exhibit impartiality because of agency efforts to influence inappropriately the mediator's conduct or otherwise compromise the mediator's impartiality, the mediator should withdraw from the mediation.*

2. *Government ethics regulations prohibit the solicitation and receipt of gifts, and this includes gifts of travel. See, for example, 5 U.S.C. § 7353, 31 U.S.C § 1353, and 5 C.F.R. 2635 Subparts B and C. Executive branch regulations are posted on the Office of Government Ethics (OGE) website which, at the time of this publication, is www.usoge.gov. The term "gifts of travel" is not intended to include the parties' reimbursement to the mediator of travel costs incurred in conjunction with rendering of mediation services.*

STANDARD III. CONFLICTS OF INTEREST

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.
- B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

***Federal Guidance Note:** The Administrative Dispute Resolution Act of 1996 (“ADR Act”) (at 5 U.S.C. § 573(a)) requires federal employee mediators to disclose conflicts of interest in writing and this includes making sure that all parties to a mediation are aware of the precise nature of the mediator’s relationship with any party. A federal employee mediator must limit his/her role to that of mediator and must never assume the role of advocate or advisor of any sort for any party’s interests during the mediation process. Depending on the policies of their sponsoring program and the desires of the parties, federal employee mediators may offer evaluation of, for example, the strengths and weaknesses of positions, the value and cost of alternatives to settlement or the barriers to settlement (collectively referred to as evaluation) only if such evaluation does not interfere with the mediator’s impartiality or the principle of self-determination of the parties. (See Federal Guidance Note 3 following Standard I, Self-Determination.) Under EEOC Management Directive MD-110, an EEO investigator or counselor may not serve as a mediator in an EEO case in which he/she has investigated or counseled the complainant. In addition, a mediator must not advise, counsel or represent any of the parties in any future proceeding concerning the subject matter of the dispute. A federal employee mediator must not serve as an advisor or approving official, for the purpose of approving a settlement agreement for statutory, regulatory or other legal compliance, when the mediator has mediated the dispute that is the subject of the settlement. Finally, mediators might also be subject to other statutes or regulations that prohibit their participation as a neutral regardless of disclosure.*

STANDARD IV. COMPETENCE

- A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator’s competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
 3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.
- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.
1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
 2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
 3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.
- C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties

may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

Federal Guidance Notes:

1. Unless a specific statute controls, the confidentiality standards of the ADR Act, found at 5 U.S.C. § 574, will govern the confidentiality obligations in federal administrative mediations, and federal employee mediators should consider this statute to be the "applicable law" referenced in standard V.A. Similarly, for matters in United States district courts, mediators need to understand the confidentiality standards established by local rules of court required by the Alternative Dispute Resolution Act of 1998, at 28 U.S.C. 652(d). Mediators need to recognize that each district court is distinct, and that the rules in one district might differ significantly from the rules in another district.

2. These statutes do not afford absolute confidentiality protection. Federal employee mediators must refrain from unauthorized disclosure of "dispute resolution communications," as defined by the ADR Act, 5 U.S.C. 574(a). Federal employee mediators should consult their agency's guidance, as well as the ADR confidentiality guidance promulgated by the U.S. Attorney General's Federal ADR Council published at 65 Federal Register 83085 (December 29, 2000) and the IADRWG website (<http://www.adr.gov>). A joint committee of the ABA Dispute Resolution, Administrative Law, and Public Contract Law Sections has developed additional federal ADR confidentiality guidance. The IADRWG Steering Committee's Confidentiality Subcommittee also has issued a confidentiality guidance handbook for federal workplace mediation, which is available on the IADRWG website.

STANDARD VI. QUALITY OF THE PROCESS

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
 2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
 3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
 5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.
 6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
 7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
 8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
 9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
 10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
- C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

Federal Guidance Notes:

1. *With respect to Standard VI.A.3, certain individuals may not be excluded from a federal mediation, if their attendance and/or participation is mandated by federal law. For example, the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114(A)(2)(a), entitles a labor organization representing bargaining unit employees to be represented at any "formal discussion" between one or more representatives of an agency and one or more employees in the unit the union represents. This right has been interpreted by the Federal Labor Relations Authority and the U.S. Court of Appeals for the District of Columbia as applying to mediation of formal EEO complaints when the complainant is a bargaining unit employee. See, e.g., Dep't of the Air Force, 436th Airlift Wing, Dover AFB v. FLRA, 316 F.3d 280 (D.C. Cir. 2003); Luke Air Force Base, Ariz., 54 F.L.R.A. 716 (1998), rev'd, 208 F.3d 221 (9th Cir. 1999). Federal employee mediators should consult with the agency's ADR Program official, a Labor Relations Officer, labor counsel or other appropriate official when confronted with an issue of union attendance in a federal mediation pursuant to its "formal discussion" rights.*

2. *Federal employee mediators should not accept federal mediation assignments unless the assignment is under the auspices of an agency program, including an established multi-agency shared neutrals program, so as to avert the possibility of being charged with abuse of official time or otherwise putting at risk their rights and benefits as federal employees. Federal employee mediators are encouraged to contact their agency's mediation program administrator or Dispute Resolution Specialist for answers to specific questions related to these Standards, including questions involving potential conflicts of interest or abuse of government positions. If applicable, they may also wish to contact their respective agency's ethics officer to resolve particular questions, and/or other appropriate official to secure authorization to serve as mediators.*

STANDARD VII. ADVERTISING AND SOLICITATION

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.
1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

- B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

***Federal Guidance Note:** For mediations subject to the ADR Act of 1996, mediators serve at the will of the parties. See 5 U.S.C. § 573(b). When federal employee mediators provide information regarding their experience and qualifications, they should provide meaningful and accurate information sufficient for the parties to make an informed decision to accept the mediator, whether that information is provided to the parties directly, via a roster, or otherwise.*

STANDARD VIII. FEES AND OTHER CHARGES

- A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
 - 1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
 - 2. A mediator's fee arrangement should be in writing unless the parties request otherwise.
- B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.
 - 1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
 - 2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

***Federal Guidance Note:** Although most federal employee mediators do not charge fees or are prohibited from charging fees, the programs for which they work sometimes charge nominal fees or seek cost reimbursement. Federal employee mediators should be prepared to answer questions regarding such arrangements for the mediations that they conduct, and conform to sections A and B above, as applicable.*

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

- A. A mediator shall act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:
1. Fostering diversity within the field of mediation.
 2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
 3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 5. Assisting newer mediators through training, mentoring and networking.
- B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

CONTRACT ADMINISTRATION PLAN (CAP)

In order to expedite the administration of this contract, the following delineation of duties is provided. The names, addresses and phone numbers for these offices or individuals are included elsewhere in the contract award document. The office or individual designated as having responsibility should be contacted for any questions, clarifications or information regarding the administration function assigned.

1. The Procuring Contract Office (PCO) is responsible for:
 - a. All pre-award duties such as solicitation, negotiation and award of contracts.
 - b. Any information or questions during the pre-award stage of the procurement.
 - c. Freedom of Information inquiries.
 - d. Changes in contract terms and/or conditions.
 - e. Post award conference.
2. The Contract Administration Office (CAO) is responsible for matters specified in FAR 42.302, except those areas otherwise designated as the responsibility of the Contracting Officer's Representative (COR) or someone else herein.
3. The paying office is responsible for making payment of proper invoices after acceptance is documented.
4. The Ordering Officer is responsible for:
 - a. Requesting, obtaining and evaluating proposals for orders to be issued.
 - b. Select the most advantageous offer to the Government for individual Task Orders in accordance with contract provisions. Determining that the price/estimated cost of the order is fair and reasonable for the effort proposed.
 - c. Obligating the funds by issuance of the delivery order/task order.
 - d. Authorizing the contractor to begin performance.
 - e. Providing subcontract approval.
 - f. Monitoring direct costs on orders issued.

NOTE: The PCO and the Ordering Officer may be the same individual, but in no case shall the COR perform the duties of the Ordering Officer.

5. The Contracting Officer's Representative (COR) is responsible for interface with the contractor and performance of duties such as those set forth below. It is emphasized that only the PCO/CAO has the authority to modify the terms of the contract. In no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic contract between the contractor and any other person be effective or binding on the government. If in the opinion of the contractor an effort outside the scope of the contract is requested, the contractor shall promptly notify the PCO in writing. No action may be taken by the contractor unless the PCO or CAO has issued a contractual change. The COR duties are as follows:

- a. Technical Interface

- (1) The COR is responsible for all Government technical interface concerning the contractor and furnishing technical instructions to the contractor. These instructions may include: technical

advice/recommendations/clarifications of specific details relating to technical aspects of contract requirements; milestones to be met within the general terms of the contract or specific subtasks of the contract; or, any other interface of a technical nature necessary for the contractor to perform the work specified in the contract or order. The COR is the point of contact through whom the contractor can relay questions and problems of a technical nature to the PCO.

(2) The COR is prohibited from issuing any instruction which would constitute a contractual change. The COR shall not instruct the contractor how to perform. If there is any doubt whether technical instructions contemplated fall within the scope of work, contact the PCO for guidance before transmitting the instructions to the contractor.

b. Contract Surveillance

(1) The COR shall monitor the contractor's performance and progress under the contract. In performing contract surveillance duties, the COR should exercise extreme care to ensure that he/she does not cross the line of personal services. The COR must be able to distinguish between surveillance (which is proper and necessary) and supervision (which is not permitted). Surveillance becomes supervision when you go beyond enforcing the terms of the contract. If the contractor is directed to perform the contract services in a specific manner, the line is being crossed. In such as situation, the COR's actions would be equivalent to using the contractor's personnel as if they were government employees and would constitute transforming the contract into one for personal services.

(2) The COR shall monitor the contractor's performance to see that inefficient or wasteful methods are not being used. If such practices are observed, the COR is responsible for taking reasonable and timely action to alert the contractor and the PCO to the situation.

(3) The COR will take timely action to alert the PCO to any potential performance problems. If performance schedule slippage is detected, the COR should determine the factors causing the delay and report them to the PCO, along with the contractor's proposed actions to eliminate or overcome these factors and recover the slippage. Once a recovery plan has been put in place, the COR is responsible for monitoring the recovery and keeping the PCO advised of progress.

(4) If the Contractor Performance Assessment Reporting System (CPARS) is applicable to the contract you are responsible for completing a Contractor Performance Assessment Report (CPAR) in the CPARS Automated Information System (AIS). The initial CPAR, under an eligible contract, must reflect evaluation of at least 180 days of contractor performance. The completed CPAR, including contractor comments if any, (NOTE: contractors are allowed 30 days to input their comments) should be available in the CPARS AIS for reviewing official (PCO) review no later than 270 days after start of contract performance. Subsequent CPARs covering any contract option periods should be ready at 1-year intervals thereafter.

c. Invoice Review and Approval/Inspection and Acceptance

(1) The COR is responsible for quality assurance of services performed and acceptance of the services or deliverables. The COR shall expeditiously review copies of the contractor's invoices or vouchers, certificate of performance and all other supporting documentation to determine the reasonableness of the billing. In making this determination, the COR must take into consideration all documentary information available and any information developed from personal observations.

(2) The COR must indicate either complete or partial concurrence with the contractor's invoice/voucher by executing the applicable certificate of performance furnished by the contractor.

(3) The COR will provide the PCO and the CAO with copies of acceptance documents such as Certificates of Performance.

(4) Upon completion of all services under the contract, the COR shall work with the Contractor to obtain and execute a final invoice no more than 60 days after completion of contract performance. The COR shall ensure that the invoice is clearly marked as a "Final Invoice."

d. Contract Modifications/Orders Under Indefinite Delivery Contracts.

(1) The COR is responsible (if necessary) for developing the statement of work for tasking orders, change orders, or modifications and for preparing an independent government cost estimate of the effort described in the proposed statement of work.

(2) The COR shall provide available and relevant Past Performance information with each request for new Task Orders. The COR shall review and evaluate the contractor's proposal and furnish comments and recommendations

e. Administrative Duties

(1) The COR is responsible for taking appropriate action on technical correspondence pertaining to the contract and for maintaining files on each contract. This includes all modifications, government cost estimates, contractor invoices/vouchers, certificates of performance, DD 250 forms and contractor's status reports.

(2) The COR shall maintain files on all correspondence relating to contractor performance, whether satisfactory or unsatisfactory, and on trip reports for all government personnel visiting the contractor's place of business for the purpose of discussing the contract.

(3) The COR must take prompt action to provide the PCO with any contractor or technical code request for change, deviation or waiver, along with any supporting analysis or other required documentation.

f. Government Furnished Property. When government property is to be furnished to the contractor, the COR will take the necessary steps to ensure that it is furnished in a timely fashion and in proper condition for use. The COR will maintain adequate records to ensure that property furnished is returned and/or that material has been consumed in the performance of work.

g. Security. The COR is responsible for ensuring that any applicable security requirements are strictly adhered to.

h. Standards of Conduct. The COR is responsible for reading and complying with all applicable agency standards of conduct and conflict of interest instructions.

i. Written Report/Contract Completion Statement.

(1) The COR is responsible for timely preparation and submission to the PCO, of a written, annual evaluation of the contractor's performance. The report shall be submitted within 30 days prior to the exercise of any contract option and 60 days after contract completion. The report shall include a written statement that services were received in accordance with the Contract terms and that the contract is now available for close-out. The report shall also include a statement as to the use made of any deliverables furnished by the contractor. For contracts where delivery orders are issued, one consolidated report which addresses all actions under the contract may be submitted.

(2) If the Contractor Performance Assessment Reporting System (CPARS) is applicable to the contract you are responsible for completing a final Contractor Performance Assessment Report (CPAR) in the CPARS with 30 days of contract completion.

(3) The COR is responsible for providing necessary assistance to the Contracting Officer in performing Contract Close-out in accordance with FAR 4.804, Closeout of Contract Files.

7. The Technical Assistant (TA), if appointed, is responsible for providing routine administration and monitoring assistance to the COR. The TA does not have the authority to provide any technical direction or clarification to the contract. Duties that may be performed by the TA are as follows:

- a. Identify contractor deficiencies to the COR.
- b. Review contract/delivery order deliverables, recommend acceptance/rejection, and provide the COR with documentation to support the recommendation.
- c. Assist in preparing the final report on contractor performance for the applicable contract/delivery order in accordance with the format and procedures prescribed by the COR.
- d. Identify contract noncompliance with reporting requirements to the COR.
- e. Evaluate the contractor's proposals for specific delivery orders and identify, for the COR, any potential problems, areas of concern, or issues to be discussed during negotiations.
- f. Review contractor status and progress reports, identify deficiencies to the COR, and provide the COR with recommendations regarding acceptance, rejection, and/or Government technical clarification requests.
- g. Review invoices for the appropriate mix of types and quantities of labor, materials, and other direct costs, and provide the COR with recommendations to facilitate COR certification of the invoice.
- h. Provide the COR with timely input regarding technical clarifications for the statement of work, possible technical direction to provide the contractor, and recommend corrective actions.
- i. Provide detailed written reports of any trip, meeting, or conversation to the COR subsequent to any interface between the TA and contractor.

Current As Of: 06/17/2008

CORPORATE EXPERIENCE and PAST PERFORMANCE INFORMATION FORM			<i>Form ___ of ___</i>	
Name of Offeror:				
Contract Number, order number, or identifier:				
Customer Name & Location:				
Customer Point of Contact (Name & Title):				
Telephone Number (<u>PLEASE VERIFY</u>): and e-mail address				
Total dollar amount for this effort during the past five (5) years: (For ordering vehicles, show both the annual estimated contract amount and the amount of orders actually performed):			(Show calendar year and dollars)	
Number of personnel (FTE) performing per year (avg.):		Period of Performance:		From: To:
Detailed description of the work performed sufficient to demonstrate the relevance of the reference to the solicitation:				
Quality, delivery, or cost problem(s); corrective action(s) taken; and effectiveness of the corrective action(s):				
Subcontractor(s) Utilized in Performance of this contract, description of the extent of work performed by subcontractor(s), along with annual dollar value of all subcontracts:				