

Tab Handout 3-2g
Sample Spot Sales Agreement/Contract

Example Spot Sales Contract

Sale of recyclable materials by the (Name of QRP) Solicitation / contract form

Type of contract: It is anticipated that this solicitation (request for proposal) will result in the following type of contract: firm fixed price, definite delivery contract with definite quantities, subject to an increased quantity option.

A. The government (recycling program), has the option to increase the quantities called for herein up to 35% of the quantity of each item (lot), offered in the schedule at the same prices specified in the acceptance of proposal (contract). The contracting officer may exercise this option at any time or times within 30 calendar days after contract award date by giving notice to the contractor. The contracting officer and the contractor shall in accordance with delivery/pickup dates agree to delivery/pick up of the quantities of items added by exercise of this option. The aforementioned increased quantity option may be further increased by mutual agreement of both contracting parties at any time up to 60 calendar days after contract award.

B. Supplies (Recyclable Materials) and Prices:

Recycling Program _____

LOT #	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT OF ISSUE	UNIT PRICE (CONTRACTOR FILL)
1	Copper wire	100,000	LBS.	

C. Packaging and Marking:

Material will be picked up in a _____ container by the contractor, Free on Board (FOB) origin. Contractor shall provide said standard _____ containers at contractor's expense.

D. Weight of Merchandise:

The purchaser (contractor) and the contracting officer will decide by mutual agreement to accept scale weights using the scale located on the _____ base located at building _____, or by use of a certified public scale located between the contractor's facility and the _____ base (at contractor's expense). Weights are subject to verification by the contracting officer. When merchandise is loaded on a wooden pallet of unknown weight the average weight of _____ pounds will be deducted from the gross weight of the

recyclable merchandise for each pallet utilized to arrive at the net weight of the recyclable merchandise.

E. Inspection and Acceptance:

1. Recyclable merchandise inspection: Contractors are expected to inspect the merchandise offered for sale and to satisfy themselves as to merchandise quality and all general and local conditions that may affect the offers proposed. In no event will the failure to inspect the recyclable merchandise constitute grounds for a claim after award of a contract resulting from this solicitation (request for proposals).

2. Recyclable merchandise may be inspected on an appointment basis at building _____, base, _____. Appointments may be made by contacting _____, contracting officer (or COR) at _____. No inspections will be scheduled on Saturdays, Sundays, or on federal holidays.

3. Inspection and acceptance of the recyclable merchandise to be furnished under this contract shall be made at the _____, building _____, base, _____ by the successful offeror (contractor) unless otherwise agreed to in writing by both contracting parties.

4. Title to the property sold there under will be vested in "the purchaser (contractor)" as and when removal is effected. No right, title, or interest in or to any of the property offered for sale there under shall be vested in the purchaser prior to its removal from the _____, base, _____.

F. Deliveries and Performance:

1. Sales of recyclable materials are on FOB. origin basis: FOB. origin is defined as being loaded by the recycling program, at the recycling program's expense, on to the contractor's open top trailer or truck at the _____, building _____, naval station, _____. At the option of the contracting officer the recyclable materials may be loaded by the recycling program directly into the contractor provided 20, 40, or 45 ft. Shipping container. The contractor shall insure that the recycling program can load its containers.

2. Removal of recyclable materials purchased by the contractor. Vehicles used for the removal of recyclable materials by the contractor or his agent must be adequate in configuration so that all property loaded thereon will be confined within the outside dimensions of the vehicle and said recyclable materials shall be stacked, tied and otherwise secured by the contractor to prevent any portion of the load from being dislodged in any manner while said vehicle is on government property. It is the sole responsibility of the contractor to insure his/her vehicles are properly loaded in the aforementioned manner.

G. Contract Administration Data:

1. Payment for merchandise by the successful offeror (contractor). Within seven calendar days from the notice of award of contract(s) based on this solicitation, the contractor will

deliver a certified/cashiers check to the contracting officer in an amount equal to award of that particular contract. Upon receipt of the aforementioned payment, pick up of the recyclable materials may commence on a mutually agreed to schedule but not later than 15 calendar days after payment is received unless the contracting officer grants an extension. Payment for recyclable merchandise covered in section a, paragraph 1a of this contract schedule regarding increased quantity option may be made by the contractor no later than three days after removal of said property using a company check. All payments made by the contractor will be made out to "Recycling Program."

2. Under no circumstances will the contractor be authorized to make cash payments for any merchandise covered under this contract. The only authorized payment method is by check.

3. The contractor assumes complete liability for all taxes applicable to its property, income, and all of its transactions arising out of, or in connection with, the performance of this contract. The contractor will not be reimbursed for any direct or indirect tax imposed on it by reason of this contract or otherwise.

4. The contracting officer may, at his/her option, impose a \$25.00 administrative charge on dishonored checks received from the contractor for the payment for recyclable materials. A charge of \$100.00 per calendar day may be assessed by the contracting officer to any contractor who fails to remove his/her recyclable materials purchased under this agreement in the time specified in the contract.

H. Special Contract Requirements:

1. Indemnity. The contractor agrees to indemnify and hold harmless the recycling program, the (military service), and the United States (including its agencies and instrumentalities), and their officers, agents and employees against liability and against any and all claims for loss, death, injury, or property damage (including costs and expenses incidental thereto), arising out of or in connection with (i) the performance of this contract, (ii) any of the activities or actions of the contractor's subcontractors, representatives, agents or employees while performing this contract, or (iii) any of the contractor's activities or actions.

2. Damage to government property. Any damage to government property during the contractor's removal operations is the responsibility of the contractor, if deemed by the contracting officer that the contractor or his/her employee was at fault, will be repaired at the contractor's expense, to its original state or a reasonable facsimile thereof to the satisfaction of the contracting officer.

3. Insurance requirements. The contractor agrees to furnish necessary vehicle and other insurance as provided for in the regulations for the state of _____ and the base security office.

4. Vehicle safety and licensing. The contractor agrees to provide vehicles and vehicle operators that are in current compliance with state and local vehicle safety and/or licensing requirements.

5. Dangerous property. The purchaser (contractor) is cautioned that articles or substances of a dangerous nature may remain in the property notwithstanding the care exercised to remove same. The government assumes no liability for damages to the property of the purchaser (contractor) or for personal injuries, disabilities or death to the purchaser (contractor), his/her employees or for any other reason arising from or incident to the purchase of this recyclable material or its use, or suits, actions, or claims of any nature arising from or out of the purchase of this recyclable material.

6. Insulated wire/cable. In some cases, insulated wire/cable may contain polychlorinated biphenyls (PCBs) above 50 parts per million by weight, which must be properly handled by the purchaser (contractor) in accordance with all applicable federal, state, and local laws and regulations regarding handling, recycling, and the eventual disposal of any remaining byproducts.

7. Chemical agent resistant coating (CARC) paint. The purchaser (contractor) is cautioned that the items listed below are, or are likely to be, coated with chemical agent resistant coatings containing trivalent chrome, lead, cobalt-zinc hexamethylene diisocyanate, and other chemicals which represent a potential hazard to human health if welded, cut, or not processed properly. The government brings the following precautions/warnings to the attention of prospective purchasers who plan to disturb this property in any way:

(a) Airline respirators should be used for processing; unless air sampling shows exposure to be below OSHA standards, then either chemical cartridge respirators or airline respirators should be used.

(b) Chemicals should be isolated from heat, electrical equipment, sparks, and open flame. Local exhaust ventilation should be used for inside processing.

(c) Overexposure to vapor/mist can cause irritation to respiratory tract (lungs, nose, throat), edema, dermatitis, dizziness, rash, itching, swelling of extremities, eye irritation, or damage to nervous system, kidneys or liver. Coating may be fatal if swallowed. Possible items or lot #'s include painted aluminum and other non-ferrous scrap metals including sheets, pipes, tubing, valves, nuts, bolts, hardware, ingots, anodes, and insulated wire.

I. Contract Clauses:

1. Definitions: As used throughout this contract, the following terms and abbreviations have the meanings set forth below:

(a) The term "contract" means this agreement and any modifications hereto.

(b) The abbreviation "NAFI" means Non-appropriated Fund Instrumentality of the United States government.

(c) The term "contracting officer" means the person executing or responsible for administering the contract on behalf of the recycling program which is a party hereto, or his successor or successors.

(d) The term "contractor" means the party responsible for buying recyclable materials at a certain price or rate from this recycling program (base recycling program) _____ under this contract.

2. Advertisements: The contractor agrees that none of its nor its agents' advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, etc., shall state, infer or imply that the contractor's products or services are approved, promoted, or endorsed by the Recycling Program (Base Recycling Program). Any advertisement, including cents off coupons, which refers to the Recycling Program will contain a statement that the advertisement is neither paid for nor sponsored in whole or in part by the particular activity.

3. Assignment: The contractor may not assign his right or delegate his obligations under this contract without prior written consent of the contracting officer.

4. Disputes:

(a) Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall state his decision in writing and mail or otherwise furnish a copy to the contractor. Within 90 days from the date of receipt of such copy, the contractor may appeal by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the armed services board of contract appeals. The decision of the board shall be final and conclusive. The contractor shall be afforded an opportunity to be heard and offer evidence in support of any appeal under this clause. Pending final decision of such a dispute, however, the contractor shall proceed diligently with the performance of the contract and according to the decision of the contracting officer unless directed to do otherwise by the contracting officer.

(b) The "disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above, providing that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

5. Examination of records:

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative shall have the right to examine and audit the books and records of the contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The contractor agrees to include the clause in paragraph "a" above in all subcontracts thereunder which exceed \$10,000.

6. Gratuities:

(a) The recycling program may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found after notice and hearing, by the secretary of the (military department) or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the government or the recycling program with a view toward securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performance of such contract.

(b) In the event this contract is terminated as provided for in paragraph "a" hereof the recycling program shall be entitled (i) to pursue the same remedies against the contractor as it could pursue in the event of a breach of contract by the contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Secretary of the (Military Department) or his duly authorized representative), which shall be not less than three nor more than ten times the cost incurred by the contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the recycling program provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

7. Hold and save harmless. The contractor shall indemnify, save harmless and defend the recycling program from any liability, claimed or established for violation or infringement of any patent, copyright, or trademark right asserted by any third party with respect to goods or merchandise hereby sold or any part thereof. The contractor further agrees to hold the recycling program harmless from all claims or judgments for damages resulting from the use of products listed in this contract. Also, the contractor shall at all times hold and save harmless the recycling program (base recycling program)_____, its agents, representatives and employees from any and all suits and expenses which arise out of acts or omissions of the contractor, its agents, representatives, or employees.

8. Law governing contracts. In any dispute arising out of this contract, the decision requires consideration of law questions, the rights and obligations of the parties shall be interpreted and determined according to the substantive laws of the United States.

9. Legal status. The Recycling Program is an integral part of the DoD and is an instrumentality of the U.S. government. Therefore, recycling program contracts are U.S. government contracts; however, they do not obligate appropriated funds of the United States. No appropriated funds of the United States shall become due or be paid a contractor by reason of this contract.

10. Modifications.: No agreement or understanding to modify this contract will be binding upon the recycling program unless made in writing and signed by a contracting officer from the office that issued the contract or its successor.

11. Order of precedence. In the event of an inconsistency between provisions of this solicitation/award, the inconsistency shall be resolved by giving precedence in the following order: (1) supplies and prices, (2) special contract requirements, (3) contract clauses, and (4) other provisions of the solicitation/award.

12. Termination for convenience. The contracting officer may terminate this contract by written notice, in whole or in part when it is in the best interest of the Recycling Program.

13. Termination for default. The contracting officer may terminate the contract by written notice, in whole or in part for failure of the contractor to perform any of the provisions hereof. In such event the contractor shall be liable for damages including the excess cost of resoliciting offers for sales of recyclable merchandise; however, if it is determined that the contractor's failure to perform is without his/her or his/her subcontractor's control, fault or negligence the termination must be deemed to be a termination for convenience. As used in this provision, the term "subcontractor" means subcontractor at any tier.

14. Clauses incorporated by reference. The provisions of the following clauses set forth in the FAR are hereby incorporated into this solicitation/award by reference with the same force and effect as though herein set forth in full. As used in the following clauses the term "government" is deleted and recycling program is substituted in lieu thereof. The date of each clause shall be the current date set forth in the far on the issuance date of the contract(s) awarded as a result of this solicitation (request for proposals). Clauses made inapplicable by the reference or by the kind of order or contract (e.g., contracts for services or purchase of supplies) instead of for sale of recyclable materials are self-deleting. The complete text of any clause incorporated in this solicitation/contract by reference may be obtained from the contracting officer.

CLAUSE NO	REFERENCE	CLAUSE TITLE
23	52.203-1	OFFICIALS NOT TO BENEFIT
24	52.203-5	COVENANT AGAINST CONTINGENT FEES
26	52.222-20	WALSH-HEALY PUBLIC CONTRACTS ACT (SUPPLY CONTRACTS OVER \$10,000 NOT WITH FOREIGN CONTRACTORS)
27	52.222-26	EQUAL OPPORTUNITY (SUPPLY CONTRACTS OVER \$10,000)
28	52.222-35	AFFIRMATIVE ACTION FOR SPECIAL DISABLED VETERANS AND VIETNAM ERA VETERANS (SUPPLIES OVER \$10,000)
29	2.222-36	AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (SUPPLIES OVER \$2,500)

J. Representations, Certifications and Other Statements of Offeror:

Scrap warranty. The purchaser, (contractor) represents, warrants and certifies to the U.S. government that this property will be scrapped by pulping, shredding, or other equally complete manner which precludes any recognition or reconstruction of the items. The purchaser (contractor) further represents, warrants, and certifies that he/she is purchasing

the property as scrap and that he/she will only use it as scrap. Notwithstanding any other provisions of this contract to the contrary, title to the property shall not vest in the purchaser until all required scrapping has been accomplished. Should the purchaser (contractor) fail for any reason to complete the scrapping within 60 calendar days after removal of the property, or such additional time as may be granted by the contracting officer, the government shall have the right to repossess the property charging the purchaser (contractor) with all costs incurred by the government in repossessing and reselling the property including any direct loss on account of the resale.

K. Instructions and Conditions and Notices to Offerors:

1. Telegraphic or facsimile offers. In keeping with standard scrap markets industry practice and in consort with the Defense Logistics Agency (DLA) policy of allowing submission of facsimile offers in response to requests for proposals for the sales of recyclable materials, facsimile or telegraphic offers may be submitted in response to this request for proposals. Telegraphic or facsimile offers must be received at the place designated by the contracting officer prior to the time specified for the receipt of offers in the request for proposals. Such offers must specifically refer to this request for proposals; must include the item(s) or lot(s), estimated quantities and the unit prices for which the offer is submitted. Additionally, the offer must contain all the representations and other information required by the request for proposals together with a statement that the offeror agrees to all the terms, conditions, and provisions of the solicitation. Failure of the offeror to furnish in the telegraphic or facsimile offer the representations and information required in the request for proposals, may necessitate rejection of the offer. A person authorized to conduct negotiations and sent to the recycling program _ must sign facsimile responses.

2. Collusion warning. Offerors are cautioned to submit their offers without consultation, communication, or agreement with any other offeror for the purpose of restricting competition. Offer (bid) rigging is a federal felony criminal offense under section 1 of the Sherman Anti-Trust Act (15 U.S.C. 1). Conviction carries with it a fine of up to \$1,000,000 for corporations and up to \$100,000 or three years imprisonment (or both) for individuals. Contractors are encouraged to report suspected violations of this criminal law to the contracting officer at (000) 000-0000. This matter is of the greatest importance to this program and your utmost cooperation in insuring that this recycling program exemplifies maximum free and open competition among offerors is solicited and appreciated.

3. Notice to contractor of certain drug detection procedure.

(a) Pursuant to DoD policy applicable to government and contractor personnel, measures will be taken to prevent the introduction and utilization of illegal drugs and related paraphernalia into government work areas.

(b) In furtherance of DoD's drug control program, unannounced periodic on base inspection of the following nature may be conducted by installation security authorities:

(1) Random inspection of vehicles on entry or exit with drug detection dog teams as available, to eliminate them (vehicles) as a safe haven for storage or trafficking in illegal drugs.

(c) When there is probable cause to believe that a contractor employee on an installation has been engaged in use, possession, or trafficking of drugs, the installation authorities may detain said employee until the employee can be removed from the installation, or can be released to the local authorities having jurisdiction.

(d) Trafficking in illegal drugs and drug paraphernalia by contractor's employees while on a military installation may lead to possible contract termination and/or referral for prosecution by appropriate law enforcement authorities.

(e) The contractor is responsible for the conduct of his/her employees performing work under this contract and is, therefore, responsible to insure that employees are notified of these provisions prior to assignment.

(f) The removal of contractor personnel from a government installation as a result of drug offenses shall not be cause for excusable delay, nor such action be deemed a basis for an equitable adjustment to price, delivery or to other provisions of this contract.

4. Removal from the list of prospective offerors. At the option of the contracting officer individuals or firms that fail to respond to three or more requests for proposals issued by this Recycling Program, or are in default regarding a contract issued by this Recycling Program, may be removed from the list of prospective offerors (commonly referred to as bidders list) and not be sent further requests for proposals from this organization until they are re-instated by the contracting officer.

5. Acknowledgment of amendments to requests for proposals. Receipt of an amendment to a request for proposals by an offeror must be acknowledged by (a) signing and returning the amendment, (b) by annotation of block #14 entitled "acknowledgment of amendments" on the solicitation/offer form (standard form 33), or (c) by letter, telegram, or facsimile. Such acknowledgment must be received prior to the hour and date specified for the receipt for proposals.

6. Explanation to offerors. Any explanation desired by an offeror regarding the meaning or interpretation of the request for proposals, specifications, conditions, etc., must be requested in writing and received by the contracting officer in sufficient time to allow for a reply to reach offerors before the submission of their proposals. Oral explanations or instructions given before the award of a contract(s) will not be binding. Any information given to a prospective offeror as an amendment to the request for proposals will be furnished to all prospective offerors.

7. Late proposals. Any proposal received at the office designated in the solicitation (request for proposals) after the exact time specified for the receipt will not be considered unless it is received before award is made; and (a) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers; (b) it was sent by mail/telegram/facsimile and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation; or (c) sent by controlled dispatch via nationally known U.S. courier (e.g., Emery, Federal Express,

etc.) not later than three calendar days prior to the date proposals were due; or, (d) it was the only proposal received.

L. Evaluation Factors for Award of Contract(s):

1. Single award by lot. An award will generally be made to a single responsive responsible offeror for all items for each lot. However, the Recycling Program reserves the right to split lots or to award by item when the contracting officer determines that to be more advantageous to the Recycling Program.
2. Contract(s) will be awarded to those responsible offerors whose proposals (conforming to the request for proposals) will be most advantageous to the Recycling Program, price and other factors considered.
3. The Recycling Program reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received. In addition, the Recycling Program reserves the right to withdraw or not award a contract for any lot(s) for which the contracting officer determines the price(s) received are not fair and reasonable.
4. The Recycling Program may accept any item or lot or group of items or lots in any proposal unless the offeror qualifies his/her proposal by specific limitations. "all or none" proposals will normally be rejected unless the contracting officer deems them to be more advantageous to the recycling program than other offers received.
5. Award of contract(s)/acceptance of proposal. An "acceptance of proposal" signed by the contracting officer and mailed (or otherwise furnished) to the successful offeror(s), within the time for acceptance specified in the proposal, shall be deemed to result in a binding contract proposal if signed by the contracting officer and mailed (or otherwise without further action by either party). No binding contract shall result without such issuance of a signed "acceptance of proposal" by the contracting officer.