

## Minutes from 10/31/11 SWOP4G Seminar:

### **In Attendance:**

Jaybe Bailey	Renee Hinte	Shavonna Neal
Matt Larrick	Mike Gray	Yvette Lewis
David Suber	Connie Fagg	Vicki Hawse
Jennifer Wagner	Joyce Wise	Connie Barney
Beverly Yount	Janelle Collier	Amy Havenar
Gary Lucas	Nikki Plank	Lisa Koppin
Cindy Strayer	Linda Garrett	Marsha Shaffer
Lori Byrd	Bryan Campbell	Tom Williams
Amy Blackaby	Javon Lewis	Carla Bozeman
Matt Gemperline	Ryan Beers	Nicole Erb
Lora Brooks	Steve Hartman	LaKeisha Washington
Parshotam Lal Channa	Scot Ross	Jeff Francis
Mitch Miller	Jay Keaton	Tracey Messer

**Speaker: Barb Johnson, CPPO,  
CPPB, MPA**

Lunch was served first starting at 11:30 a.m.

Meeting started at 11:50 a.m. by Nikki Plank. She welcomed everyone and thanked them for coming. She thanked all the Board members for putting the seminar together for the membership. Lisa Koppin then gave us all a road salt update. She stressed that everyone check your deliveries and refuse the shipment if it doesn't meet our specifications. Please let others know if you have a problem, call Lisa and she can alert everyone. Nikki let everyone know that Montgomery County has a janitorial supply bid that is eligible for rebates depending on how much you spend. Please speak with Marsha if you are interested.

Matt Larrick from the City of Dayton asked the membership if anyone does a criminal background check on its vendors. The City of Dayton is currently on the front page of the newspaper because of a particular situation. The City of Riverside does a BBB check (not criminal). The City of Middletown only does one if it is in the specs for a particular type of work. No one does it for every bid. Can we hire convicted felons? Why not?

Nikki said this is a good example of how we can use each other as resources.

5 min. break

### **12:20 Specification Writing – Barb Johnson, CPPO, CPPB, MPA**

Nikki introduced Barb to the group and she has been a member of SWOP4G since 1986. We passed out the agenda and each person introduced themselves. Most of us are interested in services and equipment. Her first recommendation was to look for specs already written by

someone else or use state bids or other types of cooperative bids. Montgomery County has several cooperative bids open to us, they also will sell surplus assets for you on Govdeals. Barb asked Bev to share the emails of all in attendance. We will not actually write specs today, but you will have the tools you need to write your own.

Keep in mind that state pricing sets a ceiling and you can always negotiate a better price. Coop.org has other links to cooperative purchasing. Outsourcing and procurement work hand in hand with cooperative purchasing.

The Procurement Cycle has 6 steps:

- Need Develops
- Source Selection
- Approvals
- Order execution
- Receive/use
- Disposal

Most of the time, you will spend a majority of your time developing the need and writing the specification. Begin with the end in mind. Output is the steps to get to outcome (quality of life). Outcome is described as either a citizen survey or a secretary taking complaints. You must determine who your subject matter expert is. Sometimes your department will not articulate what they want. Ask one more question than you need to so that you can draw out some useful information. Barb suggested we read “The Seven Habits of Highly Effective People.”

The Legal Basis for Award: make sure you are in compliance with ORC or your charter.

- Lowest responsible/responsive bidder
- Best value (where profession is going) uses evaluation criteria rather than just lowest price. Gives entity ability to award on other factors.
- Highest ranked offeror – used for professional services like an architect, surveyor. Picked based on qualifications and mostly used with RFPs

IFB – award based on price

RFP – must be proposals and uses evaluation criteria, may just state the desired outcomes

RFQ

Risk can be classified in dollars, operational complexity, legal and liability issues.

1:30 Break

1:45 Publication, Solicitation, Document Flow

Contract Interpretation Concepts (shoe tying exercise to show difference between performance and design specs)

Looked at Shortened and Modified handout

Choosing the right word handout

Choosing the right phrases handout

Worked in groups on a sample spec writing activity

Looked at NIGP resource library (indigent burials RFP)

Standard specifications have been approved and used widely.

3:20 Nikki Plank concluded the seminar and asked the membership to email us any specific needs they would like to see us do a seminar on.

# SPECIFICATION WRITING WORKSHOP

## NOTES

### **1.0 Workshop Objectives**

- 1.1 Develop specification writing knowledge network and tools
- 1.2 Sharpen your awareness of specification writing elements
- 1.3 Improve specification writing skills

### **2.0 Network – Icebreaker**

- 2.1 Introduce yourselves to the workshop participants
  - 2.1.1 What is your name?
  - 2.1.2 For What Entity/Agency do you purchase?
  - 2.1.3 What do you buy?
  - 2.1.4 What do you want to learn how to buy?

### **3.0 Procurement Cycle**

- 3.1 Need Develops
- 3.2 Source Selection
- 3.3 Approvals
- 3.4 Order Execution
- 3.5 Receive/Use
- 3.6 Disposal

### **4.0 Specifications: Begin with the end in mind**

- 4.1 Purpose/Performance/Outcome
- 4.2 Outputs/Construction/Design
- 4.3 Deliverables/Milestones

### **5.0 Legal Basis for Award**

- 5.1 Lowest Responsive and Responsible Bid/Bidder
- 5.2 Best Value (goods or services) Proposal/Proposer
- 5.3 Highest Ranked Offeror

### **6.0 Risk**

- 6.1 Financial: high dollar spend
- 6.2 Operational: complexity, mission critical
- 6.3 Legal: collateral damage
- 6.4 Good Faith: reputation, community perception

### **7.0 Types of “Formal” Solicitations**

- 7.1 Invitation To (For) Bid (ITB)
- 7.2 Request for Proposals (RFP)
- 7.3 Request for Statements of Qualifications

### **8.0 General Solicitation Flow**

- 8.1 See General Rules for Interpreting Contract

### **9.0 Writing Specifications**

- 9.1 Powerpoint and Exercise

### **10.0 Writing your Specifications Exercise**

### **11.0 Wrap, Q&A**

## **Contract Interpretation Concepts**

### **Whose Meaning Prevails? Based on Common Law to date:**

Where the parties attach the same meaning to the terms used in their agreement, the interpretation of the agreement should be in accord with that meaning even if a third party might interpret the language differently.

Whatever an objective observer might think, if the contracting parties attach different meanings to the same term, then neither is bound by the understanding of the other unless one of them knew or had reason to know what the other understood the disputed term to mean.

In the case of *Raffles v. Wichelhaus* (1864) 159 Eng.Rep. 375, the seller agreed to sell cotton to the buyer. Shipment was to be made from Bombay on the ship named Peerless. However, there were two ships named "Peerless." One was to sail in October and the other in December. Defendants intended to accept the cotton on the ship that sailed in October and refused to accept the cotton on the ship that sailed in December. It was held by the court that there was no binding or enforceable contract. The rule of the Peerless case is that no contract arises unless both parties have the same meaning in mind. i.e., there must be agreement on the same thing. "Meeting of the minds" is also a commonly used phrase to describe this

### **General Rules of Contract Interpretation**

#### **The meaning of a contract can be gleaned from the "four corners of the document"**

Where contract language is clear and explicit and does not lead to an absurd result, a court will ascertain contractual intent from the written provisions of the contract itself and go no further.

#### **Contracts are construed most strictly against the drafter**

Any ambiguities caused by the drafter of the contract must be resolved against the drafter or the party employing him or her.

#### **The words within a contract are given their ordinary meaning**

The words of a contract generally are to be understood in their ordinary and popular sense unless the parties use them in a technical sense or a special meaning is given to them by usage.

#### **"Usage of Trade" matters (See, UCC 1-205)**

Technical words in a contract must "be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense."

### **Omitted Terms**

What happens when the parties omit a term from their contract?

Often, when the parties omit a term from their contract which is essential to the determination of their rights the court will supply a term which is reasonable.

If the contract is for the sale of goods Article 2 of the UCC provides for a number of statutory terms to be used to fill gaps in the contract when missing terms cannot be supplied through resort to course of performance, course of dealing or usage of trade. By setting forth statutory terms, the Code supplies the commonly accepted term on the matter and prevents the contract from failing for lack of a reasonable basis for enforcement.

In case of conflict statutory terms are subordinated in rank to course of performance, course of dealing, and usage of trade.

Source: [lawschoolhelp.com](http://lawschoolhelp.com) and Craig A. Smith

## **Contract Interpretation Concepts**

### **The Parol Evidence Rule**

Where the parties have reduced their agreement to final written form, evidence of prior or contemporaneous agreements is inadmissible to vary or contradict the terms of the final written agreement. (UCC 2-202)

The thrust of the parol evidence rule is that if the court finds the writing to have been intended as a complete and exclusive statement of the terms of the parties' agreement, then the writing alone constitutes the contract and evidence of prior negotiations or "side agreements" will not be resorted to in interpreting the final written agreement.

When the parties to a written contract have agreed to it as an "integration"--a complete and final embodiment of the terms of an agreement-- parol evidence cannot be used to add to or vary its terms. The crucial issue in determining whether there has been an integration is whether the parties intended their writing to serve as the exclusive embodiment of their agreement.

Exceptions to the Rule A written contract may be conditioned on an oral agreement that the contract shall not become binding until some condition precedent resting in oral or extrinsic evidence shall have been performed.

### **The Plain Meaning Rule**

The plain meaning rule states that if a writing, or the term in question, appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the contract without resort to extrinsic evidence.

Some have rejected the plain meaning rule. Some say that all relevant extrinsic evidence is admissible on the issue of meaning including evidence of subjective intention and what the parties said to each other with respect to meaning. This is true even if there is an integration and there is no ambiguity. However, the trial judge must initially decide whether the asserted meaning is one to which the language taken in context, is reasonably susceptible in the light of all the evidence. If it is not then that asserted meaning may not be attached to the language in question.

When parties set down their agreement in a clear, complete document, their writing, should as a rule be enforced according to its terms. The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.

Source: [lawschoolhelp.com](http://lawschoolhelp.com) and Craig A. Smith

## Shorten and Modified

Thursday, June 27, 1996 Consultants' quest: shorter, sweeter communication

By Scott Smith Colorado Springs Gazette Telegraph COLORADO SPRINGS

See Tom. See Tom write. See Tom write well.

See Bill. See Bill speak. See Bill speak well.

See Tom and Bill try to persuade the rest of the United States to do the same, to write and speak in plain English.

Can Tom and Bill succeed?

Oh, here and there. Let's face it—this is a big country, filled with obfuscation and gobbledeygook from sea to shining sea. Filled with writers and speakers who use words like obfuscation and gobbledeygook. Tom and Bill do not approve.

That is because Tom Murawski and Bill Wallisch of Colorado Springs are passionate about language. They love words. Simple, direct words. So much so, these former English professors from the Air Force Academy became communications consultants to the world.

Their message is simple:

Whether you are a bureaucrat or a bartender, a CEO or a plumber, it is important to communicate well.

Murawski's specialty is writing; Wallisch's is speech. But their commandments are the same:

- Be brief
- Be clear.
- Be honest
- Be organized.
- Know your audience.
- And understand the basic communication truth  
— 'We're all in sales,' Murawski said. 'We're trying to get you to say, 'Yes.'"

Murawski and Wallisch practice what they teach. They know what they want to say, say it and sit down. Murawski's forte is improving regulations writing, usually by using a question-and-answer format that targets a specific audience. He hopes increased use of plain English by the federal government will erode some of the public's distrust of Washington. After Murawski's tutelage, the Federal Communications Commission rewrote its regulation on citizens band radios, in plain English — and the phones stopped ringing. The FCC was able to transfer five full-time employees who had done nothing but answer questions as the result of a poorly worded regulation.

Tom Murawski on writing well:

- Content. Think hard about what you want to say and how you want to say it. Adjust for your audience and situation: What do the readers already know, and what do they need to know now? You do not have to agree with your reader to write well, but you must see the world from your reader's perspective.
- Organization. Get to the point fast. If you delay the main message, the readers have to read the writing twice — once to see where it is going and a second time for details and perspective. Give them perspective early so they can appreciate the relevance of the detail. Use headings and lists to make it easy to move around in the text.
- Wording. Talk on paper. Write to express, not to impress. Pull the reader into the writing with twice as many references to the reader as the writer.

## CHOOSING THE RIGHT WORD

### POSSIBLE ANSWERS

<b>Consumption</b>	<b>USE</b>
<b>Circumvented</b>	<b>AVOIDED</b>
<b>Nevertheless</b>	<b>BUT</b>
<b>Activate</b>	<b>START</b>
<b>Cooperation</b>	<b>HELP/AID</b>
<b>Erroneous</b>	<b>FALSE</b>
<b>Initiate</b>	<b>START</b>
<b>Compensation</b>	<b>PAY</b>
<b>Exemplifies</b>	<b>SHOWS</b>
<b>Conglomeration</b>	<b>MIXTURE</b>
<b>Disseminate</b>	<b>SPREAD</b>
<b>Incinerate</b>	<b>BURN</b>
<b>Prioritize</b>	<b>RANK</b>
<b>Modification</b>	<b>CHANGE</b>
<b>Demonstrate</b>	<b>SHOW</b>
<b>Refrain</b>	<b>STOP</b>

## CHOOSING THE RIGHT WORD

You can make your meaning more clear by using shorter words. Shorter, more direct words get to the point, are clear-cut and distinctive. The following are a few examples of words that should have shorter words to get to the point and mean the same as the longer alternatives. The answers are on the back, but try it first!

Consumption	
Circumvented	
Nevertheless	
Activate	
Cooperation	
Erroneous	
Initiate	
Compensation	
Exemplifies	
Conglomeration	
Disseminate	
Incinerate	
Prioritize	
Modification	
Demonstrate	
Refrain	

## CHOOSE THE RIGHT PHRASES – WRITE CLEARER

You can make your meaning more clear by using words instead of phrases. Shorter, more direct words get to the point, are clear-cut and distinctive. The following are a few examples of phrases that should have shorter words to get to the point and mean the same as the longer alternatives. The answers are on the back, but try it first!

In consideration of the fact that	
At your earliest convenience	
In the normal course of action	
Avoid the intent of	
Encourage that all	
Impartiality in all phases	
Handle information of a confidential nature	
Use reasonable care	
Have the opportunity to	
A certain number of times	
At regular intervals	
In most cases	
Experience has shown	
A small number of items	
It is recommended that	
With respect to	
Make contact with	
At a later point in time	


**CHOOSE THE RIGHT PHRASES – WRITE CLEARER**

**POSSIBLE ANSWERS**

In consideration of the fact that	BECAUSE
At your earliest convenience	SOON
In the normal course of action	NORMALLY
Avoid the intent of	AVOID
Encourage that all	SUGGEST
Impartiality in all phases	BE FAIR
Handle information of a confidential nature	KEEP CONFIDENTIAL
Use reasonable care	BE CAREFUL
Have the opportunity to	CAN
A certain number of times	"X" TIMES
At regular intervals	REGULARLY
In most cases	USUALLY
Experience has shown	EXPERIENCE SHOWS
A small number of items	FEW
It is recommended that	WE RECOMMEND
With respect to	CONCERNING/ABOUT
Make contact with	MEET
At a later point in time	LATER

# EFFECTIVE STATEMENTS OF WORK

Slide  
1



## Effective Statements of Work

"The strongest drive is not to love or hate,  
it is one person's need to change  
another person's copy."

*Once upon a tyme, the <sup>BIG A DOG</sup> went  
into the woods ~~and~~, creeping like*

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2



## AGENDA

- Statement of Work Overview
- Review writing tools
- Practice
- Review others Statement of Work

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# EFFECTIVE STATEMENTS OF WORK


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3



## STATEMENT OF WORK

A specification (detailed description) for services to be performed. Two parts:

- 1) What the service will look like
  - \* Who, what, when, where and why
- 2) The measurement of the service by the chosen supplier.



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4



## United Technologies Message

Strike Three. Get your hand off my knee. You're overdrawn. Your horse won. Yes. No. You have the account. Walk. Don't walk.

Basic events require simple language.

Idiosyncratically euphuistic eccentricities are the promulgators of triturate obfuscation.

What did you do last night? Enter into a meaningful romantic involvement or fall in love?

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# EFFECTIVE STATEMENTS OF WORK

Slide  
5



## Statements of Work Effectiveness

- ❖ Divide into teams
- ❖ Teams to discuss the Tom and Bill article
- ❖ Teams to determine the best word
- ❖ Teams to determine the best phrase
- ❖ Teams to revise statement of work examples
- ❖ Teams to share statement of work revisions.



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## WRITING SIMPLY

- SHORTER, SWEETER COMMUNICATIONS!

Read the article and prepare to have a brief discussion about the merits of writing simply.

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# EFFECTIVE STATEMENTS OF WORK

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Choosing the right word  
Shorter words are better:

- Consumption - Use
- Circumvented -
- Nevertheless -
- Activate -
- Cooperation -
- Erroneous -
- Initiate -
- Compensation -
- Exemplifies -

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Slide  
8



Choosing the right word  
Shorter words are better:

- Conglomeration - Mix
- Disseminate -
- incinerate -
- Prioritize -
- Modification -
- Demonstrate -
- Refrain -
- Enhance -

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# EFFECTIVE STATEMENTS OF WORK

Slide  
9



**Shorter phrase are better:  
Complex phrase**

- in consideration of the fact that - since
- at your earliest convenience -
- In the normal course of action -
- avoid the intent of -
- encourage that all -
- impartiality in all phases -
- handle information of a confidential nature -
- use reasonable care -
- have the opportunity to -

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Slide  
10



**Shorter phrase are better:  
Complex phrase**

- a certain number of times - often
- at regular intervals -
- in most cases -
- experience has shown -
- a small number of items -
- if I were to recommend -
- with respect to -
- make contact with -
- at a later point in time -

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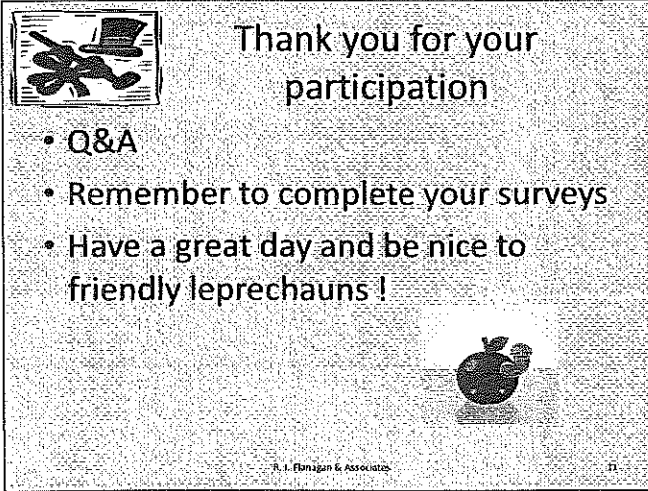
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# EFFECTIVE STATEMENTS OF WORK

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Thank you for your participation

- Q&A
- Remember to complete your surveys
- Have a great day and be nice to friendly leprechauns!

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# **PUBLIC SOLICITATION DOCUMENT FLOW (IN GENERAL-NONCONSTRUCTION)**

## Solicitation Cover page

Advertisement/Notice Information

## Information for Bidders/Offerors/Proposers/Respondents

Terms and Conditions of Solicitation  
Order of Precedents  
Protest or Debriefing Information

## Table of Contents for Solicitation

## Technical Specifications

Table of Contents for Technical Specifications  
Technical Specification Details

## Regulatory Documents

Non-Collusion Affidavit  
Declaration of Material Assistance to Terrorists  
Bid Bond Information  
Irrevocable Letter of Credit Information

## Proposed Contract Document

Section 1.	Services	Section 28.	No Assurances
Section 2.	Authority Provided Information	Section 29.	Captions
Section 3.	Compensation	Section 30.	Incorporation of Regulations
Section 4.	Contract Documents	Section 31.	Governing Law
Section 5.	Additional Consultant Responsibilities	Section 32.	Consultant Performance Evaluation
Section 6.	Costs for Re-bidding	Section 33.	No Personal Liability
Section 7.	Equipment and Supplies	Section 34.	Waiver
Section 8.	Reimbursement for Expenses	Section 35.	Severability
Section 9.	Invoicing	Section 36.	Warrant of Authority
Section 10.	Suspension	Section 37.	Entire Agreement
Section 11.	Termination for Convenience by Authority	Section 38.	Accounting Records
Section 12.	Termination by the Authority for Cause	Section 39.	CAD Standards
Section 13.	Termination by Consultant for Cause	Section 40.	Sustainable Design and Stormwater Mgt
Section 14.	Confidentiality	Section 41.	License
Section 15.	Security and Safety		
Section 16.	Ownership of Work Product		
Section 17.	Taxes		
Section 18.	Time of Performance		
Section 19.	Force Majeure		
Section 20.	Equal Opportunity		
Section 21.	Notices		
Section 22.	Changes in Scope of Services		
Section 23.	Indemnification		
Section 24.	Conflict of Interest		
Section 25.	Insurance		
Section 26.	Dispute Resolution		
Section 27.	Assignment		

SCHEDULES AND EXHIBITS:  
CONSULTANT REIMBURSEMENT POLICY  
DBE INVOICE DISBURSEMENT FORM  
CONSULTANT'S INVOICE CHECKLIST  
CONSULTANT PERFORMANCE EVAL  
AUTHORIZATION  
DELINQUENT PERSONAL PROPERTY TAX  
AFFIDAVIT  
CONTRACT SIGNATURE AFFIDAVIT  
INSURANCE MINIMUM COVERAGE

## TECHNICAL SPECIFICATIONS DETAILS

PROFESSIONAL DESIGN SERVICES (RFQ)	PROFESSIONAL SERVICES (RFP)	GENERAL SERVICES (RFP)	GENERAL SERVICES (ITB)	GOODS (ITB)
1.0 SCOPE AND CLASSIFICATION	1.0 SCOPE AND CLASSIFICATION	1.0 SCOPE AND CLASSIFICATION	1.0 SCOPE AND CLASSIFICATION	1.0 SCOPE AND CLASSIFICATION
2.0 APPLICABLE PUBLICATIONS	2.0 APPLICABLE PUBLICATIONS	2.0 APPLICABLE PUBLICATIONS	2.0 APPLICABLE PUBLICATIONS	2.0 APPLICABLE PUBLICATIONS
3.0 REQUIREMENTS	3.0 REQUIREMENTS - DELIVERABLES	3.0 REQUIREMENTS - DELIVERABLES	3.0 REQUIREMENTS - DELIVERABLES	3.0 REQUIREMENTS INCLUDING DELIVERY AND PACKAGING
4.0 EVALUATION CRITERIA - AWARD BASIS	4.0 EVALUATION CRITERIA - AWARD BASIS	4.0 EVALUATION CRITERIA - AWARD BASIS	4.0 AWARD BASIS	4.0 AWARD BASIS
5.0 QUALIFICATION RESPONSE REQUIREMENTS	5.0 RFP RESPONSE REQUIREMENTS	5.0 RFP RESPONSE REQUIREMENTS	5.0 REFERENCES	5.0 SAMPLING AND TESTING
6.0 NOTES AND MISCELLANEOUS	6.0 NOTES AND MISCELLANEOUS	6.0 NOTES AND MISCELLANEOUS	6.0 NOTES AND MISCELLANEOUS	6.0 NOTES AND MISCELLANEOUS
			7.0 BID FORM	7.0 BID FORM