

**ACQUISITION MANAGEMENT
HARPERS FERRY CENTER
ADMINISTRATIVE GUIDELINE NUMBER 5
PURCHASE AND ACCOUNTABILITY OF ILLUSTRATIONS
NOVEMBER 2010**

I. BACKGROUND

As Harpers Ferry Center (HFC) assists in the development of media to help parks tell their story, the purchase of illustrations may occur. The illustrations are primarily two or three dimensional or may be computer-generated. They are used to explain, educate, clarify, and highlight the interpretive story being presented in exhibits, multimedia, outdoor and indoor exhibit production, printed media reproduction publications, audiovisual media, and historic furnishings reports. Illustrations, unless contractual documents state otherwise, are government property. The individuals responsible for the activities set forth in this guideline are listed in Attachment A.

II. PURPOSE

The purpose of this Administrative Guideline is to establish and outline the policies and procedures for the purchase, accountability, and disposition of illustrations at HFC.

III. POLICY

All illustrations, whether purchased or donated, regardless of the dollar value, must be accounted for using the procedures outlined in this guideline and its attachment.

Illustrations required by HFC may be purchased through a competitive or non-competitive contract, upon approval from the Contracting Officer. While the intended use may vary depending on the needs of the project, illustrations must be accounted for under the Department of the Interior Federal Property Guidelines and Director's Order #44: Personal Property Management and are considered working graphics rather than fine art. It is therefore necessary to include the Rights in Data – Special Works clause (FAR 52.227-17) in any contract for the procurement of illustrations or, in the case of a task order, confirm that the Special Works clause is contained in the basic IDIQ contract. Under the Special Work clause, original illustrations would be considered data first produced in performance of the contract and as such, the government may assert copyright in the finished illustration. Allowing the contractor to assert copyright or else not specifying how copyright ownership will be handled under the contract could potentially leave the government with license rights rather than full ownership.

Although not preferred, circumstances may exist in which full ownership of the illustration cannot be obtained and the government is left with a license granting specific use rights. Under these conditions, it is necessary that the contract specify use rights that are either “unlimited rights” as defined by FAR 52.227-17 (a) or are otherwise consistent with the governments intended use. Permission from the Contracting Officer is required prior to procuring an illustration in which full copyright ownership is unavailable.

IV. PROCEDURES FOR ILLUSTRATION PURCHASE, ACCOUNTABILITY AND DISPOSITION

A. Purchase

When it is determined that an illustration is required, the requestor will search the Commissioned Art Repository database for an illustration suitable for use. The Commissioned Art Repository database can be accessed via the web at: <http://www.hfc.nps.gov/hfc-insite/cfml/art-default.cfm>. If an illustration is not found in the Commissioned Art Repository database, the requestor must contact the Commissioned Art Repository Manager to verify that all possible illustrations have been entered into the Commissioned Art Repository database. If an illustration is found, the requestor shall contact the Commissioned Art Repository Manager to verify that the illustration is suitable for the media type. The Commissioned Art Repository Manager will send an email to the requestor and the Art Coordinator to confirm the findings. If an illustration is not available, the requestor may proceed with the procurement of a suitable illustration.

The requestor will prepare the work statement and government estimate and provide to the Art Coordinator prior to proceeding with the procurement request. Once review has been completed by the Art Coordinator, a recommendation of approval, disapproval, or request for additional information is sent to the requestor via email. Additional information is contained in the guideline entitled "Commissioning Original Reflective and/or Computer-Generated Illustrations" which can be accessed via the web at: http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf.

Once the illustration has been approved for purchase, a purchase request (PR) will be initiated and submitted to the Office of Acquisition Management. The work statement, government estimate, justification and justification for other than full and open competition, if required, must accompany the PR. All PRs between \$3,000 and \$25,000 should contain three recommended sources.

The PR should be named identifying HFC, the Four-Digit Park Acronym, Artwork and then the Product Line. Examples follow:

HFC-CHOH-Artwork/WE
HFC-CHOH-Artwork/AVA
HFC-CHOH-Artwork/PUB
HFC-CHOH-Artwork/EX
HFC-CHOH-Artwork/HF

The PR route must be set up for approval by the requestor's supervisor and then routed to the Office of Programs and Budget and the Office of Acquisition Management.

Once the complete PR package is received, a request for quotation is issued. The quotes are received, reviewed, and negotiated, as may be appropriate. Then a contract is awarded.

Distribution of illustration contracts and modifications follow:

- A .pdf file to the requestor on the PR;
- A .pdf file to the Art Coordinator;
- A .pdf file to the Commissioned Art Repository Manager; and
- A .pdf file to the Contracting Officer's Representative (COR) with a copy of his or her delegation memorandum that must be immediately signed and returned to the Contracting Officer.

B. Accountability and Disposition

The Property Accountable Officer is responsible for the delegation of all custodial officers, one of which is the Commissioned Art Repository Manager, who oversees the repository and verifies locations for all illustrations.

The final illustration is received and accepted by the COR identified in the contract. In addition to the COR's inspection of the technical aspects of the illustration, the COR must also confirm that there are no attached copyright notices unless prior permission has been granted to the contractor to retain copyright. Payments under the small purchase threshold where a purchase order document is used are handled by the Office of Programs and Budget. Task order and contract payments are handled by the Office of Acquisition Management. At the time the receiver is submitted to the appropriate office, the COR or Administrative Technician must simultaneously notify the Office of Acquisition Management, HFC Art Coordinator, and the Commissioned Art Repository Manager via email that the final illustration has been accepted.

Within five days of acceptance, the COR must also complete the Art Documentation form and Contractor's Performance Report. The Art Documentation form can be accessed via the web at: http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf. An Art Documentation form must be completed for each illustration and sent to the Commissioned Art Repository Manager. The Commissioned Art Repository Manager will notify the Contract Specialist via email upon receipt of the Art Documentation form and provide the accession number. This will be followed-up with the signed Art Documentation form. The Contractor's Performance Report must be sent to the Purchasing Agent or Contract Specialist. Once the report has been signed by the Contracting Officer, a copy will be sent to the Art Coordinator.

When the COR is finished with the illustration, the Receipt for Property form (DI-105) must be completed. The Receipt for Property form is used to document the relocation of the illustration from the media division to the HFC Artwork Repository. This form can be accessed via the web at: http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf. This form identifies the person accepting responsibility for the property listed and the liability that accompanies possession. This form may be used by itself or as a supplement with a memo. Illustrations will not be accepted into the Artwork Repository without a Receipt for Property and the Art Documentation forms.

The Commissioned Art Repository Manager will review the forms and illustration and then sign the Receipt for Property form to show the illustration is now located in HFC Artwork Repository. After this review, all paperwork and the illustration(s) are officially transferred to the Commissioned Art Repository Manager. The Commissioned Art Repository Manager will then send a signed copy of the Receipt for Property form to Acquisition Management. Acquisition Management will file this form in the contract file.

The Commissioned Art Repository Manager is responsible for entering each illustration into HFC Commissioned Art Repository database. The purchase order number is used as the identification number.

The Commissioned Art Repository Manager also chairs the Art Advisory Board. The committee meets to determine the status of obsolete illustrations. Elimination of these illustrations is coordinated with the Property Accountable Officer. Harpers Ferry Center Art Advisory Board meets on an “as-needed” basis, but at a minimum annually.

C. **Derivatives of Commissioned Art Images**

Designers, other team members, or parks proposing to alter an existing illustration in any way MUST first determine its ownership and copyright status.

When commissioned art owned by the NPS has been altered, the project’s designer must provide a clear list of changes made, date, reason for the changes, and the name of staff or contractor doing the change. This digital derivative image and the information MUST be added to the art inventory records by the HFC Commissioned Art Repository Manager.

When the NPS owns only limited rights to a commissioned original artwork, but copyright and/or ownership has been retained by the artist, do nothing to the art until written permission can be obtained from the owner/copyright holder to do so. This requires a written request through the HFC Contracting Officer. The request, owner/copyright holder's written response, list of changes, reasons, and person doing the changes become part of the contract record as an authorized derivative that the NPS has the right to use. This digital derivative image and requisite information **MUST** be added to and maintained in the art inventory records by the HFC Commissioned Art Repository Manager.

D. **Donation and/or Transfers of Property**

The Director, Harpers Ferry Center and the Property Accountable Officer are the only two individuals who are authorized to accept donations of artwork into the HFC Artwork Repository.

In the case of art donations or transfers as part of our technical assistance to parks, no illustrations will be accepted into the system without complete documentation concerning its ownership, copyright, use rights or intellectual property rights, purchase price, and transfer of property.

E. **Subcontracting of Illustrations**

Contractors may elect to *subcontract* a portion or elements of a project. If an illustration is one of these elements, the COR has the responsibility to ensure that the illustration review process includes the project team and the park. The COR must review the HFC Commissioned Art Repository database before putting an illustration requirement in the prime contract. The COR must also ensure that ownership and/or use rights are covered in the procurement request document. Illustrations produced under a *subcontract* would be considered data first produced in performance of a contract so long as the Rights in Data – Special Works clause is included in the prime contract. If the Special Works clause is not included, then a modification to the prime contract to incorporate the clause may be needed. It is important for the prime contractor to ensure that any illustration produced under a *subcontract* meet the requirements of a “work made for hire” as defined by Section 101 of the 1976 Copyright Act (17 U.S.C §101) so that the subcontractor cannot retain any copyrights against the prime contractor and in turn, against the government. Illustrations purchased through a *subcontract* must also be entered into the HFC Artwork Repository within five working days after receipt and acceptance using the Art Documentation form. When the COR has accepted the illustration, a Receipt for Property form must be completed. The Commissioned Art Repository Manager will enter the value, artists name, and description of the *subcontracted* art in the Commissioned Art Repository Database. The COR will provide this information.

ATTACHMENT A

**HARPERS FERRY CENTER
RESPONSIBLE PARTIES
ILLUSTRATION PURCHASE AND ACCOUNTABILITY GUIDELINE**

<u>TITLE</u>	<u>NAME</u>
Property Accountable Officer	Michael Alvarez
Art Coordinator	Anita Smith
Commissioned Art Repository Manager	Wade Myers
Contracting Officer	JoAnne Grove
Art Advisory Board Member	Mary Ann Kave
Art Advisory Board Member	Linda Meyers
Art Advisory Board Member	Mitch Zetlin
Art Advisory Board Member	Betsy Erlich
Art Advisory Board Member	Neil Mackay
Art Advisory Board Member	Mark Johnson