

February 8, 2011

FAS INSTRUCTIONAL LETTER 2011-02

Supplement No.

1

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM: HOUSTON W. TAYLOR
ACTING ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Mandating the Use of Pre-Negotiation, Price Negotiation and Final Proposal Revision Templates for the Federal Supply Schedules Program

1. Purpose. This supplement provides guidance on the use of pre-negotiation, Price negotiation (PNM), Final Proposal Revision (FPR), and memorandum to file templates for certain modification actions on Federal Supply Schedule (FSS) contracts.
2. Background. Instructional Letter (IL) 2011-02 mandated the use of pre-negotiation, Price negotiation and Final Proposal Revision templates for FSS contract awards.

There are certain modification actions where these templates are also the preferred method of contract file documentation (see Instructions/Procedures below). For those actions that do not require the use of a pre-negotiation, PNM, and/or FPR template, a memorandum to file should be used to document the modification action.

3. Effective Date. Date of signature.
4. Termination Date. This IL expires one year from the effective date unless cancelled, extended, or incorporated into a handbook.
5. Applicability. This IL applies to all GSA/FAS acquisition activities awarding Federal Supply Schedule contracts.
6. Reference to Regulations. This IL references Federal Acquisition Regulations (FAR) Subparts 8.404, Use of Federal Supply Schedules; 12.209, Determination of Price Reasonableness; 15.307, Proposal Revisions; 15.402, Pricing Policy; 15.406-1, Pre-Negotiation Objectives; and 15.406-3, Documenting the Negotiation.
7. Instructions/Procedures. The pre-negotiation memorandum, PNM, FPR, and memorandum to file templates for modification actions are contained in Attachments A, B, C, and D. The following guidance outlines circumstances that may warrant each document's use:

- Pre-negotiation memorandum: A pre-negotiation memorandum should be used to

establish negotiation objectives for a price-related modification, such as the addition of a Special Item Number (SIN), product/labor category, or Economic Price Adjustment (EPA), and where negotiations are conducted, the Basis of Award (BOA) discount relationship is disturbed, or a new BOA is established.

- Price-negotiation memorandum (PNM): A PNM should be used to document negotiations for a price-related modification, such as the addition of a Special Item Number (SIN), product/labor category, or Economic Price Adjustment (EPA), and where negotiations are conducted, the BOA relationship is disturbed, or a new BOA is established.
- Final Proposal Revision (FPR): A FPR should be used to document a change in a contractor's modification request as a result of negotiation.
- Memorandum to file: A memo to the file should be used to document all other modification actions.

Author: Nicholas West

Appendix A

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Pre-Negotiation Memorandum Multiple Award Schedule Schedule # – Schedule Name

Contract Number _____
 Modification number _____

I. CONTRACTOR

Name
 Street Address
 Suite (if applicable)
 City, State Zip
 Phone:
 Fax:
 DUNS:
 TIN:

Authorized Negotiators:

List all authorized negotiators

Contact for Contract Administration:

List all contract administrators

II. DESCRIPTION OF THE MODIFICATION REQUEST

Company submitted a modification request dated **modification request date** to modify contract **contract number** as follows:

[Insert description of modification request]

III. KEY DOCUMENTS

- Agent Authorization Letter: N/A Yes
- Did the contractor propose any exceptions Yes No
- Add SIN(s). The modification request is requesting to add SIN(s) N/A Yes, and for each SIN, the contractor submitted:
 - Commercial Sales Practices Format Yes No
 - Updated GSA *Advantage!*[®] Price List Yes No
 - Delivery time(s) for the item(s) under the new SIN(s) N/A Yes No
 - Production point(s) for the item(s) under the new SIN(s) N/A Yes No
 - Hazardous Material information N/A Yes No

- Any information requested by 52.212-3, Contractor Representations and Certifications—Commercial Items, that may be necessary to assure compliance with Foreign, FTA, Canadian, Israeli, and other end products N/A Yes No
 - The contractor identified did not identify foreign end products.
 - The country of origin for foreign end products is/are [_____].
 - If other than the manufacturer, the Contractor has has not submitted prior to award of a contract, either (1) a letter of commitment from the manufacturer, which will assure the Contractor of a source of supply sufficient to satisfy the Government's requirements for the contract period, OR (2) evidence that the Contractor will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period.
 - If marketing through dealers, the contractor has indicated whether those dealers will be participating in the proposed contract Yes No N/A. If yes, did the contractor provide:
 - o Letter(s) of supply Yes No N/A
 - o Letter(s) of commitment Yes No N/A
 - o List of dealer(s)/reseller(s) Yes No N/A
 - o Warranty information Yes No N/A
 - o Licensing agreement(s) Yes No N/A
- Add items. The modification request is requesting to add item(s) N/A Yes, and the contractor submitted the following:
- Commercial Sales Practices Format Yes No
 - Updated GSA *Advantage!*® Price List Yes No
 - Delivery time(s) for the new item(s) N/A Yes No
 - Production point(s) for the new item(s) N/A Yes No
 - Hazardous Material information N/A Yes No
 - Any information requested by 52.212-3, Contractor Representations and Certifications—Commercial Items, that may be necessary to assure compliance with Foreign, FTA, Canadian, Israeli, and other end products N/A Yes No
 - The contractor identified did not identify foreign end products.
 - The country of origin for foreign end products is/are [_____].
 - If other than the manufacturer, the Contractor has has not submitted prior to award of a contract, either (1) a letter of commitment from the manufacturer, which will assure the Contractor of a source of supply sufficient to satisfy the Government's requirements for the contract period, OR (2) evidence that the Contractor will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period.
 - If marketing through dealers, the contractor has indicated whether those dealers will be participating in the proposed contract Yes No N/A. If yes, did the contractor provide:
 - o Letter(s) of supply Yes No N/A
 - o Letter(s) of commitment Yes No N/A
 - o List of dealer(s)/reseller(s) Yes No N/A
 - o Warranty information Yes No N/A
 - o Licensing agreement(s) Yes No N/A
- Deletion. The modification request is requesting to delete item(s)/SIN(s) and the contractor provided an explanation for the deletion N/A Yes No

- Price Reductions. The modification request is requesting a price reduction and the Contractor indicated whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75. N/A Yes No
 - If the price reduction falls under item (i), the Contractor submitted a copy of the dated commercial price list. N/A Yes No
 - If the price reduction falls under item (ii) or (iii), the Contractor submitted a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction. N/A Yes No

IV. TECHNICAL CAPABILITY EVALUATION (if bullet #3 in section III is marked “N/A” section IV should not be included)

An overall evaluation of [Company's](#) technical proposal has been performed. The firm's previous experience and past performance were assessed in order to determine the depth of its understanding of [Schedule Name's](#) requirements. Technical factors, when combined, are equally as important as price.

Factor I – Corporate Experience:

[Discuss years in business, experience, number of employees, parent/subsidiary information, etc. and a statement that the company was rated “acceptable”, “partially acceptable”, or “not acceptable” for Factor I. If modification is not requesting the addition of SINs, enter “N/A.”]

Factor II – Relevant Project Experience (if applicable):

[May include language, such as, “The submitted projects (or substitution of relevant projects of predecessor companies or the company's key personnel that will be performing major aspects of the work as applicable) demonstrate that the contractor has successful experience in performing projects within the general scope of this contract. The work described also demonstrates that the contractor has performed tasks, which are of similar complexity to those contemplated under the proposed SIN(s). For a complete description of submitted projects/key personnel descriptions, refer to Tab 17. Narrative should also include a statement that the company was rated “acceptable”, “partially acceptable”, or “not acceptable” for Factor II.” If modification is not requesting the addition of SINs, enter “N/A.”]

Each technical factor was defined and standards written so that all proposals would be objectively and impartially evaluated against those standards and not against one another. The Government determined that each technical proposal would be evaluated and rated on an “acceptable/unacceptable” basis. Pursuant to an in-depth assessment of technical factors described herein, [Company](#) is determined to be technically acceptable.

V. PRICING ANALYSIS (if bullet #2 AND #3 in section III is marked “N/A” section V should not be included)

Solicitation [\[number\]](#) seeks products/services that are commercial in nature. FAR Part 15.403-1(c) (3)(i) exempts commercial items from the requirement of cost and pricing data. Therefore, cost and pricing data are not required.

The following chart displays the contractor's proposed prices, in addition to a comparison of those prices to Most Favored Customer prices, GSA *Advantage!*® prices (for products only), and any

other external market-based research as input by the CO/CS.

INSERT PRICE COMPARISON CHART

Prices offered are are not based on a commercial catalog or pricelist. If prices are based on a commercial catalog or price list, the catalog or price list is dated *[insert date]*.

[If future price increases are based on an Economic Price Adjustment (EPA), fully describe the EPA selected and provide a mathematical example of how prices would be adjusted.]

Quantity discounts were offered. Yes No *[If quantity discounts were offered, address what they are]*

The Company’s Most Favored Customer (MFC) pricing is disclosed on the Commercial Sales Practice Sheet (CSP) is *[insert company’s Most Favored Customer or class of customer]*. The prices offered to GSA are equal to better than not comparable to the MFC. *[Fully explain how the price offered is equal to, better than or not comparable to the MFC. Include how MFC purchase volumes compare to the maximum order threshold of the schedule.]*

The terms and conditions offered to GSA are equal to better than not comparable to the MFC. *[Fully explain how the terms and conditions offered are equal to, better than or not comparable to the MFC. If MFC pricing isn’t offered, explain why not]*

Most Favored Customer pricing is used to perform price analysis and to determine fair and reasonable pricing; however, the Most Favored Customer pricing is not necessarily synonymous with Basis of Award. The customer or class of customer identified as the Basis of Award is addressed below.

[text box]

Service Contract Act: The Service Contract Act is is not applicable. In accordance with FAR Part 22, service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. The following Wage Determination numbers were reviewed: *[complete table]*

Wage Determination No.	Locality	Offered Prices Compliant?

The prices proposed are are not in compliance with the applicable wage determination for the offered locality(ies).

VI. Basis of Negotiations

By submission of the modification request, **Company** has certified that all information is current, complete and accurate.

The Government has developed the following negotiation objectives:

INSERT NEGOTIATION OBJECTIVES CHART

[Discuss the following areas where applicable: What prices should the government get and why? How did you arrive at your negotiation objectives? What additional discounts or concessions are you seeking? What is your basis? How does the proposed pricing compare to the Most Favored Customer pricing and the company's established commercial practices?]

In order to fulfill Clause 552.238-75 Price Reductions, the Government will establish [*customer or class of customer*] as **Company's** Basis of Award for the new item(s).

VII. Negotiations

Once negotiations have concluded, the Government will request a Final Proposal Revision to confirm all agreed upon changes in its initial modification request. Upon review of the Final Proposal Revision, the Government intends to make award without obtaining further revisions. Any revisions submitted after the noted due date will not be considered, unless it is determined to be in the best interest of the Government.

Prepared By:

Name

Contract Specialist
Acquisition Center

Date

Approved By:

Name

Contracting Officer
Acquisition Center

Date

Appendix B

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Price Negotiation Memorandum Multiple Award Schedule Schedule # – Schedule Name

Company Name
Contract Number _____
Modification number _____

FAR 15-406-3 Negotiation Documentation

1. Purpose of the Negotiation:

Having determined that the modification request was complete, the information from the modification request was consolidated into a pre-negotiation memorandum with recommended negotiation objectives. The pre-negotiation memorandum was approved on **date**. The purpose of the negotiations was to negotiate the terms and conditions of the modification request and to obtain pricing that is equal to or better than the contractor's Most Favored Customer pricing.

2. Description of the Acquisition:

This Price Negotiation Memorandum is for a non-mandatory/mandatory, indefinite delivery indefinite quantity/definite delivery, multiple award schedule, contract. The Contracting Officer who places task/delivery orders against the contract shall purchase products and services at fair and reasonable prices in accordance with Federal Acquisition Regulation (FAR) Clause 15.402.

Company submitted a modification request dated **date** to modify contract **contract number** as follows:

[Insert description of modification request]

3. Negotiators:

List all negotiators

[Discuss when negotiations were held and any other pertinent information.]

4. Current status of contractor systems to the extent they affected and were considered in the negotiation:

[text box]

5. Cost or pricing data not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it:

This solicitation is for commercial items as defined by FAR Subpart 2.101 and is exempt from the requirement for cost or pricing data (FAR Subpart 15-403-1(b)(3)).

6. Cost or pricing data required: N/A (See #5 above)

7. Summary of Contractor's proposal, field pricing assistance recommendations including reasons for any pertinent variances from the Government's negotiation objective, and the negotiated position. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination:

See Pre-Negotiation Memorandum

[text box]

8. The most significant facts and considerations controlling the establishment of pre-negotiation objectives and the negotiated agreement including explanation of any significant differences between the two positions.

- (1) Summarize the Contractor's request. Identify the product/services offered and initial price offered. Discuss the analysis of the proposed pricing, Most Favored Customer pricing, market pricing, etc.
- (2) Discuss the Government's negotiation objectives
- (3) Discuss the Government's negotiated position. Were the objectives met? For MAS, is the agreed upon pricing better than or equal to the offeror's MFC? Discuss any differences between the pre-negotiation objectives and the negotiated position.
- (4) Were there significant issues that developed during negotiations that the reader of the price negotiation memorandum should be aware of?
- (5) Discuss any changes from the initial proposal.
- (6) Indicate whether the company has provided quantity or prompt payment discounts or other concessions

9. To the extent such direction has a significant effect on the action, a discussion and quantification on the impact of direction given by Congress, other agencies, and higher-level officials:

[If applicable, clarify the impact or direction given by Congress, other agencies, and higher-level officials]

10. The basis for the profit or fee pre-negotiation objective and the profit or fee negotiated:

[N/A]

11. Fair and reasonable price:

Discuss price reasonableness based on price analysis including the source and type of data used to determine price reasonableness.

Final Pricing:

INSERT PRICE LIST

In order to fulfill Clause 552.238-75 Price Reductions, the Government established [customer or class of customer] as Company's Basis of Award.

It is recommended that the modification **modification number** be awarded to **Company**.

[text box. If award without discussions is made, provide rationale.]

Prepared By:

Name
Contract Specialist
Acquisition Center

Date

Approved By:

Name
Contracting Officer
Acquisition Center

Date

Appendix C

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Date
Company
Address

Re: **Company's** Final Proposal Revision for modification number _____ under contract number _____

Dear **Ms./Mr. Name**:

Discussions between the General Services Administration (GSA) and **Company** regarding the modification request to contract number _____, have concluded. Please submit your company's Final Proposal Revision (FPR) to include:

1. **Company** takes the following exceptions to the terms and conditions of the contract:

List exceptions taken or "None"

Check box for confirmation

2. The following Special Item Numbers (SINs) were proposed:

List SIN(s) or "N/A"

Check box for confirmation

3. State the negotiated method for price escalation for the base period and option periods of

additional product(s)/service(s).

[text box]

4. The following chart reflects all agreed upon pricing, whether accepted as proposed or negotiated. The data also includes other proposed or negotiated discounts, e.g. volume discounts, prompt payment terms, etc. [Company](#) understands that the Industrial Funding Fee must be set aside for remittance to GSA on a quarterly basis.

[Insert pricelist as a link or appendix.](#)

[text box]

[Check box for confirmation](#)

5. Please state the Basis of Award. [Company](#) understands that should it deviate from the established pricing policies disclosed in this offer and disturb the discount relationship with the established Basis of Award, the terms of [GSAM clause 552.238-75 PRICE REDUCTIONS](#) apply.

[text box]

6. All commercial business practices have been fully disclosed and are current, accurate and complete as of the conclusion of negotiations.

[Check box for confirmation](#)

Provide [Company's](#) Final Proposal Revision by the close of business, [date]. The General Services Administration intends to make award without obtaining further revisions. Any revisions submitted after the noted due date will not be considered unless an extension was granted.

Sincerely,

[Contracting Officer/Contract Specialist Name](#)
[Center Name](#)

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Appendix D

MEMO TO FILE

Contractor: *Company*
Contract Number: *Contract Number*
Subject: *[text box]*

[text box]

Prepared By:

Name
Contract Specialist
Acquisition Center

Date

Approved By:

Name
Contracting Officer
Acquisition Center

Date