

November 19, 2010

FAS INSTRUCTIONAL LETTER 2011-02

FROM: HOUSTON W. TAYLOR
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 of this Instructional Letter (IL) is to facilitate consistency by mandating the use of pre-negotiation, price negotiation and final proposal revision templates for the award and administration of Federal Supply Schedule (FSS) contracts.
2. Background. The following FAR references outline the requirements for the establishment of pre-negotiation objectives, a price negotiation memorandum (PNM), and a final proposal revision (FPR) (if necessary):
 - FAR 15.406-1 requires the Contracting Officer (CO) to establish pre-negotiation objectives prior to the commencement of negotiations. These pre-negotiation objectives must be addressed in a pre-negotiation memorandum for negotiated procurements. The pre-negotiation memorandum must be signed by a warranted CO prior to the commencement of negotiations.
 - FAR 15.406-3 requires the CO to document the negotiation. This is accomplished with a Price-negotiation Memorandum (PNM) for negotiated procurements. At a minimum, the PNM contains eleven elements that must be included to document the negotiated agreement. The PNM must be signed by a warranted CO after negotiations have concluded.
 - FAR 15.307 provides guidance on proposal revisions. The CO may request a FPR to clarify and document understandings reached during negotiations.

FAS is undertaking a major modernization initiative that aligns continuous process improvements with information technology applications to create an end-to-end electronic contracting environment. Part of that effort includes the Enterprise Acquisition Solution (EAS). EAS involves building the service architecture that will support end-to-end electronic contracting. EAS is composed of approximately 25 feature sets that contain contract life cycle functionality. One of those feature sets, pricing, is projected to be piloted on three FSS Schedules in summer 2011. The pricing functionality includes capturing pricing data on FSS contracts via Formatted Price Templates, displaying it on GSA Advantage!, and providing the FAS acquisition workforce a price comparison tool to enhance the ability to negotiate pricing under the FSS program.

Please note that the pre-negotiation memorandum, PNM, and FPR templates will eventually be automated as part of the EAS.

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 and FPR templates contained in Attachments A, B and C are mandated for use in all future FSS contract awards.

In a supplement to this IL, modified templates will also be made mandatory for use when executing a modification that requires establishing or changing the contractor's Basis of Award (BOA), e.g. adding a new labor category with a new BOA.

Appendix A

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Pre-Negotiation Memorandum

Multiple Award Schedule

Schedule # – Schedule Name

Solicitation Number (Refresh # dated Date)

I. EXECUTIVE SUMMARY

This acquisition will result in a non-mandatory, indefinite delivery/indefinite quantity, firm-fixed-price, multiple award schedule contract. The products and/or services offered herein will be procured from responsible sources at fair and reasonable prices in accordance with Federal Acquisition Regulation (FAR) Subparts 8.404, 12.209 and 15.402.

The purpose of this memorandum is to make an affirmation as to whether or not the offeror is responsible and responsive in accordance with FAR 9.104 and to establish pre-negotiation objectives. The Government has performed an administrative review, technical evaluation, and a price analysis of the offer. The Contracting Officer's evaluation and determination is discussed in the subsequent sections.

[text box]

II. OFFEROR

Name

Street Address

Suite (if applicable)

City, State Zip

Phone:

Fax:

DUNS:

TIN:

Parent Company [if applicable]:

NAICS: [Ensure NAICS of the offeror matches the NAICS to the SIN, and if not, provide an explanation]

Business Size: Large Small Women Owned Veteran Owned
 Small Disadvantaged Service-Disabled Veteran Owned HUBZone

Category: Manufacturer Dealer/Reseller Retailer Other _____ [specify]

Estimated Contract Value: [\$\$] (five-year base period)

[\$/\$] (five-year base period and all option periods)

The estimated contract value will be reviewed at option period and adjusted accordingly.

Contract Period: Date of award through five years
 Three five-year option periods
 Standing solicitation - no closing date

Type of Contract: Indefinite Delivery Indefinite Quantity (IDIQ)
 Multiple Award Schedule
 Firm-Fixed-Price with Economic Price Adjustment

Authorized Negotiators:

[List all authorized negotiators](#)

Contact for Contract Administration:

[List all contract administrators](#)

Scope of Contract: [Domestic / Worldwide](#)

III. DESCRIPTION OF THE ACQUISITION

[Company](#) submitted a proposal dated [offer date](#). The following Special Item Numbers (SINs) were offered:

[INSERT SIN\(S\) AND SIN DESCRIPTIONS](#)

IV. KEY DOCUMENTS

- Small Business Subcontracting Plan (IAW FAR 19.702): [*N/A / Pending Review By SBTA, this will be discussed in negotiations / Approved by SBTA on _____*]
- EEO Clearance: N/A Required In accordance with FAR 22.805, a request was submitted to the Department of Labor on behalf of the company on [*date*]. Clearance granted on [*date*].
- [Representations and Certifications Completed \(IAW FAR 4.12\)](#): Yes No
- [ORCA \(orca.bpn.gov\)](#): Registration valid until Date
- [CCR \(www.ccr.gov\)](#) (IAW FAR 4.11): Registration valid until Date

- Pathway to Success Certificate: [*Person completed by and date*]
- Agent Authorization Letter: N/A Yes
- Recovery Purchasing (IAW FAR 4.15): Yes No
- Cooperative Purchasing: N/A Yes No
- Pre-Award Audit: In accordance with Procurement Information Bulletin (PIB) 05-2, the OIG's Office of Audits reviews contracts that are scheduled for expiration and randomly selects contracts for a pre-award audit. The company has not been selected for a pre-award audit. [*If company has been selected, discuss the findings of the pre-award audit and how each finding was addressed. If recommendations from the pre-award audit were not adopted, the file must explain why.*]
- Notice of Substantial Award: N/A Yes
- Trade Agreements Act: The Trade Agreements Act is applicable. In accordance with FAR Part 52.225-5, all solicitations over the Trade Agreements Act threshold are subject to compliance with the Trade Agreements Act. Therefore, all offers submitted must in be compliance with this regulation. The production points are in compliance with the Trade Agreements Act and this company does not utilize any foreign end products, therefore this firm is in compliance the Trade Agreement Act. The offeror identified did not identify foreign end products. The country of origin for foreign end products is/as [_____].
- If other than the manufacturer, the Offeror has or has not submitted prior to award of a contract, either (1) a letter of commitment from the manufacturer which will assure the Offeror of a source of supply sufficient to satisfy the Government's requirements for the contract period, OR (2) evidence that the Offeror will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period.
- If marketing through dealers, the offeror has indicated whether those dealers will be participating in the proposed contract Yes No N/A

V. RESPONSIBILITY DETERMINATION

The company is determined to:

a.) Have adequate financial resources to perform the contract or the ability to obtain them.

A financial review was conducted on [date], where it was determined that the company has does not have adequate financial resources to perform the anticipated work.

[If an internal financial analysis is conducted, discuss how it was determined the company was financially responsible – may include analysis of a company's financial statements, reference to a Certificate of Competency (small business), etc. If after

conducting the financial review the CO is unable to determine financial capability, then use of other means may be justified.]

In accordance with FAR Part 9.104-1, the offeror has adequate financial resources to perform the contract, or the ability to obtain them; therefore, the company was determined to be responsible.

b.) Be able to comply with the required or proposed performance schedule taking into consideration all existing commercial and government business commitments.

[Discuss the company's personnel, facilities, quality control plan, past performance information, etc.]

c.) Have a satisfactory performance record.

[Discuss past performance results obtained from Dun & Bradstreet Past Performance Report, other past performance surveys/questionnaires, performance on other FSS contracts, CAV reports, etc. Sample language includes the following: Open Ratings has completed a Past Performance Evaluation on [company] as of [date]. A total of [# of respondents] references were surveyed and the evaluation determined that the summary performance rating was [%] which is satisfactory to the Contracting Officer. Past performance is is not satisfactory. Address performance reported. Reference Checks: Reference checks were conducted on [date] and based on the feedback, the company has does not have satisfactory performance.]

d.) Have a satisfactory record of integrity and business ethics.

[Include EPLS and references to other supporting documentation]

In accordance with [FAR 9.404 and Clause 52.203-13](#), [Company](#) has a written code of business ethics and is not presently debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any Federal agency. They have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state, or local government contract or subcontract; violating a Federal, state, or local antitrust statute relating to the submission of offers; committing embezzlement, theft, forgery, bribery, falsification, or destruction of records; making false statements; tax evasions, or receiving stolen property. They are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with commission of any of the aforementioned offenses.

e.) Have the necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them.

[Discuss organizational structure, key personnel, accounting controls, marketing strategy, etc.]

f.) Have the necessary production, technical equipment and facilities or the ability to obtain them.

[Discuss production schedules, equipment, etc.]

g.) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

[Discuss completed ORCA, EPLS checks, etc.]

In accordance with FAR Part 9.404, the debarred bidders list was reviewed via the Internet at address <http://epls.arnet.gov/> on [date]. The offeror does does not appear in Excluded Parties List System for Federal Procurement and Non-procurement Programs. This database will be reviewed again prior to recommendation for award.

Based on the elements of responsibility reviewed above, **Company** is determined to be responsible in accordance with FAR 9.104.

VI. TECHNICAL EVALUATION

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.]

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 offeror has successful experience in performing projects within the general scope of this contract. The work described also demonstrates that the offeror 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."]

Factor III – Past Performance:

[May include references to Dun & Bradstreet Report, other performance survey/questionnaires, etc. and a statement that the company was rated "acceptable", "partially acceptable", or "not acceptable" for Factor III.]

Factor IV – Quality Control:

[Discuss quality control plan and a statement that the company was rated "acceptable", "partially acceptable", or "not acceptable" for Factor IV.]

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.

VII. PRICING ANALYSIS

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 offeror'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). The company's MFC 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.]*

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).

VIII. Basis of Negotiations

By submission of the offer, **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.

Pending Issues: *[address any additional information that needs to be addressed/negotiated?]*

[text box]

IX. Negotiations

The offer was evaluated and the company was determined to be responsive and responsible in accordance with FAR 9.104 and therefore upon approval of the Pre-Negotiation Memorandum, negotiations will be initiated.

Once negotiations have concluded, the Government will request a Final Proposal Revision to confirm all agreed upon changes in its initial offer. 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.

The contract value is *[insert estimated value]* and is is not subject to a Pre-negotiation Clearance Panel (PNCP). *[If subject to a PNCP, address the following: Date PNCP occurred, PNCP participants, summary of PNCP comments, and whether or not PNCP approval was attained.]*

Prepared By:

| | |
|---------------------|-------|
| _____ | _____ |
| Name | Date |
| Contract Specialist | |
| Acquisition Center | |

Approved By:

| | |
|---------------------|-------|
| _____ | _____ |
| Name | Date |
| Contract Specialist | |
| Acquisition Center | |

Appendix B

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Price Negotiation Memorandum

Multiple Award Schedule

Schedule # – Schedule Name

Solicitation Number (Refresh # dated Date)

Company Name

FAR 15-406-3 Negotiation Documentation

1. Purpose of the Negotiation:

Having determined that the offer was complete, the information from the offer 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 offer and to obtain pricing that is equal to or better than the offeror'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) Subparts 8.404, 12.209 and 15.402.

Company submitted a proposal dated **offer date**, the following Special Item Numbers (SINs) were offered:

INSERT SIN(S)

NAICS:

INSERT NAICS

[Address any discrepancies that exist between SIN(s) and NAICS]

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 (Tab 14)

[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 proposal. 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 a contract be awarded to **Company** under **Schedule / Title, Solicitation Number for SIN(s)**.

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

Prepared By:

| | |
|----------------------------|-------------|
| _____ | _____ |
| Name | Date |
| Contract Specialist | |
| Acquisition Center | |

Approved By:

| | |
|----------------------------|-------------|
| _____ | _____ |
| Name | Date |
| Contract Specialist | |
| Acquisition Center | |

Appendix C

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Date

Company

Address

Re: **Company's** Final Proposal Revision

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

Discussions between the General Services Administration (GSA) and **Company** regarding the proposal, submitted in response to **Solicitation #**, 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)

Check box for confirmation

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

[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. Any contractor travel required in the performance of this contract and orders placed hereunder must comply with the Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all contractor travel. Contractors cannot use GSA city pair contracts. The contractor shall not add the Industrial Funding Fee onto travel costs.

[Check box for confirmation](#)

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

[Check box for confirmation](#)

8. Please note that the contract administrator is responsible for overall compliance with contract clauses, including [GSAM Clause 552.238-74, INDUSTRIAL FUNDING FEE AND SALES REPORTING](#). The contractor's designation of representatives to handle certain functions under this contract does not relieve the contract administrator of responsibility for compliance in these areas. Therefore, any contract compliance issues, including those concerning compliance with contract clauses, may be addressed directly to the contract administrator.

[List contract administrator\(s\)](#)

9. [Company](#) has an adequate and auditable recording system capable of sales tracking and submission of the IFF.

[Check box for confirmation](#)

[Include any other relevant information, such as Trade Agreements Act compliance, licensing agreements, etc.] Text boxes must be provided under each additional item added by the CO/CS so that the offeror can reply.

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 for Services Acquisition](#)

Author: Sheri Meadema