

## GENERAL SOLICITATION INSTRUCTIONS (March 2007)

- 1. PREPARATION OF OFFERS.** (a) Offerors are expected to examine the drawings, specifications, descriptions, terms and conditions, and all instructions. Failure to do so will be at the Offeror's risk.

(b) Each Offeror shall furnish the information required by the solicitation. The Offeror shall sign the offer. Erasures or other changes must be initialed by the person signing the offer.

(c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total price shall be entered for each item offered. In case of discrepancy between a unit price and total price, the unit price will be presumed to be correct.

(d) Offeror must state a definite time for delivery of supplies or performance of services unless otherwise specified in the solicitation. Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(e) Offers in strict accordance with the solicitation are desired. Any exceptions should be referenced to related documents by title, page, and paragraph, and should be set forth in detail.

(f) This request does not commit us to pay for any costs incurred in the preparation and submission of an offer or for any other costs incurred prior to the execution of an Agreement.
- 2. EXPLANATION TO PROSPECTIVE OFFERORS.** Any explanation desired by a prospective Offeror regarding the meaning or interpretation of the solicitation, drawings, specification, etc., must be requested with sufficient time allowed for a reply to reach all prospective Offerors before submission of their offers. Any information given to a prospective Offeror will be furnished to all prospective Offerors if such information is necessary in submitting offers or if the lack of such information would be prejudicial to any other prospective Offerors.
- 3. ACKNOWLEDGMENT OF AMENDMENTS.** Receipt of an amendment to a solicitation must be acknowledged in writing.
- 4. LATE SUBMISSIONS OF OFFERS.** Any proposal received after the time specified but before award may be considered solely within the Company's discretion.
- 5. DISCOUNTS.** Prompt payment discounts will be included in the evaluation of offers, provided the period of the offered discount is sufficient to permit payments within such period in the regular course of business under the delivery, inspection, and payment provisions of the solicitation.
- 6. TREATMENT OF OFFER INFORMATION.** Offerors that include in their proposals information that they do not want disclosed to the public for any purpose, or used by the Company or the Government except for evaluation purposes, shall—

  - (a) Mark the title page with the following legend:

*This proposal includes information that shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, an Agreement is awarded to this Offeror as a result of—or in connection with—the submission of this information, the Company and the Government shall have the right to duplicate, use, or disclose the information to the extent provided in the resulting Agreement. This restriction does not limit the Company's and the Government's right to use information contained in this information if it is obtained from another source without restriction. The information subject to this restriction are contained in pages [insert numbers or other identification of pages]; and*
  - (b) Mark each page of information it wishes to restrict with the following legend:

*Use or disclosure of information contained on this page is subject to the restriction on the title page of this proposal.*
- 7. RIGHTS TO TECHNICAL DATA IN SUCCESSFUL PROPOSALS.** (a) Should an Agreement be awarded based on a proposal, it is policy, in consideration of the award, to obtain unlimited rights for the Government in technical data (but not commercial or financial information) contained in a successful proposal upon which award of an Agreement is based. To exclude technical data contained in a proposal from the Government's rights, the Offeror must—

  - (1) advise the Company that the technical data, or portions thereof that are identified by the Offeror, are covered by the restrictive notice regarding the disclosure and use of proposal information in accordance with the provision of this solicitation entitled Treatment of Offer Information and request that such protection be maintained by excluding the data from the Government's rights; or
  - (2) establish to the Company's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the Agreement, and request that such portions be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section are to be acquired, it shall be by use of the clause below titled "Rights to Proposal Data (Technical)." Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause, which clause enables the identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will be used for evaluation purposes only. If there is a need to have access to any of the excluded technical data during contract performance, their acquisition will be as limited rights data, if they so qualify, in accordance with Federal Acquisition Regulation 27.404(d).

#### **Rights to Proposal Data (Technical)**

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of the award of this subcontract and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this subcontract in and to the technical data contained in the proposal dated \_\_\_\_\_ upon which this subcontract is based.

**8. GOVERNMENT-FURNISHED PROPERTY.** No material, labor, or facilities will be furnished by the Company or the Government unless otherwise provided in the solicitation.

**9. AWARD OF SUBCONTRACT.** (a) Unless specified otherwise elsewhere in this solicitation, the Agreement will be awarded to the responsible Offeror whose offer represents the best value, total cost of the acquisition and other factors considered.

(b) The Company reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(c) Except as may otherwise be provided in the solicitation, the Company may accept any item or group of items of any offer, unless the Offeror qualifies the offer by specific limitations.

(d) The Company may accept within the time specified therein, any offer (or part thereof, as provided in (c) above), whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Company prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Company.

(e) It is the Company's intent to award based on initial offers. Accordingly, each offer should be submitted on the most favorable terms, from a price and technical standpoint that the Offeror can submit. However, the Company may allow for proposal revisions if the Company deems it necessary.

**10. BRAND NAME OR EQUAL.** (a) If items called for by this solicitation have been identified by a "brand name or equal" description (including identification of products by make and model), such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be considered satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by the brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Company to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the Offeror clearly indicates in the offer that it is offering an "equal" product, the offer shall be considered as offering the brand name product referenced in the solicitation.

(c)(1) If the Offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Company and will be based on information furnished by the Offeror.

*CAUTION TO OFFERORS:* The Company is not responsible for locating or securing any information that is not furnished with the offer. Accordingly, the Offeror must furnish as part of the offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the Company to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation, and (ii) establish exactly what the Company would be binding itself to purchase by making an offer.

(2) If the Offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

**11. UNBALANCED PRICING.** The Company may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items and option items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. An offer may be rejected if the Company determines that the lack of balance poses an unacceptable risk to the Company.

**12. CONDITIONS AFFECTING THE WORK.** Offerors should visit the site and take such other steps as may be reasonably

necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure to do so will not relieve Offerors from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Company and the Government will assume no responsibility for any understanding or representations concerning conditions made by any of their officers or agents prior to the execution of the Agreement, unless that understanding or representation is expressly stated in the Agreement resulting from this solicitation.

**13. PLEDGES OF ASSETS (CONSTRUCTION).** (a) Offerors shall obtain from each person acting as an individual surety on a performance bond or a payment bond:

- (1) Pledge of assets; and
- (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of:

- (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in Federal Acquisition Regulation (FAR) 28.203-2 (except see 28.203-2(b)(2) with respect to Government sureties held in book entry form) and/or
- (2) A recorded lien on real estate. The Offeror will be required to provide:
  - (i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d).
  - (ii) Evidence of the amount due under any encumbrance shown in the evidence of title.
  - (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than six months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

**14. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY FOR CONSTRUCTION.** (a) The Offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Seller's aggregate workforce in each trade on all construction work in the covered area, are as follows:

	<u>Minority</u>	<u>Female</u>
Oak Ridge, TN (Anderson County)	6.6%	6.9%
Oak Ridge, TN (Roane County)	4.5%	6.9%

These goals are applicable to all of the Seller's construction work performed in the covered area. If the Seller performs construction work in a geographical area located outside of the covered area, the Seller shall apply the goals established for such geographical area where the subject work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Seller's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Constructions", and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the subcontract, and in each trade. The Seller shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees between Seller and other contractors or from project to project for the sole purpose of meeting the Seller's goals shall be a violation of this Agreement, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Seller shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U. S. Department of Labor, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Agreement resulting from this solicitation. The notification shall list the (1) name, address, and telephone number of the subcontractor; (2) employer's identification number of the subcontractor, (3) estimated dollar amount of the subcontract; (4) estimated starting and completion dates of the subcontract; and (5) geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in the subcontract resulting from this solicitation, the "covered area" is the geographic area in which the construction work under the Agreement will be performed.

**15. NOTICE OF BUY AMERICAN ACT REQUIREMENT - CONSTRUCTION MATERIALS.**

(a) Definitions. "Construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act - Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) Requests for determinations of inapplicability. An Offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Company in time to allow a determination before submission of

offers. The Offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an Offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the Offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Company will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an Offeror that requested the substitution of foreign construction material based on unreasonable cost and an Offeror that did not request an exception, the Company will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the Offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the Offeror shall submit a separate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Company has not yet determined an exception applies.

(3) If the Company determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Company will evaluate only those offers based on use of the equivalent domestic construction material, and the Offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested may be accepted if revised during negotiations.