

## GENERAL SOLICITATION INSTRUCTIONS (Mar 2004)

**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 shall be entered in the Total Price column 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 a subcontract.

**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, MODIFICATIONS, AND WITHDRAWALS 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.** (a) An offer may contain technical data and other data, including trade secrets or privileged or confidential commercial or financial information, which the Offeror does not want disclosed to the public or used by the Company or the Government for any purpose other than offer evaluation. To protect such data, the Offeror must specifically identify each page, including each line or paragraph thereof, containing the data to be protected, and attach to the offer a cover sheet containing the following notice:

### **NOTICE**

*The data contained in pages \_\_\_\_\_ of this offer have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial*

*information, and such data shall be used or disclosed only for evaluation purposes, provided that if a subcontract is awarded to this Offeror as a result of this offer, the Company and the Government shall have the right to use or disclose the data herein to the extent provided in the subcontract. This restriction does not limit the Company's and the Government's rights to use or disclose data obtained without restriction from any source, including the offeror.*

(b) Reference to the above notice on the Cover Sheet shall be placed on each page to which the notice applies. The Company assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(c) Should a subcontract be awarded based on an offer, it is policy, in consideration of the award, to obtain unlimited rights for the Government in technical data contained in the offer unless the prospective subcontractor marks those portions of the technical information that he asserts as "proprietary data" or specifies those portions of such technical data that are not directly related to or will not be utilized in the work to be funded under this subcontract. "Proprietary data" are defined in DOE Acquisition Regulation 927.401 as technical data that embody a trade secret developed at private expense, such as design procedures or techniques; chemical composition of material; or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data: (1) are not generally known or available from other sources without obligation concerning their confidentiality, (2) have not been made available by the owner to others without obligation concerning their confidentiality, and (3) are not already available to the Government without obligation concerning their confidentiality. A proposer that receives a subcontract award shall mark the data identified as proprietary by specifying the appropriate proposal page numbers to be inserted in the Rights to Proposal Data (Technical) clause below. Subject to the concurrence of the Company, information unrelated to the subcontract may be deleted from the proposal. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated rests with the prospective subcontractor.

(d) The following clause shall be included in any subcontract where the proposer seeks to protect proprietary proposal data. This clause is intended to apply only to technical data and not to other data such as privileged or confidential commercial or financial information.

***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 "Technical Data" clause contained in this subcontract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this subcontract is based.*

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

**8. AWARD OF SUBCONTRACT.** (a) Unless specified otherwise elsewhere in this solicitation, the subcontract 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 our 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, we may allow for proposal revisions if we deem it necessary.

**9. 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.

**10. 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 subcontract, unless included in the Subcontract Documents.

**11. 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 FAR 28.203-3 (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 owner; 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.

**12. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY (EXECUTIVE ORDER 11246) (CONSTRUCTION).**

(a) The offeror's attention is called to the articles of Terms and Conditions entitled "Equal Opportunity" and "Standard Federal Equal Opportunity Construction Contract Specification."

(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>Female</u>	<u>Minority</u>
Oak Ridge, TN (Anderson County)	6.6%	6.9%
Oak Ridge, TN (Roane County)	4.5%	6.9%
Paducah, KY	5.2%	6.9%

These goals are applicable to all the Seller's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Seller performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the subject work is actually performed. With regard to this second area, the Seller also is subject to the goals for both its federally involved and nonfederally involved construction.

The Seller's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and 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, and 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 with the Seller's goals shall be a violation of this subcontract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Seller shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the subcontract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number, estimated dollar amount of the subcontract;

estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) 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 subcontract will be performed.

### **13. Notice of Buy American Act/Balance of Payments Program 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 - Balance of Payments Program - 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 or Balance of Payments Program 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 or Balance of Payments Program 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 or Balance of Payments Program, 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 Company Solicitation, Offer, and Award - Construction form for the alternate 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.