

## SOLICITATION INSTRUCTIONS (5-89)

**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. Offers signed by an agent are to be accompanied by evidence of the agent's authority.

(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, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offeror must state a definite time for delivery of supplies or performance of services unless otherwise specified in the solicitation.

(e) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(f) 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.

(g) Unless otherwise stated in the solicitation, firm prices are requested. Offers containing unlimited escalation clauses are not acceptable. Except as otherwise stated in the solicitation, offers containing a limited escalation clause will be evaluated on the basis of the offer price plus maximum escalation.

**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 as an amendment of the solicitation, if such information is necessary in submitting offers or if the lack of such information would be prejudicial to any other prospective offerors.

**3. ACKNOWLEDGEMENT OF AMENDMENTS.** Receipt of an amendment to a solicitation must be acknowledged (a) by signing and returning the amendment, or (b) in the space provided on the offer form, or (c) by letter, facsimile, or TELEX II (TWX). Such acknowledgement must be received by the time specified for receipt of offers.

**4. SUBMISSION OF OFFERS.** (a) Offers and modifications thereof should be enclosed in sealed envelopes or packages addressed to the Company as specified in the solicitation, and showing the name and address of the offeror, the time specified in the solicitation for receipt, and the solicitation number.

(b) Samples of items, when required by the Company, either in the solicitation or otherwise in connection with determining equality of materials, must be submitted within the time specified, at no expense to the Company. If not destroyed by testing, samples will be returned at the Offeror's request and expense, unless otherwise specified by the solicitation.

**5. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS.**

(a) Any offer received at the location designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, TELEX II (TWX), mailgram, or facsimile, and it is determined by the Company that the late receipt was due solely to mishandling by the Company after receipt at the designated location;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two U.S. Federal working days prior to the date specified for receipt of offers. The term "U.S. Federal working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the Company's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the Company's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Company.

(d) The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore offerors should request the postal clerks to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Company location is the Company's time/date stamp on the offer wrapper or other documentary evidence of receipt maintained by the Company.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipts from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerks to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Company will be considered at any time it is received and may be accepted.

(h) Offers may be withdrawn by written notice, TELEX II (TWX), or mailgram received at any time before award. Offers may be withdrawn by facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Offers." Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the offer before award.

**6. FACSIMILE OFFERS.** (a) **Definition.** "Facsimile offer," as used in this solicitation, means an offer that is transmitted to and received by the Company by electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile offers as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile offers, if not on Company-provided forms, shall refer to this solicitation and include the items, quantities, unit prices, time and place of delivery, representations and other information required by this solicitation, and a statement specifying the extent of agreement with all provisions of the solicitation.

(d) Facsimile offers must contain the signature of a person authorized to sign offers.

(e) The Offeror must promptly submit the complete signed offer in confirmation of the facsimile offer.

(f) If the Offeror chooses to transmit a facsimile offer, the Company will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer including, but not limited to the following:

(1) Receipt of garbled or incomplete offer.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of offer.

(5) Failure of the Offeror to properly identify the offer.

(6) Illegibility of offer.

(7) Security of offer.

**7. TELETYPE OFFERS.** (a) Offerors may submit teletype responses to this solicitation. These responses must arrive at the designated location by the time specified in this solicitation.

(b) Teletype responses shall refer to this solicitation and include the items, quantities, unit prices, time and place of delivery, representations and other information required by this solicitation, and a statement specifying the extent of agreement with all provisions of the solicitation.

(c) Offerors must promptly submit complete offers in confirmation of their teletype responses.

(d) The term "teletype responses" includes TELEX II (TWX) and mailgrams.

**8. FAILURE TO SUBMIT OFFERS.** If no offer is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard should be sent to the Company advising whether future solicitations for the type of supplies or services covered by the solicitation are desired. Failure of the recipient to submit an offer, or to notify the Company that future solicitations are desired, may result in removal of the recipient from the mailing list for the type of supplies or services covered by the solicitation.

**9. 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.

**10. AWARD OF SUBCONTRACT.** (a) The subcontract will be awarded to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Company, the total cost of the acquisition and other factors considered. The total cost of the acquisition may include, but not be limited to, the purchase price and, as applicable, freight to destination, travel costs for Company inspection and liaison personnel, transportation costs of any Government-furnished property, and, if defined elsewhere in the solicitation, costs of operation and maintenance of equipment to be purchased.

(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) The Company may award a subcontract without discussion of offers. Accordingly, each offer should be submitted on the most favorable terms, from a price and technical standpoint, that the offeror can submit to the Company.

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

**12. PREFERENCE FOR LABOR SURPLUS AREA CONCERNS.** (a) Unless otherwise provided in the solicitation, this procurement is not set aside for labor surplus area (LSA) concerns. However, the Offeror's status as such a concern may affect entitlement to award in case of equal offers or offer evaluations under Buy American Act procedures. In order to have its entitlement to a preference determined if those circumstances should apply, the Offeror must identify in the offer the location(s) (city, county, and state) at which the Offeror and/or next-tier subcontractor(s) will incur manufacturing or production costs in performance of this subcontract, and the amount of such costs (stated as a percentage of the offer price) to be incurred at each specified location.

(b) Failure to identify locations and costs, as specified above, will preclude consideration of the Offeror as an LSA concern. Offeror agrees that if, as an LSA concern, it is awarded a subcontract for which it would not have qualified in the absence of such status, it will perform the subcontract, or cause it to be performed, in accordance with the obligations which such status entails.

**13. 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.

**14. RELEASE AND PUBLICATION.** The information in the solicitation is furnished for offer purposes only. In order that public disclosure or other use of such information will not adversely affect the patent interests of the Government, approval for release shall be secured from the Company prior to any such publication or other use.

**15. 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.

**16. NOTIFICATION TO UNSUCCESSFUL OFFERORS.** Because of the number of transactions processed, the Company does not routinely notify offerors whose offers are not selected for award. Names of awardees and amounts of awards will be provided only upon request.