

**FACILITIES DIVISION
Facilities Contracts Branch
Standard Operating Procedures**

DATE: February 11, 2005
SUBJECT: Memoranda to the File
NUMBER: CSOP-05-003
EFFECTIVE DATE: Immediately Until Replaced or Superseded

1. Purpose

This document provides basic guidelines for contents of Memoranda to the File for awards utilizing sealed bidding and negotiated procedures for construction and architect-engineering (A-E) services, as well as file documentation for solicitation amendments and contract modifications.

2. References

FAR Part 4.8 - Government Contract Files
FAR Part 14 - Sealed Bidding
FAR Part 15 - Contracting by Negotiation
PGM 02-004 - Six Percent Fee Limitation Architect-Engineering Services Contracts and Task Orders

3. Background

The Federal Acquisition Regulation (FAR) requires that contractual actions be sufficiently documented so that the complete history of the acquisition is available. The files must provide a complete background as to the basis for decisions made during the acquisition process, information for reviews and investigations, and furnish essential facts in the event of litigation or congressional inquiries.

4. Contents for Solicitation Amendments

In order to comply with the FAR's requirement to document the history of an acquisition, solicitation amendments should be followed up with a Memoranda to the File. These memoranda need not be long, but should contain enough information to provide a clear explanation of the basis for issuing the amendment. At a minimum, the memoranda should contain:

- a. A description of the project and its location,
- b. The change(s) being made to the solicitation,
- c. An explanation why the change(s) is necessary,
- d. The supporting or backup documentation from the A-E firm and/or contractors (e.g., sketches, questions and answers, revised specifications, etc.).

5. Contents for Sealed Bids and/or Negotiated Proposals

For A-E services, additional guidance is provided under paragraph 6 of this CSOP. At a minimum, Memoranda to the File should contain the following information in a narrative format similar to the following outline:

- a. Project Description: The description should include what the project is, where the project will be performed, and whether the project is for A-E services or construction. If the project is for construction, state whether it is for new facilities or modernization of existing ones; describe the type of facilities being constructed (office, laboratory, greenhouse, etc.), square footage, options/additive/deductive items, etc. If the project is for A-E services, identify which phase(s) is being acquired.
- b. AD-700/Procurement Request: Include the name and title of the requestor (usually the Area Director, Area Administrative Officer, etc.), AD-700 number assigned by the Area, the amount, and the date it was received. If several AD-700's were received because of changes to the requirements, amendments to the solicitation, and/or changes to the Estimated Cost of Construction (ECC), provide all the AD-700 numbers and dates they were received.
- c. Independent Government Cost Estimate (IGCE): State whether or not an independent cost estimate was prepared, who developed it, and where it is located in the file. For construction projects, provide the Government's ECC and who developed it.

- d. Period of Performance: Provide the number of days anticipated/needed for contract completion.
- e. Type of Contract: State whether the contract will be firm fixed price, cost reimbursement, time and materials, etc.
- f. Construction Authority: Identify the authority used for the project (e.g., Buildings & Facilities, Modernization, Repair & Maintenance (R&M), Ten Small Buildings (TSB), Headhouse/Greenhouse (HH/GH), Unlimited Small Buildings (USB), 10 Percent Alteration (TPA)).

For HH/GH, TSB, USB, and TPA authorities, include the date approval was received from the Director, Facilities Division.

- g. Market Research: Describe efforts made and attach or reference file locations where copies of print screens from Central Contractor Registration (CCR) correspondence from interested/prospective offerors, etc., can be found.
- h. Set-Aside Determination: Provide information as to whether or not the requirement was set-aside and the rationale, and the date the Office of Small and Disadvantaged Business Utilization approval was received from the Department.
- i. Synopsis Activities: Provide the date the synopsis of the requirement was posted in FedBizOpps. For construction, also include the date the Pre-Solicitation Notice was posted in FedBizOpps. If no synopsis was done, state so and provide the reason e.g., 8(a) set-aside, task order under an existing Indefinite Quantity Contract (IQC), etc.).
- j. Extent of Competition: At a minimum, include the following information:
 - 1. The date the solicitation was issued,
 - 2. The number of companies it was sent to,
 - 3. The number of amendments issued, if any,

4. The date the bids/proposals were to be received,
 5. The number of bids/proposals received.
- k. Determination of Responsiveness: At a minimum, include the following information:
1. A statement(s) regarding whether the offers were reviewed and by whom,
 2. Whether any offeror(s) took any exception(s) to any part of the solicitation. Identify the company and briefly describe the exceptions taken,
 3. Whether the offer(s) were completely filled out, properly signed, and submitted in accordance with the instructions in the solicitation,
 4. Whether all amendments were properly acknowledged,
 5. Whether a proper Bid Bond was submitted, in the required amount, and from an acceptable surety,
 6. Any other factors specific to the solicitation.
- l. Evaluation of Technical Proposals for **Negotiated Solicitations**, include the following:
1. Pre-Negotiation Objectives: This information needs to be provided when cost analysis is required. Outline the Government's initial position prior to negotiations. These objectives should be based on field pricing assistance, audit reports, technical analysis, fact-finding results, independent Government cost estimates, and price histories. The Contracting Officer (CO) shall document pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.
 2. Discuss and quantify the impact, if any, of direction given by Congress, other agencies and higher-level officials, to the extent such direction has a significant effect on the action. For example, whether specific security measures or environmental actions are required by special

legislation or legal actions, such as a Federal Facilities Compliance Agreement, Consent Order, etc.

3. Evaluation Report: Identify the members of the Technical Evaluation Board (TEB). Provide the dates they met and when the report was received.
4. Technical Evaluation: In a table-like format, identify each of the evaluation factors, outline the technical rankings, and results of each proposal that was evaluated as per the Source Selection Plan and Section M of the solicitation. Discuss any significant difficulties the TEB may have encountered.
5. Competitive Range: Summarize the basis for the Competitive Range Determination and the names of the offerors included in it. Reference the location in the contract file where the memorandum regarding Competitive Range Determination can be found.
6. Revised Proposals: State whether letters requesting revised proposals were issued. If so, state when they were issued and to what companies. State when revised proposals were received and from whom. State when the TEB met to reevaluate proposals. In a table-like format, identify each of the evaluation factors, outline the initial technical rankings, and the revised technical rankings based on evaluation of the revised proposals. Discuss the results of each revised proposal. Discuss any significant difficulties the TEB may have encountered in this phase.
7. Exchanges with Offerors (FAR 15.306):
 - a. Clarifications are limited exchanges, between the Government and offerors, that may occur when an award without discussions is intended.

Summarize any clarifications that are requested of offerors. Identify the contractor, state what information was requested and when it was received.

- b. Communications are exchanges between the Government and offerors after receipt of proposals leading to the establishment of the competitive range.

Summarize any communications with offerors. Identify the contractor, state what information was requested, and when it was received.

m. Cost/Price Evaluation:

1. **For Negotiated Solicitations:**

- a. Outline the name of each offeror and their proposed cost/price. State whether a Price Evaluation Preference (PEP) was applied and what the extended price is.
- b. If price analysis is required, compare and discuss the price of each offeror relative to each offeror, to the IGCE, and to any other source of pricing information (e.g., recent project of similar size and complexity in the same general area).
- c. If cost analysis is required, discuss individual cost/price elements (labor and mix, labor hours, material, other direct costs, indirect costs, overhead, and profit), as compared to the IGCE.
- d. Summarize any field pricing assistance recommendations, including the reasons for variances from them.
- e. Discuss and quantify the cost/price impact, if any, of direction given by Congress, other agencies and higher-level officials, to the extent such direction has a significant effect on the action. For example, whether specific security measures or environmental actions are required by special legislation or legal actions, such as a Federal Facilities Compliance Agreement, Consent Order, etc.

f. Certificate of Current Cost or Pricing Data: Provide a statement as to whether this was necessary. If one was required, state when it was received and its location in the contract file. If one was not required, state why not and provide the appropriate FAR exception.

2. **For Sealed Bids:**

a. Outline the name of each offeror and their proposed cost/price. State whether a PEP was applied and what the extended price is.

b. Compare and discuss the bid prices of each offer relative to each other and the IGCE.

c. Certificate of Current Cost or Pricing Data: Provide a statement as to whether this was necessary. If one was required, state when it was received and its location in the contract file. If one was not required, state why not and provide the appropriate FAR exception.

n. Negotiations: The CO shall document the principal elements of the outcome of negotiations. The information should include the following:

1. The purpose of the negotiation,

2. The name, title, and organization of each person representing the contractor and the Government in the negotiation,

3. The current status of any contractor systems (e.g. purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation,

4. If cost or pricing data was not required in the case of any price negotiation exceeding the cost or pricing data threshold, cite the exception used and the basis for it,

5. If cost or pricing data was required, explain the extent to which the CO:

- a. Relied on the cost or pricing data submitted and used it in negotiation of the price,
 - b. Recognized as inaccurate, incomplete or non-current any cost or pricing data submitted; the action taken by the CO and the contractor as a result; and the effect of the defective data on the price negotiation, or
 - c. Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.
6. Provide any field pricing assistance recommendations, including the reasons for any variances from them.
 7. Summarize the contractor's proposal.
 8. Summarize the most significant facts or considerations controlling the establishment of the pre-negotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.
 9. Discuss the basis for the profit or fee in the pre-negotiation objective and the profit or fee that was negotiated.
- o. Documentation of Fair and Reasonable Pricing: Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. 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.
 - p. Responsibility Determination: The information below should be considered and documented when determining contractor responsibility. The information can be gathered by either the CO or the A-E firm tasked with designing or inspecting the project (as long as the requirement was included in their contract/task order).

1. Whether the contractor has adequate financial resources to perform the contract or the ability to obtain them,
2. Whether the contractor will be able to comply with the delivery/performance schedule taking into consideration all existing commercial and governmental business commitments,
3. Whether a satisfactory performance record has been maintained. Various contractor performance systems may be utilized (e.g., NIH Contractor Performance System/Past Performance Information System (PPIRS)), in addition to checking references provided by the contractor.

When documenting reference checks, provide the contact's name, title, and company. Ask the contact to confirm the type of project the contractor said they worked on, as well as the dollar value and whether they were the prime contractor or a subcontract. Include the contact's responses to questions regarding such issues as quality and timeliness of the project, responsiveness, safety record, change orders, labor compliance, recommendations, etc.

4. Whether the company has a satisfactory record and business ethics,
5. Whether the company has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them,
6. Whether the company has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them,
7. Whether or not the company has filed the required VETS-100 Federal Contractor Report on Veterans' Employment prior to contract award. Attach a copy of the printout of the records check (or reference its location in the file) from the Web site at: "<http://vets100.cudenver.edu/>".

8. Whether the company is registered in the CCR database. Attach a copy of the printout of the records check (or reference its location in the file) from the Web site at "<http://www.ccr.gov>".
 9. The company must be otherwise qualified and eligible to receive an award under applicable laws and regulations. Attach a copy of the printout of the records check (or reference its location in the file) of the Excluded Parties Listing System (EPLS) from the Web site at "<http://www.epls.gov/>".
 10. Include any other pertinent information.
- q. Basis for Award: Discuss the rationale for the selection, e.g., best value and trade-offs, lowest responsible offeror, etc. Provide a summary explaining the determination that the selection of the particular contractor for award is in the best interest of the Government.

6. Contents for Memoranda to the File for A-E Services

There should be three (3) Memoranda to the File for competitive A-E services and one for task orders issued under IQC's. The first will document the initial evaluation, the process that leads up to the "short listing" phase. The second memorandum will document the second evaluation, selection of the most highly qualified firm(s) based on the interviews and presentations. The third will document the negotiations with the selected firm for contract award.

- a. Initial Evaluations: At a minimum, the Memoranda to the File should contain the following information:
 1. A description of the project and its location including any restrictions or constraints on competition. For example, competition was restricted to firms within a certain geographic location or distance; whether the requirement was set-aside for small businesses, 8(a) firms, etc.

2. The names of the Evaluation Panel members and the date(s) they convened to perform evaluations,
3. The date the requirement and evaluation criteria was publicized,
4. The date the SF-330's were due,
5. The number received,
6. Rankings/scores of each company in table format,
7. Narrative statements concerning each company that was evaluated, including its strengths and weaknesses,
8. Names and rankings/scores in table format of companies selected for interviews and presentations,
9. Rationale for selection of each of the companies selected for interviews and presentations,
10. Statement regarding whether the CO reviewed the Panel's evaluation and whether such evaluation was conducted fairly and impartially and in accordance with FAR requirements. Indicate whether the CO concurs with the evaluation results and selection of companies for interviews.

b. Second Evaluation and Recommended Selection: At a minimum, this Memoranda to the File should contain the following information:

1. A description of the project and its location, including any restrictions or constraints on competition. For example, competition was restricted to firms within a certain geographic location or distance; whether the requirement was set-aside for small businesses, 8(a) firms, etc.
2. The names of the evaluation panel members and any other personnel attending the interviews,

3. The location and date(s) the interviews were conducted, plus the length of time allowed for each interview/presentation and question and answer period,
 4. Rankings/scores of each company in table format,
 5. Narrative statements concerning each company that was evaluated, including its strengths and weaknesses,
 6. Name of the company recommended for negotiations.
- c. Negotiations and Award: This memoranda should contain:
1. All the information listed in Section 5 above.
 2. A summary of the discussions of the costs associated with the 6 percent A-E fee limitation. Information on such costs can be found in Policy Guidance Memorandum (PGM) 02-004. The documentation should contain information that distinguishes between the applicable costs and those that are excluded from the limitation, thus substantiating compliance with the limitation. The "Cost Summary for A-E Fee Limitation" from PGM-02-004 should be used to document the A-E costs and attached to this memorandum. The CO should require the A-E firm to complete this summary sheet and include it in their cost proposal, as well as a statement that their costs are in compliance with the 6 percent A-E fee limitation.
 3. If a task order is issued under an IQC, reference the location in the contract file where the Memoranda to the File can be found documenting the selection of the particular A-E firm as required by CSOP-03-001.

7. Contents for Contract and Task Order Modifications

The contents of Memoranda to the File for contract and task order modifications should be commensurate with the complexity and/or dollar value of the action. The following information should be presented:

- a. Description of Change(s): Provide the nature and reason for the changes.
- b. Independent Government Cost Estimate (IGCE): Identify the Government's or A-E's cost estimate for the work and whether any additional time is needed.
- c. Funding: Include the AD-700 number(s), date of receipt, dollar amount(s) and accounting code(s).
- d. Date of the RFP(s): Identify when the RFP(s) was issued to the contractor and when the Government received the proposal(s).
- e. Technical and Cost Review/Evaluation(s): Provide a brief statement as to who reviewed the proposal(s) and when, what their comments were, and when they were received.
- f. Negotiations/Discussions: The level of detail should be appropriate to the complexity and dollar amount of the change(s). The date of negotiations and participants should be documented and all changes agreed to by the parties. (Refer to 5(n) above.)
- g. Period of Performance: Discuss whether or not the change(s) has any impact on the period of performance and what the new completion date will be.
- h. Recommendation: A brief summary of the determination of fair and reasonable price and why executing the modification is in the best interest of the Government.

8. Contact Information

Further information may be obtained by contacting the Facilities Contracts Branch on 301-504-1171.

/s/ Brenda A. Wood

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