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USACE issues Amendment No. 5 to the Army Task Force RFP

The U.S. Army Engineering and Support Center (USACE) recently issued its fifth amendment (Amendment No. 5) to the request for proposals (RFP) for the Army Energy Initiatives Task Force Multiple Award Task Order Contract (MATOC) solicitation. USACE also responded to some of the questions regarding the RFP, via postings on ProjNet.

NOTE: The deadline for submission of proposals remains 2 p.m. Central time, October 5, 2012.

Many of the changes are non-substantive, however, not necessarily unimportant. We suggest that Amendment No. 5 and the accompanying responses to the ProjNet questions be reviewed carefully. For example, the changes include: (i) the number of representative project descriptions that should be submitted for each technology under the evaluation factors, (ii) reference requirements, (iii) page limitations for various sections of a proposal, and (iv) delivery instructions.

Key points to note are:

Pricing At the Huntsville pre-proposal conference, USACE representatives stated that they would review the RFP's pricing terms after several questions were posed regarding how bidders should calculate the maximum unit price per kilowatt-hour (kWh) to be included in a proposal. In Amendment No. 5, USACE issued the following clarifications:

- Pricing information must be set out in the spreadsheet format provided in Section J, Attachment A (not in the CLINs as originally proposed) on a technology-specific basis (a separate spreadsheet for each technology).
- An offeror must include the percentage of its price per kWh that is based on

construction, operation and maintenance, versus the percentage attributable to financing costs.

The maximum unit price should include all direct costs, indirect costs, overhead, G&A, and profit, and the offeror should assume that **NO** tax incentives, renewable energy credits (RECs), or other financial incentives for renewable energy are available (nor should it include ancillary or incidental costs such as land-use fees, grid interconnection fees, or other costs not directly related to the planning, design, construction, operation, and maintenance of a facility).

- The maximum unit price per kWh should be based on an assumed location of the offeror's choice.
- The spreadsheet will make a regional adjustment to the unit price per kWh for all of the other possible task order locations using PAX Newsletter DoD Area Cost Factors to adjust construction costs. The use of these indexes for regional price adjustment will normalize offerors' maximum prices per kWh regardless of the assumed location used to calculate the proposed rates. The offeror's contractual maximum price per kWh will be the highest price per kWh generated by the spreadsheet. After award, contractors' Task Order proposals will be limited to no more than their proposed maximum (ceiling) price per kWh as calculated by the spreadsheet.
- Each offeror's normalized price per kWh for the highest cost location calculated by a spreadsheet will function as the ceiling unit price(s) for the term of the basic award (base period and all option periods), and any Task Orders awarded against the contract.

Small Business Subcontracting and Participation Plans One of the more significant clarifications in Amendment No. 5 is that the total small business goal for the procurement is "best efforts," not the 50 percent of the total contract price goal indicated in the original solicitation. This should provide offerors with some welcome flexibility.

Amendment No. 5 also provides several clarifications for Small Business Participation Plans (Participation Plan) and Small Business Subcontracting Plans (Subcontracting Plan).

Every offeror, including small businesses, must submit a Participation Plan, which will be part of the source selection evaluation and must be demonstrably feasible, using the template provided in Section J, Attachment 2. In addition, each Participation Plan must set out an offeror's proposed small business participation goal and rationale for that goal based on its assessment of the opportunities for small businesses.

Amendment No. 5 provides new clarification as to what will constitute “evidence of small business participation”:

- The extent to which small firms are specifically identified in the proposal.
- The extent of commitment to use such firms (enforceable commitments will be weighted more heavily than non-enforceable ones).
- The identification of the work that small businesses are expected to perform (construction, energy production, supplies, or other services).
- Past performance of the offeror in complying with the requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns; and for all large business offerors, FAR 52.219-9, Small Business Subcontracting Plan.
- The extent of participation of such firms in terms of the value of the total acquisition, to include Small Disadvantaged Business dollars by the North American Industry Classification Code Systems (NAICS) code deemed applicable by the offeror (using sample procurement size of \$5 million).

On the other hand, **only offerors that are not small businesses will need to submit Subcontracting Plans**, which must include all of the elements required by FAR clause 52.219-9 and DFARS 252.219.7003 or .7004. These plans must be submitted separately from the Participation Plan. The Subcontracting Plan is not a requirement for evaluation in the source selection, but rather a requirement for award to a large business, and will be incorporated into any resulting contract. Subcontracting Plans will be evaluated on an acceptable/unacceptable basis with respect to the following:

- Does the Subcontracting Plan adequately respond to each of the required elements of FAR 52.219-9(d) paragraphs (1) through (11)?
- Are the commitments in the Subcontracting Plan consistent with the commitments in the Participation Plan?

Finally, a reminder: The definition of a small business under NAICS 221119 for purposes of the MATOC RFP is established by the Small Business Administration (SBA). A potential bidder that is interested in bidding in the small business set-asides should review the SBA's regulations carefully to determine its eligibility.