

A/E Selection Guide

CHAPTER 4. NEGOTIATION AND AWARD

4.1 Negotiation Team

The contracting officer has overall responsibility for negotiation of a fair and reasonable price and timely award of a contract. The contracting officer typically forms a team with an engineer or architect to draft the request for proposal, analyze the response, and negotiate a contract. Depending on the size and complexity of the requirement, the negotiation team may also include auditors, attorneys, or other specialists such as the Small Business Technical Advisor.

4.2 Request for Proposal (RFP)

The negotiation team drafts an RFP containing the general clauses and provisions required by law, any special provisions necessary to tailor the RFP to the requirement, and the current SOW. The RFP must completely state what is expected from the contractor but must also avoid being overly prescriptive. The RFP should allow the contractor to use modern design methods and provide a realistic ability to price the job within the 6 percent statutory fee limit.

The RFP must inform the contractor that no construction contract may be awarded to the firm that designs the project.¹⁵

The RFP should identify requirements for identification of key personnel and restrictions on subcontracting to ensure that the level of quality used in evaluation is available during performance.

The RFP will include a general description of the level of cost information or, if the estimated dollar value is high enough, certified cost or pricing data required to be submitted with the proposal.¹⁶ Government policy is to ask for cost information only when essential to evaluate the reasonableness of the price and not to ask for more information than is necessary. The primary concern is for the price actually paid by the government and not with individual elements of price such as profit or indirect cost.¹⁷ For small requirements it may be adequate to rely on an overall price comparison with an independent government estimate. In most A-E acquisitions for design, it is probably necessary to ask the contractor to identify the number of hours of proposed labor, broken down by design discipline and phase, and the burdened billing rate associated with each category of labor. Additional information can be requested during negotiation if necessary.

If the A-E contract is expected to exceed \$500,000, the appropriate Regional Audit Director, Office of the Inspector General, is advised of the pending potential requirement for audit assistance.¹⁸

If the A-E contract is expected to exceed \$500,000 and the selected firm is classified as other than a small business, the regional Small Business Administration (SBA) representative is advised of the pending receipt of a subcontracting plan requiring SBA review.¹⁹

If the A-E contract is expected to exceed \$1,000,000, the Regional Office of Federal Contract Compliance Programs is requested to provide pre-award clearance for the A-E firm to receive a contract.²⁰

The RFP is forwarded to the selected firm with a cover letter outlining the general requirements for a response, including the portions of the RFP to be completed and returned, and a due date for response. The firm is also told who to contact with questions. During proposal preparation, the contracting and technical staffs remain available to answer questions and assist the firm in understanding the RFP requirements. See Exhibit XIX, Request for Proposal. ([EXH 19.DOT](#))

4.3 Government Cost Estimate

The ES or Area technical staff assigned to the acquisition are responsible for furnishing a detailed, independent cost estimate to the contracting officer prior to initiating negotiations for any proposed contract

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over \$100,000.²¹ The estimate must be prepared to the same level of detail that the Government requires of the firm in preparing their financial and cost data for their proposal. Although not always possible, it is expedient to have the A-E's estimate and Government's estimate presented in the same "spreadsheet" format to facilitate comparison. For acquisitions under \$100,000, less detailed estimates should be prepared to help analyze the cost realism of the price proposal.

4.4 Proposal Analysis

The contracting officer receives the proposal and verifies if the contractor has responded completely to the RFP. This includes verifying that any required certifications are completed and that any requested supporting information, such as cost information or subcontract plans, has been furnished. The contracting officer will obtain any missing information and if applicable, arrange for audit and forward the subcontracting plan to SBA for review.

The negotiation team reviews the proposal in detail and establishes a pre-negotiation position. Proposed changes to the SOW are evaluated for merit and, if acceptable, are analyzed for their impact on estimated cost. The government estimate is revised as necessary and compared to the contractor's proposal to identify areas that need to be resolved in negotiation. If no government estimate is available, the cost information obtained from the contractor should be evaluated against the SOW and a judgment made as to whether the estimated cost reasonably reflects the effort required by the proposed work scope.

In A-E acquisitions for design, the contractor's proposed estimated construction contract cost (the figure to be inserted in the clause at FAR 52.236-22, Design Within Funding Limitations) must be carefully considered. This estimate sets the upward limit for part of the design fee (see the definition for "fee limit"). Also, a significant variance from the government's estimate may indicate a misunderstanding of the scope of work.

The proposed schedule should be analyzed to verify that it is consistent with the overall project schedule.

The pre-negotiation position should document that the negotiation team understands the proposal and the SOW and has identified areas for discussion that will provide a reasonable opportunity to reach agreement on a fair and reasonable price.

4.5 Negotiation

The contracting officer establishes a date for initiating negotiations with the A-E firm. If discussion of the issues identified in the pre-negotiation analysis results in a mutually agreeable SOW and a fair and reasonable price, the negotiation team documents the agreement in a price negotiation memorandum that should include:²²

- The purpose of the negotiation.
- Description of the acquisition (project title, location, solicitation number).
- Names of negotiating team members for the government and the contractor.
- Whether or not certified cost or pricing data was required and, if required, the extent to which the data was considered in the negotiation and affected the results. This information is important in sustaining any subsequent adjustment based on defective cost or pricing data.
- A summary comparison of the contractor's proposal, the pre-negotiation objective, and the negotiated position.
- Principal issues discussed and an explanation of any adjustments made to the pre-negotiation

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position. If an audit was obtained, a description of how each audit finding was resolved.

- Changes to scope of work and agreements reached. The final scope of work must be modified as necessary to reflect clearly all agreed changes. In legal situations, the courts and boards will enforce the contract as written. The parties' price negotiation memoranda and notes will be used to infer the intent of the contract only if the contract wording is ambiguous.
- The basis for the profit or fee negotiated.
- Documentation of fair and reasonable pricing.
- A calculation demonstrating that the portion of the fee subject to the fee limit on A-E acquisition is less than 6 percent of the estimated construction contract cost.

See Exhibit XX, Negotiation Memorandum for a sample outline. ([EXH 20.DOT](#))

4.6 Contract Award

The contracting officer drafts the final contract, prepares the contract file and obtains pre-award approval from the Director, Division of Contracts and Grants Policy, IHS, for acquisitions over \$100,000.²³ The draft contract is then sent to the contractor for signature after which the contracting officer executes the contract to complete the award.

After the contract has been awarded, firms that were included on the final selection list are notified of the contract award by the contracting officer.²⁴ The notice includes the number of offerors, the name and address of the firm that received the award, and the price. See Exhibit XXI, Notification of Award. ([EXH 21.DOT](#))

A post-award debriefing will be sent in writing to firms which requested a debriefing except if the firm was already furnished a pre-award debriefing. The debriefings should be sent within 5 days after contract award. See Exhibit XXII, Debriefing Response. ([EXH 22.DOT](#))