



IN REPLY
REFER TO

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DEC 20 1999

DESC-CPA (Gloria Daws/X7637)
CONTRACTING INSTRUCTIN (CI): 99-26

MEMORANDUM FOR CI DISTRIBUTION

SUBJECT: DEPI Addition: Appendix E – PBM/PNM Negotiation Memorandum Guidelines

The purpose of the CI is to notify you of the addition of Appendix D to the DEPI. This CI provides the format and instructions to be used in the preparation and documentation of the Prenegotiation Briefing Memorandum (PBM) and the Price Negotiation Memorandum (PNM). The PBM documents the governments prenegotiation objective(s) and the PNM documents the significant facts and issues that affected the contract price as a result of negotiations and documents the rationale used to determine the negotiated price as being fair and reasonable.

This instruction is effective immediately and will be incorporated into the next DEPI change. Point of contact is Gloria Daws, 767-7637.

A handwritten signature in cursive script that reads "Sharon L. Murphy".

SHARON L. MURPHY
Center Senior Procurement Official



APPENDIX E
PBM/PNM
NEGOTIATION MEMORANDUM GUIDELINES

E-100 Purpose.

The Prenegotiation Briefing Memorandum (PBM) and Price Negotiation Memorandum (PNM) formats are given below. The following format/guidance is representative of the type of information suitable for inclusion as all will not be required for each and every procurement. The PBM shall be completed and signed prior to going into negotiations. The PNM shall follow the PBM and shall be completed and signed prior to contract award. Although each document is a standalone document, to preclude the reiteration of information, the PNM shall reference, when necessary, information contained in the PBM.

E-101 Format.

PRENEGOTIATION BRIEFING MEMORANDUM (PBM)

SECTION I - SUBJECT

- a. Solicitation Number
- b. Brief title of Action (Describe the supply(s) or service(s) being purchased.)
- c. Estimated dollar value of the procurement
- d. Purchase Request Number

SECTION II - INTRODUCTION SUMMARY

- a. Purchase Program #
- b. Company Name and Address
- c. Type of Contract, i.e., Firm Fixed Price Requirements, Fixed Price with EPA, etc.
- d. Procurement environment, i.e., Unrestricted, Small Business Set-Aside, Partial Small Business Set-Aide, Partial SDB Set-Aside, Hub Zone, Sole Source, etc.
- e. Period of Performance for the supply(s) or service(s) being procured.
- f. Identify the place(s) of contract performance.

SECTION III - PROCUREMENT SITUATION

- a. Number of offers/bidders solicited and number of responses received.
- b. If only one source solicited, explain the absence of competition.
- c. The purpose of negotiations. (New contract, modification, final pricing of letter agreement, etc.)
- d. Discuss technical, schedule and cost risk involved.
- e. Describe any outside influences and/or times pressures.
- f. Provide a brief procurement history of the supply/service to be obtained. (Competitive acquisition, sole source, small business set-aside, etc.)
- g. Prior awarded contract pricing history.
- h. Provide a summary of the most significant facts or considerations controlling the establishment of the pricing objective. (General market conditions, differing economic conditions, sole source environment, etc.)
- i. Identify Government Furnished Equipment or Property.
- j. Describe any unique aspects of the contract action or anticipated problems. (Did the market change, did quantities change mid-stream, were past performance evaluations waived, was a subcontracting plan required and/or reviewed, etc.)

General Market Conditions

- Changes in the Level of Competition. Changes in the level of competition will affect the accuracy of price estimates based on historical prices. As firms become less concerned about competition, prices may be expected to increase faster than national averages. As firms become more concerned about competition, price increases may be slower than national averages.

- Differing Economic Conditions. A firm can have a competitive advantage because of the economic conditions in the area in which it operates. Depressed economic conditions (e.g., high local unemployment rates) in an area can lower costs. Lower labor and material costs will permit a firm to produce a product more cheaply than its competitors operating in areas with better general economic conditions.

- k. Describe how many bids/offers were received, who was eliminated from the competitive range and why (a brief synopsis).

SECTION IV – PBM COST ANALYSIS (When cost analysis is performed, make a summary comparison of the proposal with the result of the analysis, broken down by major cost element and presented in tabular form against the Government Objective. In certain circumstances the Government may have a HIGH and LOW Objective.)

a. Provide in columnar format the contractor’s proposed cost and the Government’s Prenegotiation Objective (The Government may have a HIGH and LOW Government Objective). The following is an example of the format to be used:

Cost Element	Proposed Price	Gov’t Objective
Labor	\$1M	\$900K

Or For Unit Prices

Item(s)	Proposed Price	Gov’t Objective
0001	\$15,000	\$14,000

b. If provided, discuss field pricing assistance recommendations, including the reasons for any pertinent variances from them.

c. If cost or pricing data were not required to support any price negotiation over the cost or pricing data threshold, state the exception used (e.g., acquisition of a commercial items) and the basis for using it.

d. If cost or pricing data were required, the extent to which the CO:

- (1) Relied on the cost or pricing data submitted and used them in negotiating the price.
- (2) Recognized data as being inaccurate, incomplete, or non-current and effect of data on the price negotiated.
- (3) Determined that an exception applies after the data were submitted and therefore, considered not to be cost or pricing data.

e. Discuss the contractors proposed profit/fee/rate.

f. Discuss the Incentive/Award Fee Structure, if applicable.

g. A narrative shall be provided describing the basis of the Government’s negotiation objective. This information shall be as precise as possible in identifying factual data, their sources and their currency.

SECTION V – PBM PRICE ANALYSIS

Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. The contracting officer is responsible for selection and use of the price analysis technique used to determine that the price offered is fair and reasonable, given the circumstances surrounding the acquisition. Per FAR Subpart 15.404-1 (b) examples of such techniques include, but are not limited to the following:

- a. Comparison of proposed prices received in response to the solicitation.
- b. Comparison of previously proposed (historical) prices and current contract price(s) for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.
- c. Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- d. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- e. Comparison of proposed price with independent Government cost estimates.
- f. Comparison of proposed price with prices obtained through market research for the same or similar items.

SECTION VI - NEGOTIATION ISSUES

Provide the Government's pricing objective and the issues to be brought up with each offeror/bidder. (Contractor forgot to fill in a clause, contractor took exception to pricing structure, contractor did not annotate business size, exceptions taken to existing terms and conditions of the solicitation, etc.)

Provide name, title, date and the signatures of both the Contract Specialist and Contracting Officer upon completion of this portion of the Negotiation Memorandum. (See the DEPI Subpart 15.406 and DLAD Subpart 15.807 for specific approval levels.) Example:

CONTRACT SPECIALIST NAME
Contract Specialist
Ground Fuels Division
Direct Delivery Fuels

DATE: _____

CONTRACTING OFFICERS NAME
Contracting Officer
Ground Fuels Division
Direct Delivery Fuels

DATE: _____

PRICE NEGOTIATION MEMORANDUM (PNM)

SECTION VII - NEGOTIATION SUMMARY (The PNM will document what happened in negotiations. Discuss rationale for differences in the PBM and the PNM Government position if they changed as a result of negotiations, particularly the pricing objective.)

- a. The name, position, and organization of each person representing the contractor and the Government in the negotiation.
- b. Discuss outcome of negotiation issues raised in Section IV.
- c. Address rationale for changes in special provisions or the addition of supplementary special provisions.
- d. Provide in columnar format the cost element or Item #, the contractor's original proposed price, the Government's Prenegotiation Objective, and the final negotiated price. See sample below:

Cost Element	Contractor Proposed	Gov't Objective	Negotiated Price
Labor	\$100M	\$900K	\$925K

Or if by unit price

Item(s)	Contractor Proposed	Gov't Objective	Negotiated Price
0001	\$150K	\$140K	\$145K

NOTE: If the same rationale applies to all items, a single explanatory paragraph should be enough. If different rationales apply to different items, you may need to provide several explanatory paragraphs.

- e. Where there are significant differences between the negotiation objective and final negotiated price(s), the Contract Specialist should supply an explanation for significant departures from the Governments position.
- f. The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.
- g. 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.

SECTION VIII - MISCELLANEOUS/SPECIAL PROVISIONS (Discuss any other special provision or significant fact or consideration controlling the negotiated agreement including an explanation of any significant difference which may affect source selection or price.)

- a. Economic Price Adjustments
- b. Conversion from Cost to FFP Contract
- c. Government Furnished Material/Equipment/Property
- d. Small Business Incentives or Set Asides
- e. Deviations from FAR, DFARS, DLAD, DEPI, or other Departmental Regulations, Directives or Instructions
- f. Liability to third persons
- g. Any unusual contract financing, billing or advance payment requirements
- h. Past performance evaluation summary

SECTION IX - BASIS FOR DETERMINING FAIR AND REASONABLE PRICES (Determinations of fair and reasonable prices may be predicated on any of the following criteria; however, the specialist shall provide within the PNM the source and type of data used to support/substantiate the data, i.e., the published market prices, past contract history prices and contract number, consumer price index prices, etc. Additional guidance/information may be viewed in the Contract Pricing Reference Guides which can be found on the World Wide Web, internet address <http://www.gsa.gov/fai>)

- a. If based on competition, provide comparison of other prices received in response to the solicitation. FAR 15.404-1(b)(2)(i)
- b. Market Research (comparison with recently procured similar items in the same location, competitive published price lists, catalogs, published market prices of commodities, similar indexes, recently procured similar items in similar locations, and discount or rebate arrangements.) FAR 15.404(b)(2)(iv) and (vi)
- c. If based on prior contract history, describe supply or service acquired, contract number and prior prices paid. (Include a comparison of the PNM position to the historical unit price. Compare previously proposed prices and previous government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.) FAR 15.404-1(b)(2)(ii)

d. Value analysis. (Value analysis is the task of determining why similar products should be priced differently. This analysis helps you understand the reason for price differences between past buys and present offers. See the Armed Services Pricing Manual (ASPM), Volume 2, Price Analysis, Chapter 14, Price Analysis Techniques for more information on Value Analysis.) FAR 15.401(b)(4)

e. Technical Analysis. The CO may request that personnel having specialized knowledge, skills, experience, or capability to perform a technical analysis of the proposed quantities of materials, labor, processes, facilities or other associated factors set forth in the proposal in order to determine the need for and reasonableness of the proposed resources. FAR 15.404-1(e)

f. If based on Consumer Price Index (CPI) state what the current percentage increase in the CPI is or what the industry price increase is versus prior year contract price(s).

g. If based on prices that are regulated, provide that information.

h. Comparison to an Independent Government Estimate or Purchase Request Estimate. (If the estimate is based on past pricing, explain how or why those prices were picked and include the quantities.)

i. The contracting officer's personal knowledge of the item being purchased; or

j. Any other reasonable basis. (Ask CPB&N for assistance in determining if a novel/different approach is "reasonable.")

Provide name, title, date and the signatures of both the Contract Specialist and Contracting Officer upon completion of this portion of the Negotiation Memorandum. (See the DEPI and DLAD Part 15 for specific approval level.) Example:

CONTRACT SPECIALIST NAME
Contract Specialist
Ground Fuels Division
Direct Delivery Fuels

DATE: _____

CONTRACTING OFFICERS NAME
Contracting Officer
Ground Fuels Division
Direct Delivery Fuels

DATE: _____

NOTE: A PNM should present a concise summary of all offers received. It should note the exceptions taken by offerors to the requirements of the solicitation. It should detail the offeror's proposal, your going-in position, and the final terms negotiated and should explain all significant differences/changes. The PNM should address counteroffers made during negotiations and your response to them, to include any tradeoff's agreed to by both parties. The PNM must clearly support the negotiated price. If the agreed-to price is beyond the range established as a prenegotiation objective, you must explain why.

A well-written PNM provides a clear trail for anyone who wants to find out what happened and how central issues were handles; it can be a great help to anyone who needs to reconstruct the events of a contract action. It can also be of great use in future procurements as a source of valuable pricing information. It can illustrate what analysis was done and how successful those efforts were. It can highlight problems and provide information that may prevent repetition of past mistakes.