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CHAPTER 2

PRICE ANALYSIS AND NEGOTIATION

2.1 OVERVIEW

The previous chapter outlined the steps required by Division personnel to initiate a task order and receive a proposal from an A/E firm. This chapter addresses the steps necessary to award the task order to the A/E. These steps include reviewing the A/E proposal, establishing a negotiation position, and developing pre-negotiation and negotiation memoranda to describe the negotiations and document the final price reached.

The purpose of performing price analysis is to develop a negotiation position that allows the negotiator and the offeror to reach agreement on a fair and reasonable price while providing the offeror the greatest incentive for efficient and economical performance. The objective of the negotiation process is to reach a complete and mutual understanding of the detailed scope and cost of services to be provided. Without this understanding, it is impossible for the A/E to provide a quality product. Any misunderstandings may cause errors and omissions during the construction phase when corrections can be very costly.

2.2 PRICE PROPOSAL

A Price Proposal is required of the A/E consultant for a task order and for task order modifications involving cost adjustments, either upward or downward. The A/E consultant prepares a price proposal based on tasks agreed to previously with the COTR and hourly rate information in the IDIQ contract, including direct costs and submits it to the CO. (See Section 1.6.)

The following are items to review or points to consider when evaluating a Price Proposal submitted by an A/E consultant:

- Review work items (and/or task item breakdowns) and determine validity.
- Was the provided proposal spreadsheet used?
- Are the labor hours appropriate for the task?
- Are the labor hours appropriate for the personnel category?
- Do all the subtotals (task labor hours, personnel category and others) add up correctly?
- Does each personnel category have the correct salary rate as established in the IDIQ contract? (Obtain the IDIQ information from Acquisitions.)
- Are the direct costs appropriate and reasonable? Have unit costs been established in the IDIQ?
- Ensure that proposed direct costs are not included in contact overhead rate? (Verify with Acquisitions.)
- Is the overhead rate correct as established in the IDIQ?
- Are the profit rate and subconsultant markup correct as established by the IDIQ?
- Are the escalation rates for multi-year contracts those established in the IDIQ? (Obtain the IDIQ information from Acquisitions).

2.3 PRE-NEGOTIATION OBJECTIVE MEMORANDUM

Pre-negotiation objectives establish the Government's initial negotiation position and are documented in the Pre-negotiation Objective Memorandum (POM). (See Exhibit 2.3-A.) The objective is based on the results of the analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, fact-finding results, the IGE and price histories. The analysis includes a verification of the A/E consultant's formula/calculations for accuracy. If the A/E consultant's proposal substantially exceeds the IGE and funding document, then the project manager should review the SOW with the A/E to ensure a common understanding of the work requirements. A revised price proposal based on these discussions may be required prior to negotiations. (See Section 1.5.1.)

Project managers establish pre-negotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives is directly related to the dollar value, importance and complexity of the pricing action. The Government's pre-negotiation objective should have substance, rationale and detail sufficient to explain to a third party how the overall reasonableness of the proposed price was determined and how the objective represents a fair and reasonable amount.

The POM is marked "For Official Use Only" and is included with the package that is forwarded for CO signature.

2.3.1 Forms and Templates

To view or download the POM template, go to
http://intra.cflhd.gov:8080/tools/formLibrary.cfm?category=Contracting priceneg.pdf.

Exhibit 2.3-A PRE-NEGOTIATION OBJECTIVE MEMORANDUM

INFORMATION: PRENEGOTIATION MEMORANDUM
Task Order T-05-00X
Mooney Road – Final Design
IDIQ DTFH68-0X-D-0000X

ABC Company
123 17th Street, Suite 2300
Denver, CO 80202-3404

By: XXXXX P. E.
Project Manager

I. PURPOSE OF NEGOTIATION.
The purpose of negotiations is to clarify tasks and resolve the price difference for the work described in the attached Statement Of Work (SOW).

II. COMPLIANCES.
A Contract Pricing Proposal has been submitted by the contractor along with the SOW.

III. TYPE OF CONTRACT.
The type of contract being used for this project is an Indefinite Delivery-Indefinite Quantity contract. This Task Order will be paid on a firm-fixed-price basis.

IV. SUMMARY OF KEY DOCUMENTS.

A. Contract Statement of Work
B. Contractor's price proposal
C. Independent Government Estimate

V. EVALUATION OF OFFER.
The contractor's price proposal for the Mooney Road Final Design was evaluated based on similar work performed by FHWA staff, negotiated results for Mooney Road, Phase 1 and previous efforts negotiated with other civil engineering consulting firms.

A. Cost and Price Analysis.
XXXXXXX submitted the initial cost and price proposal via email and FAX for the SOW on September 27, 2005. The cost and price proposal as submitted by the contractor was approximately 8.3 percent lower than the IGE. The price per hour for ABC Company project personnel, overhead rate, profit and subconsultant markup were in accordance with the IDIQ contract and direct labor sheets for subconsultants provided to FHWA by ABC Company.

The proposed sheet count in the IGE indicated an approximate total of 750 plan sheets for the Mooney Road contract. This estimate of sheets was developed in concert with the Roadway Project Manager, XXXXXXX of ABC Company. This count will be verified with Mr. XXXXXX during negotiations.

Exhibit 2.3-A PRE-NEGOTIATION OBJECTIVE MEMORANDUM
(Continued)

1. Particulars.
The contractor's proposal was reviewed. The following tasks or labor classification hours were identified as having significant differences in **labor hours and direct labor costs** from the IGE. In addition, direct costs were evaluated.

Task	Estimate	GOV Estimate
ABC Company		
Project Management	355 hours	178 hours
Utilities	146 hours	301 hours
Environment – E4	264 hours	336 hours
Survey – S1, S2 & S4	875 hours	2,374 hours
Right of Way	811 hours	1,292 hours
Geotechnical	30 hours	74 hours
Hydraulics	480 hours	640 hours
Highway Design	3,687 hours	2,188 hours
Permits	129 hours	91 hours
Meetings & Field Reviews	391 hours	670 hours
QA/QC	216 hours	60 hours
ROW Sub-Consultant	$2,100.00	$0.00
Travel	$7,770.38	$1,680.75

B. PRENEGOTIATION OBJECTIVES
The price proposal submitted for the Mooney Road Final Design has been analyzed and the following negotiation objectives have been established.

1. General

Clarification of the Statement of Work will be completed. The specific deliverables required under the task order will also be discussed. The deliverable dates will be discussed and adjusted as necessary.

The total estimates are reasonably close. The largest discrepancy seems to be in the expected surveying work and the design effort. These two items will be discussed in detail.

2. Specifics

ABC Company Project Manager: The line item for Project Management compares 355 hours from ABC Company with 178 hours in the IGE. However, the total hours for this assigned task are 1,182 hours vs. 1,199 hours, a difference of only 17 hours. This is because the duties were spread to the individual tasks in the IGE. Therefore, this task should not be an issue.

Exhibit 2.3-A PRE-NEGOTIATION OBJECTIVE MEMORANDUM
(Continued)

Utilities: The ABC Company submittal lists about half the hours for utility work as the IGE. Some of these hours can be attributed to the method of assigning the Project Manager hours. A check will be made to insure that the Argentine and Xcel site utility relocation work has been taken into consideration.

Environment – E4: The IGE has an additional 72 hours assigned to this task. 40 of these hours can be attributed to the designation of Project Manager hours since the ABC Company submittal did not include any hours for this task.

Survey – S1, S2 & S4: This is one of the largest discrepancies in the proposal. ABC Company submitted 875 hours compared to the 2,374 hours in the IGE. We assumed extensive surveying on each of the walls providing the Contractor with the survey data for all MSE walls with the bid documents. This will need to be discussed to make sure that ABC Company took this into account.

Right of Way: The ABC Company submittal is 481 hours less than the IGE. Some of this can be attributed to the use of Sub-Consultant #2 that was not included in the IGE. We also may have not taken into consideration that a large amount of the work in the Mooney Road area is already completed. The submittal hours are probably the more accurate of the two.

Geotechnical: The ABC Company submittal is 44 hours less than the IGE. The dollar amount is only $753.74 less. The discussion on this item will be kept to a minimum and we will accept the Consultant's estimate of hours. The total for the Geotechnical work is within 1% of the estimate when the oversight by the primary Consultant and work by the Sub-Consultant are added together and compared with the IGE.

Hydraulics: The IGE is about 50% above the submittal by ABC Company. The item of discussion here will be the three trail structures in Hark County. The extra hours under consideration here are very similar to the number of hours of difference in the Structures part of the submittal.

Highway Design: This is the second large discrepancy between the ABC Company submittal and the IGE. The difference is about 1,500 hours. This will be the major point of discussion. It is very likely that the IGE underestimated this item. The IGE indicates the assignment of one full time designer with assistance at critical times. The Consultant's submittal indicates two full-time designers. This is probably more realistic.

Permits: The difference in this item is 38 hours with the ABC Company submittal being the higher estimate. The IGE did not include designer hours for this item. This may have been an oversight on our part and will be the center of the discussion for this item.

Exhibit 2.3-A PRE-NEGOTIATION OBJECTIVE MEMORANDUM
(Continued)

Meetings & Field Reviews: The IGE assigns 279 more hours to this item than the ABC Company submittal. Much of this can be attributed to the assigned length of meetings. The IGE usually assumes a meeting will take an entire day. The ABC Company submittal refutes this assumption. Therefore, the ABC Company numbers are probably the more accurate.

QA/QC: The ABC Company submittal assigns 156 more hours to this task than estimated in the IGE. A review of the QA/QC plan is necessary to determine the accuracy of these numbers. The QA/QC plan is one of the deliverables in the task order.

ROW Sub-Consultant: This item was discussed under the Right of Way topic and should not be an issue.

Travel: The IGE assumed most travel would be trips to the Project Site from the Denver Area with returns each night. The ABC Company submittal includes much more overnight stays than the assumption. This item will be discussed during the negotiations.

VI. Pre-negotiation Position:

The Governments prenegotiation range for all tasks necessary in the Statement of Work is a low of $1,000,000 and a high of $1,200,000.

VII. SIGNATURES

The following signature represents development of prenegotiation objectives prior to the commencement of negotiations

Prepared by: _____ Date: _____
(Signature and Title)

2.4 NEGOTIATIONS

The negotiation meeting, or meetings if necessary, is conducted between the Government team (usually the COTR and others as appropriate) and the A/E consultant team for a new task order and for task order modifications. In addition to members from its team, the A/E consultant usually includes appropriate representatives from its subconsultants. The intent of the negotiations is to reach an agreement between the Government team and the A/E consultant team on the SOW requirements, level of effort, assumptions and other direct costs included in the task order or the task order modification.

Prior to the negotiation meeting(s) with the A/E consultant, it is imperative that the appropriate Government personnel (see http://www.cflhd.gov/Project_Management/Oversight.cfm) review the A/E consultant's proposal compare the A/E consultant's Price Proposal against the IGE, identify key issues/items for discussion and prepare the pre-negotiation objectives. Prior to meeting with the consultant, the Government team members must understand their role in the negotiation process. Negotiations should focus on the hours required for the tasks, the positions under which the hours are applied and other costs such as copies, mailing and travel expenses. During negotiations, the Government team should not disclose the information in the IGE to the A/E consultant.

All members of the Government team must be willing to enter into negotiations without preconceptions of "written in stone" results. To be successful, all members have to be ready to discuss items with an open mind and to listen to and consider the A/E consultant's opinions and position.

Both the Government team and the A/E consultant team should enter into the sessions with the opinion that the results will be win-win and that the Government will pay a fair and reasonable price, allowing the consultant to achieve a reasonable profit for its work.

During the negotiation meeting(s), portions of the SOW may need to be revised due to changes in work requirements or funding availability or due to resolution or clarifications between the A/E consultant and the Government about portions of the SOW or levels of effort. If the negotiations require revisions to the SOW, it should be revised immediately after the negotiation meeting to reflect the revisions agreed to in the meeting. Revisions may include specific tasks, general requirements, deliverable expectations, level of effort and schedule(s). The Government team shall document the minutes and results of each negotiation meeting using a Price Negotiation Memorandum (PNM). Be sure to include documentation of changes agreed to in the SOW, as well as cost agreements and other relevant information.

2.5 PRICE NEGOTIATION MEMORANDUM

The PNM provides a narrative of the process by which the A/E and the negotiator arrived at a fair and reasonable price (see Exhibit 2.5-A). The FAR and TAR require the preparation of a PNM on each negotiated procurement covering the following items:

- The purpose of the negotiation.
- A description of the acquisition, including the base contract and the task order number.
- The name, position and organization of each person representing the offeror and the Government in the negotiation.
- A summary of the offeror's proposal and field pricing recommendations, the Government's negotiation objective and the negotiated position.
- 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.
- Documentation of fair and reasonable pricing.

The negotiator signs the PNM and forwards it to Acquisitions for approval, along with any revisions to the SOW and/or the revised funding document resulting from the negotiations. The CO is the final approval authority for all task orders issued under the contract.

2.5.1 Forms and Templates

To view or download the PNM template, go to
http://intra.cflhd.gov:8080/tools/formLibrary.cfm?category=Contracting priceneg.pdf.

Exhibit 2.5-A PRICE NEGOTIATION MEMORANDUM

PRICE NEGOTIATION MEMORANDUM	DATE: 1/28/05
CONTRACTOR'S NAME AND ADDRESS: ABC Company 123 17th Street, Suite 2300 Denver, Colorado 80202	CONTRACT NUMBER: Contract # DTFH68-0X-D-0000X T.O. # T-05-00X

BRIEF ITEM DESCRIPTION: Task Order to prepare 100% roadway plans, perform reference hub X-sectioning and miscellaneous tasks for Mooney Road.

I. INTRODUCTION SUMMARY

TYPE OF CONTRACT:	TYPE OF NEGOTIATION ACTION:	NEGOTIATION AUTHORITY:
Indefinite Quantity	Individual Task Order	Thomas Puto (COTR)

COMPARATIVE SUMMARY	PROPOSED	OBJECTIVE	NEGOTIATED
TOTAL COSTS	$ 389,186.51	$ 307,267.76	$ 337,662.99
PROFIT/FEE (%)	$ 45,467.72	$ 30.206.54	$ 32,346.78
TOTAL PRICE	$ 439,654.23	$ 337,474.30	$ 370,009.77

REMARKS: The negotiated price is 9.6% higher than the original Government estimate. See Negotiation Summary.

II. PARTICULARS

PURCHASE REQUEST NUMBER:	QUANTITIES:
Task Order No. T-05-00X	Prepare 100% PS%E plans package.

MEETING DATES, PLACES AND ATTENDEES NAMES AND TITLES

A. FACT FINDING
See next page.

B. PRENEGOTIATION
See next page.

C. NEGOTIATIONS
See next page.

III. PROCUREMENT SITUATION

A. OUTSIDE INFLUENCES AND/OR TIME PRESSURES:
Need to expedite to minimize project delays.

B. DELIVERY AND/OR PERIOD OF PERFORMANCE:
All work to be completed by April 1, 2006.

C. PREVIOUS BUY, WHEN, QUANTITIES DELIVER AND UNIT COSTS:
Unit costs previously agreed under IDIQ contract.

D. FACTOR(S) INFLUENCING SOURCE SELECTION:
Past experience and performance, distribution of workload.

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Exhibit 2.5-A PRICE NEGOTIATION MEMORANDUM
(Continued)

IV. NEGOTIATION SUMMARY

Coordination

10/04 – COTR discussed preliminary Scope of Work (SOW) during 70% plans meeting in Denver, CO
11/04 – COTR prepares draft SOW and reviews with ABC. Consultant provides comments on draft SOW.
12/04 - Scope of work sent ABC for fee proposal.
1/05 - COTR conducts in person (Jan. 19) and telephone (Jan. 24) negotiations with PB.
1/05 – COTR completes negotiations (Jan. 30) with ABC on Task Order X.

All fee proposals were complete and well-documented when received by the COTR.

The COTR negotiated the number of x-sections required for reference hub staking from 660 x-sections to 522 This was accomplished by having ABC review their CADD design files and eliminate all unnecessary x-sections. The COTR also discussed efficiency rates to accomplish a reference hub x-section. It normally would take 20 minutes to complete 1 section and it seemed that the survey subconsultnat wanted 30 minutes per x-section. This was negotiated downward to an average of 25 minutes per x-section., which reduced labor hours, per diem costs, etc.. The COTR also requested ABC recheck their right-of- entry permission forms and this resulted in an upward price for the survey work.

Post design services during the construction phase were eliminated in this T.O., as this work will need to be accomplished at a later date by a still to-be-determined CFLHD process.

Labor hours on the following sub-tasks were negotiated downward: B.1.b -- Prepare final x-sections (work already covered under other sub-tasks), B.1.f -- CPM construction schedule (most work completed under previous task order), B.1.J -- Site visit for pedestrian bridge (reduced # of personnel attending), B.3.e – R/W field meetings (reduced # of personnel attending), C.1.a Incorporate revisions from 95% plans (P-11 & P-8 work hours reduced as current plans in good shape) and some project travel costs were adjusted downward as a result of these changes

Direct labor rates were adjusted from $31.21 to $ 27.89 for work on the Southwest Willow Flycatcher study and there was a math error for other direct costs. A total fee of $ 9,742.91 was agreed upon.

The Consultants final cost is a fair and reasonable price for the proposed work efforts.

V. CONCLUSION		DISTRIBUTION
The A/E's proposal fully represents the scope of work, resources schedule, and cost necessary to accomplish the task. The proposal is fair compensation for the work and is recommended for approval.		XXXXXX
PRINTED NAME OF COTR XXXXXXX	SIGNATURE	DATE
PRINTED NAME OF CONTRACT PRICE ANALYST	SIGNATURE	DATE
PRINTED NAME OF CONTRACTING OFFICER	SIGNATURE	DATE

FOR OFFICIAL USE ONLY

2.6 PRE/POST-NEGOTIATION MEMORANDUM

A combined Pre/Post-negotiation Memorandum (POM/PNM) is acceptable and can be used in lieu of the separate POM and PNM forms if it provides for the pre-negotiation position and objective as well as the negotiation outcome. (See Exhibit 2.6-A.)

The following reviews and approvals are required for the POM and the PNM under TAM Subchapter 1204.70 – Review and Approval of Contracts and Contract Related Documents. (See http://fasteditapp.faa.gov/dot/do_action?do_action=ListTOC&contentUID=1.)

The CO responsible for the acquisition reviews the solicitation, the POM, the PNM and the contract or contract modification, as applicable, prior to the other reviews required by this subchapter of the TAM. The CO has the authority to approve all proposed solicitations, pre-negotiation objectives, documentation of price negotiations, contract awards and contract modification awards valued at or below $500,000. Actions exceeding $500,000 shall be approved by an individual at least one level above the CO responsible for the acquisition.

All solicitations, POMs, PNMs, contract awards and contract modification awards expected to exceed $500,000 shall be reviewed for legal sufficiency.

2.6.1 Forms and Templates

To view or download the template, use the link below:

- Pre/Post-negotiation Memorandum.

Exhibit 2.6-A PRE/POST-NEGOTIATION MEMORANDUM

PRE/POST-NEGOTIATION MEMORANDUM

Project Name:
Project Number:
Contract Number:
Contractor:
Contract Modification Number:

I. PURPOSE OF NEGOTIATION

A. REASONS AND DESCRIPTION:

B. CONTRACT TIME:

II. ATTENDEES AT NEGOTIATION

A. CONTRACTOR REPRESENTATIVES:

B. GOVERNMENT REPRESENTATIVES:

III. TASK ORDER TYPE

( ) Fixed Unit Price (including lump sum)

( ) Cost Plus Fixed Fee

Exhibit 2.6-A PRE/POST-NEGOTIATION MEMORANDUM
(Continued)

IV. SUMMARY OF PRICING

The independent Government estimate is in the amount of $.00.

The initial Contractor proposal is in the amount of $.00.

The Government's prenegotiation objective is in the amount of $.00.

The final negotiated price is in the amount of $.00.

V. CONTRACTOR-FURNISHED DATA

Was certified cost or pricing submitted? __Yes ___No

VI. NEGOTIATION SUMMARY

Include the pre-negotiation objective (amounts/hours) and negotiation position (narrative). After negotiations, show final negotiated amount and discuss reasons for differences.

VII. SIGNATURES

Approval requested for the use of a cost reimbursement-type task order?

__ Yes __ No

The following signatures represent: (1) agreement with the information contained herein; (2) if so indicated, the use of a cost-reimbursement-type task order; and (3) that the final negotiated price is fair and reasonable.

Prepared by:_____Date: _____

Name, Title

Reviewed by:_____Date: _____

Name, Title

Exhibit 2.6-A PRE/POST-NEGOTIATION MEMORANDUM
(Continued)

Legal Review by: _____Date: _____

Name, Title
(> $500.000)

Approved by:_____Date: _____

Name, Title

This POM/PM was discussed with:
__ Design
__ Bridge
__ Materials
__ Claims/Legal
__ Geotechnical
__ Acquisitions

2.7 A/E PRICE AGREEMENT

Once negotiations have been successfully completed, the A/E consultant shall submit a signed final pricing proposal to the CO. Having the A/E firm document its understanding of the negotiations serves two purposes: it ensures agreement between the A/E and the Government of the outcome of negotiations and serves as an offer to the Government that the CO can accept and award.