

IDS Terms and Conditions Guide

Section A

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CLAUSE A001M

SUBJECT: Preparation of Offers.

SOLICITATION PROVISION TEXT:

The Buyer's Terms and Conditions of Purchase are located on the Internet at:
<http://www.boeing.com/companyoffices/doingbiz/idscommon/guide.htm>
unless otherwise advised by the cognizant Buyer purchasing representative.

Any prospective Offeror desiring an explanation or interpretation of this solicitation, its drawings, specifications and the like, must request such explanation or interpretation in writing and in sufficient time to allow a reply to reach all prospective offeror's before the submission of their offers. Oral explanations or instructions given before the award of any resulting Purchase Order will be binding. Any information given to a prospective Offeror concerning this solicitation will be furnished promptly to all other prospective offeror's as an amendment to this solicitation, if in the discretion of Buyer, that information is necessary to the submittal of offers or if the lack of it would be prejudicial to any other prospective offeror's.

Unless otherwise specified in the solicitation or by the Offeror in its response, all prices quoted shall be considered firm fixed prices.

PREPARATION OF OFFERS

1. Offeror's are expected to examine the drawings, specifications, schedule and all instructions contained or referenced in this solicitation. Failure to do so will be at the Offeror's risk.
2. Each Offeror shall furnish the information required by this solicitation. Offeror shall sign the offer and print or type its name on at least the first page of each proposal volume. The person signing the offer must initial erasures or other changes. Offers signed by an agent shall be accomplished by evidence of that agent's authority, unless that evidence has been previously furnished to the cognizant Buyer Purchasing Representative.
3. For each item offered, offeror's shall:
 - (A) Show the unit price/cost, including, unless otherwise specified, packaging, packing and preservation; and
 - (B) Enter the extended price/cost for the quantity of each item offered in the format required by this solicitation.

In the case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject however, to correction to the same extent and in the same manner as any other mistake.

4. Offers for supplies or services other than those specified will not be considered unless authorized by this solicitation.
5. Offeror's must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in this solicitation.
6. Time, if stated as a number of days, will include Saturdays, Sundays and holidays.
7. If tooling charges is included in Offeror's response, Offeror will furnish a complete list and description of the tooling and accessory equipment that would be required to produce the goods according to Offeror's proposal. Each item shall be separately priced.

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8. As a result of this solicitation, Buyer may issue a Purchase Order, to the responsible, responsive Offeror whose offer, conforming to the solicitation, will be most advantageous to Buyer, considering cost or price and other factors specified elsewhere in this solicitation.
9. Buyer may reject any or all offers if such action is in the best interest of Buyer and its customer(s), accept other than the lowest offer, and waive informalities and minor irregularities in offers received.
10. Buyer may issue a Purchase Order on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror's best terms for the factors specified in the solicitation.
11. Buyer may accept any item or group of items of an offer, unless the Offeror qualifies the offer by specific limitations. Unless otherwise provided, offers may be submitted for quantities less than those specified. Buyer reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the offer.
12. A written award of acceptance of offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, Buyer may accept an offer (or part of an offer, as provided in paragraph 11 above), whether or not there are negotiations after its receipt, unless a written notice of the offer's withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by Buyer.
13. In the event the Offeror is unable or declines to quote any item(s) of this solicitation, Offeror is requested to state its reason for such "no bid" response.
14. Offeror is invited to submit alternate quotes which might reduce price by taking advantage of price breaks, delivery schedule variations, more economical packaging, bulk handling or change in configuration (materials, tolerances, finishes, etc.), which will not impair any essential characteristics of form, fit or function such as service life, reliability, ease of maintenance or interchangeability. Alternate quotes may only be considered as an addition to the basic quotation requested; Offeror should therefore always quote the original requirement.
15. Unless otherwise specified by Buyer, responses to this solicitation are to be: (A) firm offers, valid for a minimum of six (6) months from the date of submittal and, (B) expressed in "Then Year" (Period of Performance) U.S. Dollars.
16. Diminishing Manufacturing Sources (DMS)/Obsolescence: Based on the most currently available data at the time of selection, the Offeror shall ensure that any product acquired, modified, or developed under this contract shall be free of known DMS/Obsolescence impact, unless otherwise authorized by the Buyer.
17. Offeror shall furnish a certified price breakdown, or make available cost information for all non-competitive solicitations in which the Offeror's offer exceeds \$500,000.

(A) For Commercial Solicitations:

Offeror's books, records, documents and other supporting data shall be available to Buyer or its authorized representative for inspection and audit as required by Buyer in connection with any negotiations prior to Purchase Order award. Offer shall cause a like provision to be included in all proposed lower-tier Purchase Orders or subcontracts valued over \$500,000, unless prices will be firmly established by catalog or adequate price competition.

(B) For U.S. Government Prime Contract Solicitations:

Offeror shall submit cost or pricing data in the manner and format described in FAR 15.408 including Table 15-2 "Instructions for Submitting Cost/Price Proposals when Cost

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or Pricing Data are Required", and all such data shall be subject to the conditions set forth in FAR Part 15. Offeror shall also certify to such data and any other data supplied to Buyer or its customer during negotiations by the use of Certificate of Current Cost or Pricing Data as of the date of agreement on price or other mutually agree date.

Neither Offeror's financial data submitted with an offer nor representations concerning facilities or financing will form a part of any resulting Purchase Order. However, if the resulting order contains a clause providing for price rejection for defective cost or pricing data, the Purchase Order price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate or not current.

If this solicitation is issued under a U.S. Government Prime Contract/Solicitation. Offeror's response must include the following representatives, certifications, or plans where applicable:

<u>FORM</u>	<u>DESCRIPTION</u>
FORM 10706	Cost Account Standards Certification, Quotation Conditions (If required per FAR 52.230-1.)
Supplier Plan	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (If required per FAR 52.219-9.)

(C) All Solicitations of \$500,000 or more:

Offeror shall, upon request of Buyer, furnish a statement of related historical cost experience in the item(s) indicated in this solicitation by cost element, or in such form as stipulated by Buyer, together with applicable projections and supporting data. Such statements shall be based on current, accurate and complete cost information and be certified by a responsible officer of Offeror's organization.

Offeror shall include in its cost proposal, the name of the individual in Offeror's organization who is most familiar with the backup data supporting the cost information requested herein.

18. If Offeror's response to this solicitation exceeds \$100,000 and the period of performance exceeds six (6) months (from the start of work to the delivery of the last item), Offeror shall include a cumulative monthly termination liability schedule. This schedule will be made a part of any resulting Purchase Order when issued and Buyer's liability will be limited accordingly.
19. Offeror's are advised that if this solicitation requires the Offeror to submit data, software or other information with it's proposal which Offeror claims as proprietary, confidential or restricted, Buyer's acceptance of any data or documentation marked with a restrictive legend does not indicate Buyer's agreement that information contained therein is proprietary. Buyer will have the right to reproduce any submitted data, drawings or other material as required for evaluation purposes only, even though marked with a restrictive legend. In the event information contained in submitted documents is already within the public domain, or Buyer's knowledge is obtained from any source without restriction, or is for any reason not protected by law, restrictive markings which purport to cover the information, shall not be valid nor be binding upon Buyer.
20. If this solicitation requires handling of classified matters, such information provided to Offeror by Buyer is to be controlled by Offeror in accordance with the provisions outlined in the applicable Industrial Security Manual.
21. No news release, public announcement, advertisement, denial or confirmation of some or any part of the subject matter of this solicitation or any resulting Purchase Order of any phase of any program shall be made without the prior written approval of Buyer.

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22. The Offeror may be relieved of requirements included in this Request for Proposal (RFP) when these requirements are inconsistent with Government approved SPI processes at the Offeror's facility. This relief will be granted only under the following conditions:
- (A) Buyer's customer (US Air Force, US Navy, US Army or NASA) must have been a party to the SPI approval at the Offeror's facility.
 - (B) The Offeror must describe in writing how the RFP requirements are inconsistent with the SPI processes, and must commit that there will be no adverse impact to performance, cost, quality or schedule due to the substitution of the Offeror's approved SPI processes.
 - (C) Buyer must be satisfied that there are no firmly definable reasons (legal, technical or otherwise) why the Offeror's approved SPI processes cannot be used on the Buyer's prime contract.

Buyer will consider all Government approved SPI processes meeting the above conditions as meeting the baseline Buyer RFP requirements and not as alternate proposals.

23. All drawings, specifications, plans, statements of work or any other data or material provided by Buyer in regards to this solicitation is the property of Buyer or its customer. The Offeror shall not use, reproduce or transfer these items for any other purpose than this solicitation without the written consent of the Buyer's Authorized Purchasing Representative.
24. By submittal of any quotation or proposal for contract(s) issued under government contract(s) the Offeror certifies that it is in compliance with the Anti-Kickback Act. The clause entitled "Anti-Kickback Procedures" set forth in FAR 52.203-7 is made a part of this solicitation/contract by this reference with the following modifications: The terms "Contractor" shall mean Offeror/Seller and the term "Contracting Officer" shall mean the Contracting Officer cognizant of the Government prime contract or higher-tier subcontract under which this Contract was awarded. **If the Offeror is not prepared to make this certification, it will so notify Buyer as part of its response to the solicitation.**
25. By submittal of any quotation or proposal for contract(s) issued under government contract(s) the Offeror certifies that it is in compliance with FAR 52.223-13, Certification of Toxic Chemical Release Reporting. FAR 52.223-13 is made a part of this contract by this reference. **If the Offeror is not prepared to make this certification, it will so notify Buyer as part of its response to the solicitation.**
26. By submittal of any quotation or proposal for contract(s) issued under government contract(s) exceeding the simplified acquisition threshold (defined in FAR 2.101), the Offeror certifies that it is in compliance with FAR 52.203-7 - Anti-Kickback Procedures (Jul 1995). **If the Offeror is not prepared to make this certification, it will so notify Buyer as part of its response to the solicitation.**
27. By submittal of any quotation or proposal for contract(s) issued under government contract(s) valued at \$100,000 or more, the Offeror certifies that it is in compliance with Public Law 101-121 - Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, Reference FAR 52-203-11 and FAR 52-203-12. **If the Offeror is not prepared to make this certification, it will so notify Buyer as part of its response to the solicitation.**
28. By submittal of any quotation or proposal for contract(s) issued under government contract(s) valued at \$10,000 or more, the Offeror certifies to the below. **If the Offeror is not prepared to make these representations and certifications, it will so notify Buyer as part of its response to the solicitation.**

(A) EQUAL OPPORTUNITY (Not applicable if Offeror is a Foreign Supplier)

Offeror represents that:

- (1) It has participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114.

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- (2) It has filed all Compliance Reports
- (3) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained.

(B) AFFIRMATIVE ACTION (applicable if Offeror has 50 or more employees) (FAR 22.804-1)
(Not applicable if Offeror is a Foreign Supplier)

Offeror represents that:

- (1) If required to do so by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), it has developed and has on file a written Affirmative Action Compliance Program at each of its establishments, or
- (2) In the event such a program does not presently exist, and this contract is for \$50,000 or more, that it will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this contract.

(C) CERTIFICATION OF NONSEGREGATED FACILITIES (FAR 52.222-21) (Not applicable if Offeror is a Foreign Supplier)

- (1) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- (2) Offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (3) Offeror further agrees that (except where it has obtained similar certifications from proposed subcontractors for specific time periods) it will -
 - a. Obtain similar certifications from proposed subcontractors before the award of contracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - b. Retain the certifications in the files; and
 - c. Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted similar certifications for specific time periods).

Notice to Proposed Subcontractors of Requirement for Certifications of
Nonsegregated Facilities.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(D) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (FAR 52.209-5) (This is applicable to all Suppliers)

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Offeror certifies that to the best of its knowledge and belief, that:

- (1) It is not presently debarred, suspended, proposed for debarment, or ineligible for award of contracts by any Federal agency.
- (2) It has not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for : commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- (3) The Offeror is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses of this provision.
- (4) It has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(E) CLEAN AIR AND WATER (Not applicable if Offeror is a Foreign Supplier)(FAR 52.223-1)

The Offeror certifies that:

- (1) Any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities.
- (2) Offeror will immediately notify the cognizant Buyer Purchasing Representative, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (3) The Offeror will include a certification substantially the same as this certification, including this paragraph (E)(3), in every nonexempt subcontract.

The Offeror shall provide immediate written notice to Buyer if the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances anytime during the performance of the contract.

NOTE: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

29. **Code of Conduct.** Boeing is committed to conducting this procurement fairly, impartially, and in an ethical and proper manner. In the event that Bidder has cause to believe that Boeing or any Boeing employee or agent has acted improperly or unethically in connection with this solicitation, Bidder shall report such conduct to the Boeing Ethics hotline. Copies of Boeing's Code of Conduct and contacts for such reports are available on <http://www.boeing.com/> under "Ethics and Business Conduct." Boeing will not use the failure to make such a report as a basis for rejecting Bidder's proposal. Bidder is nonetheless encouraged to exert reasonable efforts to make such reports when warranted.