



ACQUISITION DIRECTIONS™

Research Response

Date: September 4, 2001

Client: [Deleted]

To: [Deleted]

Purpose: This is a research response under the Acquisition Directions™ service, which provides for up to a four-hour level-of-effort response to an inquiry.

Client Question: What are the pros and cons of announcing a requirement for services and including in that announcement the dollar amount available? (e.g., “services are required to conduct a business process review of agency xyz's financial functions and \$150,000.00 has been budgeted for this requirement. Please provide your best value proposal.”)

Would there be a difference in the response if the requirement were processed under simplified procedures or a GSA vendor? The customer providing the government estimate does not necessarily do the required work, but will just state what money is available. For certain services it might be the better way of doing business.

Acquisition Solutions' Response:

First, we think your strategy is quite appropriate. The amount of available funds are both an important parameter and limitation on the range of acceptable solutions that an offeror might propose. In a sense, the process would be to ask industry “with these funds and these intended results, what can you propose as a technical solution?” It is a nice performance-based approach.

We do, however, suggest that you clearly communicate your intent to the offerors. Your intent might differ for each requirement. For example, in one scenario, you might want offerors to propose the best value you can get for the stated budget (i.e., all offers come in around \$150,000, and you pick the best value – the one offering the ‘biggest bang for the buck’). In another scenario, you might indicate that while the budget is “X,” price will be a factor in the selection of a contractor (i.e., a good \$120,000 proposal might win out over a very good \$150,000 proposal). We advise you to carefully consider the intent of releasing the information and craft appropriate language and evaluation criteria.

This is one of those areas where the FAR has some (but not necessarily on-point) guidance. For example, FAR provisions on construction (36.203) address developing an “independent Government estimate of construction costs” which is generally not provided to industry. However, a distinction is made with regard to “estimated price range” which *is provided to industry*. The difference, we believe, is in the purpose of the information. An independent Government cost estimate is used as a measure to assess proposed pricing, and is sometimes used as a price negotiation aid. On the other hand, providing contractors information on estimates and budget authority has an altogether different purpose. It is a means of helping contractors appropriately “size” the project and make effective proposals to the agency. Clearly, the latter is your intent.

One of our partners observed: “There are those who would argue that you are giving away the Government’s Independent Cost Estimate. That isn’t necessarily true. The amount of funding doesn’t necessarily have to equal the ICE. Furthermore, who cares? The ICE is used only as a ‘price analysis tool’ anyway. (But even if it were used for more, all you are giving out is the total of the ICE not the details of how you got there.) If there is enough competition, your fair and reasonable price is determined by the competition. If it isn’t, the contracting officer would probably ask for C&P data anyway.”

On the positive side, the FAR in 34.005-2 addresses “mission-oriented solicitation” for major systems. Those provisions address that the solicitation sent to “all prospective offerors ... shall ... indicate, and explain when appropriate, the schedule, capability, and cost objectives and any known constraints in the solicitation.” Although your acquisition may not be defined a “major” acquisition, most solicitations support the agency’s mission and could therefore be construed as a “mission-oriented solicitation.”

Another Acquisition Solutions partner observed, “Yes, you can release the cost. It is called ‘design to cost’ in the FAR (part 7) (also referred to as cost as an independent variable).” This approach is used mostly in the DOD, but the concept is closely related to what you are proposing.

Finally, we observe that the FAR guiding principles in section 1.102(d) indicate that “members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interest of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.” In sum, we believe the approach makes good sense, conforms with the concept of results-based acquisition, and violates no provision that we are aware of or could find.

In our opinion, this approach will work best with a performance-based acquisition, in which the offerors have the freedom to craft solutions to the agency’s objectives. In our opinion, this approach would work particularly well with our Statement of Objectives (SOO) approach, in which the agency communicates, in one or two pages, the objectives of the project, and the offerors propose a Statement of Work (based on their expertise) for accomplishing the agency’s objectives. For more information on the SOO approach, refer

to our May 2001 *Advisory: An Innovative Approach to Performance-Based Acquisition: Using a SOO*.

Announcing budgets. As mentioned previously, agencies regularly release information to the public on funding levels for various programs and projects. For example, refer to the acquisition forecast site managed by the SBA (<http://www.sbaonline.sba.gov/GC/forecast.html>) or that maintained on the FedBizOpps site (<http://www.arnet.gov/FedBusOpps/>), in Text Box #4. For many years, contractors have monitored this type of information as part of their market research and used it to support their competitive bid and proposal processes. In our opinion, there appears to be no reason *not* to provide this information

Deciding how to address budget limitations: It seems to us that the amount of available funds is an important constraint on the requirements. Our inclination would be to begin Section C with a statement of objectives, followed closely by the budgetary limitation. Then you will certainly want to do a best-value selection.

Conclusion: We believe that the approach of providing the government's budget to prospective offerors is sound. Given that agencies frequently release forecasts (including budget authority) to the public, there appears to be no reason why you should not do so in your solicitation. However, if there is hesitation within an agency to release the budget, an alternative might be to release a range rather than a single dollar amount. Our opinion on this issue does not differ when considering Federal Supply Schedules or the use of simplified acquisition procedures.

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Note: This Research Response is provided as part of the Acquisition Directions™ on-call research, information, and advisory service. The information and opinions in this document are based on professional research of available information using sources deemed reliable. If your question involves legal issues, you may wish to consult an attorney for legal advice based on your particular situation.