**Business Clearance Memorandum – Template**

The business clearance memorandum typically includes acquisition background, technical and financial evaluation outcomes, a pre-negotiation position, request to negotiate and approval to negotiate, and a determination of reasonable pricing and recommendation to award the contract.

**Non-competitive Pre/Post-Negotiation Business Clearance Memorandum (>$650k)**

**Template**

**SECTION I. SUMMARY OF KEY DOCUMENTS AND ATTACHMENTS**

A. Summary of Key Documents*:*

No Commitment of Funds is required. This will be a Third-Party financed project. Payments will be made from savings derived from implementation of the project.

Synopsis of proposed action. (FAR 5.201)

J&A to use other than full and open competition. (FAR 6.303) [include when applicable]

B. List of Attachments:

Attachment (1) Concept for UESC

Attachment (2) Authority to proceed with ECP

Attachment (3) Letter to Utility to develop PA or IGA as applicable

Attachment (4) Receipt of final version of assessment

Attachment (5) Estimate of Design Cost

Attachment (6) Approval to enter into Design phase

Attachment (7) Notice of Intent

Attachment (9) Responsibility Determination

Attachment (10) Life Cycle Cost Analysis (LCCA)

Attachment (11) Government Review Comments

Attachment (12) Revised design

Attachment (13) Documentation of Competitive Solicitation Practices

Attachment (14) GSA price schedule for utility ESCO contractor

Attachment (15) Utility Final LCCA for Project

**SECTION II. BACKGROUND**

1. Acquisition Purpose/Procurement History.

In order to meet the requirements of the EPACT and EO 13423, the project site engineering office has requested that we pursue a project to reduce energy consumption for project site name, buildings, systems, and location.

This request was based on research of energy consumption at these facilities conducted by project site engineering office(Attachment 1). The project site engineering office presented its findings to the project site engineering office manager who concurred with the decision to pursue a UESC. A request to pursue a UESC was forwarded to approving manager’s office and subsequently approved by approving manager.

The Utility name is a regulated utility that provides electricity / natural gas service(s) to project site name. Agency name has established a utility service(s) agreement with Utility name agreement under GSA AWC No. GS-XXX-XX-XXX-XXXX (AWC). Exhibit “C”, EMSA under Contract No. GS-XXX-XX-XXX-XXXX is provided as a vehicle (TO) by which to contract with the Utility to install energy saving equipment if the potential for savings are demonstrated to be greater than the cost of implementing those measures. Utility name has agreed to provide initial studies, referred to as PAs / Feasibility Studies, to the Government at no cost (or agreed cost). The Utility name offers to provide this service to the Government in order to reduce the electrical / natural gas / water service demand (DSM) on the Utility. The Government issued a letter to the Utility on date requesting a no-cost PA offered under the terms and conditions of the letter (Attachment 3). The Government identified some potential ECMs for the Utility company’s investigation based on its knowledge of existing conditions and allowed the Utility to fully assess the facilities to identify all potential ECMs.

Utility name began its investigation of facilities, sharing information with the Government as the audit developed. After several iterations of the PA, the Utility submitted its final revision of the PA (Attachment 4). The Government team consisting of names of offices of involved agency staff, engineer and CO reviewed the proposed ECMs and associated LCCA. In addition to the technical review of ECMs and proposed equipment, the Government also reviewed the breakout of the estimated costs for design of the project, should the Government elect to go forward. The projection of cost for design was cost in dollars. (Attachment 5).

The following table depicts the estimated construction cost for the project and the estimated costs for the project development/design:

**Total Estimate Construction Cost Estimated Project Development Cost**

construction cost in dollars design cost in dollars

The estimated cost for project development/design was % of the estimated cost of the construction for the project. The rates proposed for the design effort were compared to the burdened rates of the current A&E IDIQ contract No. xxx, awarded to name of contractor. The IDIQ contract was competitively solicited with more than one offer received. (for example) The following table provides a snapshot comparison of the primary engineering rates:

**Discipline Example Rates Proposed Design Rates**

Project Manager $190.00 $150.00

Mechanical Engineer $110.00 $150.00

Electrical Engineer $160.00 $150.00

Draftsmen II $ 70.00 $ 70.00

Clerical II $ 60.00 $ 45.00

The review team concluded that the proposed measures had the potential for reducing energy consumption and that the estimated cost of construction would be less than the potential savings to be derived. The estimated cost for design to develop the project to a firm fixed price proposal can be determined to be fair and reasonable by comparison to the above competitively awarded IDIQ design rates. The team briefed the project site engineering office manager who concurred with the team’s findings and briefed the approving manager, recommending that the Government proceed with requesting final design. The approving manager agreed with the recommendation and gave authorization to proceed to design on date.

B. Contract Type.

GSA AWC No. GS-XXX-XX-XXX-XXXX (AWC) was used to establish a service agreement between the Government and Utility name, the local franchised electric / natural gas utility company servicing project site and location. Exhibit “C”, EMSA under Contract No. GS-XXX-XX-XXX-XXXX is provided as a vehicle (TO) to contract with the Utility to reduce energy consumption.

In accordance with 42 USC 8256, statutory authority exists to enter into sole source contracts with local utility companies that provide DSM services to reduce energy consumption. The TO will be a firm, fixed price contract.

C. Special Provisions.

The TO will be a financed project. No Government funds will be provided for issuance of the TO; rather, the project will be paid for from the savings realized from implementation of the project.

D. Extent Competition Solicited and Secured.

As authorized by 42 USC 8256, authority exists to enter into sole source contracts with utility companies for energy conservation and DSM services.

A Notice of Intent (NOI) to contract with a certain utility company in order to fully ascertain that no other utility company could also qualify as a source. A NOI was transmitted to the government-wide point of entry via the Internet at <http://fedbizopps.gov> (Attachment 7). No responses from other utility companies were received. [describe the process used for utility selection].

In accordance with FAR, Part 6.3, a J&A for the use of Other Than Full and Open Competition is/is not required.

A J&A was prepared date and submitted to the cognizant authorities for review and approval. Approval was received on date (Attachment 8). [When agency counsel determines a J&A is not required, save the determination document to the file]

E. Compliance and Responsibility:

The Utility name is registered in the required government databases. An on-line search was made of the Central Contractor Registration (CCR) database, On-Line Representations and Certifications (ORCA) and the Excluded Parties List System (EPLS) (Attachment 9). The Utility is current in CCR and ORCA and is not found on EPLS. [insert process for verification]

**SECTION III. EVALUATION/ANALYSIS AND OBJECTIVE**

[insert process for evaluation / analysis and project objective]

The Utility company submitted a 65% design package for Government review on (date); it was insufficient for evaluation, lacking essential information and breakout of pricing. The Utility was advised that the submittal was rejected. The Government advised the Utility to provide additional details in the 100% design package.

The 100% proposal for implementation of ECMs was delivered on date (Attachment 10). The technical package was routed for comments to the Fire Inspector, Environmental, Safety, Security, Communications, Utilities office, Building Managers, Engineering, (others).

The CO and the project manager initially reviewed the LCCA form contained in the 100% proposal to determine the project cost was less than the calculated energy savings. Data submitted indicated a construction project of (insert cost $) with a loan term of (insert # of years) at a finance rate of (insert %). The annual savings were projected to be (insert calculated savings $). Payments were structured to be less than the savings. The project appeared to be viable. The agency team compiled comments and questions during proposal review for utility response prior to Government entering negotiations with the Utility. The Utility provided a spreadsheet indicating competitive proposals had been received; information to support the competitive procedures and a detailed breakdown of pricing for proposals received without competition were requested. The Government’s questions were forwarded to the Utility and its ESCO on date (Attachment 11).

In response to the Government’s comments, the Utility submitted additional data on date (Attachment 12). As part of this proposal, the Utility provided evidence of competitive pricing among the installing subcontractors (Attachment 13) as well as a detailed breakout of pricing for work to be performed by contractors on a non-competitive basis (Attachment 14).

**SECTION IV. OTHER INFORMATION N/A**

**SECTION V. NON-PRICE EVALUATION**

The Government team reconvened to review the revised proposal. Technical reviewers included:

Name / Title / Office / Office location

[insert process and conclusion of technical evaluation]

The technical team analyzed the details of the proposed ECMs to determine if the proposed work was appropriate for the various facilities and if the measures would enhance the efficient operation of those facilities. In addition, the team reviewed the Utility’s projection of energy savings to be derived from the installation of the proposed equipment. The team concluded that the measures proposed were appropriate for the facilities and should result in the reduction of energy indicated by the Utility at the facilities.

**VI. PRICE/COST ANALYSIS**

[insert process and conclusion of financial evaluation]

Four (4) groups of ECMs were proposed for this contract consisting of mechanical, electrical, lighting, and water conservation. The ESCO provided full disclosure of their Requests for Proposal to each of the subcontractors considered for the various trades (Attachment 13).

The following tables list the contractors who competed for the four categories of the work and their pricing. The ESCO for the Utility company based its selection of subcontractors using Best Value techniques to determine the contractor whose proposal represented the best value to the government, both from technical and price considerations. The contractor selected by the Utility/ESCO is highlighted:

|  |  |
| --- | --- |
| MECHANICAL BIDDERS | PRICING |
|  |  |
| **Subcontractor #1 name** | **$2,000,000.00** |
| Subcontractor #2 name | $2,300,000.00 |
| Subcontractor #3 name | $2,500,000.00 |
| Subcontractor #4 name | $2,600,000.00 |

Selection of the Mechanical contractor was made to the lowest priced offeror.

|  |  |
| --- | --- |
| ELECTRICAL BIDDERS | PRICING |
|  |  |
| **Subcontractor #1 name** | **$250,000.00** |
| Subcontractor #2 name | $210,000.00 |
| Subcontractor #3 name | $240,000.00 |

Selection of the Electrical contractor was made using best value techniques. Sub #1 price was X% ($) higher than Sub #3 and Y% ($) higher than Sub #2. The Utility Company determined Sub #1 to be the highest rated technically among the offerors.

Engineering staff is familiar with each of the firms and concurred that Sub #1 has the best knowledge of the facilities and is the most technically competent of the firms who submitted proposals for the electrical work. No formal Source Selection Plan or procedures described under FAR Part 15 are required for the acquisition of UESC. The government relies upon the business judgment of the Utility company in soliciting for subcontracting opportunities in accordance with its commercial business practices. The AWC does not specify or require the Utility to use Government Source Selection Procedures defined in Part 15 of the FAR. The Government has no reason to question the Utility’s selection of Sub #1 as the contractor offering the Best Value to the Government for the electrical work.

|  |  |
| --- | --- |
| LIGHTING | PRICING |
|  |  |
| **Subcontractor name #1** | **$950,000.00** |
| Subcontractor name #2 | $890,000.00 |

Both subcontractors were competitive in the main areas of lighting work. Sub #2 did not respond with a bid addressing all elements of work for lighting ECMs. Since Sub #2 price was less than Sub #1 however, it did not address work estimated to cost $80,000, staff and utility engineers determined Sub #2 bid price would total approximately $960,000.00. The Government concurs with the selection of Sub #1.

|  |  |
| --- | --- |
| WATER CONSERVATION | PRICING |
|  |  |
| **Subcontractor name #1** | **$31,000.00** |
| Subcontractor name #2 | $42,000.00 |

Selection of the Water Conservation contractor was made to the lowest priced Offeror.

**Non-competitive Subcontractor Pricing:**  (Contractor name) is the sole source provider of (Direct Digital Controls (DDC)) as determined by (J&A signed by name, title). As such, there is no competition for the engineering, equipment, installation, and management to be provided for the project. In order to determine that contractor’s pricing is fair and reasonable, data was provided (Attachment ) for the Government’s analysis.

Pricing is based largely on the contractor’s GSA schedule, GS-xxx-xxxx. GSA CO made a determination on fair and reasonable pricing prior to awarding a Federal Supply Schedule. Therefore, the Government will not challenge the labor rates or materials pricing on their current Schedule.

Contractor has proposed labor categories including Specialist, Project Manager, Engineer, and Electric Installer. The following table compares the GSA schedule price ranges and the pricing proposed by contractor for these labor categories:

GSA Labor Mix and Price Range\_\_\_ Contractor Proposed Price

Specialist $68.43 - $117.54 Specialist $ 80.00

Project Manager $87.32 - $169.12 Proj Mgr $115.00

Engineer $75.56 - $171.28 Engineer $ 90.00

Electric Installer $57.09 - $169.26 E Installer $ 70.00

The Contractor’s proposed pricing is within the ranges determined fair and reasonable by GSA. In addition, Attachment 14 lists the applicable engineering rates for Project site location, which are identical to the contractor’s proposed rates.

**Additional Engineering Pricing:** Due to changes directed by the Government during project development, additional engineering was required. Attachment 15 contains reasoning and explanation for the additional engineering costs. Rates proposed are in accordance with the original rates proposed for this project which have been determined to be fair and reasonable. This contract was competitively awarded.

The engineering members of the review team, have reviewed the data and agree the additional work was required due to Government requested changes. They concurred that the amount of time listed for the design effort is appropriate.

[include description of the ECM changes directed by the government]

**Finance Rate:**

[include process for evaluating financing]

Attachment 15 contains evidence of competition among lenders to finance the project. Five lenders were solicited by the Utility and each lender responded to the solicitation. The following table shows the initial interest rates offered by the various lenders.

Since the initial offer, due to the time between the initial offer and the date at which a firm fixed price for the contract was negotiated, the current interest rate is 4.61%.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Company** | **Spread** | **Index Source** | **Index Rate** | **Interest Rate** | **Termination** |
| Dominion Federal Corp | 2.00% | 10 yr Treasury | 2.50% | 4.5000% | 3% |
| Guggenheim Capital Markets, LLC | 2.08% | 8.817 WAL Treasury | 2.26% | 4.3400% | 5% |
| Banc of America Public Capital Corp | 2.60% | 10 yr Treasury | 2.53% | 5.1300% | 3% |
| Siemens Financial Services, Inc. | 2.46% | 15 yr SWAP Rate | 2.73% | 5.1850% | 3% |
| Bostonia Partners LLC | 2.28% | 9.4 yr WAL Treasury | 2.37% | 4.6500% | Make whole |

Dominion Federal presented the best and was selected as the lender for the project.

The Utility submitted its final proposal to the Government on [date]. The final proposed pricing for the project is detailed in the LCCA provided as Attachment 16. The final construction cost is $9,000,000 with a loan term of 14.75 years at a finance rate of 4.61% for a total financed cost of the project in the amount of $10,146,334. The primary purpose of a UESC is to save energy or water and the project must also fully pay for itself over the life of the project. Using the government-provided LCCA format, (Utility name) has presented a UESC package that meets the established criteria resulting in energy savings over the financed term of the loan in the amount of $53,670.

The following table demonstrates the build-up of costs to the final financed amount.

|  |  |  |
| --- | --- | --- |
| **Cost Category** |  | **Cost** |
| Construction (installing subcontractor costs) |  | $9,000,000 |
| **Professional Fees:** |  |  |
| Project Development (Design) | 4.63% | **$416,700** |
|  |  |  |
| **ESCO CONSTRUCTION AND FEES TOTAL** |  | **$9,416,700** |
|  |  |  |
| **Utility Mark-up (OH and profit)** | 3.0% | **$282,501** |
| **PROJECT TOTAL COST (without cost of financing)** |  | **$9,699,201** |
| **Cost of project with financing over 15 year term of loan** | **4.61%** | **$10,146,330** |
| **Projected savings (based on customer energy savings** |  | **$10,200,000** |
| **reference ECP Summary page** |  |  |
| **of LCCA)** |  |  |
|  |  |  |

The Utility Company’s ESCO has provided detailed energy calculations for each ECM of the project supporting their projection of savings. Agency utility subject matter experts have reviewed the project proposal, including the types of equipment proposed, the life expectancy of the equipment, the expected increase in the cost of utilities (bills) over the finance term of the project, and have concluded that the projected savings are achievable.

**VII. RECOMMENDATION FOR AWARD**

In accordance with the criteria for award of Utility Energy Service Contracts (UESC), the cost of the project must be less than the savings generated by the installation of the ECMs identified for the project. A graduated payment structure is planned so that each payment will be less than the savings projected for the payment period. The project, therefore, meets the criteria for award. The pricing has been determined to be fair and reasonable based on the data presented by the Utility Company based on both competition among subcontractors and detailed price breakout where competition was not available. It is recommended that we proceed to award the UESC.