

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

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| 1. CONTRACT ID CODE | |
| 2. AMENDMENT/MODIFICATION NO. 02 | 3.EFFECTIVE DATE 02-27-2002 |
| 4. REQUISITION/PURCHASE REQ. NO. CN 192P0150004 | 5.PROJECT NO. (If applicable) |
| 6. ISSUED BY CODE U.S. Patent and Trademark Office Office of Procurement 2011 Crystal Drive, Suite 810 Washington,DC 20231 | 7. ADMINISTERED BY Code (If other than Item 6) U.S. Patent and Trademark Office Office of Procurement 2011 Crystal Drive, Suite 810 Arlington, VA 22202 |
| 8. NAME AND ADDRESS OF CONTRACTOR (No. Street, County, State and ZIP Code) To All Offerors/Bidders Code: FACILITY CODE: | [X]9A. AMENDMENT OF SOLICITATION NO. 52PAPT201006R 9B. DATED (See Item 11) 02-05-2002 []10A. MOD. OF CONTRACT/ORDER NO. 10B. DATED (See Item 13) |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[X] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [] is extended, [X] is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

EXCEPTION TO STANDARD FORM 30
APPROVED BY GSA/IRMS 9-87

STANDARD FORM 30 (REV 10-83)
FAR(48 CFR) 53.243

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13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

See Continuation Sheet(s)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remain unchanged and in full force and effect.

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| 15A. NAME AND TITLE OF SIGNER (Type or print) | 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Sylvia G. Van Dyke Contracting Officer |
| 15B. CONTRACTOR/OFFEROR _____ (Signature of person authorized to sign) | 16B. UNITED STATES OF AMERICA Sylvia G. Van Dyke _____ (Signature of Contracting Officer) |
| 15C. DATE SIGNED | 16C. DATE SIGNED: 02/27/2002 |

EXCEPTION TO STANDARD FORM 30

This amendment is issued to clarify items in the RFP, and answers which were released in Amendment 1.

1. Reference: Section L.13, page 101 - "Set-Aside Information"
As stated in L.13, the percent of set-aside is 0%.

Clarification: This acquisition is being conducted using full and open competitive procedures, with multiple awards. While the USPTO has chosen to make one of the awards to a small business, this is not a SET-ASIDE, nor a Partial SET-ASIDE. Answer No. 4 in Amendment 1 - states "The USPTO's requirement in this Request for Proposal applies to all offerors, whether large or small".

2. References:

Section L.15.2.1.1 (C)(3)(b). page 105, "Experience/Past Performance Factor Proposal Instructions" The experience/past performance references for small business prime contractors or small business subcontractors are contracts valued at \$500,000 or more.

See Section L.15.2.1.1 (D)(1)(b) - The number of contract references for small business prime contractors or small business subcontractors are three (3).

See Section M.3.2.2 (I) "Past Performance Factor" - "In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror will neither be evaluated favorably nor unfavorably on past performance".

See Section M.3.2.2 (E)(4) - "Lack of conformance of the past performance reference contracts to Section L.15.2.1.1 will be identified as a significant risk and may affect the best value decision".

See Section M.3.2.2 (B) "Past Performance Factor" - "The Government will focus on, but not be limited to, the offeror's past performance for the last three years....." (*emphasis added*).

Clarification:

The USPTO's requirements as stated above and in the RFP remain unchanged. The requirement for past performance references for small businesses, whether prime or subcontractor, is three contract references valued at \$500,000 or more. Offerors without a record of relevant past performance, or for whom information on past performance is not available, will neither be evaluated favorably nor unfavorably. However, as stated in Section M.3.2.2 (E)(4), lack of conformance of the past performance reference contract will be identified as a significant risk and may affect the best value decision. The USPTO answered Question No. 26 in Amendment 1 as follows: "If an offeror or the offeror's subcontractor do not have contract references valued at \$500,000 or more, the offeror should submit the best three contract references the offeror or subcontractor has".

3. Reference: Section L.15.2.2. (B)(9)(b) - "Government Approved Accounting System".

The USPTO has stated in the RFP, Section B.3 "Contract Type", that it contemplates award of two Cost-Plus-Award Fee (CPAF) contracts. In accordance with FAR 16.301-3 (a)(1) and (2), "A cost reimbursement contract may be used only when- (1) The contractor's accounting system is adequate for determining costs applicable to the contract; and (2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used". Therefore, since the USPTO's contract type is a cost type contract, this requirement remains unchanged. Offerors who are determined to be in the competitive range

will be requested to submit certified cost and/pricing data, at which time, the USPTO will request field pricing support from Defense Contract Audit Agency (DCAA). DCAA will notify the USPTO if the accounting system is not adequate for a cost type contract. The offeror may be given an opportunity to correct any deficiencies.

Clarification: The requirement for a Government Approved Accounting System remains unchanged.

4. Reference: SECTION K.13 - COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION

Clarification: This Notice does not apply to Small Business.

5. Reference: Question No. 9 and Answer- Amendment 1

All Past Performance Reference Questionnaires are due to the USPTO by proposal closing date, March 7, 2002, 1:00 p.m. (EST).

6. Reference Answer to Question No. 12 in Amendment 1. The maximum fee cannot exceed 10 percent of the contractor's estimated cost, excluding fee, established by statutory limitations, imposed by 41 U.S.C. 254(b) and FAR 15.404-4(c)(4)(i). The contract type is cost-plus-award fee. The USPTO has interpreted 41 U.S.C 254(b) "...in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 percent of the estimated cost of the contract, exclusive of the fee,..." (**emphasis added**). FAR 16.405-2, description states "A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of-(1) a base amount fixed at inception of the contract..".

Clarification: USPTO has interpreted FAR §15.404-4(c)(4)(i) and 41 U.S.C. §254(b) to prohibit any fee over 10% of the estimated cost, exclusive of fee. Therefore, an offeror proposing a total award fee exceeding 10% of the estimated cost, exclusive of fee, will be considered non-compliant.

