US Army Corps of Engineers ®

Construction Bulletin

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CEMP-E

Subject: Chronology of Modification Documents

Applicability: GUIDANCE

1. REFERENCE: FAR Part 15, Contracting by Negotiation
FAR Part 36, Construction and Architect-Engineer Contracts
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EFARS Part 36, Construction and Architect-Engineer Contracts

2. BACKGROUND: A frequent observation on recent Design Construction Evaluations (DCE) is the deficient chronology of modification documents. Also, the haphazard filing of these documents, and the failure to include an index or table of contents tends to reduce the effective use of these files as a resource in the administration of the contract.

3. The modification procedure in fixed price construction contracts is usually pursuant to the "Changes" or the "Differing Site Conditions" clause. As such, it is a negotiated contract action. This requires that the documentation provide detailed verification that the goods and services were acquired IAW the FAR. One thing is sure, if the documentation is out of sequence, it calls into question not only the modification being evaluated, but whether the modification process in the field office is being done IAW the governing regulations.

4. The following is a discussion of the documents that make up a complete modification package at the field office. A recommended arrangement of these documents is listed below, and illustrated in the enclosure .

a. Background Material that describes the need for the change. This material can originate with either the contractor or the government. Examples of this material are: (1) Notice of a differing site condition from the contractor; (2) Observation of the need for a change by either the contractor or the government; (3) Observations made on the daily QC or QA log; (4) Requests made by the user/sponsor; (5) Value Engineering proposals made by either the government or the contractor.

b. Independent Government Estimate (IGE) This is required of all modifications anticipated to cost $100,000 or more. Also, an IGE may be done for modifications less than $100,000 at the discretion of the ACO. This estimate may be used initially in requesting funds, but is primarily used as the basis of the prenogtiation objectives. The IGE should be approved IAW district policy and should be dated prior to receipt of the contractor's proposal. Once the IGE is complete, it is a confidential document and as such must be protected until after negotiations. DA Label 87 For Official Use Only (FOUO) must be used as a cover sheet and each sheet of the estimate must be stamped FOUO.

c. Verification of Availability of Funds, or some official instrument from the district office should be included, indicating the availability of funds in an amount equal to or greater than the IGE. Once the negotiations are complete, this document should be revised to reflect the final amount of the modification. Availability of funding should be ascertained prior to issuance of the RFP.

d. Request for Proposal (RFP) sent to the contractor. This should usually be dated after the funding document. The RFP should completely describe the work to be done, and should include plans and specifications, if appropriate. It should also include a proposal due date. In rare instances on very small changes, the RFP may be done by telephone. However, if it is done this way, a written record should be executed, and made part of the file. In addition, the RFP should include the kind of supporting data required as part of the contractor's proposal (ie: cost or pricing data; or other supporting data).

e. Contractor's Proposal including cost or pricing data, if appropriate. When cost or pricing data is required, a Certificate of Current Cost and Pricing Data shall be executed by the contractor (FAR 15.406-2).

f. Proposal analysis for fixed price construction contracts should consist of one or more analysis techniques:

(1) Price analysis is the evaluation of the price with little consideration of the individual cost elements. This method usually compares the IGE with the proposal to determine the reasonableness of the proposal's total price.

(2) Cost analysis is an examination of the individual components and profit of the contractor's proposal. It is also used to verify questionable elements of the price. A cost analysis is required when cost or pricing data is submitted as part of the contractor's proposal.

(3) Technical analysis is an analysis of the technical aspects of the work to be done including both the materials and the construction procedures. It is the primary process used to evaluate the contractor's proposal to verify the scope, materials and methods, that form the basis for the factual costs, and the indirect costs such as overhead.

(4) The audit is actually part of the cost analysis, and is supported by the technical analysis.

g. Prenegotiation Objectives are formulated once the proposal analysis is completed, but prior to negotiations. For very small modifications this document may be very simple, such as a red-lined copy of the contractors proposal. For large complex modifications, a Prenegotiation Objectives Memorandum (POM) should be composed, explaining in detail how the objectives were arrived at and citing the appropriate supporting material. In either case, these objectives are required for all modifications regardless of monetary value, and should be a separate document, clearly titled and dated prior to negotiations.

h. Price Negotiation Memorandum (PNM) is a complete record of the negotiations that documents the principal elements of the negotiated agreement, and explains the rationale behind the final settlement of the price and time.

i. Modification (SF 30) signed by the contractor and the contracting officer. This document is a complete detailed statement of work to be done as a change to the basic contract. Also, it usually serves as the Notice to Proceed (NTP). However, in an unpriced change order the NTP may be in letter format.

5. The enclosure is included only to indicate the proper sequence of the documents that comprise a modification package — not to require a specific filing format for the field office. However, it is crucial that the chronological order of the documents follows the indicated sequence. Incorrect dating of the documents can only call into question the validity of the modification procedures being practiced.

6. This Construction Bulletin (CB) was coordinated with the following HQUSACE organizations: Office of Chief Counsel, CECC-C; Office of Principal Assistant for Contracting, CEPR-ZA; and Operations, Construction, and Readiness Division, CECW-OC. POC for this CB is C. J. Harris, CEMP-EC, telephone (202) 761-8801.

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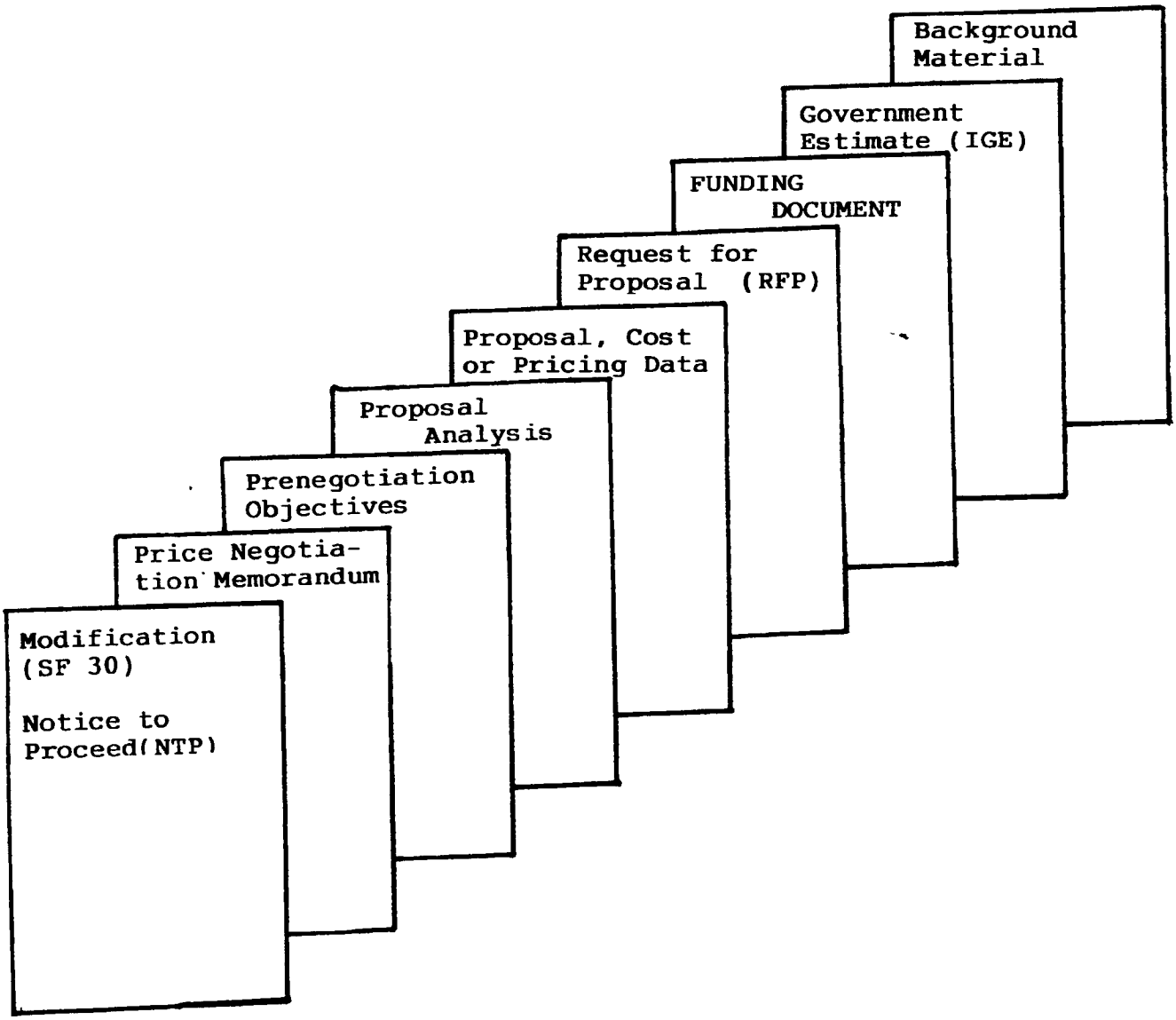
FIELD OFFICE MODIFICATION PACKAGE
CHRONOLOGICAL SEQUENCE OF DOCUMENTS



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