Commercial Solutions Opening
HQ0034-25-9-WHSCSO

Washington Headquarters Services
Acquisition Directorate

I. INTRODUCTION

a. Background

The Washington Headquarters Services (WHS) Acquisition Directorate (AD) is an essential mission partner and trusted advisor, providing innovative and agile contracting solutions throughout the acquisition life cycle as the Single Enterprise Contracting Office (SECO) to the Office of the Secretary of Defense (OSD), offices thereunder, and other Department of Defense (DoD) mission partners. WHS/AD awards and manages research and development projects authorized by 10 United States Code (U.S.C.) Section (§) 4001. The WHS/AD Emerging Capabilities and Defense Prototyping Branch (ECDP) executes and manages other transaction agreements (OTs) authorized by 10 U.S.C. § 4021 "Research projects: transactions other than contracts and grants", 10 U.S.C. § 4022 "Authority of the Department of Defense to carry out certain prototype projects", 10 U.S.C. § 4023 "Procurement for experimental purposes", or 10 U.S.C. § 3458 "Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures."

In executing the authority in 10 U.S.C. § 4022, the Government partners with nontraditional and traditional defense contractors and non-profit research institutions to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of personnel of the DoD or improving platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces. The information provided in this Commercial Solutions Opening (CSO) is intended to ensure that to the maximum extent practicable, competitive procedures are used when entering into agreements to carry out these prototype projects. 10 U.S.C. § 3458 authorizes the DoD to acquire innovative commercial products and services, including commercial software for defense purposes, through a competitive selection process.

b. Purpose

This CSO seeks innovative, commercial approaches to accelerate the attainment of defense capabilities. This CSO anticipates awarding prototype agreements under the authority in 10 U.S.C. § 4022 or 10 U.S.C. § 3458. This includes not only commercially available technologies fueled by commercial or strategic investment, but also concept demonstrations, pilots, and agile development activities that can incrementally improve commercial technologies, existing Government-owned capabilities, concepts for defense application, or innovative commercial products or services.

c. Posting

The CSO solicits solutions via Areas of Interest (AOIs), published separately on the Government Point of Entry (GPE) https://sam.gov. Additional mediums may also be utilized to maximize exposure of this CSO and its AOI opportunities to non-traditional defense contractors. The Government may issue amendments

to this CSO and any AOI. Companies are responsible for monitoring the GPE for AOI and amendment postings.

d. Communication

Questions regarding the content of this CSO must be addressed to the WHS/AD Point of Contact (POC) Erin P. Eslinger, Agreements Officer (AO) at erin.p.eslinger.whs@mail.mil. Additional POCs may be identified in an AOI and should be included in any communications regarding that AOI.

Only a warranted AO has the authority to enter into, or modify, a binding Agreement on behalf of the Government.

Companies are advised that the Government does not intend to provide feedback on its selection decisions under this CSO. By submitting a solution brief, pitch or proposal in response to this CSO, Companies acknowledge and agree that they will not receive feedback on their submission(s).

e. Eligibility

Any prototype transaction resulting from an AOI posted onto this CSO must be an Appropriate Use of Authority pursuant to 10 U.S.C. § 4022(d) in that one of the following conditions must be met: (A) There is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project; (B) All significant participants in the transaction other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. § 638)) or nontraditional defense contractors; (C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government; or (D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

Foreign-Owned businesses may independently submit a solution or do so as part of a teaming arrangement with one or more United States-Owned businesses. However, the ability to obtain an agreement based upon a submission may depend upon the ability of the Foreign-Owned business to obtain necessary clearances and approvals to obtain proscribed information. Foreign-Owned businesses should be aware that regulatory or statutory restrictions might apply which could preclude participation. Foreign-Owned businesses must immediately notify the WHS/AD POC before responding to this CSO or any AoI issued under it and ensure compliance with all applicable regulatory or statutory requirements.

II. CSO PROCEDURE

This CSO is a competitive selection process for innovative prototype projects focused on being fast, flexible, and collaborative. The CSO process will generally consist of three phases:

Phase 1: Solution Brief
Phase 2: Pitch
Phase 3: Prototype Proposal

a. General Guidelines

The instructions herein, and any additional instruction as specified in an AOI posting, must be followed. Acceptance of a solution not submitted in accordance with the instructions is at the sole discretion of the WHS/AD AO. While typically conducted in three phases, this CSO may be conducted in one, two or more phases at the Government's sole discretion.

Unsolicited solutions not connected to an AOI posting shall not be considered.

In general, respondents should comply with the following:

1. Brochures or marketing materials are not desired.
2. Use of a diagram(s) or figure(s) to depict the essence of the proposed solution is strongly encouraged.
3. Companies may submit multiple solution briefs in response to any single AOI if each submission represents a separate and distinct concept.
4. The period of performance for any solution brief or proposal submitted under this CSO should generally be no greater than 24-months, unless otherwise stipulated.
5. Technical data with military application may require appropriate approval, authorization, or license for lawful exportation.
6. All solution briefs, pitches, and proposals shall be UNCLASSIFIED. Solution briefs, pitches, and proposals containing data that is not to be disclosed to the public for any purpose or used by the Government except for evaluation purposes shall include the following on the cover page:

   > *"This [select one: solution brief, pitch, or proposal] includes data that shall not be disclosed outside the Government, except to non-Government personnel for evaluation purposes, and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this submission. If, however, an agreement is awarded to this Company as a result of -- or in connection with – the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent agreed upon by both parties in the resulting agreement. This restriction does not limit the Government's right to use the information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]."*

   Each restricted data sheet shall be marked as follows:

   > *"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."*

7. Submissions must be submitted electronically and only to the Agreements POC as instructed in the AOI posting.
8. Late submissions sent after the AOI period has ended may be considered at the Government's sole discretion.

The Government will not reimburse any costs associated with submission of solution brief, pitch, demonstration, prototype proposal, or other procedure relating to an AOI. The Government will not reimburse any costs prior to the award of an Agreement.

b. Phase 1 – Solution Brief

Solution briefs must comply with this CSO and any additional instructions or guidance included in the AOI. The Government will evaluate solution briefs against the criteria stated in this CSO and the AOI.

i. Solution Brief Content

The solution brief should not exceed five (5) written pages using 11-point font at a minimum and 1-inch margins or, alternatively, the solution brief may take the form of briefing slides which should not exceed fifteen (15) using 11-point font at a minimum. Review of any content beyond the limit is at the Government's sole discretion. The Government may request additional information to further supplement the information provided in the solution brief.

Content shall include the following:

1. Cover Page *(does not count against page limit)*
   Company Name, System for Award Management (SAM) Unique Entity Identifier (UEI) Number, Commercial and Government Entity (CAGE) number, Title, Date, Point of Contact Name, E-Mail Address, Phone, and Address. Specifically identify the AOI title for which the solution brief is submitted.

2. Executive Summary *(one page)*
   Provide an executive summary of the solution.

3. Solution Concept
   Describe the unique aspects of your solution and the proposed work as it relates to the AOI. Identify whether the effort includes the pilot or demonstration of existing commercial technology (identified as commercially ready and viable technology), or the development of technology, for potential defense application. If development or adaptation is proposed, identify a suggested path to mature the technology. Identify aspects which may be considered proprietary.

   Do NOT submit resumes, descriptions of facilities and equipment, or a proposed work statement with the submission of a solution brief.

4. Business Viability
   Provide a brief overview of the business establishment. Provide a summary of current fundraising to date or a summary of gross sales/revenues. Provide a summary of product commercialization and go-to-market strategy.

ii. Solution Evaluation

The Government will evaluate submissions and select the solution that has the most potential to meet the needs of the AOI. The Government may select any number of solution briefs to proceed to the next phase. Solution briefs will be evaluated against the following criteria:

1. Relevance of the solution to the AOI: The solution must be determined relevant to the AOI to receive further consideration. Any solution determined not to be relevant to the AOI will be excluded from further consideration.
2. Solution meets at least one of the following:
    a. Unique Government application;
    b. Underutilized in the Government; or
    c. Innovative Government application

iii. Notification of Selection

The Government will notify all companies of their selection / non-selection for moving forward to either a pitch or proposal phase.

c. Phase 2 – Pitch

The AO may request pitches by companies whose solutions are selected to move forward. Not all companies will be requested to pitch, however, even if their solution moves past Phase 1. Phase 2 is comprised solely of the pitch.

If the Government requires additional information, it will be provided in the specific AOI highlighting those procedures.

The Government may forgo the pith phase and proceed directly to a request for prototype proposal (RPP)

i. Pitch Content

If selected to pitch, companies will have a specified amount of time to provide an in-person or virtual pitch of their prototype solution. The Government may gather market intelligence to evaluate company viability. During the pitch, the company must address the following in detail:

1. Solution: Provide further details on how the solution has technical merit, adequately addresses the AOI, and is feasible. Demonstrate how the solution has a unique, underutilized and/or innovative defense application or is otherwise a compelling solution to the AOI.
2. Business Viability: Demonstrate and provide further details on the business viability of the company.
3. Estimated Price/ Schedule: Provide a rough order of magnitude (ROM) price for the cost of the solution. Provide a notional schedule for the solution.
4. Data Rights Assertions: Identify any intellectual property (IP) involved in the effort and any associated restrictions on the Government's use of that IP.

ii. Pitch Evaluation

The Government will evaluate pitches to determine those with the most potential to address the AOI. The Government may select any number of solutions to proceed to the next phase. Pitches will be evaluated against the following:

1. Solution has technical merit, adequately addresses the AOI, and is feasible.
2. Company is viable.
3. ROM and notional schedule are acceptable.

4. Potential impact of data rights assertions is acceptable.

In addition to these factors, the Government will determine whether the evaluation of factors in Phase I remain constant.

iii. Notification of Selection

The Government will notify all companies of their selection / non selection for moving forward to either a proposal phase or the solution library.

iv. Solution Library

If the proposed solution is of interest, but not selected to proceed to proposal due to availability of Government resources, the pitch may be placed in the Government's solution library. The company may be contacted with a request to respond to a RPP within 365 calendar days from the pitch date. If, after 365 calendar days from the pitch date (or earlier if notified by WHS/AD), the Government has not formally issued a RPP to the company, its solution will no longer be eligible for an award under the relevant AOI.

d. Phase 3 – Prototype Proposal

Companies whose solution brief and pitch are evaluated and selected for potential award of an agreement, and for which funding is available, may be requested to submit a full written proposal.

i. Request for Prototype Proposal

The RPP shall be solicited only by a WHS/AD AO. The purpose of the RPP is to solicit a complete proposal in response to an AOI.

A RPP package will include, at least, draft Terms and Conditions (T&C) and templates for the Project Execution Plan (PEP), Affirmation of Business Status Certification (ABSC), End User License Agreement (EULA), and Price Proposal.

The Government will evaluate proposals with the intent of negotiating an Agreement. The Government, however, is under no obligation to award an Agreement.

Prior to award, the company shall have an active registration in the System for Award Management (SAM) and a Unique Entity ID (UEI) number. Companies are advised to commence SAM registration upon receipt of an RPP.

ii. Project Execution Plan

Detailed instructions regarding the prototype proposal submission will be included in the RPP.

So long as the competitive procedures have been satisfied though selection phases prior to the RPP, through a solution brief and/or pitch phase, the company may collaborate ideas and details of the prototype proposal with the Government during the PEP writing process.

Companies shall include documentation proving ownership or possession of appropriate licensing rights to all patented inventions (or inventions for which a patent application has been filed) that will be utilized under the proposal. If a patent application has been filed for an invention that the proposal utilizes, but the application has not yet been made publicly available and contains proprietary information, the

company may provide only the patent number, inventor name(s), assignee names (if any), filing date, filing date of any related provisional application, and a summary of the patent title, together with either: (1) a representation that the company owns the invention, or (2) proof of possession of appropriate licensing rights in the invention.

iii. Price Proposal

Detailed instructions regarding the price proposal submission will be included in the RPP.

So long as the competitive procedures have been satisfied though selection phases prior to the RPP, through a solution brief and/or pitch phase, the company may communicate with the Government on budget and funding availability.

If the RPP includes a price proposal template, the price proposal should include the format and information requested in the template. The price proposal should include relevant data or supporting information that is necessary for the determination of reasonableness. This can include, but is not limited to, commercial price catalog or other proprietary information to help the Government assess project cost.

iv. Terms and Conditions

Government Terms and Conditions will be included in the RPP. OT agreements are not governed by the Federal Acquisition Regulation (FAR), but there are non-negotiable terms and conditions based on law, process limitations, or for other reasons. The Government will endeavor to annotate any limitations in the proposed terms and conditions accompanying the RPP. Taking exception to any of the annotated mandatory terms and conditions is not prohibited but may jeopardize the Government's ability to award an agreement.

The validity, interpretation and enforcement of any resulting agreement and its attachments will be governed by and construed in accordance with federal law.

v. Use of Authority

The AO will determine whether the prototype project meets the statutory requirements at 10 U.S.C. § 4022.

e. Non-Disclosure

Non-Government advisors may be used during any phase of this CSO and will have signed non-disclosure agreements (NDAs) with the Government. Companies may enter into specific NDAs directly with the Non-Government advisors or their corporate entities. Submission under this CSO will constitute a grant of authority by the submitting Company to the Government to allow the use of non-Government advisors to participate in all phases of the CSO process.

The Government understands that information provided in response to this CSO is presented in confidence and may contain trade secret or commercial or financial information, and it agrees to protect such information from unauthorized disclosure to the maximum extent permitted or required by Law, to include 18 U.S.C. § 1905 (Trade Secrets Act); 18 U.S.C. § 1831 et seq. (Economic Espionage Act); 5 U.S.C. § 552(b)(4) (Freedom of Information Act); Executive Order 12600 (Pre-disclosure Notification Procedures for Confidential Commercial Information); and, Any other statute, regulation, or requirement applicable to Government employees.

All submissions will be treated as confidential information and disclosed only for the purpose of evaluation. Restrictive notices notwithstanding, during the evaluation process, submissions may be handled by support contractors for administrative purposes and to assist with technical evaluation. All DoD support contractors performing this role are bound by appropriate NDAs.

III. AWARD

An award resulting from this CSO will be in the form of an OT Agreement. The WHS/AD AO will negotiate directly with the company on the terms and conditions of the Agreement, including payments, and will execute the OT Agreement on behalf of the Government.

Only an AO has the authority to enter into, or modify, a binding Agreement on behalf of the Government.

a. Requirements for Award

The company shall register in the prescribed Government invoicing system, currently Wide Area Work Flow, unless otherwise stated in the Agreement. WHS/AD is available to assist with this registration for a company responding to an RPP.

The company must be determined to be responsible by the AO and must not be suspended or debarred from award by the Federal Government, nor be prohibited by Presidential Executive Order and/or law from receiving award.

Receipt and response to an RPP does not guarantee award. The Government reserves the right to cancel an RPP at any point prior to award.

b. Comptroller Access to Information

As required by 10 U.S.C. § 4022(c), all Agreements awarded under this CSO that provide for payments in a total amount in excess of $5,000,000, shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

c. Procurement Integrity Act

All Agreements awarded under this CSO are treated as Federal Agency procurements for purpose of the Procurement Integrity Act (PIA), 41 U.S.C. Chapter 21. Accordingly, the CSO competitive solicitation process and awards made thereof must adhere to the ethical standards required by the PIA.

IV. SPECIAL CONSIDERATIONS FOR OTHER TRANSACTIONS

a. Iterative Prototyping

Agreements awarded against this CSO allow for an iterative prototyping process. An iterative prototyping process allows the parties to modify, by mutual agreement, the work in a prototype project to allow the adaptation and modification of the solution being prototyped to meet additional unique and discrete

purposes/mission sets. These additional unique and discrete purposes/mission sets can be generated by the original DoD customer or other mission partners.

b. Successful Completion

A prototype project is complete upon the written determination of the AO that efforts conducted under the transaction: (1) met the key technical goals of a project; (2) satisfied success metrics incorporated into the agreement; or (3) accomplished a particularly favorable or unexpected result that justifies the transition to production. The agreement may include criteria for successful completion in further detail with acceptance thresholds describing the minimum acceptable standards critical to the success of the prototype project.

Successful completion can occur prior to the conclusion of a prototype project to allow the Government to transition any aspect of the prototype project determined to provide utility into production while other aspects of the prototype project have yet to be completed.

V. DEFINITIONS

"Agreement" refers to an OT Agreement, authorized under 10 U.S.C. § 4022, between the Government and an awardee.

"Agreements Officer" (AO) is the WHS/AD warranted Contracting Officer authorized to sign an Agreement for the Government, administer or terminate an Agreement and make related determinations and findings. The AO is the only individual with the authority to bind the Government.

"Area of Interest" (AOI) is an announcement seeking solutions to a problem which may result in award of an Agreement.

"Commercial Solutions Opening" (CSO) is the competitive procedure for employing the authority in 10 U.S.C. § 4022 to solicit for innovative commercial products, technologies, and services.

"Directly Relevant" focuses on the agency determination of the direct relationship of the prototype project (as opposed to a tangential association) with the DoD mission. (see OUSD(A&S) Other Transactions Guide (OT Guide), July 2023)

"Foreign-Owned" means any entity organized or existing under the laws of a country other than the United States of America.

"Innovative" means any technology, process, or method, including research and development that is new for defense purposes as of the date of submission of a solution, or any application that is new for defense purposes as of the date of submission of a solution of a technology, process, or method existing as of such date.

"Nontraditional Defense Contractor" (NDC) is an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section. (see 10 U.S.C. § 3014)

"Non-profit Research Institution" is an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (see 15 U.S.C. § 3703(3))

"Prototype Project" includes a project that addresses- (A) a proof of concept, model, or process, including a business process; (B) reverse engineering to address obsolescence; (C) a pilot or novel application of commercial technologies for defense purposes; (D) agile development activity; (E) the creation, design, development, or demonstration of operational utility; or (F) any combination thereof. (see 10 U.S.C. § 4022(e)(5))

"Small Business" is defined under Section 3 of the Small Business Act (codified at 15 U.S.C. § 632)