

Determination and Findings to Extend Contract AG-3142-C-08-0039 for Six Months

FAR Part 17.217-8 (Nov. 1999) Option to Extend Services

Contract No. AG-3142-C-08-0039

Eisenstein Malachuk, LLP

FINDINGS:

The United States Department of Agriculture (USDA) awarded Contract No. AG-3142-C-08-0039 with Eisenstein Malachuk LLP for Expert Support for Insurance Review and Site Settlement Negotiation Support on August 11, 2008. The term of the contract was for one annual base period and four (4) annual option periods. The period of performance of the contract is as follows:

Base Period – 08/25/2008 thru 09/30/2009
Option Year I – 10/01/2009 thru 09/30/2010
Option Year II – 10/01/2010 thru 09/30/2011
Option Year III – 10/01/2011 thru 09/30/2012
Option Year IV – 10/01/2012 thru 09/30/2013

There is no commitment of funds by the USDA. The contractor's fee is paid from the amount of settlements with different parties. The fee is negotiated at 30% of the collected settlement throughout the contract.

On April 3rd 2013, Ellery Taylor, Chief, Supply Service Construction Branch and Pratap Das, Contract Specialist of Supply Services Construction Branch (SSCB) of Procurement Operation Division (POD) met Gary Fremerman of Office of General Counsel (OGC) to discuss further continuation of expert support for insurance review and site settlement negotiation. Mr. Fremerman expressed a negative requirement for the USDA for these services for next five (5) years and justify not submitting any further request for future solicitation. Later Mr. Fremerman sent an email requesting to extend a six-month extension to the contract from October 1, 2013 thru March 31, 2014 for the reasons below:

1. Eisenstein is currently working on a number of matters covered under the contract which will be resolved in next six months but which are ongoing and not resolvable prior to 9/30/2013.
2. Efforts have continued to focus on the key target companies. For Standard Metals, the contractor continues to follow up with CNA, and is expecting a counteroffer in the near future. For Federal Resources, the contractor is awaiting further developments in the litigation between EPA and Federal Resources.

The Contracting Officer verified Contract Clause FAR.217-8 Option to Extend the Services clause in the contract. The facts present support the following three criterions for exercising an option or a six months extension:

- a) There is a continuing requirement of services by the Office of the General Counsel for the expert support for insurance review and site settlement negotiation support from October 1, 2013 through March 31, 2014. No other new contractor will be able to continue the negotiations on behalf of the Government at this time.
- b) Eisenstein Malachuk LLP has performed satisfactorily and continued to fulfill the Government's needs for all past five (5) years.
- c) It is the most advantageous method of continuing services without interruption.
- d) A new procurement method will not be cost effective for the Government to procure the services.

DETERMINATION:

Based on above, it is the determination of the Contracting Officer that it will advantageous for the USDA to continue the Expert Support for Insurance Review and Site Settlement Negotiation Support services with Eisenstein Malachuk LLP without any interruptions. Accordingly, the USDA should extend the services for an additional six (6) months effective October 1, 2013 through March 31, 2014.



Pratap Das, Contracting Officer

17-9-13
Date



Richard Jiron, Chief, ITS Contracting Branch

18 Sep 2013
Date

Approved Disapproved

Reviewed:



Jodey Exhem, Director
Procurement Operation Division

9/19/2013
Date