Optional Phases & Factors

Overview

What if your evaluation strategy could adapt to the results of the evaluations without having to change course midway through the acquisition? An Optional Phase & Factor(s) gives acquisition teams that flexibility. Whether you receive more offers than anticipated or need a targeted oral question-and-answer session to better assess offerors' capabilities, this concept provides an evaluation safety net that can be exercised when additional insight is needed to support a confident award decision.

Optional phases and evaluation factors can be incorporated into a solicitation that has an existing multi-phase approach or can be added for use at the end of a single-phase evaluation. While typically used together, they can also be used independently. An optional phase may involve either a firm or advisory down-select, depending on the acquisition strategy.

This concept is particularly valuable when broad evaluation criteria fail to distinguish offerors, or they did not result in any offerors instilling confidence that they would be successful. Historically, it has been used as an Optional Phase & Factor as an addition to a multi-phased approach, where an oral presentation, briefing, or demonstration can occur with a further down-selected pool of offerors.

Include the language contained in the Consider This Language section below and contemplate reviewing the process for conducting Down-Selects as there is some procedural overlap in the execution. Consider including language surrounding Oral Presentations and Technical Demonstrations from the Periodic Table of Acquisition Innovations (PTAI) for building out the Optional Phase & Factor. There are no prohibitions in any regulation, the FAR, nor by law, statute, or Executive Order, for this concept.

Key Considerations

- All technical evaluations are completed and documented for all technical evaluation factors.
- Price has not yet been reviewed or considered prior to electing to use this process.
- If you have two initial technical evaluation factors with price as a third factor, then you caveat how the Optional Factor would fall into the descending level of importance. For instance, if you had Factor 1 – Demonstrated Prior Experience, Factor 2 – Technical Solutions (as either a written or oral factor), Factor 3 – Price, and Factor 4 – Optional Oral Briefing then you could include "*Non-Price Factors (Factor 1, 2, and 4 – if utilized) are listed in descending order of importance*."
- The optional factor can just be an Oral Briefing, without questions developed ahead of time.
- Ensure the standard sections of the solicitation, like the evaluation ratings, keep the optional factor included, such as this paragraph with regards to confidence rating scheme;
    - The evaluation of Factor 1 and Factor 2, and **if utilized, Optional Factor 4**, will be performed holistically and each factor will be assigned a confidence rating based on a rating scale of "high confidence," "some confidence," and "low confidence," representing the Government's confidence that the Quoter understands the requirements,

quotes a sound approach, and will be successful in fulfilling the BPA requirements. In evaluation of Factor 1, Factor 2, and **Optional Factor 4 (if utilized),** the Government may identify aspects which increase or decrease (lower) the Government's confidence.

- You may already have two technical factors, and a factor for price. It may make it easier to order the optional factor as last in the sequence.
- Keep the process of the Optional Phase & Factor flexible, you may not know if it will be completed via an advisory down-select, firm down-select, all offerors from the final phase, or as a competitive range determination.
- You could combine concepts into the Optional Factor, such as a site visit or a small written requirement in addition to an oral briefing.

Consider This Language

Optional Factor 4: Oral Briefing

It is the Government's intent to make an award following the evaluation of Phase I and Phase II submissions. However, following evaluation of Factor 1 and Factor 2, the Government may find it necessary to utilize Optional Phase III/Factor 4 to further assess the offeror. Successful implementation of this concept requires that no award decisions or best-value determinations have been made prior to deciding to initiate the optional phase. As outlined in Section M, the price factor, Factor 3, is evaluated separately from non-price factor(s), and price will not be introduced or considered prior to enacting the optional phase and factor. Further, this is not a competitive range determination, and the Government is not requesting any revisions or exchanges of any previously submitted offerors.

Following evaluations of the Phase II technical factors, the Government may utilize Optional Phase III – Optional Factor 3: Oral Briefing/Technical Challenge Session. If Optional Phase III is utilized, the Government may provide advisory or firm down-select notifications to offerors. If advisory, the notification will advise the offerors of the Government's advisory recommendation to proceed or not to proceed with this Phase. The offerors whose Phase I and II technical factor submissions, combined, provided the highest level of confidence to the Government may be invited/advised to continue to Optional Phase III via an advisory down-select. Offerors who were not amongst the most highly rated for Factor 1 and Factor 2, combined, will be advised that they are unlikely to be viable competitors. Offerors shall consider the order of importance of the non-price factors as stated in section M's Basis of Award before opting into Phase III if it is utilized. However, the Government's advice is a recommendation only, and those offerors who were advised not to proceed may elect to continue their participation in the procurement under Optional Phase III if it is utilized by the Government. Additionally, the Government may elect a firm down-select. This notification will include all necessary information, similar to the information included above regarding the advisory down-select.

If the Government does not elect to utilize Optional Phase III, an email stating this will be provided to all participants under Phase II. If the Government elects to utilize Optional Phase III, participants under Phase II will be notified in their Advisory Down-Select Notification.

If utilized, offerors who choose to proceed with participation in Optional Phase III must send an opt in notification email to the Contract Specialist, at contract.spec@gov.gov and the Contracting Officer, at contract.offic@gov.gov no later than 5:00 PM ET on the 3rd business day after receipt of the advisory notification indicating their intent to participate in Optional Phase III, however the actual notification will control the final timeline. The subject line for opting into participation under Phase III shall be marked **"[Company Name] – PHASE III OPT IN – RFP #."** Failure to opt into participation under Phase III within the time frame indicated may preclude the Quoter from being considered further.

If the Government elects to utilize Optional Phase III, the Optional Phase III may proceed as follows:

- The Optional Factor - Oral Briefing, will be held virtually at a date and time established by the Government.
- Invitations, specific timelines, and instructions for the Oral Briefings may be provided by the Government at least 2 weeks prior to the participating Quoters' scheduled briefing. The Government may provide additional information pertaining to the Oral Briefing at that time.
- The Government does not intend to provide debriefings or brief explanations after the completion of the Phase I or II down-selects.
- Optional Phase III participation will not be permitted for offerors who have not submitted Phase I and Phase II submissions by the due date and time stated in the RFP. Failure to participate in Phase I and Phase II of the procurement precludes further consideration of an offeror.

Why Is This Innovative?

This approach represents an adaptation from the traditional down-select approach, including more flexibility from the Government to shape its evaluation approach to be agile and allow it to provide more information without getting into exchanges or competitive range determinations. Importantly, the FAR does not prohibit this practice, meaning it is permissible and could be implemented without any statutory barriers (see RFO 1.102(b)(4). By leveraging this technique, agencies can move unsure acquisition teams into using oral briefings, presentations, and demonstrations while having the process laid out in the solicitation for all parties to consider prior to receipt of proposals.

Questions? Contact The LAB at thelab@doc.gov. The LAB is happy to connect and think through the next steps with you.

***Disclaimer**: The information contained in this document is merely an idea or opinion of The LAB and does not constitute formal legal or policy guidance of any kind.