



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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April 28, 2020

AMENDMENT NO. 001 (TUNGSTEN METAL PRODUCTS)
TO
NEGOTIATED SOLICITATION FOR
STOCKPILE MATERIALS
UNDER
DLA-STOCKPILE MATERIALS-001-(NEGOTIATED)

The above referenced solicitation DLA-Stockpile Materials-001-(Negotiated), issued **September 21, 2017**, is hereby amended to offer tungsten metal products for sale under the Negotiated Solicitation. This amendment applies to the solicitation only for the offering of tungsten metal products, as follows:

1. The link for the online sales site used throughout the Negotiated Solicitation is updated to read:

<https://businessportal.dla.mil/irj/portal>

2. Section **A.1., Introduction (SEP 17)**, paragraph **a.**, is deleted for tungsten metal products and replaced with the following:

Section A.1., Introduction (Tungsten Metal Products) (APR 20)

- a. The Defense Logistics Agency (DLA), DLA Strategic Materials, will be soliciting offers for the sale of approximately **125,073.829 kilograms of contained tungsten (KgW)** of tungsten metal products in Fiscal Year 2020. **Potential Offerors for this material must pre-qualify in order for their offers for this material to be considered. A separate notice will be provided to set the exact offering date and time. This notice will be provided to registered firms by email issued by DLA Strategic Materials.** Offers must then be submitted electronically through the DLA Strategic Materials online sales site at <https://businessportal.dla.mil/irj/portal>. However, refer to Section **C.1.**, paragraph **c.**, as revised in Item No. **6** of this Amendment. In the event that DLA Strategic Materials is closed at the time of the offering, offers will be processed in accordance with Section **C.6.d.** of the Negotiated Solicitation.

3. Section **A.1., Introduction (SEP 17)** is revised for tungsten metal products to add the following as paragraphs **c.**, **d.**, **e.** and **f.**:

Section A.1., Introduction (Tungsten Metal Products) (APR 20), paragraphs **c.**, **d.**, **e.**, and **f.**:

- c. Offers to purchase material under this Amendment No. 001 (Tungsten Metal Products) to Solicitation **DLA-Stockpile Materials-001-(Negotiated)** (Negotiated Solicitation) shall be made on a fixed price basis with a contract period of ninety (90) calendar days. Material must be removed in accordance with Section **E.** All offers will be evaluated as specified in Section **C.8.** to the Negotiated Solicitation, as revised by this Amendment No. 001 (Tungsten Metal Products).

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- d. Offerors are advised that tungsten metal powder and other tungsten products offered under this Solicitation Amendment are included on the Commerce Control List (CCL) maintained by the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce. As a result, the tungsten metal products offered for sale under this Negotiated Solicitation are subject to the requirements of Department of Defense (DoD) Instruction Number 2030.08, "Implementation of Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties Outside DoD Control," dated February 19, 2015, Incorporating Change 1, May 24, 2017.

A copy of the DoD Instruction is available at:

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/203008p.pdf>

- e. Offerors are also advised that, in accordance with 10 U.S.C. § 2533c, tungsten metal powder; and tungsten heavy alloy or any finished or semifinished component containing tungsten heavy alloy are defined as a "covered material" and shall not be sold to a "covered nation" or to a third party that is acting as a broker or agent for a covered nation or entity in a covered nation. A "covered nation" is defined in 10 U.S.C. § 2533c as the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran. The items of tungsten metal products offered for sale meet the definition of a "covered material" and are subject to the restrictions of 10 U.S.C. § 2533c and are subject to the requirements of Department of Defense Instruction Number 2030.08. A copy of 10 U.S.C. § 2533c, is available at:

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title10-section2533c&num=0&edition=prelim>

- f. Offerors must complete and submit Section **I.10., DLA Form 1822, End-Use Certificate** at the time of their acceptance of this Solicitation Amendment No. 001 (Tungsten Metal Products) in order for their offers for this material to be considered. See Sections **G.15., G.16., and I.10.** Offerors shall also certify their compliance with the requirements of 10 U.S.C. § 2533c in Item No. **22**, below, of this Solicitation Amendment.

Copies of **DLA Form 1822, End-Use Certificate** and the Instructions for Completing DLA Form 1822, End-Use Certificate, are available on the DLA Strategic Materials website at:

<https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Sales/TungstenMP/>

Offerors must submit the **DLA Form 1822, End-Use Certificate** in advance of the submission of other parts of the offer in order for the required Trade Security Control review to be completed. Award of material under this Amendment is subject to a Trade Security Control review in order to confirm compliance with both the Commerce Control List and 10 U.S.C. § 2533c requirements. An offer cannot be considered unless and until an Offeror has been cleared by this review.

4. Section **A.3., Material Description (SEP 17)**, paragraph **b.**, is deleted for tungsten metal products and replaced with the following:

Section A.3., Material Description (Tungsten Metal Products) (APR 20), paragraph b.:

- b. The material being offered for sale under this Amendment No. 001 (Tungsten Metal Products) to Solicitation **DLA-Stockpile Materials-001-(Negotiated)** is the entire tungsten metal inventory held by DLA Strategic Materials. It consists of metal powder (carbon- and hydrogen-reduced); semifabricated forms (characterized as rolled sheet, bars, and blanks); and miscellaneous scrap material (identified as carboloy, bits, shapes, die-cores, powder, rods, wire, copper alloy, metallic, carbide, and tungsten-silicon). All of the items are located at the DLA Strategic Materials Depot in Hammond, IN. A description of the material offered for sale and the analysis of the material are posted on the DLA Strategic Materials website at:

<https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Sales/TungstenMP/>

Information on the storage location is available at:

<https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Resource/HammondDepotInformation>

1. Metal powder is the predominant form, comprising 83% of the inventory by weight. Known producer information is as follows: The “CF-“ lots of C-reduced powder were produced by Wah Chang Corp.; the “26—“ lots of C-reduced powder were produced by Electrometallurgical Co./Union Carbide and Carbon Corp.; and the “63/70” lot of H-reduced powder was produced by North American Phillips Co. The producer information for Lot 3 of H-reduced powder is unknown.
2. The DLA Strategic Materials’ tungsten metal inventory was acquired 50-70 years ago, and therefore may now exhibit characteristics indicative of long-term storage, such as oxidation (as shown in the chemical analysis data); dampness; and agglomeration (caking / not free-flowing). In addition, nine (9) of the metal powder items are hazardous materials (“metal powder, flammable”), and therefore have certain restrictions with regard to shipping. These items are identified on the listings of the analyses: seven of the items are carbon-reduced and two items are hydrogen-reduced. One item of the miscellaneous scrap material is also considered hazardous, Item 1819 (“metal powder, flammable”). Flammability of material was assessed in 2004 by the Oak Ridge National Laboratory.
3. The metal powder was analyzed by Ledoux & Company in 1999-2001. The semifabricated forms and miscellaneous scrap were analyzed by Alex Stewart Assayers in 2006, with the exception of the tungsten-silicon item whose composition was communicated by the manufacturer. The analytical data are presented in tabular form on the DLA Strategic Materials website at: <https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Sales/TungstenMP/> with the disclaimer provided in paragraph c. of Section **A.3 Material Description** of the Negotiated Solicitation.
4. Representative photographs of the items are available for viewing at: <https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Sales/TungstenMP/>.

5. Section **A.5., Inspection (SEP 17)** is amended to add the following for tungsten metal products:

Section A.5. Inspection (Tungsten Metal Products) (APR 20)

No inspection or sampling of the tungsten metal products material will be permitted.

6. Section **C.1., Submission of Offers Online (SEP 17)**, paragraph **c.**, the first and second sentences are deleted and replaced with the following:

“Offers, modifications, and revisions to offers must be submitted through the DLA Strategic Materials online sales site. With the exception of the offering under Amendment No. 001 (Tungsten Metal Products), this is the only transmission method authorized by the Negotiated Solicitation. For the offering of Tungsten Metal Products, Section **I.10. DLA Form 1822, End-Use Certificate**, must be submitted by email to the attention of the Contracting Officer at DLAStrategicMaterialsSales@dla.mil. This is the only documentation which may be submitted by another transmission method other than online.”

All other text under paragraph **c.**, beginning with the current third sentence, remains unchanged.

7. Section **C.3. Unit Pricing (SEP 17)** is amended to add the following for tungsten metal products:

Section C.3. Unit Pricing (Tungsten Metal Products) (APR 20)

Prices for all items under this Amendment No. 001 shall be expressed on a U.S. dollar and cent value per kilogram of contained tungsten (Kg W).

8. Section **C.4. Price Adjustments for Specific Materials (JUN 17)** does not apply to tungsten metal products and is deleted in its entirety.

9. Section **C.5. Minimum Quantity (JUN 17)** is amended to add the following for tungsten metal products:

Section C.5. Minimum Quantity (Tungsten Metal Products) (APR 20)

The minimum offer quantity shall be one entire line item. An offer for less than the minimum quantity may render the Offeror ineligible for award.

10. Section **C.8. Evaluation of Offers (SEP 17)** is amended to add the following for tungsten metal products:

Section C.8. Evaluation of Offers (Tungsten Metal Products) (APR 20)

- a.** The evaluation factors are listed below in descending order of importance:

- (1) Unit price
- (2) Removal schedule

- b.** To be considered, offers must meet the following minimum requirements:

- (1) Offerors must submit the **DLA Form 1822, End-Use Certificate** in advance of the submission of other parts of the offer in order for the required Trade Security Control review to be completed. Award of material under this Solicitation Amendment is subject to a Trade Security Control review in order to confirm compliance with the Commerce Control List and 10 U.S.C. § 2533c requirements. An offer cannot be considered unless and until an Offeror has been cleared by this review. Offerors shall also certify their compliance with the requirements of 10 U.S.C. § 2533c in Item No. **22**, below, of this Solicitation Amendment;
- (2) Submission of minimum quantities which comply with Section **C.5.**;
- (3) Submission of pricing which complies with the provisions of Section **C.3.**; and
- (4) Submission of a removal schedule which meets or exceeds the provisions of Section **E.1.**

11. Section D.1. Payment (SEP 17), paragraph **f.**, is not applicable to tungsten metal products and is deleted.

12. SECTION E – MATERIAL REMOVAL is revised specifically for tungsten metal products, as follows:

E.1 Removal of Material (Tungsten Metal Products) (APR 20)

- a.** The contract period for any quantity of material awarded is **90 calendar days** from the date of contract award.
- b.** If the Contractor fails to pay for and remove the material on or before the last day of the contract period, the Contractor will be considered delinquent and no material will be shipped until payment for all remaining material has been received.
- c.** The contract period includes Saturdays, Sundays, and Federal holidays. If the last day of the contract period is a Saturday, Sunday, or Federal holiday, or the storage location is otherwise closed that day, the period of contract performance will be extended to the next Government workday.

E.2. Storage Charges (Tungsten Metal Products) (APR 20)

- a.** Storage charges shall be assessed on all material remaining after the last day of the contract period. The Government reserves the right to remove any remaining material to a commercial storage facility and be reimbursed by the Contractor for any expenses incurred. Storage charges continue to accrue until all the material has been removed or the contract is terminated for default, in which case the Contractor will be liable for damages, as set forth in Section **G.7. Default** of the Negotiated Solicitation.
- b.** The storage charge is the greater of the following: (1) **\$0.005 per pound bulk weight** (if a fraction of a pound remains, the charge will be for a full pound) per 30 day period regardless of whether the material remains in storage a period of 30 days or less than 30 days; *or* (2) commercial storage charges, if applicable.

- c. Storage charges will be invoiced upon shipment. Payment shall be due immediately.
- d. Payment of storage charges shall not relieve the Contractor of its obligation to remove the material in a timely manner. Acceptance of storage payments by the Government is not a waiver of the Government's right to find the Contractor to be in default for failure to remove the material (See Section **G.7. Default**).

13. Section F.1. Request for Shipment (SEP 17), paragraph **a.**, is deleted and following substituted specifically for tungsten metal products, as follows:

Section F.1.a. (Tungsten Metal Products)

- a. Shipment of tungsten metal products is F.O.B. carrier's conveyance.
 - 1. Transportation: In the transportation of this material, it is the responsibility of the Contractor to comply with all relevant Federal, State, and Local laws, including the Department of Transportation (DoT) Hazardous Materials Regulations (49 CFR 170-189), where appropriate.
 - 2. **NOTE: The tungsten metal powder offered for sale is currently packaged in older casks, drums, or other packages that are not UN approved. No repackaging of the material is permissible at the Depot. For items identified on the listings as "metal powder, flammable" it is the responsibility of the Contractor to ensure that they meet DoT transportation requirements for flammable metal powder n.o.s. transport via methods such as the use of sift-proof closed vehicle transport in accordance with 49 CFR 173.**

14. Section F.1. Request for Shipment (SEP 17), paragraph **f.**, is deleted in its entirety.

15. Section F.1. Request for Shipment (SEP 17), paragraph **h.**, is revised to state that requests for shipment of tungsten metal products shall be for a minimum of one line item.

16. Section F.3. Weighing (JUN 17) is deleted in its entirety and the following inserted for tungsten metal products:

Section F.3. Weighing (Tungsten Metal Products) (APR 02)

- a. No outweighing of material will be performed by the Government. The Government's weights of record shall govern and will be used for payment purposes. The Contractor may elect to have a representative present to witness outloading.
- b. Weight certificates shall be provided at the expense of the Government.
- c. In the event that any broken containers are detected at time of shipment, these will be overpackaged by the Government at the Government's expense prior to outloading. If no loss is discernible, the weight of record with the Government shall govern for that item and shall be final for payment.

17. Section F.4. **Weight Discrepancy (JUN 17)** applies to tungsten metal products and the text of this clause is included below:

Section F.4. Weight Discrepancy (Tungsten Metal Products) (JAN 95)

- a. If the Contractor's weights for the material delivered vary from the Government's certified weights by more than one-half of one percent, the Contractor may give notice of such difference to the Contracting Officer within **two (2)** working days (exclusive of Saturdays, Sundays, and Government holidays) after receipt of the material at destination, requesting that the material be reweighed. In that case, the Contractor shall segregate the shipment in question and hold it intact pending reweighing. The entire shipment shall be reweighed by the Contractor at its expense, in the presence of and in the manner approved by a Government representative, using scales approved by the Government representative. If the weight varies from the Government's certified weight by greater than one-fourth of one percent, plus or minus, that weight shall govern for payment purposes. If the weight determined by reweighing does not vary from the Government's certified weight by greater than one-fourth of one percent, plus or minus, the Government's certified weight shall be final for payment purposes.
- b. No adjustment shall be considered or made in accordance with the above paragraph unless notice is given by the Contractor to the Contracting Officer within the time specified above and all other requirements of the paragraph are complied with.

18. Section F.6. **Adjustment for Variation in Quantity or Weight (JUN 17)** is revised to add a percentage of **5%** for tungsten metal products.

19. Section G.15., **Notice Regarding U.S. Commerce Control List (CCL) and Covered Material Items (Tungsten Metal Products) (APR 20)** is added to the Negotiated Solicitation for tungsten metal products items under this Amendment:

Section G.15., Notice Regarding U.S. Commerce Control List (CCL) and Covered Material Items (Tungsten Metal Products) (APR 20)

- a. The use, disposition, export and re-export of purchased property is subject to all applicable U.S. laws and regulations, including, but not limited to, the Arms Export Control Act (22 U.S.C. § 2751 *et seq.*); Export Control Reform Act of 2018 (50 U.S.C. § 4801 *et seq.*); International Traffic in Arms Regulations (22 C.F.R. § 120 *et seq.*); Export Administration Regulations (15 C.F.R. § 730 *et seq.*); Foreign Asset Control Regulations (31 C.F.R. § 500 *et seq.*) and the Espionage Act (18 U.S.C. § 793 *et seq.*); which, among other things, prohibit:
 1. The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property; and
 2. Any use, disposition, export or re-export of the property not permitted by applicable statute and regulation.
- b. Purchaser understands that transfer of CCL property and Covered Material subject to restrictions found in 10 U.S.C. § 2533c could impact national security. The submission of

false or misleading information and/or concealment of any material facts regarding the use, disposition or export of this property may constitute a violation of provisions of 18 U.S.C. § 554, 18 U.S.C. §§ 793-1001, 19 U.S.C. §1595, 22 U.S.C. § 401, 22 U.S.C. §§ 2778-2779, 50 U.S.C. § 1705, 50 U.S.C. App. §§ 2410-2411, 50 U.S.C. App. §1-44 and other laws. U.S. laws and DOD policy (including DoD Instruction 2030.08) describe sanctions for violations that include, but are not limited to, the denial of U.S. export privileges, debarment from future U.S. Government contracts, fines and criminal penalties.

- c. Transfer of CCL property by purchasers is subject to the requirements of the Department of Commerce. An export license or other authorization may be required. It is the responsibility of the Purchaser to determine the applicable requirements and obtain all necessary approvals, authorizations, and licenses. The Sales Contract number can be referenced when submitting an application for an export license or other authorization to the Department of Commerce for CCL property. Transfer of Covered Material subject solely to restrictions found in 10 U.S.C. § 2533c do not require the same procedures as those noted above. Purchasers are advised to ensure they comply with all federal law and regulations concerning the export of covered materials.
- d. In the event the CCL property or Covered Material subject to restrictions found in 10 U.S.C. § 2533c is sold or transferred to another party, the information in this form regarding the above laws, regulations and DOD policy must be passed to the subsequent purchaser or receiver. Copies of Records of Resale or transfer must be forwarded to the Contracting Officer within 5 days of the sale.
- e. The Purchaser agrees to cooperate with all authorized Government representatives to verify the existence, condition, and location of the CCL property or Covered Material subject to restrictions found in 10 U.S.C. § 2533c and agrees to obtain the cooperation of any other receiver for this same purpose.

20. Section G.16., End User Certificate and Disposition and Use of Property (Tungsten Metal Products) (APR 20) is added to the Negotiated Solicitation for tungsten metal product items under this Amendment:

Section G.16., End User Certificate and Disposition and Use of Property (Tungsten Metal Products) (APR 20)

- a. The Purchaser agrees to submit a completed End-Use Certificate, DLA Form 1822.
- b. The Purchaser represents and warrants that the ultimate destination, use, and disposition of the property shall be in accordance with the End-Use Certificate as submitted and approved by the Contracting Officer.
- c. The Purchaser further represents that at no time shall the destination of the property be a Covered Nation, as defined in 10 U.S.C. § 2533c(d)(2).
- d. Changes to the Purchaser's End-Use Certificate for Commerce Control List (CCL) property or Covered Material subject solely to restrictions found in 10 U.S.C. § 2533c require written notification to and the prior written approval of the Contracting Officer.

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- e. The Purchaser further agrees to notify any and all subsequent Purchasers or Receivers of this property in writing of the provisions relating to CCL items and of the Purchaser's End-Use Certificate relative to the authorized destination; the requirement for approval by the Contracting Officer of any change of such destination prior to exportation thereto; the specific United States restrictions on exports and reexports directly and indirectly to denied areas or other prohibited destinations that may have been specified in this contract; the documentation (e.g., Import Certificate/Delivery Verification (IC/DV) documents, lading certificates, answers to follow-up requests) that may be required; and United States sanctions against violators. Subsequent Purchasers and Receivers must also agree to make similar notification to its Purchasers and Receivers. Any unauthorized disposition of the property by a Subpurchaser or Subreceiver of the property shall be the responsibility of such Subpurchaser or Subreceiver and, where at fault, of the original Purchaser from the United States.
 - f. When property purchased under a single contract is intended for more than one destination, the Purchaser agrees to submit with its End-Use Certificate a listing of those items specifying quantities intended for each destination and consignee. The Purchaser further agrees to furnish the listings referred to herein with each request for approval of a change in destination.
 - g. The Purchaser agrees to furnish any and all information requested by the United States regarding the actual disposition of the property awarded to the Purchaser within 10 calendar days of the date of the request.
21. The reference to Section **I.10. Special Certifications (JUN 17)** in the Negotiated Solicitation is deleted and Section **I.10., DLA Form 1822, End-Use Certificate** is substituted for tungsten metal products. Offerors must complete and submit Section **I.10., DLA Form 1822, End-Use Certificate** at the time of acceptance of the Solicitation Amendment. This form must be submitted separately by email to the attention of the Contracting Officer to DLAStrategicMaterialsSales@dla.mil. Offerors shall certify their compliance with the requirements of 10 U.S.C. § 2533c in Item No. **22**, below.
22. The Offeror certifies affirmatively, by checking this box , and by accepting this Amendment No. 001 (Tungsten Metal Products) below, that for any tungsten metal products awarded to it under this Amendment to Solicitation DLA-Stockpile Materials-001 (Negotiated), the Offeror shall comply with the requirements of 10 U.S.C. § 2533c for covered materials and covered nations.
23. Except as provided herein, all other terms and conditions of **DLA-Stockpile Materials-001-(Negotiated)** remain unchanged and in full force and effect. The Offeror must acknowledge receipt of this Amendment by checking the box below.

User
Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)