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I. PREPARING FOR INTEREST-BASED NEGOTIATIONS (IBN)

- Has the Government team developed a list of negotiation objectives that reflect the Government's interests (rather than just positions), which can be shared with the vendor? "Positions" reflect demands, while their "interests" reflect the reasons and motives behind these demands.
- Has the Government team captured some of the contractor's interests or concerns (rather than just their positions)?
- Does the Government team have a communication plan to map these negotiation objectives with proposed deliverables and Tactics, Techniques, and Procedures (TTPs)? Do these TTPs address the contractor's interests and concerns? Does the communication plan encourage the parties to focus on interests, rather than positions?
- Has the Government team considered sample contract or license terms to implement these TTPs?
- If so, has the Government requested potential cost differences associated with the proposed license terms versus standard license terms?
- Has the Government team cross-walked this list of negotiation objectives with the proposed licenses and identified gaps and areas for clarification?
- Has the Government and Contractor identified key decision makers or inputs (from contracting, technical, legal, and program management teams) necessary for approval of an agreement?
- If so, have the teams arranged for these decision makers to be present for negotiations?

II. QUESTIONS FOR CONSIDERATION – PREP WORK FOR THE NEGOTIATION STRATEGY WORKSHEET

1. What contract type will be used for this acquisition (e.g., an OT agreement or FAR-based contract)? Has the performer expressed concerns about or preferences for particular contract types? What impact (if any) does contract type have on licensing options to satisfy negotiation objectives?
2. What specific data or software item(s) will the Government require to be delivered under the contract or agreement? Are there any special content or formatting requirements for these deliverables?
3. What mission goal or negotiation objective does each data or software item satisfy? Is this data or software necessary to accomplish mission goals? How will the Government communicate its interests (rather than positions)? What vendor's interests may impact negotiations? How the Government team developed a list of negotiation objectives to be shared with the vendor?
4. What internal DoD distribution of the data or software is anticipated? For what purpose? What third parties need to use the data or software? What types of third parties (support CTRs, service CTRs, foreign allies)? For what purpose?
5. Has the data already been delivered to the Gov't?
6. Who funded past development of HW or SW?
7. Who will fund future development of HW or SW?
8. What categories of license rights will satisfy program goals?
9. What TTPs are best suited for empowering all parties to achieve their goals? How does each TTP impact price? See also Page 3, "Examples of IP-related TTPs for Consideration."

III. EXAMPLES OF IP-RELATED TTPS FOR CONSIDERATION

- Evaluation of the offeror's proposed IP rights during source selection or sole-source negotiations
- Priced CLIN options for technical data or software
- Digital engineering tools
- Use of and reliance on Specially negotiated licenses
- Purchase of source code or other critical software tools
- Access agreements
- Design Modularity or Modular Open System Approaches
- Use of an IP valuation analysis to arrive at a fair and reasonable price for the IP associated with the offeror's proposed data deliverables
- Purchase of detailed manufacturing or process data
- Reverse engineering
- Escrow accounts

IV. NEGOTIATION STRATEGY WORKSHEET – GUIDANCE

- The table below is a planning template for listing technical data and software items that are needed for each negotiation objective.
- For each technical data or software item, consider the Government’s interests and use cases for each column, including column H, which provides blank space for writing in any TTPs that achieve the negotiation objectives.
- Aim to fill in all the “blanks” in table.
- As they are designed to help you critically think through important negotiation planning considerations.
- As you fill in table, please consider what type of contract should be utilized, comparing and contrasting licensing options in OTAs versus FAR-based contracts.
- ***PRACTICE TIP:***
 - *For each TTP, keep in mind that it is a best practice to be prepared to explain why this TTP is advantageous for the CONTRACTOR.*
 - *Considering the other party’s interests (i.e. CTR interests, not USGs) is purposeful and central to IBN.*
 - *Applied in practice, this IBN approach enables better preparation for and posture in conducting negotiations.*

V. NEGOTIATION SCENARIO WORKSHEET – TEMPLATE

A. DATA OR SOFTWARE ITEM?	B. WHAT NEGOTIATION OBJECTIVE DOES THIS SATISFY? IS THIS DATA OR SOFTWARE NECESSARY TO ACCOMPLISH MISSION GOALS?	C. DISTRIBUTION CONSIDERATIONS		D. HAS THE DATA ALREADY BEEN DELIVERED TO THE GOV'T? (CHECK Y/ N)	E. WHO FUNDED PAST DEVELOPMENT OF HW OR SW?	F. WHO WILL FUND FUTURE DEVELOPMENT OF HW OR SW? *1*	G. WHAT CATEGORIES OF LICENSE RIGHTS WOULD SATISFY PROGRAM GOALS? *2*	H. WHAT TTPs ARE BEST SUITED FOR EMPOWERING ALL PARTIES TO ACHIEVE THEIR GOALS?
1. [List Data or Software Item]	Negotiation Objective: _____ Mission Essential? <input type="checkbox"/> YES <input type="checkbox"/> NO	What internal DoD distribution of the data or software is anticipated? For what purpose?	What third parties need to use the data or software? What types of third parties (support CTRs, service CTRs, foreign allies)? For what purpose?	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Government <input type="checkbox"/> Gov't CTR or Performer <input type="checkbox"/> Supplier/ Sub-CTR	<input type="checkbox"/> Government <input type="checkbox"/> Prime CTR <input type="checkbox"/> Supplier/ Sub-CTR	<input type="checkbox"/> Unlimited Rights <input type="checkbox"/> Government Purpose Rights <input type="checkbox"/> Limited Rights/ Restricted Rights <input type="checkbox"/> Other?	[List Any Viable TTPs]
2. [List Data or Software Item]	Negotiation Objective: _____ Mission Essential? <input type="checkbox"/> YES <input type="checkbox"/> NO	What internal DoD distribution of the data or software is anticipated? For what purpose?	What third parties need to use the data or software? What types of third parties (support CTRs, service CTRs, foreign allies)? For what purpose?	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Government <input type="checkbox"/> Gov't CTR or Performer <input type="checkbox"/> Supplier/ Sub-CTR	<input type="checkbox"/> Government <input type="checkbox"/> Prime CTR <input type="checkbox"/> Supplier/ Sub-CTR	<input type="checkbox"/> Unlimited Rights <input type="checkbox"/> Government Purpose Rights <input type="checkbox"/> Limited Rights/ Restricted Rights <input type="checkbox"/> Other?	[List Any Viable TTPs]

¹ In this context, consider the concept of “development” under the current contract or agreement.

² Please note that the categories listed in “Column H” are not necessarily included in the terms of an OTA.