

INTERIM AGREEMENT

1.0 - Authority

This letter contract is an interim agreement that is entered into under the authority provided by FAR 16.603-2 and pursuant to Sect. 603 Of Public Law 102-585, Veterans Healthcare Act of 1992 ("the Act"). The Act requires that manufacturers make their covered drugs available on the Federal Supply Schedule (FSS) upon introduction to the commercial market place. FAR 16.603-2 authorizes the agency to establish a "binding commitment" when immediate performance is required. Therefore, this agreement is created to allow sufficient time to negotiate and award a new FSS contract for covered drugs to new manufacturers, as required by the Act. Please complete and return this document to the Department of Veterans Affairs no later than the date indicated in the attached package.

2.0 - Letter Contract Number

Letter Contract number V797P- _____, **Interim Agreement Number FSS-IA-** _____ has been assigned to your firm under Public Law 102-585, Sect. 603 (Veteran Health Care Act of 1992). The assigned contract number does not commit the VA to awarding a contract under the Pharmaceutical FSS program. The offeror is still required to meet the GSA/VA requirements, as outlined in the FSS solicitation package.

Please complete the areas to follow:

3.0- Pricing

The manufacturer of covered drug(s), designated below, agrees to honor this Interim Agreement. See paragraph 7.0 (or any attachment) for a listing, which is incorporated herein by reference that provides the product NDC#, nomenclature, size, strength, and Federal Ceiling Price (FCP) for each covered drug. The manufacturer shall sell the listed covered drug product(s) at no higher than the inserted FCP plus a 0.5% Industrial Funding Fee (IFF) to all government ordering activities, until a Federal Supply Schedule (FSS) contract has been awarded.

4.0 Delivery Terms:

The manufacturer agrees to sell the listed covered drug product(s) either directly to FSS ordering facilities or directly, as well as, indirectly through the VA Pharmaceutical Prime Vendor Program (PPV). The manufacturer can obtain information about the VA PPV program and its users at <http://www.va.gov/oamm/nac/ncs/pharmpv.htm>. After concurrence, the VA Contracting Officer will forward the manufacturer's pricing information to the awarded prime vendor contractors.

4.1 Delivery Method:

Please indicate your desired delivery method for this interim agreement:

Direct Only: _____

Direct and PPV: _____

5.0 Contract Clauses:

Clause 52.216-23 Execution and Commencement of Work (Apr 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than the date prescribed in the cover letter. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

Clause 52.216-24 Limitation of Government Liability (April 1984)

- (a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding the Guaranteed Minimum of the FSS program, or the total value of delivery orders placed and received under this contract by activities authorized to use the FSS program, whichever is greater.

5.0 Contract Clauses (Continued):

Clause 52.216-24 Limitation of Government Liability (April 1984) (continued)

- (b) The maximum amount for which the Government shall be liable if this contract is terminated is equal to the Guaranteed Minimum of the FSS program, or the total value of delivery orders placed and received under this contract by activities authorized to use the FSS program, whichever is greater.

Clause 52.216-25 Contract Definitization (Oct 1997)

- (a) An FSS negotiated, firm fixed price, IDIQ definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of the execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a proposal under Solicitation M5-Q50A-03.
- (b) The schedule for definitizing this contract is to achieve completion of negotiation and award of the offer submitted under the FSS solicitation within 90 to 120 days from the date of this letter contract.
- (c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to the Contractor appeal as provided in the Disputes Clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability Clause.
 - (1) After the Contracting Officer's determination of price or fee, the contract shall be governed by
 - (i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under paragraph (c);
 - (ii) All clauses required by law as of the date of the Contracting Officer's determination, and;
 - (iii) Any other clauses, terms and conditions mutually agreed upon.

To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

Clause 52.212-4 (o) (TAILORED) (MAY 1997) Warranty

The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. In the event that the terms of the contractor's standard commercial warranty (See Clause 52.246-73) conflict with the warranty terms contained in this clause, the terms of this clause will govern this contract, unless some other resolution is specified in the award document.

Clause 52.212-4 (p) (TAILORED) (MAY 1997) Limitation of Liability

Except as otherwise provided by an express warranty, the contractor will not be liable to the Government in a breach of warranty action for consequential damages resulting from any defect or deficiencies in accepted items. In the event that the terms of the contractor's standard commercial warranty/limitation of liability clause(s) place greater limits on the contractor's liability than do the terms contained in this clause, the terms of this clause will govern the contract.

6.0 Contract Clauses by Reference:

The manufacturer, during the time that this agreement is in force, agrees to abide by the terms of the following clauses that are incorporated herein by reference and will be contained in the awarded FSS contract:

- Clause 552.238-74 Industrial Funding Fee and Sales Reporting
- Clause 52.216-18 Ordering (Dev. 10/95)
- Clause AS908 Delivery
- Clause 52.212-4 Contract Terms & Conditions
- Clause AS213 Manufacturing Facilities
- Clause AS1913 New Drug Application
- Clause AS 1506 Chargebacks
- Clause F-FSS-202-G Delivery Price
- Clause 552.246-73 Warranty

7.0 Pricing Schedule

NDC#	Product Description	2006 FCP	Proposed IA price without IFF	Proposed IA price with IFF

Please either complete the information in the above table or provide an attachment, to be incorporated by reference, if additional room is needed.

8.0 Negotiation Timetable

The manufacturer agrees to cooperate with the VA to negotiate and award a Federal Supply Schedule (FSS) contract within 120 calendar days of the execution date of this letter contract. Moreover, the vendor is required to submit their offer under Solicitation M5-Q50A-03-R1 no later than 30 days after the signature date of this letter contract. If an FSS award is not made within this time frame or a mutually agreed extension thereof, this interim agreement will expire and the matter will be turned over to the Office of General Counsel for compliance action under the Public Law. The effective date of this agreement will be determined based on the approval date of the VA Contracting Officer as either the 1st or 15th of a month.

9.0 Signatures:

Name of Manufacturer:

Street Address:

City, State and Zip Code of Firm:

This agreement is accepted on behalf of the manufacturer by:

Name and Title of Authorized Company Representative

Executed by:

Signature of Authorized Company Representative Date

Telephone Number

Executed by VA NAC Contracting Officer: Effective Date:
