915.207-70 Handling proposals and information during evaluation.

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with, the procedures in this subsection.

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in paragraph (e) of the provision at 48 CFR 52.215-1 to such information. In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data) not made subject to such notice in accordance with paragraph (e) of the provision at 48 CFR 52.215-1.

(c) If proposals are received with more restrictive conditions than those in paragraph (e) of the provision at 48 CFR 52.215-1, the contracting officer or coordinating officer shall inquire whether the submitter is willing to accept the conditions of paragraph (e). If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the information (data) contained in proposals, except as authorized in this subsection, is to be disclosed outside the Government before the Government's decision as to the award of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, this subsection.

(e)

(1) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, contracting officers shall assure that the following notice is affixed to each solicited proposal prior to distribution for evaluation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in DEAR subsection 915.207-70.

(End of notice)

(2) The notice at 48 CFR 15.609(d) for unsolicited proposals shall be affixed to a cover sheet attached to each such proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f)

(1) Normally, evaluations of proposals shall be performed only by employees of the Department of Energy. As used in this section, "proposals" includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain necessary expertise, employees of other agencies may be used in instances in which they will be available and committed during the period of evaluation. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating contractors, may be used where necessary. Where such non-Federal employees are used as evaluators, they may only participate as members of technical evaluation committees. They may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2)

(i) Pursuant to section 6002 of Pub. L. 103-355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, discussed at 48 CFR 37.204, shall be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by the Contracting Officer in all other procurements.

(ii) Where it is determined such qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect shall be made by the same officials in the same memorandum. Should such qualified personnel not be available, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to employ non-Federal evaluators or advisors, including employees of DOE management and operating contractors, in Source Evaluation Board procurements must be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity. In all other procurements, the decision shall be made by the senior program official or designee with the concurrence of the Head of the Contracting Activity. In a case where multiple solicitations are part of a single program and would call for the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the Senior Procurement Executive.

(4) Where such non-Federal evaluators or advisors are to be used, the solicitation shall contain a provision informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) The nondisclosure agreement as it appears in paragraph (f)(6) of this subsection shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that the required handling notice described in paragraph (e) of this subsection is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator or advisor. In all instances, such persons will be required to comply with nondisclosure of information requirements

and requirements involving Procurement Integrity, see 48 CFR 3.104; with requirements to prevent the potential for personal conflicts of interest; or, where a non-Federal evaluator or advisor is acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.

(6) Non-Federal evaluators or advisors shall be required to sign the following agreement prior to having access to any proposal:

Nondisclosure Agreement

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the Contracting Officer, I agree that I shall not contact the originator of the proposal concerning any aspect of its elements.

Recipient:

Date:

(End of agreement)

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also 48 CFR 24.2, Freedom of Information Act.)

Parent topic: Subpart 915.2—Solicitation and Receipt of Proposals and Information