

Federal Acquisition Regulation

15.607

reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish agency points of contact (see 15.604) to coordinate the receipt and handling of unsolicited proposals.

15.606-1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—

(1) Is a valid unsolicited proposal, meeting the requirements of 15.603(c);

(2) Is suitable for submission in response to an existing agency requirement (see 15.602);

(3) Is related to the agency mission;

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

(6) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(7) Complies with the marking requirements of 15.609.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal.

[62 FR 51230, Sept. 30, 1997, as amended at 69 FR 17769, Apr. 5, 2004]

15.606-2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.609(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators shall notify the agency point of contact of their recommendations when the evaluation is completed.

15.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The contracting officer may commence negotiations on a sole source basis only when—

(1) An unsolicited proposal has received a favorable comprehensive evaluation;

(2) A justification and approval has been obtained (see 6.302-1(a)(2)(i) for research proposals or other appropriate provisions of subpart 6.3, and 6.303-2(b));

(3) The agency technical office sponsoring the contract furnishes the necessary funds; and

(4) The contracting officer has complied with the synopsis requirements of subpart 5.2.

15.608 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.609 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets *[insert numbers or other identification of sheets]*.

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is sub-

ject to the restriction on the title page of this proposal.

(c) The agency point of contact shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

Unsolicited Proposal—Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) Use the notice in paragraph (d) of this section solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by the Freedom of Information Act (5 U.S.C. 552). An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or non-profit organization or institution, and an evaluation outside the Government