

Health and Human Services

352.216-70

legislature, except in presentation to the Congress or any State legislature itself; or (iii) payment of salary or expenses of the Contractor, or any agent acting for the Contractor, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

(End of clause)

352.215-1 Instructions to offerors—competitive acquisition.

As prescribed in 315.209, the Contracting Officer shall insert the following paragraph (e) in the provision in FAR 52.215-1, Instructions to Offerors—Competitive Acquisition:

(e) *Restriction on disclosure and use of data.*

(1) The proposal submitted in response to this request may contain data (trade secrets; business data (e.g., commercial information, financial information, cost and pricing data); and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following statements, specifying the particular portions of the proposal which are to be restricted:

“Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services (HHS), data contained in the portions of this proposal which the offeror has specifically identified by page number, paragraph, etc. as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that HHS may not be able to withhold a record (e.g., data, document, etc.) nor deny access to a record requested pursuant to the Act and that the HHS’ FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if HHS has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of un-

marked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act. The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).”

(2) In addition, the offeror must mark each page of data it wishes to restrict with the following statement

“Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.”

(3) Offerors are cautioned that proposals submitted with restrictive statements or statements differing in substance from those cited above may not be considered for award. The Government reserves the right to reject any proposal submitted with nonconforming statement(s).

352.215-70 Late proposals and revisions.

As prescribed in 315.208, the Contracting Officer shall insert the following provision:

LATE PROPOSALS AND REVISIONS (JANUARY 2006)

Notwithstanding the procedures contained in FAR 52.215-1(c)(3) of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, the Government may consider a proposal received after the date specified for receipt if it appears to offer the best value to the Government and it was received before proposals were distributed for evaluation, or within 5 calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

352.216-70 Additional cost principles.

As prescribed in 316.307(j), the Contracting Officer shall insert the following clause:

ADDITIONAL COST PRINCIPLES (JANUARY 2006)

(a) *Bid and proposal (B & P) costs.* (1) B & P costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) B & P costs of the current accounting period are allowable as indirect costs.

(3) B & P costs of past accounting periods are unallowable in the current period. However, if the organization’s established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

352.219-70

(4) B & P costs do not include independent research and development (IR & D) costs covered by the following paragraph, or pre-award costs covered by paragraph 36 of Attachment B to *OMB Circular A-122*.

(b) *IR & D costs*. (1) IR & D is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) IR & D shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The cost of IR & D, including its proportionate share of indirect costs, is unallowable.

(End of clause)

352.219-70 Mentor-protégé program.

As prescribed in 319.270-1(a), the Contracting Officer shall insert the following provision:

MENTOR-PROTÉGÉ PROGRAM (JANUARY 2010)

(a) Large business prime contractors serving as mentors in the HHS Mentor-Protégé program are eligible for HHS subcontracting plan credit, and shall submit a copy of their HHS Office of Small and Disadvantaged Business Utilization (OSDBU)-approved mentor protégé agreements as part of their offers. The amount of credit provided by the Contracting Officer to a mentor firm for protégé firm developmental assistance costs shall be calculated on a dollar for dollar basis and reported by the mentor firm in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The mentor firm and protégé firm shall submit to the Contracting Officer a signed joint statement agreeing on the dollar value of the developmental assistance the mentor firm provided. (For example, a mentor firm would report a \$10,000 subcontract awarded to a protégé firm and provision of \$5,000 of developmental assistance as \$15,000 of developmental assistance.) The mentor firm may use this additional credit towards attaining its subcontracting plan participation goal under this contract.

(b) The program consists of—

(1) *Mentor firms*—large businesses that: (i) demonstrate the interest, commitment, and capability to provide developmental assistance to small business protégé firms; and (ii) have a Mentor-Protégé agreement approved by HHS' OSDBU;

(2) *Protégé firms*—firms that: (i) seek developmental assistance; (ii) qualify as small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, or woman-owned

48 CFR Ch. 3 (10-1-11 Edition)

businesses; and (iii) have a Mentor-Protégé agreement approved by HHS' OSDBU; and

(3) *Mentor-Protégé agreements*—joint agreements, approved by HHS' OSDBU, which detail the specific terms, conditions, and responsibilities of the mentor-protégé relationship.

(End of provision)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.219-71 Mentor-protégé program reporting requirements.

As prescribed in 319.270-1(b), the Contracting Officer shall insert the following clause:

MENTOR-PROTÉGÉ PROGRAM REPORTING REQUIREMENTS (JANUARY 2010)

The Contractor shall comply with all reporting requirements specified in its Mentor-Protégé agreement approved by HHS' OSDBU.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.222-70 Contractor cooperation in equal employment opportunity investigations.

As prescribed in 322.810(h), the Contracting Officer shall insert the following clause:

CONTRACTOR COOPERATION IN EQUAL EMPLOYMENT OPPORTUNITY INVESTIGATIONS (JANUARY 2010)

(a) In addition to complying with the clause in FAR 52.222-26, Equal Opportunity, the Contractor shall, in good faith, cooperate with the Department of Health and Human Services (Agency) in investigations of Equal Employment Opportunity (EEO) complaints processed pursuant to 29 CFR Part 1614. For purposes of this clause, the following definitions apply:

(1) "Complaint" means a formal or informal complaint that has been lodged with Agency management, Agency EEO officials, the Equal Employment Opportunity Commission (EEOC), or a court of competent jurisdiction.

(2) "Contractor employee" means all current Contractor employees who work or worked under this contract. The term also includes current employees of subcontractors who work or worked under this contract. In the case of Contractor and subcontractor employees, who worked under this contract, but who are no longer employed by