

## Department of Education

3452.216-71

### RELEASE OF RESTRICTED DATA (MAR 2011)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215-1(e), Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act (FOIA). The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under FOIA. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold or deny access to data requested pursuant to FOIA and that the Government's FOIA officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by FOIA;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to FOIA; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under FOIA.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with:

(1) A restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.215-1(e), Restriction on Disclosure and Use of Data, or

(2) A statement taking exceptions to the terms of paragraphs (a) or (b) of this provision.

(End of provision)

### 3452.216-70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

#### ADDITIONAL COST PRINCIPLES (MAR 2011)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable

as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of 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. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocations of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

### 3452.216-71 Award-Term.

As prescribed in 3416.470, insert a clause substantially the same as the following in all solicitations and contracts where an award-term arrangement is anticipated:

#### AWARD-TERM (MAR 2011)

(a) The initial [insert initial contract term] contract term or ordering period may be extended or reduced on the basis of contractor performance, resulting in a contract term or an ordering period lasting at least [insert minimum contract term] years from the date of contract award, to a maximum of [insert maximum contract term] years after the date of contract award.

(b) The contractor's performance will be measured against stated standards by the performance monitors, who will report their findings to the Award Term Determining Official (or Board).

(c) Bilateral changes may be made to the award-term plan at any time. If agreement cannot be made within 60 days, the Government reserves the right to make unilateral changes prior to the start of an award-term period.

(d) The contractor will submit a brief written self-evaluation of its performance within X days after the end of the evaluation period. The self-evaluation report shall not exceed seven pages, and it may be considered in the Award Term Review Board's (ATRB's) (or Term Determining Official's) evaluation of the contractor's performance during this period.

(e) The contract term or ordering period may be unilaterally modified to reflect the ATRB's decision. If the contract term or ordering period has one year remaining, the