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Assistant Secretary for Management

Unsolicited Proposals

Table of Contents

I. Purpose	2
II. Policy	2
III. Authorization	2
IV. Applicability	2
V. Definitions	2
VI. Responsibilities.....	2
A. Head of the Contracting Activity (HCA).....	3
B. Principal Officers.....	3
C. Contracts and Acquisitions Management (CAM).....	3
VII. Procedures and Requirements.....	3
A. Advance guidance to potential offerors	3
B. Receipt of unsolicited proposals	3
C. Processing unsolicited proposals – CAM	3
D. Processing unsolicited proposals – PO	4
E. Processing unsolicited proposals – Contracting Officer	5
Appendix 1: Memorandum to PO.....	6
Appendix 2: Notice of Receipt of Proposal	8
Appendix 3: Letter to Inquiring Entity	10
Appendix 4: FAR Excerpts.....	12
Appendix 5: Certification by Offeror	15
Appendix 6: Sample Letter Denying an Unsolicited Proposal	16
Appendix 7: Sample Letter Denying an Unsolicited Proposal	17

Supersedes ACS document OCFO:2-104 “Unsolicited Proposals” dated 01/16/2004.

If you have any technical questions regarding this ACS document, please contact Cynthia Bond-Butler on 202-401-1615 or Cynthia.Bond@ed.gov.

I. Purpose

This Directive establishes Departmental procedures for the receipt, evaluation, and timely disposition of unsolicited contract proposals, referred to as "unsolicited proposals" throughout this Directive.

II. Policy

The U.S. Department of Education (Department) policy is to provide the free, written information on unsolicited proposals described in the Federal Acquisition Regulations (FAR) 15.6, Unsolicited Proposals, and to provide timely, comprehensive evaluation and disposition of unsolicited proposals submitted to the Department. The Government encourages submission of unsolicited proposals; however, it is difficult to justify an award, especially in the Department with its limited discretionary funds. Lack of funds alone, however, is not an adequate reason for rejecting an unsolicited proposal. When, after a comprehensive evaluation, the unsolicited proposal is deemed acceptable, the appropriate Assistant Secretary shall determine whether the benefits from accepting the unsolicited proposal merit a recommendation to reallocate resources in view of the probable net effect of the reallocation on the accomplishment of Departmental objectives.

III. Authorization

This Directive is authorized by FAR 15.6 to implement the requirements of FAR Subpart 15.6 and FAR 6.302 – 1.

IV. Applicability

This Directive is applicable Department-wide and applies only to contracts.

V. Definitions

- A. Head of the Contracting Activity (HCA) - The official who has overall responsibility for managing the contracting activity.
- B. Contracting Officer (CO)- The person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings
- C. Principal Office (PO) - An organization headed by an assistant secretary or the equivalent.
- D. Principal Officer - The Official in charge of an organization designated as a PO.

Other applicable definitions are listed in FAR 15.601.

VI. Responsibilities

A. Head of the Contracting Activity (HCA)

Within the Office of the Chief Financial Officer (OCFO), the Head of the Contracting Activity, Director, Contracts and Acquisitions Management (CAM) is the designated contact point for the receipt and coordination of unsolicited proposals for the Department. The HCA shall ensure that initial review of unsolicited proposals is performed in conformance with FAR 15.606 – 1.

B. Principal Officers

Assistant Secretaries for POs shall ensure unsolicited proposals received in their organizations are handled in conformance with FAR Subpart 15.6 and FAR Subpart 6.3.

C. Contracts and Acquisitions Management (CAM)

As directed by the HCA, CAM shall coordinate all unsolicited proposals received in the Department in conformance with FAR Subpart 15.6 and this Directive. .

VII. Procedures and Requirements**A. Advance guidance to potential offerors**

1. Conduct personal contacts without making any commitments concerning acceptance of unsolicited proposals when providing the advance guidance permitted by FAR 15.604.
2. Entities requesting advance information on the submission of unsolicited proposals shall be provided the information as prescribed in FAR 15.604(a). A letter shall be sent by CAM (Appendix 3) along with the certification by the offeror to sign and return with the unsolicited proposal (Appendix 5).

B. Receipt of unsolicited proposals

CAM is the HCA's administrative office for the receipt and handling of unsolicited proposals. Other offices of the Department that receive unsolicited contract proposals shall immediately send them to CAM, Attention: Director's Support Staff.

C. Processing unsolicited proposals – CAM

Upon receipt of the proposal, CAM shall:

1. Ensure the offeror is not debarred or suspended in accordance with FAR 9.406 and FAR 9.407.

2. Review the proposal to ensure that the requirements in FAR 15.605 are met. If not, CAM will send a letter to the offeror (Appendix 6).
3. Review the proposal to ensure that the requirements in FAR 15.606-1(a) are met. If the proposal meets the requirements in FAR 15.606(a), the PO shall perform an evaluation in conformance with FAR 15.606 – 2.
4. Mail a notice of receipt of the proposal to the originator in conformance with Appendix 2, including the certification in Appendix 5 (if not submitted with the unsolicited proposal), and send the proposal to the appropriate PO within 7 calendar days of receipt (Appendix 1).
5. Upon receipt of PO evaluation and rejection, send a letter to the offeror (Appendix 7).
6. Ensure that the offeror receives a response from the Department within 45 calendar days of submitting the unsolicited proposal.

D. Processing unsolicited proposals – PO

Upon receipt of the transmittal, the PO shall:

1. Further review the proposal to ensure that none of the qualifying conditions in FAR 15.607(a) exists. If the proposal is not disqualified by any of the conditions in FAR 15.607(a), the PO shall perform an evaluation in conformance with FAR 15.606 – 2.
2. Prepare a letter explaining a rejection for the Assistant Secretary's signature if the unsolicited proposal does not qualify for funding. The letter must include detailed information and any documentation regarding the evaluation of the proposal and the reason(s) for rejection. When signed, send the letter to CAM: Attention: Director, Contracts and Acquisitions Management.
3. Send recommendations for award of unsolicited proposals to the contracting officer at least 7 calendar days before the end of the 45 days period so that an independent evaluation can be made. Recommendations for award must be supported with the same documentation that would accompany an ordinary purchase request.
4. Adhere to the prohibitions in FAR 15.608 before recommending competitive acquisitions of unsolicited proposals. Sole source acquisitions are permitted for unsolicited research proposals that demonstrate a unique and innovative concept. However, other circumstances described in FAR Subpart 6.3 may also justify an acquisition through other than full and open competition. Such circumstances are relatively rare in the Department. If the proposal does not conform to any of the circumstances described in FAR Subpart 6.3 it may only be acquired in a full and open

competition; i.e., when resubmitted in response to a conventional solicitation and found to be the most advantageous proposal received.

5. Change the memorandum (Appendix 1) to conform to FAR 15.609(f) when using outside experts to evaluate the proposal.

E. Processing unsolicited proposals – Contracting Officer

1. Perform an independent evaluation of the applicability of FAR 15.607 to recommend awards of unsolicited proposals. Notify the PO and provide explanation in the event of a disagreement with the PO's recommendation; or notify the offeror of a decision to negotiate the proposal.
2. Ensure a signed copy of the offeror's certification is in the proposal file before beginning a negotiation.

Appendix 1: Memorandum to PO

TO :

FROM : Director, Contracts & Acquisitions Management

SUBJECT : Unsolicited Proposal

The attached unsolicited proposal has been submitted to the U.S. Department of Education (Department), Contracts & Acquisitions Management (Attachment A) for evaluation and proper disposition. The content has been matched to the organization mission of your office and is being forwarded to you for evaluation in accordance with the Federal Acquisition Regulations (FAR) 15.6 (Attachment B) and Departmental Directive OCFO: 2-104, Unsolicited Proposals.

The evaluation shall be comprehensive and shall consider the following factors, in addition to any other factors or conditions that may be appropriate for this 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.

If any of the following disqualifying conditions below apply, the proposal may be rejected and further review is not necessary:

1. The content of the proposal is available to the Government without restriction from another source;
2. The content of the proposal closely resembles a pending competitive acquisition requirement;
3. The content of the proposal does not relate to the activity's mission; or
4. The content of the proposal does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

A favorable comprehensive evaluation of an unsolicited proposal must meet the criteria for award on a sole-source basis and shall follow the procedures of FAR 6.302.

Please safeguard the information in this unsolicited proposal. The adherence to the following official notice concerning disclosure of information in unsolicited proposals is mandatory:

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].

Your written evaluation is due to this office no later than date. If you have any questions, please contact (INSERT NAME AND PHONE NUMBER).

Attachments

Appendix 2: Notice of Receipt of Proposal

TO

Proposal No.

Date Received:

Title:

Thank you for the submission recorded above. It has been assigned a proposal number and sent to the appropriate program office for evaluation as an unsolicited proposal. Review, evaluation, and disposition of your proposal will be performed in conformance with FAR Subparts 15.6 and 6.3.

An unsolicited proposal is defined as a written proposal that is submitted to the U.S. Department of Education (Department) on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request.

The following factors, in addition to any other factors or conditions that may be appropriate for your particular proposal, must be considered by the evaluators:

1. Unique innovative, and meritorious methods, approaches, or concepts demonstrated by the proposal;
2. Overall scientific, technical, or socio-economic merits of the proposal;
3. Potential contribution of the effort to the Department's specific mission;
4. Your capabilities, related experience, facilities, techniques, or unique combinations of the foregoing which are integral factors for achieving the proposal objectives;
5. The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and
6. The realism of the proposed cost

Even when all the above factors are favorably evaluated, your proposal may not qualify for an award if the substance of it:

1. Is available to the Government without restriction from another source;
2. Closely resembles a competitive acquisition requirement;
3. The content of the proposal 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.

Finally, to receive an award you may have to provide information to show you are a responsible prospective contractor and do not have a disqualifying organizational conflict of interest.

Enclosed with this letter are excerpts from the Federal Acquisition Regulation (FAR) (Attachment A) that define responsible prospective contractor and organizational conflict of interest, show the information needed to consider an unsolicited proposal, and provide instructions on the way to limit use of data provided in your proposal to evaluation purposes.

Also enclosed is a certification (Attachment B) that must be signed by a person empowered to enter into contracts for your organization.

The certificate and any additions to your proposal may be sent to this office. Please use the above proposal number in all correspondence.

Your interest in achieving Departmental objectives is appreciated.

Sincerely,

Name
Title

Attachments

Appendix 3: Letter to Inquiring Entity

LETTERHEAD

TO: (Name & address of inquiring entity)

Your inquiry about the U.S. Department of Education (Department) funding for a project is covered by the procedure for unsolicited proposals.

1. An unsolicited proposal is a written proposal that is submitted to the Department on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request – other than an agency request constituting a generalized statement of needs. The process is regulated by Federal Acquisition Regulation (FAR) Subparts 15.6 and 6.3. The Government encourages submission of unsolicited proposals; however, it is difficult to justify an award, especially in the Department that does not have much money for basic and applied research.
2. The enclosed FAR (Attachment A) excerpts identify, under the heading “Needed Information,” information your proposal must contain to be evaluated by the Department. In addition, you must provide the enclosed certification (Attachment B), signed by an individual empowered to enter into contracts for your organization.
3. All proposals should be sent to the Contracts and Acquisitions Management, Directors Support Staff at the address in paragraph 5 below. If your proposal evaluation is favorable, and the content of the proposal is not available from another source, does not resemble a competitive acquisition requirement, and can demonstrate an innovative or unique method, approach or concept, it will be eligible for an award. Then, you may have to provide information to show that you are a responsible prospective contractor and do not have a disqualifying organizational conflict of interest. See the attached FAR excerpts on “responsible prospective contractor” and “organizational conflict of interest.”
4. The sole purpose of oral and written discussion is to advise you of Departmental needs and constraints in order to help you prepare a proposal. Technical correspondence before proposal preparation does not commit the Government to fund your proposal nor to pay the costs incurred in preparing it.
5. If you are interested in competing with others to meet Department needs, visit the Department contracting website at:
<http://www.ed.gov/about/offices/list/ocfo/contracts/contracts.html> .
6. To limit the use of data provided in your proposal to evaluation purposes, use the legends prescribed in the attached FAR excerpts. Use of different legends will make it impracticable for the Government to comply, and your proposal will be returned unevaluated.

Your interest in meeting Department objectives is appreciated.

Sincerely,

Name
Title

Attachments

Appendix 4: FAR Excerpts

NEEDED INFORMATION

FAR 15.605 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including –

- (1) Offeror's name and address and type of organization; e.g., profit, nonprofit, educational, small business;
- (2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
- (3) Identity of proprietary data to be used only for evaluation purposes;
- (4) Names of other Federal, State, local agencies, or parties receiving the proposal or funding the proposed effort;
- (5) Date of submission; and
- (6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including –

- (1) Concise title and abstract (approximately 200 words) of the proposed effort;
- (2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;
- (3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and
- (4) Type of support needed from the agency; e.g., facilities, equipment, materials, or personnel resources.

(c) Supporting information including –

- (1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (2) Period of time for which the proposal is valid (a six month minimum is suggested);
- (3) Type of contract preferred;
- (4) Proposed duration of effort;
- (5) Brief description of the organization, previous experience in the field, and facilities to be used; and
- (6) Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts.

TO LIMIT USE OF DATA

FAR 15.609 [(a) and (b) only] Limited use of data.

- (a) An unsolicited proposal may include data that the offeror does not want disclosed for any purposes other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

USE AND DISCLOSURE OF DATA

The data in this proposal 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 the proposal; provided, that 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 contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Sheets _____.

- (b) The offeror shall also mark each restricted sheet with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

RESPONSIBLE PROSPECTIVE CONTRACTOR

FAR 9.104-1 General standards.

To be determined responsible, a prospective contractor must –

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them [Usually an explicit agreement to rent or purchase needed resources or personnel];
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Have a satisfactory performance record;
- (d) Have a satisfactory record of integrity and business ethics;
- (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors);
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

FAR 9.104-2 [(a) only] Special standards.

- (a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

ORGANIZATIONAL CONFLICT OF INTEREST

FAR 9.501 Definition.

An “organizational conflict of interest” exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (a) result in an unfair competitive advantage to the contractor, or (b) impair the contractor’s objectivity in performing the contract work.

Appendix 5: Certification by Offeror

Unsolicited Proposal

Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

- a. This proposal has not been prepared under Government supervision.
- b. The methods and approaches stated in the proposal were developed by this offeror.
- c. Any contact with employees of the U.S. Department of Education (Department) has been within the limits of appropriate advance guidance set forth in FAR 15.604.
- d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

Signature: _____

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

Appendix 6: Sample Letter Denying an Unsolicited Proposal

Name
Address
Address

Reference:

Thank you for your unsolicited proposal dated X. Your proposal is being denied under FAR 15.605 since it does not contain certain information necessary to evaluate your proposal. Attached is a copy of the Federal Acquisition Regulation, Subpart 15.6, Unsolicited Proposals, which states the reasons for denial. (Attachment A)

You may resubmit your proposal to the Department once all of the necessary information is included. Your interest in achieving Departmental objectives is appreciated.

Sincerely,

Name
Title

Attachment

Appendix 7: Sample Letter Denying an Unsolicited Proposal

Sample 1:

Name
Address
Address

Reference:

Your unsolicited proposal was forwarded to the Department of Education, OFFICE NAME, for review and evaluation to determine if the merits of your unsolicited proposal met the qualifying conditions for a Department of Education contract award.

As a result of the evaluation, using the six factors as prescribed by the Federal Acquisition Regulation (FAR) 15.606-2, your unsolicited proposal is rejected and consequently will not be funded. In general, the content of the proposal does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal. The proposal lacked a conceptual framework and failed to provide enough specific important information.

Enclosed for your examination, are the specific comments and evaluation results (Attachment A). This feedback is offered to assist you in preparing future proposal submissions. Also, enclosed is your original unsolicited proposal (Attachment B).

We appreciate your interest in doing business with the Department of Education.

Name
Title

Attachments