MDA Small Business Industry Day

SBIR Proposal Preparation

By: John Swan
Contracting Officer
Missile Defense Agency
August 14, 2015

Approved for Public Release
15-MDA-8342 (30 July 15)

Agenda

- Introduction - John Swan
- Accounting System Audits - John Swan
- Cost Proposal Preparation - Mitch Shelton
- Data Rights - Dawn Terry
- Foreign Persons - Latoya Gilbert
- Question and Answer Session

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Accounting System Audits

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Accounting System Audits

- **DCAA approved accounting system required for award of Government cost reimbursement contracts**
- **MDA SBIR Phase II are cost reimbursement**
- **Accounting system criteria defined in DFARS 252.242-7006**
  - **Key requirements:**
    - **Be able to segregate direct and indirect costs, and unallowable costs**
    - **Calculation of indirect rates**

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Accounting System Audits

- **Get an approved accounting system ASAP!**
- **If selected for Phase II award, but do not have a current approved accounting system:**
  - **Complete and send the Pre-award Survey (SF 1408 Criteria) to your Contracting Officer.**
  - **Prepare for an audit**
- **Reference: DCAA Public Website (www.dcaa.mil)**

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Cost Proposal Preparation

By: Mitch Shelton
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Cost Proposal Preparation

- **A complete, detailed cost proposal is required in accordance with FAR 15.403 and 15.404**
  - **The Contracting Officer is responsible for evaluating the reasonableness of the offered prices**
  - **Cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required (>$700K)**
  - **The Government will use all available information to analyze your proposal and verify the overall price is fair and reasonable**

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Cost Proposal Preparation

- **Include the following detailed information:**
  - **Labor**
    - **Labor hours by Contractor Fiscal Year and by labor category**
    - **Labor rates**
      - **Submit payroll records if DCAA audited rates not available**
  - **Basis of Estimates (BOE)**
    - **Specific BOEs**
    - **A short narrative of how you determined the hours required to complete the job**
      - **Actuals based on previous work**
      - **Engineering estimates**

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Cost Proposal Preparation

- **Include the following detailed information:**
  - **Indirect Rates**
    - **Specific indirect rates such as Labor Overhead, General & Administrative (G&A), Fringe Benefits, etc.**
    - **How were the rates applied and calculated?**
    - **Submit DCAA Provisional Billing Rates Approval letter or Forward Pricing Rate Agreement**

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Cost Proposal Preparation

- **Subcontractors**
  - Prime contractor proposal preparation requirements flow down to each subcontractor
  - Prime contractor must perform a cost or price analysis for each subcontractor proposal
    - Submit as part of the prime proposal
    - Subcontractors may submit unsanitized proposal to the PCO
- **Materials**
  - Provide Priced Bill of Materials with specific BOEs that may include vendor quotes, catalog prices, recent purchase history or price analysis

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Cost Proposal Preparation

- **Travel Expenses**
  - **Include purpose, the number of trips, trip origin and destination, duration, and number of travelers per trip**
    - **Govt will evaluate reasonableness of trips, and review airline tickets, rental car, per diem IAW commercial travel websites and Federal travel regulations**

- **Fee**
  - **Government will evaluate proposed "*fixed-fee*" using Weighted Guidelines methodology**
  - **MDA Clause H-38 titled " Fee/Profit Limitations (DEC 2010)" will be in every SBIR/STTR Phase II contract**

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Cost Proposal Preparation

- **Excerpt of Summary of H-38 Clause: No Fee/Profit on Material and Other Direct Costs (ODC).**
  - **The Contractor is not entitled to fee/profit on ODC and Material**
  - **Examples of ODC: travel expenses (fee on labor/salary while on travel is allowed), renewable licenses, leases, consultants, special tooling, and royalties**
  - **Examples of Material include: equipment, hardware and spares/repair parts**
  - **This limitation shall flow down to subcontractors**

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Cost Proposal Preparation

- **Final Summary of Key Points:**
  - **Provide detailed cost information for every cost element**
  - **Provide your basis of estimates for all your costs**
  - **Ensure your subcontract proposals do the same**

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Data Rights

By: Dawn Terry
Contract Specialist
Missile Defense Agency
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Data Rights

- **Data Rights Defined**
  - **Data Rights is a shorthand way to refer to the Government's license rights in two major categories of valuable intellectual property:**
    - Technical Data (TD)
    - Computer Software/algorithms/processes (CS)

- **Data Rights Information:**
  - **Federal Acquisition Regulation (FAR) Part 27**
  - **DoD FAR Supplement (DFARS) Part 227**

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Data Rights

- **Technical Data (TD) Defined**
  - **TD includes drawings, standards, specifications, technical manuals, blueprints, drawings, plans, instructions, software/algorithms documentation, or other tech info to use to design, engineer, product, manufacture, operate, repair, overhaul, reproduce and military or space equipment. DFARS 252.227-7018(a)(20).**

- **Computer Software Defined**
  - **Includes executable code, source code, code listing, design details, processes, algorithms, flow charts, and related material. DFARS 252.227-7018(a)(4).**

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Data Rights

Types of Data Rights:

- **Unlimited Rights**
  - **Tech Data or SW developed w/ Govt funds**

- **Government Purpose License Rights (if not during a SBIR funded contract)**
  - **Tech Data or SW developed with mixed funds**

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Data Rights

Types of Data Rights (Continued):

- **Limited Rights**
  - **Tech data developed exclusively at private expense**
- **Restricted Rights**
  - **SW/algorithms developed exclusively at private expense**
- **SBIR Data Rights (Data & software developed under SBIR contract)**
  - **Basically: Government purpose rights with some changes**
  - **The Govt cannot disclose your Tech Data/software, outside Govt for 5 years after the project is complete**

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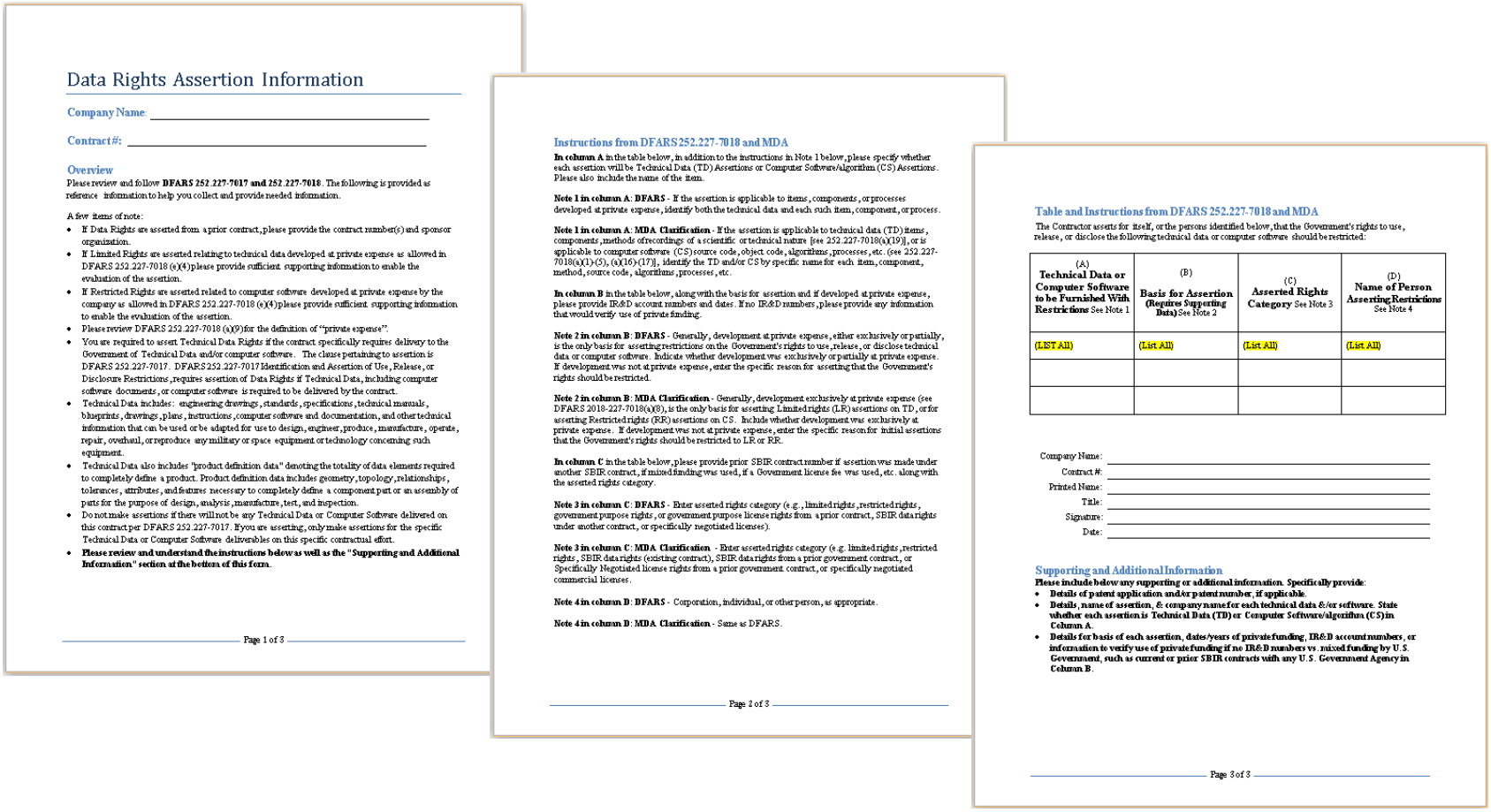
Data Rights

SBIR Data Rights Assertions Form:



Data Rights Assertion Information

Company Name: _____

Contract #: _____

Overview

Please review and follow **DFARS 252.227-7017 and 252.227-7018**. The following is provided as reference information to help you collect and provide needed information.

A few items of note:

- If Data Rights are asserted from a prior contract, please provide the contract number(s) and sponsor organization.
- If Limited Rights are asserted relating to technical data developed at private expense as allowed in DFARS 252.227-7018 (e)(4) please provide sufficient supporting information to enable the evaluation of the assertion.
- If Restricted Rights are asserted related to computer software developed at private expense by the company as allowed in DFARS 252.227-7018 (e)(4) please provide sufficient supporting information to enable the evaluation of the assertion.
- Please review DFARS 252.227-7018 (a)(9) for the definition of "private expense".
- You are required to assert Technical Data Rights if the contract specifically requires delivery to the Government of Technical Data and/or computer software. The clause pertaining to assertion is DFARS 252.227-7017. DFARS 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions, requires assertion of Data Rights if Technical Data, including computer software documents, or computer software is required to be delivered by the contract.
- Technical Data includes: engineering drawings, standards, specifications, technical manuals, blueprints, drawings, plans, instructions, computer software and documentation, and other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.
- Technical Data also includes "product definition data" denoting the totality of data elements required to completely define a product. Product definition data includes geometry, topology, relationships, tolerances, attributes, and features necessary to completely define a component part or an assembly of parts for the purpose of design, analysis, manufacture, test, and inspection.
- Do not make assertions if there will not be any Technical Data or Computer Software delivered on this contract per DFARS 252.227-7017. If you are asserting, only make assertions for the specific Technical Data or Computer Software deliverables on this specific contractual effort.
- **Please review and understand the instructions below as well as the "Supporting and Additional Information" section at the bottom of this form.**

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Instructions from DFARS 252.227-7018 and MDA

In column A in the table below, in addition to the instructions in Note 1 below, please specify whether each assertion will be Technical Data (TD) Assertions or Computer Software/algorithm (CS) Assertions. Please also include the name of the item.

Note 1 in column A: DFARS - If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

Note 1 in column A: MDA Clarification - If the assertion is applicable to technical data (TD) items, components, methods of recordings of a scientific or technical nature [see 252.227-7018(a)(19)], or is applicable to computer software (CS) source code, object code, algorithms, processes, etc. (see 252.227-7018(a)(1)-(5), (a)(16)-(17)], identify the TD and/or CS by specific name for each item, component, method, source code, algorithms, processes, etc.

In column B in the table below, along with the basis for assertion and if developed at private expense, please provide IR&D account numbers and dates. If no IR&D numbers, please provide any information that would verify use of private funding.

Note 2 in column B: DFARS - Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

Note 2 in column B: MDA Clarification - Generally, development exclusively at private expense (see DFARS 2018-227-7018(a)(8), is the only basis for asserting Limited rights (LR) assertions on TD, or for asserting Restricted rights (RR) assertions on CS. Include whether development was exclusively at private expense. If development was not at private expense, enter the specific reason for initial assertions that the Government's rights should be restricted to LR or RR.

In column C in the table below, please provide prior SBIR contract number if assertion was made under another SBIR contract, if mixed funding was used, if a Government license fee was used, etc. along with the asserted rights category.

Note 3 in column C: DFARS - Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

Note 3 in column C: MDA Clarification - Enter asserted rights category (e.g. limited rights, restricted rights, SBIR data rights (existing contract), SBIR data rights from a prior government contract, or Specifically Negotiated license rights from a prior government contract, or specifically negotiated commercial licenses.

Note 4 in column D: DFARS - Corporation, individual, or other person, as appropriate.

Note 4 in column D: MDA Clarification - Same as DFARS.

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Table and Instructions from DFARS 252.227-7018 and MDA

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

(A) **Technical Data or Computer Software to be Furnished With Restrictions** See Note 1	(B) **Basis for Assertion (Requires Supporting Data)** See Note 2	(C) **Asserted Rights Category** See Note 3	(D) **Name of Person Asserting Restrictions** See Note 4
(LIST ALL)	(List All)	(List All)	(List All)

Company Name: _____

Contract #: _____

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Supporting and Additional Information

Please include below any supporting or additional information. Specifically provide:

- **Details of patent application and/or patent number, if applicable.**
- **Details, name of assertion, & company name for each technical data &/or software. State whether each assertion is Technical Data (TD) or Computer Software/algorithm (CS) in Column A.**
- **Details for basis of each assertion, dates/years of private funding, IR&D account numbers, or information to verify use of private funding if no IR&D numbers vs. mixed funding by U.S. Government, such as current or prior SBIR contracts with any U.S. Government Agency in Column B.**

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Data Rights

(A) **Technical Data or Computer Software to be Furnished With Restrictions** See Note 1	(B) **Basis for Assertion (Requires Supporting Data)** See Note 2	(C) **Asserted Rights Category** See Note 3	(D) **Name of Person Asserting Restrictions** See Note 4
(LIST All)	(List All)	(List All)	(List All)

- **Table and Instructions from DFARS 252.227-7018 & MDA**
  - **Column A: If the assertion is applicable to TD and or CS, list each by specific name of each item, component, method, source code, algorithms, processes, etc.**
  - **Column B: If Private expense: Provide Independent Research & Development (IR&D) account numbers and dates (month/year) and additional documentation.**

Data Rights

- **Column C:** Provide prior SBIR contract number if assertion was made under another SBIR contract, and end date of prior SBIR contract. Enter SBIR data rights from a prior government contract, or Specifically Negotiated license rights from a prior government contract, or specifically negotiated commercial licenses

- **Column D:** Corporation, individual, or other person, as appropriate.

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Data Rights

- **Final Summary of Key Points:**
  - **Complete a Data Rights Assertion Form whether you make assertions or not**
    - **If no assertions are made, enter 'N/A'**
  - **Submit subcontractor data assertions on a separate Data Rights Assertion Form**
  - **If SBIR Data Rights or Government Purpose Rights, list prior contract numbers, & each prior contract end date.**
  - **If Limited Rights or Restricted Rights Assertions, provide detailed basis 'private funding'**
  - **Sign and date the Data Rights Assertion Form**
  - **The final approved data assertions will become an attachment to the contract**

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Foreign Persons

By: Latoya Gilbert
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Foreign Persons

- **The intent to use non-U.S. citizens in the performance of a MDA SBIR/STTR contract must be reported to the MDA contracting officer**

- **These requirements are in accordance with:**
  - **The Arms Export Control Act,**
  - **The International Traffic in Arms Regulation (ITAR), and**
  - **Department of Defense Directives**
  - **DFARS 252.225-7048, Export Controlled Items**

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Foreign Persons

- **As a matter of policy, foreign personnel are excluded from participation in CLASSIFIED SBIR efforts**
  - **Only U.S. citizens are eligible for a U.S. security clearance**
- **Participation in a Phase I effort by a foreign person may be authorized if the work will be UNCLASSIFIED**
  - **Participation in subsequent Phase II and Phase III efforts may be prohibited as application of the research effort becomes more specific and potentially encroaches on CLASSIFIED information**

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Foreign Persons

- **ITAR Definition**
  - **Sending or taking a defense article or technical data out of the U.S.**
  - **Disclosures to foreign persons or entities, whether those disclosures occur in the United States or abroad**
  - **Disclosure of technical data made to a foreign national within the US is deemed to be an export even though the information does not physically leave the country at that time**

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Foreign Persons

- **Applicable ITAR Policy**
  - **The ITAR Parts 120 – 130. implement the Arms Export Control Act to control the export of defense articles, technology, and services;**
  - **ITAR Part 120, specifically, provides the purpose and definitions for control of the export of defense articles and defense services**

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Foreign Persons

- **Requests for foreign nationals to work on a proposed contract require an evaluation by MDA International Security**

- **In accordance with regulations:**
  - **Withholding of Unclassified Technical Data from Public Disclosure, no foreign persons will work on a contract without Contracting Officer approval**

- **Adequate information must be provided to address citizenship of any all foreign persons that are going to be affiliated, involved with, or part of the contract**

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Foreign Persons

- **If a SBIR/STTR contractor proposes to use a foreign person, prime or sub:**
  - **The contracting office initiates a foreign disclosure request to the MDA International Security Division**

- **Specific rules do apply to disclosure of classified and controlled unclassified military information (CMI/CUMI)**

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Foreign Persons

- **Foreign Person information required for a contract:**
  - **Full name**
  - **Date of birth**
  - **Place of birth**
  - **Nationality**
  - **Social Security Number**
  - **U.S. citizenship status, ie., visa type/status, permanent resident status (green card)**
  - **Current address**
  - **COR inputs for Evaluation of foreign persons participation**
  - **Representation and Certifications**
  - **Foreign persons biographic data and/or resume**
  - **Statement of Work**

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Foreign Persons

- **Final Summary of Key points:**
  - **Only U.S. citizens are authorized to perform classified contract performance**
  - **MDA approval required for Foreign Persons to perform unclassified contract performance**
  - **All rules concerning Foreign Persons apply to your subcontracts**

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Questions and Answers

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