

## Department of the Interior

## 1415.207-71

AUTHORITY: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

SOURCE: 75 FR 19829, Apr. 15, 2010, unless otherwise noted.

### Subpart 1415.2—Solicitation and Receipt of Proposals and Information

#### 1415.201 Exchanges with industry before receipt of proposals.

(a) Use of a presolicitation conference shall be approved at one level above the CO.

(b) A CO may issue a solicitation for information or planning purposes without a written justification and without obtaining a higher level of approval.

#### 1415.207 Handling proposals and information.

##### 1415.207-70 Department of the Interior proposal and information handling procedures.

(a) *General.* This section establishes procedures that must be used in addition to those prescribed in FAR 15.207, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) *Marking of solicited proposals.* A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, prefers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors must mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at 1452.215-71, Use and Disclosure of Proposal Information—Department of the Interior. COs and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(c) *Failure to mark.* The Government assumes no liability for the disclosure or use of information contained in a

proposal if not marked in accordance with 1452.215-71. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with 1452.215-71, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(d) *Solicitation provision.* The provision at 1452.215-71, Use and Disclosure of Proposal Information—Department of the Interior, shall be inserted in all requests for proposals and requests for quotations.

##### 1415.207-71 Confidentiality of proposal evaluation.

(a) The safeguarding of evaluation data and information, including proposals, is essential in order to preserve the integrity of the proposal evaluation process. During the selection process, no member or advisor of any committee appointed to evaluate proposals shall discuss or disclose any information on the number, identity or content of proposals received to any other party (including supervisors) without the written approval of the CO. 18 U.S.C. 1905 prohibits the unauthorized disclosure of business, confidential or trade secret information unless authorized by law.

(b) At the initial meeting of the committee, the CO shall brief all members and advisors on the sensitivity of the evaluation process and the prohibition against unauthorized disclosure of information. At this meeting each member and advisor shall sign a Confidentiality Certificate. During the proposal evaluation process, all proposals, evaluation notes, scoring sheets, and other

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materials shall be locked in file cabinets or drawers when not in use by committee members and advisors.

(c) The CO shall be the single point of contact regarding communications received from outside parties relating to the acquisition and the evaluation and selection process. Any committee member or advisor who receives a communication from any outside party shall, without discussion, immediately refer the party to the CO. The CO will then determine what further action shall be taken, if any, in responding to the communication. Requests for information made pursuant to the Freedom of Information Act shall be referred to the CO for reply. Proposal evaluation committee members and advisors shall not contact any offeror whose proposal is under evaluation. All communications with offerors shall be handled by the CO.

(d) Bureaus and offices may only release proposals outside the Government for evaluation or advice in accordance with the following requirements:

(1) Decisions to release proposals outside the Government for evaluation or advice shall be approved in writing by the HCA;

(2) Outside evaluators and advisors shall sign a Conflict of Interest Certificate and a Confidentiality Certificate in a format approved by the HCA;

(3) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor, or by the Government shall be applied to any reproduction or abstracted information made by the outside evaluator or advisor;

(4) Upon completing the evaluation, all copies of the proposal, as well as any abstracts thereof, shall be returned to the Government office which initially furnished them for evaluation; and

(5) All determinations to release the proposal outside the Government shall take into consideration requirements for avoiding individual conflicts of interest (see 1403.101) and organizational conflicts of interest (see 1409.5 and FAR Subpart 9.5), and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective outside evaluator.

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(e) If outside individuals will be voting members of the evaluation committee or otherwise participate in other than an advisory capacity, then the committee must be constituted as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (PL 92–463) and 308 DM 2. Since the Secretary must appoint such committees in consultation with the Office of Management and Budget, there should be very few occasions when use of outside individuals as voting members is justified.

(f) Outside evaluators will usually serve as advisors to the proposal evaluation committee and as such, are consultants. Consultants may be appointed as special employees in accordance with 5 U.S.C. 3109 or contracted for in accordance with 1437.1.

(g) Additional restrictions on the disclosure of acquisition evaluation information are listed in FAR Subpart 5.4.

### 1415.209 Solicitation provisions and contract clauses.

### 1414.209–70 Examination of records by the Department of the Interior.

The CO shall insert the clause at 1452.215–70, Examination of Records by the Department of the Interior, in all contracts requiring the clause at FAR 52.215–2 Audit and Records, Negotiation, as prescribed in FAR 15.209(b).

## Subpart 1415.3—Source Selection

### 1415.303 Responsibilities.

(a) The HCA shall determine when a formal source selection process will be used and shall establish implementing procedures.

(b) The formal source selection procedures shall include designating the CO as the individual responsible for the proper control and appropriate release of proprietary and source selection information after source selection.

### 1415.305 Proposal evaluation.

The CCO is authorized to make the determination to reject all proposals.