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legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever (1) the principal purpose of the instrument is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or (2) whenever MarAd determines in a specific instance that the use of a type of procurement contract is appropriate.

(c) *Grant agreement.* A type of grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

(d) *Cooperative agreement.* A type of cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a state or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the state or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between MarAd, acting for the Federal Government, and the state or local government or other recipient during performance of the contemplated activity.

§ 385.33 Unsolicited applications and proposals for financial assistance awards.

(a) *Policy.* Although it is MarAd policy to solicit applications and proposals for assistance awards where possible, MarAd also values obtaining innovative ideas, methods, and approaches in maritime transportation areas offered by the public through unsolicited applications and proposals. It is the policy of the Government to foster and encourage the submission of unsolicited proposals. This § 385.33 is designed to encourage the submisson of unsolicited proposals relating to MarAd's mission and to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

(b) *Scope.* This section applies to unsolicited proposals being considered for support through an assistance instrument. This section does not apply when a procurement contract is the appropriate award instrument in accordance with § 385.32(b).

(c) *Definition of unsolicited proposal.* The term *unsolicited proposal* means a written offer to perform a proposed task or effort, initiated and submitted to MarAd by a prospective recipient (offeror) without solicitation by MarAd, and with the objective of obtaining an award. The term may include both requests for support of a new project and requests for additional support of a previously funded project (renewals).

(d) *Advance consultation.* Organizations or individuals who are interested in submitting an unsolicited proposal are encouraged, before expending extensive effort in preparing a detailed unsolicited proposal or submitting any proprietary information to the Government, to make preliminary inquiries of MarAd program staff as to the general interest in the type of project contemplated. Prior contact with agency technical personnel is permissible and is encouraged, with the limited objectives of conveying to the prospective recipient an understanding of the agency mission and interest relative to the type of project contemplated. The project officer shall not indicate or imply in discussions with the potential proposer that a proposal will result in

an award. Nothing is to be suggested to encourage or authorize the potential proposer to perform any work at MarAd expense in anticipation of support or an award. If there have been prior discussions with a particular MarAd program office, a statement of this fact should be stated on the face of the proposal.

(e) *Guides.* Guides for preparing the content of unsolicited proposals are available from the Awards Officer (M-900), Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Notwithstanding these guides, state and local governments may submit unsolicited applications or proposals using the application forms authorized by OMB Circular No. A–102, Attachment M.

(f) *Submission point.* All unsolicited proposals for new or renewals of financial assistance awards shall be submitted to Awards Officer (M-900), Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.

(g) *Receipt and review.* (1) Receipt of unsolicited proposals will be acknowledged promptly by the Awards Officer and then forwarded expeditiously to potentially interested program offices for comment. Each unsolicited proposal that is circulated for a comprehensive evaluation shall have a legend attached or imprinted on it by the Awards Officer, identifying it as an unsolicited proposal and stating that it shall be used only for purposes of evaluation.

(2) The responsible program officials shall evaluate the proposal fairly and objectively using the criteria in §§ 385.50 through 385.52.

(3) An unsolicited proposal may include data which the proposer does not want disclosed for purposes other than the evaluation of the proposal. In such case, the proposer should mark each page containing such data with the words ''Proprietory Data—Restricted Use'' at the top of the page. In the event that an unsolicited proposal, in whole or in part, indicates that the proposer wishes to impose restrictions on the use or disclosure of the data contained in the proposal, MarAd personnel handling the proposal will take care to ensure that the information in the proposal is not disclosed outside of MarAd. The Awards Officer has responsibility for ensuring that proposal reviewers are free of any direct affiliation with the individual(s) or institution submitting the proposal. MarAd policy on the use of information contained in proposals is to use such information only for evaluation purposes, except to the extent such information is generally available to the public, is already the property of the Government, or is available to the Government without restriction. Accordingly, if a proposal contains information the proposer wishes to protect, the proposer shall mark the cover page of the proposal with the following Notice:

NOTICE: The data contained in pages ____ of this proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial information, and such data shall be used or disclosed only for evaluation purposes: *Provided,* That if this proposer receives an award 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 herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the proposer.

MarAd shall ensure that all copies of the proposal carry the above Notice, and that it is not disclosed outside MarAd, except with the consent of the proposer.

(h) *Criteria* for acceptance of an unsolicited proposal are those listed in §§ 385.50 through 385.52. If an unsolicited proposal fails to meet any of the criteria, the proposer will be notified by the Awards Officer in accordance with paragraph (j) of this section.

(i) *Funding determination.* The responsibility for deciding funding availability rests solely with the Grants Officer and will not be considered by the proposal reviewers.

(j) *Nonsupport of proposal.* If the proposal does not offer sufficient technical merit or program value; is not relevant to the accomplishment of a public purpose authorized by MarAd program legislation; or if funds are not available; the proposal will be returned to the proposer, if the proposer so requests. The Awards Officer shall prepare a letter to the proposer which sets forth the

basis for rejection of the unsolicited proposal or application.

(k) *Support of proposal.* There is no prescribed format for the program documentation necessary to justify providing assistance. The minimum requirements are that: there be a reasonable basis for acceptance based on the criteria set forth in §§ 385.50 through 385.52; the rationale for providing support be written, and approvals be obtained as required by MarAd; and, that a copy of the documentation be included in the assistance instrument award file. The rationale for providing assistance may be included in documents required for project approval.

§ 385.34 Responsibility for issuing solicitations for proposals or applications.

(a) It is MarAd policy to favor solicitation of proposals or applications, where discretionary assistance awards are available, in preference to relying on unsolicited proposals, in order to maximize opportunities for open participation by the public in MarAd assistance awards.

(b) The Awards Officer shall be responsible for issuing solicitations, announcements, or the like, which call for the submission of proposals and applications by a certain due date which, if favorably acted upon by MarAd, may result in assistance awards.

§ 385.35 Program opportunity notices.

(a) A program opportunity notice can be used to stimulate the flow of unsolicited proposals or applications when the program objectives cannot be defined sufficiently to prepare a program solicitation.

(b) The program opportunity notice will contain the following, at a minimum:

(1) A number assigned for control and reference purposes;

(2) A brief description of the broad, general technical program or areas needing investigation (generally 50 words or less);

(3) A statement of the principal program objective in possibly funding unsolicited proposals as either:

(i) The acquisition of concepts, property, or services for the direct benefit or use of the Federal Government; or

(ii) The transfer of money, property, or services to a recipient for support or stimulation authorized by Federal statute;

(4) A statement about how unsolicited proposals will be evaluated and accepted:

(i) If the principal program objective is to accomplish a public purpose of support or stimulation, the criteria in §§ 385.50 through 385.52 shall be applied;

(ii) If the principal program objective is the acquisition of concepts, property, or services for the direct benefit or use of the Federal Government (i.e., procurement), the policy regarding evaluation and acceptance of unsolicited proposals in 41 CFR 9–4.9 shall apply;

(5) Restrictions, if any, as to who may submit proposals;

(6) A contact where additional information may be obtained;

(7) An expiration date which identifies when the program opportunity notice will no longer be current. This date shall not be used as a required common due date for submission of proposals;

(8) A statement that MarAd reserves the right to support or not support, in whole or in part, any or all proposals received;

(9) A statement that MarAd assumes no responsibility for any costs associated with specific proposal preparation if no award is made; but that if an award is made, MarAd will pay its allocable share of bid and proposal expenses as provided for in applicable Federal cost principles;

(10) A statement that proposals submitted pursuant to the notice shall be mailed to the Awards Officer (M–900), Maritime Administration, Room 4885, U.S. Department of Transportation, Washington, DC 20590.

(11) A reference that detailed information concerning assistance policy and procedures is contained in these assistance regulations, 46 CFR part 385;

(12) As much information as possible as to how proposals and applications will be evaluated;

(13) Policies and procedures for patents, data, and copyrights. Proposers have the right to request in advance of or within thirty (30) days after the effective date of award a waiver of all or