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
MDA Small Business Industry Day

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
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)
Cost Proposal Preparation

By: Mitch Shelton
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August 14, 2015
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
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
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
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
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
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
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
August 14, 2015

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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
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).
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
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
Data Rights

SBIR Data Rights Assertions Form:

Data Rights Assertion Information

Company Name: ____________________________
Contract: ________________________________

Overview

Please review and sign SBIR 252-227-7816 and SBIR 227-7816. The following is provided in reference to SBIR Data Rights and is intended to clarify the rights held by the contractor and the proprietary information rights of the government.

A few items of note:

1. If Data Rights are set forth as "Off-Contract", please provide the contract number and submit in accordance.

2. If Data Rights are set forth as "Contract", please provide all information and submit.

3. If Data Rights are set forth as "Restricted", please provide the rationale for not releasing proprietary information and submit.

4. If Data Rights are set forth as "Contract and Restricted", please provide all information and submit.

5. Please note that Data Rights are not transferable to off-Contract personnel.

6. Please note that Data Rights are not transferable to off-Contract personnel at all.

7. Please note that Data Rights are not transferable to off-Contract personnel without the express written consent of the contracting officer.

8. Please note that Data Rights are not transferable to off-Contract personnel without the express written consent of the contracting officer at all.

9. Please note that Data Rights are not transferable to off-Contract personnel without the express written consent of the contracting officer at all.

Instructions from DFARS 252.227-7816 and MDA

Instructions for SBIR 252-227-7816 and MDA:

In column A, enter the following information:

1. Type of Data:
2. Type of Contract:
3. Type of Technology:
4. Type of Rights:
5. Type of Restrictions:
6. Type of Proprietary Information Rights:
7. Type of Non-Disclosure Agreement:
8. Type of Non-Circumvention Agreement:
9. Type of Export Control:

In column B, enter the following information:

1. Name of Contractor
2. Date of Approval
3. Signature of Contractor

Table and Instructions from DFARS 252.227-7816 and MDA

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Data</td>
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<td>Type of Export Control</td>
</tr>
</tbody>
</table>

Supporting and Additional Information

Please include any supporting or additional information, specifically provide:

1. Details of proposed changes to existing terms and conditions.
2. Details of proposed new terms and conditions.
3. Details of proposed changes to existing terms and conditions.
4. Details of proposed new terms and conditions.
5. Details of proposed changes to existing terms and conditions.
6. Details of proposed new terms and conditions.

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## Data Rights

<table>
<thead>
<tr>
<th>(A) Technical Data or Computer Software to be Furnished With Restrictions See Note 1</th>
<th>(B) Basis for Assertion (Requires Supporting Data) See Note 2</th>
<th>(C) Asserted Rights Category See Note 3</th>
<th>(D) Name of Person Asserting Restrictions See Note 4</th>
</tr>
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</table>

**• 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.
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
Foreign Persons

By: Latoya Gilbert
Contract Specialist
Missile Defense Agency
August 14, 2015
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
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
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
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
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.
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)
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, i.e., 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
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
Questions and Answers