

## SOLICITATION PROVISIONS

For the Pacific Northwest National Laboratory  
Operated by Battelle Memorial Institute

### Submission, Modification, Revision, and Withdrawal of Proposals (cl 605 – Aug 2012)

- A. Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Battelle office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:00 p.m., local time, for the designated Battelle office on the date that proposal or revision is due.
- B. Any proposal, modification, or revision received at the Battelle office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Battelle Contracts Representative determines that accepting the late offer would not unduly delay the acquisition; and—
1. It was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Battelle, Pacific Northwest Division, infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
  2. There is acceptable evidence to establish that it was received at the Battelle site designated for receipt of offers and was under Battelle's control prior to the time set for receipt of offers; or
  3. It is the only proposal received.
- C. However, a late modification of an otherwise successful proposal that makes its terms more favorable to Battelle will be considered at any time it is received and may be accepted.
1. Acceptable evidence to establish the time of receipt at the Battelle site includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Battelle personnel.
  2. If an emergency or unanticipated event interrupts normal Battelle processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Battelle requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Battelle processes resume.
  3. Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and

the person signs a receipt for the proposal before award. Withdrawals are effective upon receipt of notice by the Battelle Contracts Representative.

4. Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
  5. Offerors shall submit proposals in response to this solicitation in English and in U.S. dollars unless otherwise permitted by the solicitation.
  6. Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
  7. Offerors may submit revised proposals only if requested or allowed by the Battelle Contracts Representative.
- D. Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation (unless a different period is proposed by the offeror and accepted by Battelle).
- E. Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by Battelle except for evaluation purposes, shall:
1. Mark the title page with the following legend:  
*This proposal includes data that shall not be disclosed outside Battelle and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with--the submission of this data, Battelle shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit Battelle's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and*
  2. Mark each sheet of data it wishes to restrict with the following legend:  
*Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.*

### Amendments to the Solicitation (cl 602 – Aug 2012)

If this solicitation is amended, all provisions which are not modified remain unchanged.

Offerors shall acknowledge receipt of any amendment of this solicitation (a) by signing and returning the form provided for such purpose; (b) by stating in its proposal that the amendment (date and number) was received and considered in formulating the proposal; or (c) by letter or E-mail. Battelle must receive the acknowledgement by the hour and date specified for receipt of proposals.

## Alternate Proposals (cl 604 – Aug 2012)

Battelle is inviting proposals in full accordance with the attached specifications or description. In the event that offeror is unable to submit a proposal responsive to this requirement and offeror believes they have an item(s) which may otherwise be acceptable, offerors are invited to submit a proposal for Battelle's consideration, stating item by item each incidence of noncompliance. Offerors are hereby advised that Battelle shall not be obligated to evaluate this proposal, but if acceptable, this solicitation will either be canceled and reissued or revised to incorporate any appropriate changes.

## Treatment of Proposal Data (cl 609 – Aug 2012)

Although not specifically requested by the solicitation, the proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the offeror does not want disclosed to the public or used by Battelle or the Government for any purpose other than proposal evaluation. To protect such data, the offeror will specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet 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. Battelle and the Government shall have the right to use or disclose the data herein to the extent provided in the contract. This restriction does not limit Battelle's and the Government's right to use or disclose data obtained without restriction from any source, including the offeror.*

Reference to this notice on the cover sheet should be placed on each page to which the notice applies. Battelle assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

Should a contract be awarded based on a proposal, it is policy, in consideration of the award, to obtain unlimited rights for the Government in technical data contained in the proposal unless the prospective contractor marks those portions of the technical information that he asserts as "proprietary data," or specifies those portions of such technical data that are not directly related to or will not be utilized in the work to be funded under this subcontract. "Proprietary data" are defined as technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data: (1) are not generally known or available from other sources without obligation concerning their confidentiality; (2) have not been made available by the owner to others without obligation concerning their confidentiality; and (3) are not already available to the Government without obligation concerning their confidentiality. An offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate proposal page number to be inserted in the Rights to Proposal Data clause below. Subject to the

concurrence of Battelle, information unrelated to the subject may be deleted from the proposal by the offeror. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated rests with the offeror.

The following clause shall be included in any contract based on a proposal. This clause is intended to apply only to technical data and not to other data, such as privileged or confidential commercial or financial information

### RIGHTS TO PROPOSAL DATA

*Except for technical data contained on pages \_\_\_\_\_ of the Contractor's proposal dated \_\_\_\_\_, which are asserted by the Contractor as being proprietary data, it is agreed that as a condition of the award of this contract, notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, and disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.*

## Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data

(cl 601 - Feb 2012) (applies to proposals >\$700,000)

A. **Exceptions from cost or pricing data.** 1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Battelle Contracts Representative may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

1. **Identification of the law or regulation establishing the price offered.** If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
2. **Commercial item exception.** For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include --

For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market. The offeror shall submit, at a minimum,

evidence of an existing market structure such as a blue book or an exchange including the price for the items proposed.

For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

The offeror grants the Battelle Contracts Representative or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or market place.

- B. Requirements for cost or pricing data.** If the offeror is not granted an exception for the requirement to submit cost or pricing data, the following applies:
1. The offeror shall prepare and submit certified cost or pricing data, and data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Battelle Contracts Representative and the offeror agree to a different format and change this clause to use Alternate I.
  2. As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

#### **Prompt Payment Discounts** *(cl 603 - Aug 2012)*

Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror.

#### **Brand Name or Equal** *(cl 606 - Jan 1986)*

The use of brand names in this solicitation is intended to be descriptive and to indicate the quality and characteristics of products that will be satisfactory. If the offeror proposes to furnish an equal product, the brand name of such product shall be clearly identified in the offer. The determination as to equality of the product offered shall be the responsibility of Battelle based on information furnished by the offeror. To ensure that sufficient information is available for evaluation, the offeror shall furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for Battelle to 1) determine whether the product offered meets the essential characteristics of this solicitation and 2) establish what Battelle would be binding itself to purchase.

NOTE 1: Offers shall be considered as offering the brand name product referenced in this solicitation unless offeror clearly indicates that it is offering an equal product.

NOTE 2: If offeror proposes to modify a product to make it conform to the essential characteristics of this solicitation it shall 1) include in its offer a clear description of such proposed modifications and 2) clearly mark any descriptive material to show the proposed modifications.

#### **Requirement for Sustainable Goods and Services**

*(cl 681 - Nov 2011)*

The successful offeror must provide environmentally sustainable products in accordance with the General Provision Clause 381 entitled "Sustainable Acquisition Requirements." A request for an exception to the requirement to provide environmentally sustainable goods must be submitted to the Battelle Contracts Representative prior to submission of proposal.

#### **GSA Contract Proposal** *(cl 616 - July 2012)*

If an offeror is a GSA Schedule contractor and submits a proposal for the supplies/services specified herein under the terms of its GSA Schedule, a copy shall be attached to its proposal. Proposals shall be evaluated in accordance with the criteria specified in this solicitation. However, award may be made under the GSA contract if such award would be more advantageous to Battelle.

#### **Software License Agreements** *(cl 625 - Sep 2012)*

If software license agreements are required, they shall be submitted with your proposal. Software licenses require approval prior to award. The inability to negotiate license terms acceptable to Battelle may result in proposal deemed to be unacceptable.

As a minimum, the following are examples of terms which will not be acceptable:

- A. Any conditions which makes licensee a guarantor against theft or unauthorized copying or other improper handling of software by employees or others.
- B. Any condition which imposes on licensee a greater degree of care for the protection of software than Battelle's normal control procedures for licensed software.
- C. Any condition which obligates licensee to indemnify licensor against liability to third parties.
- D. Any conditions by which licensor disclaims ownership of rights to the program or responsibility that program does not infringe the rights of others.
- E. Any condition which restricts Battelle's right to assign the software to the U.S. Department of Energy (DOE), its designee, or the program sponsor as long as that assignee agrees to honor the terms of the license agreement.

In addition, the following are examples of terms which shall be included. Any software proposed may be:

- A. Used or copied for use in or with the computer or computers for which it was acquired, including use at any government installation to which such computer or computers may be transferred.
- B. Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative.

- C. Reproduced for safekeeping (archives) or backup purposes.
- D. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this contract.
- E. Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract.
- F. Used or copied for use in or transferred to a replacement computer.
- G. Destroyed at end of useful life rather than returned to licensor.

Note: In the event that direct assignability of software to DOE, its designee, or other program sponsor is not acceptable to offeror the proposal shall so state and costs of relicensing the software shall be included in the total price proposed for evaluation.

**Bid and Proposal Costs** *(cl 617 – July 2012)*

Battelle is not obligated to pay any costs incurred in the preparation and submission of a proposal, nor to enter into a contract or any other arrangement with any offeror.

**Preaward On Site Equal Opportunity Compliance Evaluation** *(cl 620 - Feb 1999)*

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**As required by FAR 32.706-3, the following clause shall be incorporated by reference in any resultant contract:**

FAR 52.232-39      Unenforceability of Unauthorized Obligations (Jun 2013)