

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 3452.2—Texts of Provisions and Clauses

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19125, May 26, 1988, unless otherwise noted.

#### Subpart 3452.2—Texts of Provisions and Clauses

##### 3452.202-1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

##### DEFINITIONS (AUG 1987)

(a) The term *Secretary or Head of the Agency* (also called *Agency Head*) means the Secretary or Under Secretary of the Department of Education; and the term *his/her duly authorized representative* means any person, persons, or board authorized to act for these officials.

(b) The term *contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(c) The term *Contracting Officer's Technical Representative* means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department or ED* means the Department of Education.

(e) Except as otherwise provided in this contract, the term *subcontract* includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

##### 3452.208-70 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

##### PRINTING (AUG 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

##### 3452.209-70 Organizational conflict of interest.

As prescribed in 3409.570, insert the following provision in all certifications:

### 3452.215-33

#### ORGANIZATIONAL CONFLICT OF INTEREST (OCT 1987)

The offeror certifies that it ( ) is ( ) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

### 3452.215-33 Order of precedence.

As prescribed in 3415.406-3, insert the following clause in contracts:

#### ORDER OF PRECEDENCE (AUG 1987)

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the work statement or specification).
- (b) The contract clauses (Section I).
- (c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications.
- (d) The work statement or specifications, and
- (e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

### 3452.215-70 Release of restricted data.

As prescribed in 3415.407, insert the following provision in solicitations:

#### RELEASE OF RESTRICTED DATA (AUG 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215-12, Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act. The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

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(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515-12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

### 3452.216-70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

#### ADDITIONAL COST PRINCIPLES (AUG 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.