

REQUEST FOR PROPOSAL INSTRUCTIONS TO OFFERORS

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1. EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective Offerors before the submission of their offers. Oral explanations or instructions given before the award of the subcontract will not be binding. Any information given to a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offerors.

2. SUBMISSION OF OFFERS

- Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the Offeror.
- Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice, if that notice is received by the time specified for receipt of offers.
- Facsimile offers, modifications or withdrawals will be considered.
- Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to Fermilab and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

3. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS

- Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it –
 - Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by Fermilab that the late receipt was due solely to mishandling by Fermilab after receipt at Fermilab.
 - Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
 - Is the only proposal received.
- Any modification of a proposal or quotation, except a modification resulting from Fermilab's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) above.

- A modification resulting from Fermilab's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by Fermilab after receipt at Fermilab.
- The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, Offerors or quoters should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- The only acceptable evidence to establish the time of receipt at Fermilab is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
- The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, Offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
- Notwithstanding paragraph (a) above, a late modification of an otherwise successful proposal that makes its terms more favorable to Fermilab will be considered at any time it is received and may be accepted.
- Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an Offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

4. AWARD

- Fermilab will award a subcontract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to Fermilab, cost or price and other factors, specified elsewhere in this solicitation, considered.
- Fermilab may (1) reject any or all offers, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.
- Fermilab may award a subcontract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms from a cost or price and technical standpoint.
- Fermilab may accept any item or group of items of an offer, unless the Offeror qualifies the offer by specific limitations. *Unless otherwise provided in the solicitation, offers may be*

submitted for quantities less than those specified. Fermilab reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the offer.

- (e) A written award or acceptance of offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer shall result in a binding subcontract without further action by either party. Before the offer's specified expiration time, Fermilab may accept an offer (or part of an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by Fermilab.
- (f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting subcontract. However, if the resulting subcontract contains a clause providing for price reduction for defective cost or pricing data, the subcontract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.
- (g) Fermilab may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to Fermilab, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

5. PRIORITIES AND ALLOCATIONS DOMESTIC ENERGY SUPPLIES

A program or project under this purchase order may be determined to be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Department of Energy and Commerce.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication MA-0192, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1985, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Office of Scientific and Technical Information (OSTI), Post Office Box 62, Oak Ridge, Tennessee 37830.

6. RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by Fermilab except for evaluation purposes, shall –

- (a) Mark the title page with the following legend:
"This proposal or quotation includes data that shall not be disclosed outside Fermilab and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate this proposal or quotation. If, however, a subcontract is awarded to this Offeror or quoter as a result of – or in connection with – the submission of this data, Fermilab shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting subcontract. This restriction does not limit Fermilab'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

- (b) 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 or quotation."

7. ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendment to this solicitation by
 - (1) signing and returning the amendment,
 - (2) identifying the amendment number and date in the space provided for this purpose on FL-6,
 - (3) letter or telegram, or
 - (4) facsimile, if facsimile offers are authorized in the solicitation. Fermilab must receive the acknowledgement by the time and at the place specified for receipt of offers.

8. FACSIMILE OFFERS

- (a) Definition. "Facsimile offer," as used in this solicitation, means an offer, modification of an offer or withdrawal of an offer that is transmitted to and received by the Fermilab via electronic equipment that communicates and reproduces both printed and handwritten material.
- (b) Facsimile offers may be submitted in response to this solicitation. Facsimile offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.
- (c) Facsimile offers that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.
- (d) Facsimile offers must contain the required signatures. The Offeror agrees that its facsimile signature has the same force and effect as a handwritten signature on an original document and fully signifies its intent to contract in accordance with the facsimile offer.
- (e) Fermilab reserves the right to make award solely on the facsimile offer. However, Offerors shall promptly submit the complete original signed offer, but in no event later than five (5) working days following Fermilab's request.
- (f) The Offeror's failure to make timely submission of the original, signed, offer in accordance with paragraph (e) of this provision may render the offer ineligible for award.
- (g) Facsimile receiving data and compatibility characteristics are as follows:
 - (1) Telephone number of receiving facsimile equipment:
(630) 840-2457 PURCHASING DEPT.
(630) 840-2907 CONTRACTS DEPT.
 - (2) Compatibility characteristics of receiving electronic equipment:
OMNIFAX MODEL 9S, 9600 BPS
- (h) If the Offeror chooses to transmit a facsimile offer, Fermilab will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer including, but not limited to, the following:
 - (1) Receipt of illegible, garbled or incomplete offer.
 - (2) Availability (or condition) of the receiving electronic equipment.
 - (3) Incompatibility between the sending and receiving equipment.
 - (4) Delay in transmission or receipt of offer.
 - (5) Failure of the Offeror to properly identify the offer.
 - (6) Fermilab shall not be responsible for physical security of a facsimile offer prior to receipt of the offer.