

Unsolicited Proposals and Partnership Requests

SANDAG normally develops its own requirements, solicits proposals or bids, and contracts with entities whose proposals or bids are deemed most advantageous to SANDAG, however, the Board of Directors recognizes the valuable, innovative ideas or sources of revenue that educational and nonprofit institutions, private sector entities, and individuals may bring to propose relevant projects or partnerships that they believe are within the purview of SANDAG and will help meet SANDAG goals. This policy outlines how SANDAG staff will process unsolicited proposals to contract with SANDAG as a consultant or contractor, and partnership requests seeking to work with SANDAG in a public private partnership (P3) or other similar arrangement.

1 Scope of Policy

- 1.1 This policy is intended to provide high-level policy considerations and procedures to guide SANDAG management decisions when responding to unsolicited proposals and partnership requests (unsolicited offers). The Board of Directors hereby delegates authority to the Executive Director to create written procedures and to contract with parties submitting unsolicited proposals or partnership requests consistent with the requirements of this policy and Board Policy No. 017: Delegation of Authority.
- 1.2 An "unsolicited proposal" is defined as a written proposal to perform a proposed task or effort, initiated and submitted to SANDAG by a prospective consultant or contractor without a solicitation from SANDAG, with the objective of obtaining a contract award from SANDAG. The unsolicited proposal is the formal means by which business proposals are brought to the attention of SANDAG, submitted in the hope that the SANDAG will contract with the offeror for goods or services.
- 1.3 An "unsolicited partnership request" is a written request that SANDAG participate in a P3 or other partnership arrangement. Unlike a consultant or contractor arrangement, a partnership request calls for the requesting partner(s) to assume responsibility and financial liability for performing all or a significant number of functions in connection with a project. In transferring responsibility and risk for multiple project elements to the partner, SANDAG would reduce its controls and risks regarding the project. Additionally, the partner would receive the opportunity to earn a financial return or other benefits commensurate with the risks it would assume.
- 1.4 An "offeror" is the term used in this policy to refer to entities or persons submitting an unsolicited offer, which may be in the form of an unsolicited proposal or partnership request.
- 1.5 The following types of correspondence will not be considered under this policy: (1) written inquiries regarding SANDAG interest in research and/or development areas, (2) proposal explorations, (3) technical inquiries, (4) research descriptions, (5) offers to sell commercial off-the-shelf equipment or software, (6) a proposal that overlaps with the scope of work in a pending competitive procurement, and (7) proposals or requests that would require SANDAG to act outside SANDAG authority, inconsistently with applicable laws, or outside the purview of the agency.

2 Role of SANDAG Staff

- 2.1 Offerors may engage in preliminary discussions with SANDAG staff to gauge SANDAG interest in a potential unsolicited proposal or partnership request. Both SANDAG and offeror staff, however, must exercise caution to ensure that these preliminary communications do not lead to inadvertent collaboration on the development of a work statement that would subsequently be incorporated in an unsolicited offer. This would potentially invalidate the unsolicited nature of the offer or disqualify it from being considered due to concerns about unfair competition. Discussions between a potential offeror and SANDAG staff other than SANDAG Contracts and Procurement Division (CPD) staff should be limited to preliminary discussions of general concepts only. Discussions with non-CPD staff should be used solely to gauge SANDAG potential interest and determine whether the unsolicited offer would be of interest to SANDAG. If a potential offeror wishes to pursue the proposal or request after preliminary discussions, SANDAG staff should refer the offeror to this Board Policy and the CPD.
- 2.2 In cooperation with the Office of General Counsel, the CPD is responsible for: (1) establishing contracting policies and procedures consistent with Board Policies and applicable laws that are needed to address matters unique to unsolicited proposals and partnerships; (2) processing solicitations and proposals; and (3) processing unsolicited offers. The CPD will endeavor to ensure prompt and impartial evaluation in all of its function areas.

3 Preparation and Submission of Proposals

- 3.1 All unsolicited offers submitted for SANDAG consideration should be addressed to:

Contracts and Procurement Division
Attention: Unsolicited Offers
SANDAG
401 B Street, Suite 800
San Diego, CA 92101
unsolicitedoffers@SANDAG.org

- An unsolicited offer submitted directly to anyone other than CPD personnel cannot be acted upon officially until it is submitted to the CPD. If an offer is not sent by email, five copies of each offer must be delivered to SANDAG, one of which must be a manually signed original. Unsolicited offers should be prepared in conformance with this policy and any written procedures developed under the authority of the Executive Director. Offerors may submit their proposals or requests in their own format as long as the required data are provided. Email submissions may be made to the email address above, provided a single, manually signed hard copy is mailed concurrently. All electronic submissions must be in PDF and OCR format.
- 3.2 An unsolicited offer must meet all of the following requirements in order to be eligible for formal evaluation: (1) it must be in writing; (2) contain a novel, innovative, or otherwise meritorious concept, application, approach, or method; (3) be independently originated and developed by the offeror; (4) be prepared without SANDAG staff supervision or direct SANDAG staff assistance; and (5) present the proposed work or project in sufficient detail to allow a determination to be made that SANDAG support could be worthwhile and the proposed work could enhance, benefit, and provide valuable input to SANDAG mission or responsibilities.
 - 3.3 The following information must be included in unsolicited offers:
 - 3.3.1 Name(s) and address(es) of entity(ies) or persons submitting the offer.
 - 3.3.2 Type(s) of organization(s) (for profit, nonprofit, educational, small business, other) submitting the offer.

- 3.3.3 In the case of participation of other key entities or persons not participating as an offeror, provide identifying information for such entities or persons.
- 3.3.4 Names and telephone numbers of the offeror's technical and business personnel whom SANDAG may contact for evaluation and negotiation purposes.
- 3.3.5 Identification of whether the offer is intended to be an unsolicited proposal or unsolicited partnership request.
- 3.3.6 Identification of any proprietary data that the offeror intends to be used by the agency only for evaluation purposes. (See Section 3.4 for instructions).
- 3.3.7 Names of any other Federal, State, local agencies, or other parties receiving the offer.
- 3.3.8 Date of submission of the offer.
- 3.3.9 A signature of a responsible official authorized to contractually obligate the offeror.
- 3.3.10 Technical information, including a concise title and an abstract (approximately 200 words) of the proposed effort or partnership.
- 3.3.11 A reasonably complete discussion stating the objectives of the project or partnership, method of approach, the nature and extent of the anticipated results, and the manner in which the project or partnership will help support the SANDAG mission.
- 3.3.12 The names and brief background information of the offeror's key personnel who would be involved.
- 3.3.13 The type of support, if any, the offeror requests of SANDAG; e.g., financial, facilities, real property rights, equipment, materials, profit sharing, or personnel resources.
- 3.3.14 A cost estimate for the proposed contract award, or estimated amount of investment from offeror and amount, if any, sought from SANDAG. The estimate must be sufficiently detailed, by element of cost, for meaningful evaluation by SANDAG and include subcontractors, partners, or any potential private equity contribution the offeror would provide. Offeror also must provide its estimate of the projected total net value or cost of the proposal or partnership to SANDAG and offeror over the life of the program, project, or service.
- 3.3.15 Period of time for which the offer is valid (minimum of three months).
- 3.3.16 Proposed schedule.
- 3.3.17 A statement, if applicable, regarding proposed cost or revenue sharing.
- 3.3.18 Identification of any organizational conflicts or financial conflicts of interest with SANDAG, its member agencies, or the members of the Board of Directors.
- 3.3.19 A brief description of the offeror's organization and previous relevant work or experience.
- 3.3.20 A statement demonstrating the financial ability of the offeror to perform the project or venture.

3.4 Proprietary Data

Whenever possible, an offeror should submit a proposal without restrictions on the use of technical data provided. All offers shall be public records. The offeror must state whether or not the proposal contains proprietary information that constitutes a trade secret pursuant to California Civil Code section 3426.1. If an unsolicited offer includes trade secret data that the offeror does not want disclosed for any purpose other than evaluation of the offer, the title page shall be marked with the following legend:

USE AND DISCLOSURE OF DATA

The trade secret information in this offer shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the offer; provided, that if a contract or partnership agreement is executed with offeror as a result of or in connection with submission of this data, SANDAG shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit SANDAG's right to use information contained in the data if it is obtainable from another source without restriction. The data subjected to this restriction are contained in Page(s) [insert page numbers] of the offer.

The offeror also shall mark each restricted page with the following legend:

Use or disclosure of data in sections or paragraphs [insert section or paragraph numbers] on this page is trade secret and is therefore subject to the restriction on the title page of this offer.

An unsolicited offer will be returned to the offeror if it is marked with a different legend than that provided in paragraph (a) above. The offeror will be informed that the offer cannot be considered because it is impracticable for SANDAG to comply with the offeror's requirements. The offeror shall also be informed, however, that the offer will be considered if it is resubmitted with the legend provided above.

4 Evaluation of Proposals

- 4.1 Preliminary Review. Prior to making a Comprehensive Evaluation of a document submitted as an unsolicited offer, the CPD will determine that the document contains sufficient information to enable meaningful evaluation. The CPD will notify the potentially interested SANDAG Department Director(s) and coordinate a preliminary review of the offer. If the Department Director(s) in his/her/their sole discretion, deems the offer in SANDAG's best interest to further evaluate, the CPD will notify the offeror. If the document lacks information required by this policy or other procedures promulgated by SANDAG the offeror will be notified and given the opportunity to submit the needed information. The Comprehensive Evaluation cannot begin until the needed information is received and one or more Department Directors has authorized the expenditure of the funds within SANDAG's approved budget to conduct a Comprehensive Evaluation. If it is determined that the submission does not meet the criteria for Comprehensive Evaluation as an unsolicited offer, a reply will be sent to the offeror, indicating the reason(s) for not considering it. SANDAG will endeavor to notify an offeror whether or not its offer will progress to a Comprehensive Evaluation within 60 days of receipt of the offer. Offerors shall have neither vested rights in this decision, nor ability to protest a decision by SANDAG not to conduct a Comprehensive Evaluation.
- 4.2 Comprehensive Evaluation. Upon acceptance of an unsolicited offer for Comprehensive Evaluation, CPD will convene a panel of CPD staff and experts to perform an independent evaluation. The decision as to whether favorable action will be taken on the offer will be based upon an assessment by the panel of the potential contribution of the proposed project or partnership arrangement to the objectives of SANDAG and whether the risk and cost to SANDAG can be justified under the circumstances. SANDAG staff or consultants will conduct cost, economic or market analyses to evaluate the current and future market conditions and determine whether the project or partnership arrangement is viable and in the best interest of SANDAG. The offeror will need to be available to the evaluation team to answer questions and provide additional information without charge to SANDAG. An offeror must establish it and/or its team or partners have sufficient technical experience and readiness to proceed.
- 4.3 Privacy Impacts. SANDAG may determine that an offer involving exchange of data raises public privacy concerns that require further assessment. SANDAG may require a privacy impact assessment to occur prior to fully evaluating an offer.

- 4.4 If it is determined to be in the best interest of SANDAG, other local, state, or Federal agencies may be approached to share in the evaluation and consideration of the offer.
 - 4.5 When the Comprehensive Evaluation has been completed, CPD will inform the offeror of the results of the evaluation. If SANDAG determines the offer is viable and worthy of pursuit in its sole discretion, it will evaluate whether to utilize Section 5 or 6 of this policy as the next step in the process.
 - 4.6 Normally, unsolicited offers are not returned after completion of the evaluation. They are retained in a secure location for a period of time and then destroyed after two years. If the offeror wishes the offer to be returned, a statement to that effect should be clearly made in the submission.
- 5 Determinations Regarding Competitive Process
 - 5.1 SANDAG will determine in its sole discretion whether competition exists from other potential offerors.
 - 5.2 If SANDAG determines competition may exist, the CPD shall publicly notice the unsolicited offer on its website and in any other locations directed by SANDAG management, and allow for other offerors to submit an abbreviated competing proposal within 30 days for consideration by SANDAG. The public notice shall include the evaluation criteria that SANDAG will use to evaluate competing offers.
- 6 Determinations Regarding Whether a Sole Source Contract is Appropriate
 - 6.1 SANDAG will utilize written procedures to evaluate whether a contract award or partnership agreement can be justified without a competitive process. Such procedures shall be consistent with SANDAG sole source justification procedures and will be dependent upon the sources of funding SANDAG would use and the circumstances of each offer.
 - 6.2 The offeror may claim, or it may appear from an offer, that no other entity or person could offer the same product, service, or partnership arrangement. In the case of software, technology or other intellectual property, it may appear that only the offeror can perform. These circumstances alone, however, will not justify a sole source contract. The concept will be evaluated on its own merit, including analysis of revenue producing potential and opportunities for cost recovery for the applicable project or program. In many cases, the offeror will have competitors that could offer SANDAG similar solutions, but with different options, functionality, costs or risks. A competitive process should be used to select the consultant, contractor or partner, unless SANDAG staff determines that the proposed concept itself is proprietary, or the proposal concerns a specific piece of real property with unique attributes essential to SANDAG's interests to which the offeror has exclusive ownership and/or negotiating authority.
 - 6.3 The essential consideration in whether or not to accept an unsolicited offer without competition (i.e., to engage in contract negotiations on a sole source basis) is whether or not the offer is presenting a proprietary/trade secret concept or real property interest that is itself essential to contract performance. If an offeror is merely presenting a rationale for doing certain work that could be done by others if given the chance to compete, then there is no permissible basis to authorize a sole source. In the case of a proprietary software product that is being offered to achieve a certain goal, SANDAG could not, for example, release proprietary programming codes in a competitive solicitation. Staff should, however, if it deems the proposal one it recommends pursuing, compete the contract award in terms of describing what the mission or goal is in order to see what other firms might offer in terms of software solutions. In other words, staff cannot assume that the product being offered in the unsolicited proposal is the only, or best, product available to meet the objectives of the agency.

7 Partnership Requests that Include Joint Development Proposals

Offers including proposed joint use and development on SANDAG-developed and/or owned property will be evaluated using the following additional criteria:

- 7.1 Whether the project will negatively impact present or future public transportation facilities.
- 7.2 Whether the project is consistent with regional and local community policies and plans.
- 7.3 Whether the project demonstrates a fiscal benefit to SANDAG or a public transportation operator.
- 7.4 Whether the project provides economic development potential to SANDAG and/or the community.
- 7.5 Whether the project increases accessibility to public transportation.
- 7.6 Whether the project addresses community needs for housing, employment, services, or recreational facilities.

8 Board of Directors Participation

- 8.1 As set forth in Board Policy No. 017: Delegation of Authority, the Executive Director and his/her delegates may enter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per transaction so long as the overall budget remains in balance. If, in order to act upon an offer, a modification of more than \$300,000 would be necessary, such action shall be brought to the Executive Committee if under \$500,000 or to the Board of Directors for amounts in excess of \$500,000 as prescribed by Board Policy No. 001 Allocation of Responsibilities.
- 8.2 For all offers that progress to the Comprehensive Evaluation Stage, the Executive Director will report actions taken to the Board in summary written form at the next regular meeting of the Board.

9 SANDAG Liability

- 9.1 This policy and the procedures it describes do not commit SANDAG to evaluate an offer within a certain period of time, execute a contract, or to expend any public funds. SANDAG has no obligation to reimburse an offeror for any costs it incurs in preparing or submitting an offer or in providing information to SANDAG as it evaluates an offer.
- 9.2 All unsolicited offers submitted to SANDAG become the property of SANDAG and public records and, as such, may be subject to public review and use by SANDAG. Documents protected by law from public disclosure will not be disclosed by SANDAG if clearly marked as described in Section 3.4 of this policy. Trade secrets may be marked as confidential only to the extent they meet the requirements of California Civil Code section 3426.1(d). Only information claimed to be a trade secret at the time of submittal to SANDAG and marked as required in this policy will be treated as a trade secret. To the extent that an entire offer is marked as confidential or a trade secret, such designations will not be effective, and the offer will be rejected. To the extent that an offeror marks any information as either confidential or a trade secret, the offeror thereby agrees to defend and indemnify SANDAG in the event that SANDAG's non-disclosure is challenged in any legal action. Please see SANDAG Board Policy No. 015: Records Management Policy for information regarding the treatment of documents designated as confidential by SANDAG.
- 9.3 Offerors who wish to release information regarding evaluation, selection, or contract awards information in a press release or its promotional materials prior to the time a public announcement is made by SANDAG must receive prior written approval from SANDAG.