Client Impropriety

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Requests for proposals (RFPs) often include statements transferring ownership of the content of proposals to the requestor. Thus, evaluators are frequently faced with the problem of responding to a RFP in an unprotected manner, knowing full well that potential funding entities have the legal right to implement these ideas without the submitter's approval. In extreme cases, funding entities have even requested proposals for the purpose of idea-generation only, that is, it was never the intention to fund these submissions, only to use their ideas.

This kind of ethical abuse is neither new nor unique to evaluation. Allowing intellectual property to become the property of the entity requesting the proposal directly influences the evaluator's work and raises several significant ethical issues regarding the contractual statements found in most requests for proposals which give funding agencies property rights to all information and materials submitted to them.

Take the following case, for example. Recently, a request for proposals was issued for an adult drug treatment program. The RFP was of the usual sort; design, expertise and experience, budget, and so on. Two proposals were ultimately selected as the final candidates: the first, a well planned, systematic evaluation

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with a proposed budget of just under $100,000; the second a poorly designed effort budgeted at slightly more than $10,000. Why the substantial budget differences? The first proposal was submitted by a university-based evaluation unit and the second was submitted by a university professor acting as an independent consultant, local to the city within which the program was based. As such, the second proposal neither included expenses for travel nor the indirect costs associated with university-based research units. Moreover, the independent consultant indicated within his proposal that all work would be conducted by his students as part of a class project and that these students would not be reimbursed for their work. The funding entity decided that $10,000 was more attractive than $100,000. Ultimately, the low-cost competitor was funded, but under the premise of utilizing the costlier competitor's plan and design. The following questions arise as a result of the client's decision:

1. Can the costlier competitor's plan and design be comparably implemented by the low-cost competitor at 1/10 of the price? Perhaps costs can be cut dramatically by hiring a local evaluator with access to free labor and university resources, but what the evaluand saves monetarily may be lost in validity and credibility.

2. Does the low-cost competitor have the expertise and competency to implement the costlier competitor's plan and design? It may be reasonable to infer, in some case, that the contracted low-cost competitor has neither the means nor the competencies necessary to effectively implement the competitor's plan and design.

The client may save as a result of funding the low-cost evaluator if the evaluator is able to implement and fulfill the contract as proposed by the high-cost competitor.

However, the issues surrounding the contractual statements that allow all submitted materials to become the property of the funding agency are indeed troubling. Given the current climate of the competitive evaluation market, proposal writers are faced with several poignant questions:

> How detailed and precise should evaluation proposals be if they become the intellectual property of the entity requesting them?
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> Should the funding entity return rejected proposals?
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> How can we as evaluators protect our intellectual property given that funders have the rights to use all proposals they receive?

If the funding entity uses any or all of the rejected proposals, in full or part, it should—for the sake of integrity—compensate the originator. This could be accomplished in several ways: (i) a fee could be provided for the use of plans and designs, (ii) the evaluator could collaborate for a consulting fee to help execute the evaluation, or (iii) the evaluator could be contracted as a metaevaluator.

The aforementioned example of client/funder impropriety is utterly unacceptable and the repercussions for the evaluation profession are profound. In addition to the impropriety of the client/funder, other relevant ethical concerns are raised. First, the professor discussed in the case example is more than likely not a member of any organized evaluation organization and therefore not accountable to professional standards of conduct, yet he had obviously violated the unwritten standards of conduct expected of a researcher by accepting the contract and using another's work without the consent of the proposal writer. Second, what can be done to alleviate these problems in the future? Some writers of proposals have attempted to take matters into their own hands by explicitly indicating in their

proposals that no portion of the submission may be used without their express consent. Yet if potential clients/funders willingly and knowingly use these materials, unbeknownst to the proposal writer, what can be done? As can be seen, the implications of an epidemic of this kind of client behavior are frightening. It has been suggested here at the Evaluation Center that approaching AEA might be appropriate. We might suggest developing a code of conduct for evaluation clients, and perhaps some defensive strategies such as blacklisting abusers. What do you think?