

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

234.001 Definitions.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems. It also includes modifications to existing systems that involve redesign of the systems or subsystems.

[60 FR 61598, Nov. 30, 1995]

234.003 Responsibilities.

DoD 5000.1, Defense Acquisition, and DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, contain the DoD implementation of OMB Circular A-109.

[62 FR 34126, June 24, 1997]

234.005 General requirements.

234.005-70 Earned value management systems.

When an offeror provides an earned value management system (EVMS) plan as part of its proposal in accordance with paragraph (b) of the provision at 252.234-7000, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO). The procuring contracting officer shall obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

[62 FR 9991, Mar. 5, 1997, as amended at 63 FR 11537, Mar. 9, 1998]

234.005-71 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD earned value management system criteria—

(a) Use the provision at 252.234-7000, Notice of Earned Value Management System, in solicitations; and

(b) Use the clause at 252.234-7001, Earned Value Management System, in solicitations and contracts.

[62 FR 9991, Mar. 5, 1997; 62 FR 11953, Mar. 13, 1997]

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36416, July 31, 1991, unless otherwise noted.

235.001 Definitions.

As defined in DoD 7000.14-R, Financial Management Regulations, and as used in this part—

(a) *Basic research* (Category 6.1) means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides farsighted, high-payoff research, including critical enabling technologies that provide the basis for technological progress. It forms a part of the base for:

(1) Subsequent applied research (exploratory development); and advanced technology developments in Defense-related technologies; and

(2) New and improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

(b) *Applied research* (Category 6.2) means effort that translates promising basic research into solutions for broadly defined military needs, short or major development projects. This type of effort may vary from fairly fundamental applied research to sophisticated bread-broad hardware, study, programming, and planning efforts that establish the initial feasibility and practicality of proposed solutions to technologies challenges. It includes studies, investigations, and nonsystem specific development efforts. The dominant characteristic of this category of effort is that it be pointed toward specific military needs with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(c) *Advanced technology development* (Category 6.3A) means all efforts that have moved into the development and integration of hardware for field experiments and tests. The results of this type of effort are proof of technological

feasibility and assessment of operability and producibility rather than the development of hardware for Service use. Projects in this category have a direct relevance to identified military needs. Advanced technology development is system specific (particularly for major platforms, i.e., aircraft, ships, missiles, and tanks, etc.) and includes advanced technology development that is used to demonstrate the general military utility or cost reduction potential of technology when applied to different types of military equipment or techniques. Advanced technology developments also includes evaluation and synthetic environment and proof-of-principle demonstrations in field exercises to evaluate system upgrades or provide new operational capabilities.

(d) *Demonstration and validation* (Category 6.3B) means all efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration and validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

(e) *Engineering and manufacturing development* (Category 6.4) means those projects in engineering and manufacturing development for Service use but that have not received approval for full-rate production. This area is characterized by major line item projects, and program control will be exercised by review of individual projects. Engineering development includes engineering and manufacturing development projects consistent with the definitions within DoDD 5000.1.

(f) *Management support* (Category 6.5) means research and development effort directed toward support of installations or operations required for general research and development use. Included would be test ranges, military construction, maintenance support of laboratories, operation and maintenance of test aircraft and ships, and studies and analyses in support of the research and development program. Costs of laboratory personnel, either in-house or contractor-operated, would be assigned

to appropriate projects or as a line item in the basic research, applied research, or advanced technology development program areas, as appropriate.

(g) *Operational system development* (Category 6.6) means those development projects, in support of development acquisition programs or upgrades, still in engineering and manufacturing development (DoDD 5000.1) but that have received approval for production through Defense Acquisition Board or other action, or for which production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line item projects that appear as research, development, test, and evaluation costs of weapon system elements in other programs. Program control will be exercised by review of individual projects.

(h) *Research and development* ordinarily covers only the following categories:

- (1) Basic research.
- (2) Applied research.
- (3) Technology development.
- (4) Demonstration/validation.
- (5) Engineering and manufacturing development.
- (6) Operational system development.

[63 FR 11537, Mar. 9, 1998]

235.006 Contracting methods and contract type.

(a) All contracts under the Manufacturing Technology Program (see DoDI 4200.15, Manufacturing Technology Program) shall be awarded using competitive procedures (10 U.S.C. 2525).

(b)(i) A fixed-price type contract shall not be awarded for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(1) By the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) for—

(i) Research and development for non-major systems, if the contract is over \$25 million;

(ii) The lead ship of a class;

(iii) The development of a major system (as defined in FAR 2.101) or subsystem thereof, if the contract is over \$25 million, or is over \$10 million and is funded with FY90 funds (Pub. L. 101-165, section 9048), FY91 funds (Pub. L. 101-511, section 8038), FY92 funds (Pub. L. 102-172, section 8037), or FY93 funds (Pub. L. 102-396, section 9037).

(2) By the contracting officer for any development not covered by paragraph (b)(i)(C)(1) of this section.

(ii) The contracting officer must obtain USD(A&T) approval of the Government's prenegotiation position before negotiations begin and must obtain USD(A&T) approval of the negotiated agreement with the contractor before the agreement is executed for any action that is—

(A) An increase of more than \$250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price or ceiling price by more than \$250 million for equivalent quantities.

(iii) Notify the USD(A&T) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(iv) A cost-sharing arrangement (see FAR 16.303) must be used for contracts awarded in support of the Manufacturing Technology Program, unless an alternative is approved by the Secretary of Defense (10 U.S.C. 2525). Approval by the Secretary of Defense to use other than a cost-sharing arrangement for the Manufacturing Technology Program must be based on a determination that the contract is for a program that—

(A) Is not likely to have any immediate and direct commercial application;

(B) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(C) Will be carried out by an institution of higher education.

[56 FR 36416, July 31, 1991, as amended at 57 FR 14994, Apr. 23, 1992; 58 FR 28471, May 13, 1993; 59 FR 27673, May 27, 1994; 60 FR 4570, Jan. 24, 1995; 60 FR 29500, June 5, 1995; 61 FR 50454, Sept. 26, 1996; 62 FR 34126, June 24, 1997]

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government's estimate of the man-year effort under a research contract.

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944.

[60 FR 29500, June 5, 1995, as amended at 62 FR 34126, June 24, 1997]

235.015 Contracts for research with educational institutions and non-profit organizations.

(b) *Basic agreements.*

(3) When using a basic agreement—

(i) Incorporate it by reference in section I of the contract; and

(ii) Incorporate any special clause requirements in section H.

[59 FR 27673, May 27, 1994]

235.015-70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy.* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

235.015-71 Short form research contract (SFRC).

(a) *Scope.* This section prescribes procedures for contracting within the U.S. for research on a cost-reimbursement basis with educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Definitions.* As used in this section—

(1) *Educational institution* means an institution of higher learning which—

(i) Provides facilities for teaching and research; and

(ii) Is authorized to grant academic degrees.

(2) *Nonprofit organization* means—

(i) Organizations of the type—

(A) Described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)); and

(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability.* (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principal purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302-1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302-3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principal investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by work-days, work-months, or work-years;

(3) The executed representations on DD Form 2222-1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

(ii) The description of the property should be detailed enough to enable the contracting officer—

(A) To determine whether the Government will furnish such property under FAR 35.014 and FAR 45.302-1; and

(B) For property which may be contractor-acquired (versus Government-furnished)—

(1) To accept it as advance notification required by FAR 52.244-2; and

(2) To authorize acquisition at time of award;

(iii) If the offeror proposes to acquire facilities (FAR 45.301), the offeror shall include a written statement which—

(A) Explains why acquiring these items with contract funds is necessary; and

(B) Expresses the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources;

(iv) Special test equipment or components proposed. Individual items of less than \$1,000 may be grouped by category (FAR 45.307-2);

(6) A SF 1411, Contract Pricing Proposal Cover Sheet, or acceptable substitute. FAR 52.244-2(b) prescribes information required for subcontracts;

(7) Markings complying with FAR 15.509 on the title page and each restricted sheet if the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation. In addition, the offeror should state in the offer or check Block A on page 2 of the DD Form 2222-2 if the offeror grants the Government permission to have nongovernment evaluators review the proposal;

(8) The following statement:

This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 235.015-71(i) in effect on the effective date of the contract or such other dates as may be mutually agreed upon.

(9) Any other applicable FAR or DFARS clauses agreed to by the parties;

(10) Monthly expenditure estimates by which incremental funding periods may be calculated; and

(11) An executed DD Form 2222-2, Short Form Research Contract Research Proposal Cover Page.

(e) *Contracting procedures.*

(1) The contracting officer may award a SFRC under full and open competition (FAR Subpart 6.1) when the proposal—

(i) Is in response to a broad agency announcement under FAR 6.102(d)(2); and

(ii) Contains the information required by 235.015-71(d); and

(iii) Has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(2) The contracting officer may award an SFRC under other than full and open competition (FAR subpart 6.3) when—

(i) The proposal is an unsolicited research proposal submitted, evaluated, and accepted under FAR subpart 15.5, which meets the criteria of FAR 6.302-1; or

(ii) Award is necessary to establish or maintain an essential engineering research or development capability under FAR 6.302-1.

(3) When a research proposal (solicited or unsolicited) is satisfactory to the Government, the contracting officer should accept the proposal by executing a SFRC incorporating—

(i) The proposal by reference, or

(ii) The statement of work by reference.

(4) When acceptance of the entire research proposal is not advantageous to the Government, the contracting officer should use the acceptable parts of the research proposal. These parts may be either attached or incorporated by reference to develop a contract for execution by both parties. In this event, the contractor must sign the SFRC before the Government signs.

(5) Use the DD Form 2222, Short Form Research Center (SFRC) Modification, to effect modifications.

(6) The initial dollar amount and period of performance specified in the award document shall include the initial research program only. The SFRC shall identify separately the options, periods of performance, and costs, if appropriate.

(7) FAR 35.014 applies to vesting of title in property to organizations defined in 235.015-71(b). DD Form 2222 shall identify property, title to which is not vested in the contractor, or for which a determination of title is deferred.

(8) The offeror's submission of its proposal under this section 235.015-71 constitutes the offeror's agreement to be bound by all terms and conditions of the resulting contract.

(f) *Advance payments.* The contracting officer shall ensure that SFRCs awarded to institutions and organizations authorized to receive advance payments under FAR subpart 32.4 are clearly marked to read "Advance Payment Pool Contract."

(g) *Method of funding.* If incrementally funded, the SFRC shall specify—

(1) The total estimated cost for the full period of the research program, both funded and unfunded; and

(2) The amount of funds currently obligated.

(h) *Uniform contract format.* The SFRC is exempt from uniform contract format requirements (FAR 15.406).

(i) *SFRC clauses.* (1) Include in the contract any FAR or DFARS clause agreed to by the parties and incorporate it by reference or full text, as appropriate.

(2) The following clauses should be incorporated by reference in all SFRC awards of \$25,000 or more. Clauses with a single asterisk (*) apply to educational institutions only. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.202-1 Definitions

FAR 52.203-1 Officials Not to Benefit

FAR 52.203-3 Gratuities

FAR 52.203-5 Covenant Against Contingent Fees

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

FAR 52.203-7 Anti-Kickback Procedures

252.203-7001 Special Prohibition on Employment

**FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity

FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

252.209-7000 Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty

FAR 52.215-2 Audit and Records—Negotiation

FAR 52.215-26 Integrity of Unit Prices

**FAR 52.215-30 Facilities Capital Cost of Money (Applies if contract is subject to commercial cost principles, FAR Subpart 31.2)

**FAR 52.215-31 Waiver of Facilities Capital Cost of Money (Applies if contractor does not propose facilities capital cost of money.)

FAR 52.215-33 Order of Precedence

FAR 52.216-7 Allowable Cost and Payment

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*FAR 52.216-15 Predetermined Indirect Cost Rates (Applies only when the contractor has an executed negotiation agreement with the cognizant contract administration office. Predetermined rate agreements in effect on the date of the contract shall be incorporated in the contract schedule.)

FAR 52.219-8 Utilization of Small Business and Small Disadvantaged Business Concerns

FAR 52.219-13 Utilization of Women-Owned Small Businesses

FAR 52.220-3 Utilization of Labor Surplus Area Concerns

FAR 52.222-3 Convict Labor

FAR 52.222-26 Equal Opportunity (Add Alternate I as a special provision when applicable.)

FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans

FAR 52.222-36 Affirmative Action for Handicapped Workers

FAR 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era

FAR 52.223-6 Drug-Free Workplace

FAR 52.225-13 Restrictions on Contracting with Sanctioned Persons

252.225-7016 and Restriction on Acquisition of Foreign Machine Tools and Alternate I (if applicable)

FAR 52.227-1 and Alternate I Authorization and Consent

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

FAR 52.227-14 Rights in Data—General (Specify applicable Alternate in contract.)

252.227-7013 and Alternate I Rights in Technical Data and Computer Software

252.227-7018 Restrictive Markings on Technical Data

252.227-7029 Identification of Technical Data

**252.227-7030 Technical Data—Withholding of Payment

FAR 52.228-7 Insurance—Liability to Third Persons Alternates I and II, if applicable)

**252.231-7000 Supplemental Cost Principles (Applies to nonprofit institutions, when allowability of costs is determined under FAR Subpart 31.2)

FAR 52.232-23 Assignment of Claims

FAR 52.232-25 Prompt Payment

FAR 52.233-1 Disputes

FAR 52.233-3 and Alternate I Protest After Award

252.235-7004 Option to Extend the Term of the Contract

252.235-7005 Contractor-Acquired Property

252.235-7006 Title to Contractor-Acquired Property

252.235-7007 Advance Payments

252.235-7008 Inspection and Acceptance

252.235-7009 Restriction on Printing

FAR 52.242-1 Notice of Intent to Disallow Costs

252.242-7001 Certification of Indirect Cost

252.242-7004 Material Management and Accounting System

**FAR 52.243-2 and Alternate V Changes—Cost-Reimbursement

FAR 52.244-2 and Alternate I Subcontracts (Cost-Reimbursement and Letter Contracts)

FAR 52.244-5 Competition in Subcontracting

FAR 52.245-5 and Alternate I Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts.)

FAR 52.247-63 Preference for U.S.-Flag Air Carriers

FAR 52.251-1 Government Supply Sources

252.251-7000 Ordering from Government Supply Sources

FAR 52.253-1 Computer Generation of Forms by the Public

(3) The following clauses should be incorporated by reference in all SFRC contracts of \$100,000 or more. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

252.203-7000 Statutory Prohibitions on Compensation to Former Department of Defense Employees

FAR 52.222-2 Payment for Overtime Premiums (The word "zero" is inserted in the blank space indicated by an asterisk.)

FAR 52.223-2 Clean Air and Water Act (Applies if contract amount exceeds the dollar amount set forth in the preamble to the clause.)

**FAR 52.230-2 Cost Accounting Standards (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)

**FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)

**FAR 52.230-5 Administration of Cost Accounting Standards (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)

252.231-7001 Penalties for Unallowable Costs.

252.233-7000 Certification of Claims and Requests for Adjustment or Relief.

(4) The following clauses should be incorporated by reference, if applicable.

FAR 52.215-22 Price Reduction for Defective Cost or Pricing Data

FAR 52.215-24 Subcontractor Cost or Pricing Data (Applies only if FAR 52.215-22 applies.)

FAR 52.215–27 Termination of Defined Benefit Pension Plans (Applies if certified cost and pricing data are required and cost determinations are subject to FAR Subpart 31.2.)

252.215–7000 Pricing Adjustments (Applicable if FAR 52.215–23, 24, or 25 applies.)

FAR 52.216–8 Fixed Fee (Applies in cost-plus-fixed-fee contracts.)

FAR 52.216–11 and Alternate I Cost Contract—No Fee

FAR 52.216–12 and Alternate I Cost Sharing Contract—No Fee

252.225–7000 Pricing Adjustments (Applies if FAR 52.215–23, 24, or 25 applies.)

252.225–7023 Reporting of Subcontracts (Applies only when contract action exceeds \$500,000, or when any modification increases contract amount to more than \$500,000.)

FAR 52.227–11 Patents Rights—Retention by the Contractor (Short Form)

252.227–7034 Patents—Subcontracts

252.227–7039 Patents—Reporting of Subject Inventions

FAR 52.232–9 Limitation on Withholding of Payments

FAR 52.232–17 Interest

FAR 52.232–20 Limitation of Cost (Applies only when contract is fully funded.)

FAR 52.232–22 Limitation of Funds (Applies only when contract is incrementally funded.)

FAR 52.232–28 Electronic Funds Transfer Payment Methods

FAR 52.246–23 Limitation of Liability

FAR 52.246–24 Limitation of Liability—High Value Items

FAR 52.246–25 Limitation of Liability—Services

FAR 52.249–5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions). (Applies if work is done on a no-profit or no-fee basis)

FAR 52.249–6 Termination (Cost Reimbursement) (Applies if work is performed on a fee or profit basis.)

FAR 52.249–14 Excusable Delays (Applies only to contracts in which FAR 52.249–6 applies.)

[56 FR 36416, July 31, 1991, as amended at 57 FR 53600, Nov. 12, 1992; 59 FR 27673, May 27, 1994; 60 FR 61598, Nov. 30, 1995]

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Public Law 99–661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.017 Federally Funded Research and Development Centers.

(a) *Policy.*

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (section 8107 of Pub. L. 102–172 and similar sections in subsequent Defense appropriations acts).

[58 FR 28471, May 13, 1993]

235.017–1 Sponsoring agreements.

(c)(4) DoD-sponsoring FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103–337).

[60 FR 61598, Nov. 30, 1995]

235.070 Indemnification against unusually hazardous risks.

235.070–1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354 and if authorized by the Secretary concerned, or designee under 10 U.S.C. 2356, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

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(i) Results from a risk that the contract defines as “unusually hazardous;”

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85-804. Public Law 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85-804 must also comply with FAR subpart 50.4.

235.070-3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070-1, use either—

(a) The clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235-7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States, its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at 252.235-7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235-7011, Final Scientific or Technical Report,

in solicitations and contracts for research and development.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

Subpart 235.70—Research and Development Streamlined Contracting Procedures

SOURCE: 63 FR 34605, June 25, 1998, unless otherwise noted.

235.7000 Scope.

This subpart prescribes streamlined procedures for acquiring research and development, using a standard solicitation and contract format and the capabilities of the World Wide Web.

235.7001 Definitions.

As used in this subpart—

(a) *Research and development streamlined contract (RDSC)* means—

(1) A contract that results from use of the research and development streamline solicitation; or

(2) Any other contract prepared in the standard format published at the RDSS/C website.

(b) *Research and development streamlined solicitation (RDSS)* means a solicitation issued in accordance with 235.7003.

(c) *RDSS/C website* means the site on the World Wide Web at “http://www.rdss.osd.mil/” where research and development streamlined solicitation and contracting information is published.

235.7002 Applicability.

(a) Except as provided in paragraph (b) of this section, consider using the procedures in this subpart for acquisitions that—

(1) Will result in the award of a cost-reimbursement contract; and

(2) Meet the criteria for research and development as defined in 235.001 and FAR 35.001.

(b) Do not use the procedures in this subpart for—

(1) Contracts to be performed outside the United States and Puerto Rico;

(2) Contracts denominated in other than U.S. dollars;

(3) Acquisitions using simplified acquisition procedures;

(4) Acquisition of engineering and manufacturing development, management support, or operational system development, as defined in 235.001; or

(5) Acquisition of laboratory supplies and equipment, base support services, or other services identified in paragraphs (a) through (h) of the definition of “service contract” at FAR 37.101.

(c) Regardless of whether the RDSS is used, the RDSC may be used for any acquisition that meets the criteria in paragraph (a) of this section.

235.7003 Research and development streamlined solicitation and contract.

235.7003-1 General.

The procedures and standard format are published at the RDSS/C website. The RDSS/C Managing Committee is responsible for updating the website.

235.7003-2 RDSS process.

(a) *Synopsis.* The Commerce Business Daily synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) Statements that—

(i) A paper solicitation will not be issued; and

(ii) The solicitation will be published at the RDSS/C website.

(b) *Solicitation.* (1) The solicitation—

(i) Shall be published in its entirety at the RDSS/C website;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

(c) *Amendments.* Amendments shall be published at the RDSS/C website.

235.7003-3 Proposal evaluation and contract award.

(a) Evaluate proposals in accordance with the evaluation factors set forth in the RDSS.

(b) *RDSC.* (1) The RDSC shall include—

(i) Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract; and

(ii) Sections B through J of the RDSS or other solicitation, with applicable fill-in information inserted.

(2) When an RDSC is awarded to an educational or nonprofit institution—

(i) Remove provisions and clauses that do not apply to educational or nonprofit institutions; and

(ii) As necessary, insert appropriate replacement provisions and clauses.

235.7003-4 Additional provisions and clauses.

Use of FAR and DFRAS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the RDSS/C standard format, shall be approved in accordance with agency procedures.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 236.1—General

Sec.

236.102 Definitions.

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236.201 Evaluation of contractor performance.

236.203 Government estimate of construction costs.

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236.274 Construction in foreign countries.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.

236.303-70 Additive or deductive items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.