

(2) *Schedule of deliverables or reporting requirements.* The project officer must specifically describe what is to be delivered and when it is to be delivered to ensure proper contract monitoring. Usually, technical and financial progress reports and the final report are prescribed in this section. These reports should be tailored to the instant acquisition and should avoid unnecessary and burdensome reporting requirements.

(c) The following may not be applicable to all RFC's but must be included as attachments whenever any do apply:

(1) *Government property.* The project officer must identify, as referenced in the statement of work, the types, individual items, and quantities of Government property to be furnished to or allowed to be acquired by, the resultant contractor, if known. The project officer must specify when the Government property is to be made available to the resultant contractor.

(2) *Special terms and conditions.* The project officer may suggest inclusion of any special terms and conditions applicable to the proposed acquisition not already covered in the statement of work or the applicable contract general provisions.

(3) *Justification for other than full and open competition.* If the proposed acquisition is to be awarded using other than full and open competition, a justification, prepared in accordance with FAR subpart 6.3 and subpart 306.3, must be submitted as an attachment to the RFC.

(4) *Privacy Act "system notice."* When the project officer has determined that the requirements of the Privacy Act are applicable to the proposed acquisition, a copy of the "system notice" must be attached to the RFC (see 324.103(d)).

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

### **315.7006 Review.**

Upon receipt of the RFC, the contracting activity shall review the contents to ensure that all pertinent information has been provided by the program office. If pertinent information is missing or if there are discrepancies in previously agreed upon information,

such as significant alterations in the statement of work, the contracting activity shall obtain or clarify the information so that the acquisition schedule is met. If the program office delays furnishing the information or clarification, the acquisition schedule may have to be changed. When this circumstance arises, the contracting activity should notify the head of the sponsoring program office of the problem, in writing, of the possible slippage in the acquisition schedule, and the need for an expeditious remedy. If the head of the sponsoring program office is not responsive to the request for expediency, the matter should be referred to higher management authorities for resolution.

[49 FR 13979, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984]

## **PART 316—TYPES OF CONTRACTS**

### **Subpart 316.3—Cost-Reimbursement Contracts**

Sec.

- 316.301 General.
- 316.301-3 Limitations.
- 316.303 Cost-sharing contracts.
- 316.306 Cost-plus-fixed-fee contracts.
- 316.307 Contract clauses.

### **Subpart 316.4—Incentive Contracts**

- 316.403 Fixed-price incentive contracts.

### **Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

- 316.601 Time-and-materials contracts.
- 316.603 Letter contracts.
- 316.603-2 Application.
- 316.603-3 Limitations.
- 316.603-70 Information to be furnished when requesting authority to issue a letter contract.
- 316.603-71 Approval for modifications to letter contracts.

### **Subpart 316.7—Agreements**

- 316.702 Basic agreements.
- 316.770 Unauthorized types of agreements.
- 316.770-1 Letters of intent.
- 316.770-2 Memorandums of understanding.

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

SOURCE: 49 FR 14004, Apr. 9, 1984, unless otherwise noted.

**Subpart 316.3—Cost-Reimbursement Contracts**

**316.301 General.**

**316.301-3 Limitations.**

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract and establishing the fee:

DEPARTMENT OF HEALTH AND HUMAN SERVICES—DETERMINATION AND FINDINGS

*Authority to Use Cost-Reimbursement Contract*

I hereby find that:

(1) The (agency title) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is (\$ ) (if contract is CPFF type, insert, "plus a fixed fee of (\$ ) which is percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.) I hereby determine that:

On the basis of the above findings, and in accordance with FAR 16.301-3, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee\*) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed fee\*) method of contracting is likely to be less costly than other methods.

Date  
Signature

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44294, Dec. 9, 1986]

**316.303 Cost-sharing contracts.**

For detailed information concerning the use of cost-sharing contracts, see 335.070.

**316.306 Cost-plus-fixed-fee contracts.**

(c)(2) The determination and findings (D&F) required by FAR 16.306(c)(2) has been combined with the D&F required by FAR 16.301-3(c) authorizing the use of cost-reimbursement contract, and is shown in 316.301-3(c). The contracting officer is responsible for executing the

\*Use applicable word, words, or statement.

D&F and is authorized to make both determinations required by the FAR.

[51 FR 44294, Dec. 9, 1986]

**316.307 Contract clauses.**

(a) If the contract is with a hospital (profit or nonprofit), modify the "Allowable Cost and Payment" clause at FAR 52.216-7 by deleting from paragraph (a) the words "subpart 31.2 of the Federal Acquisition Regulation (FAR)" and substituting "45 CFR part 74 appendix E."

(j) The contracting officer shall insert the clause at 352.216-72, Additional Cost Principles, in solicitations and resultant cost-reimbursement contracts with nonprofit organizations, as identified in OMB Circular A-122.

[55 FR 42197, Oct. 18, 1990]

**Subpart 316.4—Incentive Contracts**

**316.403 Fixed-price incentive contracts.**

(c) The determination and findings required by FAR 16.403(c) shall be executed by the chief of the contracting office after it is prepared by the contracting officer.

[51 FR 44294, Dec. 9, 1986]

**Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

**316.601 Time-and-materials contracts.**

(c) *Limitations.* The format prescribed in 316.301-3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that the final paragraph shall be changed to read as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required work or services.

**316.603 Letter contracts.**

**316.603-2 Application.**

It is the policy of the Department to refrain from issuing letter contracts.

Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon.

**316.603-3 Limitations.**

The principal official responsible for acquisition shall be the approving official who executes the prescribed written statement. However, if the principal official responsible for acquisition is to sign the letter contract as the contracting officer, the approving official becomes the head of the contracting activity.

[49 FR 14004, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

**316.603-70 Information to be furnished when requesting authority to issue a letter contract.**

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

- (a) Name and address of proposed contractor.
- (b) Location where contract is to be performed.
- (c) Contract number, including modification number, if possible.
- (d) Brief description of work and services to be performed.
- (e) Performance or delivery schedule.
- (f) Amount of letter contract.
- (g) Estimated total amount of definitized contract.
- (h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.).
- (i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.
- (j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation

must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

**316.603-71 Approval for modifications to letter contracts.**

All letter contract modifications (amendments) must be approved by the principal official responsible for acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

- (a) Name and address of the contractor.
- (b) Description of work and services.
- (c) Date original request was approved and indicate approving official.
- (d) Letter contract number and date issued.
- (e) Complete justification as to why the letter contract cannot be definitized at this time.
- (f) Complete justification as to why the level of funding must be increased.
- (g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.
- (h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603-70(j) must be included.

**Subpart 316.7—Agreements**

**316.702 Basic agreements.**

- (b) *Application.*
  - (2) Basic agreements shall continue in effect until termination, supersession, or expiration of the term.
  - (d) *Contracts incorporating basic agreements.*
    - (2) Any provision of a contract which conflicts with the terms of a basic agreement must be approved by the Director, Division of Acquisition Policy, OAGM.

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. Where negotiated overhead rates are included, the bases to which the rates apply and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs shall also be included as appropriate.

(e) *Content and format.* A basic agreement shall consist of an execution page(s), contents page, special provisions, and general provisions. The following is illustrative of an execution page:

Basic Agreement Number Page 1 of— pages  
Basic Agreement

Between the United States of America, as represented by the Department of Health and Human Services, and (Name of Contractor), this agreement, effective (Insert Date) by and between the United States of America, hereinafter called the "Government," as represented by the Department of Health and Human Services, and (Name of Contractor), a corporation organized and existing under the laws of the (State/Commonwealth) of with its principal office in (City, State), hereinafter called the "Contractor".

WITNESSETH THAT

Whereas, the Government and the Contractor desire to enter into a single basic agreement for use only in connection with negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination; and

Whereas, the parties understand that this Agreement shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the Contractor.

Now therefore, the Government and the Contractor agree that the provisions and clauses of the Special Provisions, as set forth herein, and the General Provisions, as set forth and modified herein, shall be incorporated in and constitute the terms and conditions applicable to all negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

United States of America

Name of Contractor

Signature of Contracting Officer

By

Signature of Authorized Official

Typed name

Typed name

Date

(f) *Procedures.* (1) Negotiation of basic agreements may be undertaken by OPDIV contracting activities on behalf of the Department. When an OPDIV contracting activity decides to negotiate a basic agreement with an organization, prior authorization must be requested, in writing, from the Director, Division of Acquisition Policy (DAP). When the Director, DAP, gives written authorization to the OPDIV contracting activity designated to conduct negotiations on behalf of the Department, all other OPDIVs will be notified of this designation. If another OPDIV elects, it may attend the negotiation or furnish special terms and conditions or provisions for inclusion in the proposed basic agreement by advising the designated negotiating activity in writing within ten (10) days from the date of the authorization. After review and resolution of all requests for inclusion of special terms and conditions or provisions, the designated negotiating activity will invite those OPDIVs which expressed an interest in attending the negotiations and make the necessary arrangements for the negotiation of the basic agreement.

(2) Prior to the conclusion of negotiations, the designated negotiating activity shall furnish the OPDIVs a draft copy of the proposed basic agreement together with:

(i) A resume of all salient features of the basic agreement which will facilitate review;

(ii) Any of the negotiating OPDIV's guides or procedures which are being considered for incorporation into the basic agreement by reference;

(iii) A listing of nonstandard clauses used, the genesis of such clauses, and the reasons for such clauses in the basic agreement; and

(iv) The contractor's comments, including the basis for requesting any deviation from the HHSAR and the designated negotiating activity's position with respect thereto.

(3) The OPDIVs shall have fifteen (15) days from the date of the memorandum transmitting the information to submit comments on the draft copy of the basic agreement. After receipt, analysis, and resolution of the comments of the OPDIVs, the designated negotiating activity will proceed to conclude the negotiation of the basic agreement.

(4) After conclusion of the negotiation, but prior to execution of the basic agreement, a copy of the basic agreement, together with the information specified in paragraph (f)(2) above, the comments of the OPDIVs, the designated negotiating activity's analysis of the OPDIV comments, and the basis for the action taken will be furnished to the Director, DAP for review by DPP and the Office of General Counsel. Approval by the Director, DAP must be given prior to the execution of the basic agreement. After approval and execution of the basic agreement, the designated negotiating activity will distribute the executed document to the OPDIVs, Office of General Counsel, and the Director, DAP. The basic agreement is mandatory for use by all activities of the Department for all acquisitions falling within the scope of the basic agreement.

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23126, 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 54 FR 24343 June 7, 1989; 54 FR 24343, June 7, 1989]

### **316.770 Unauthorized types of agreements.**

#### **316.770-1 Letters of intent.**

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

#### **316.770-2 Memorandums of understanding.**

A "memorandum of understanding" is an unauthorized agreement, usually

drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of such memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

## **PART 317—SPECIAL CONTRACTING METHODS**

### **Subpart 317.2—Options**

#### **Sec.**

- 317.201 Definition.
- 317.202 Use of options.
- 317.203 Solicitations.
- 317.206 Evaluation.

### **Subpart 317.70—Consolidated Acquisitions**

- 317.7001 General.
- 317.7002 Policy.

### **Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act**

- 317.7100 Scope of subpart.
- 317.7101 Applicable regulations.
- 317.7102 Acquisition of training.

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

SOURCE: 49 FR 14006, Apr. 9, 1984, unless otherwise noted.

### **Subpart 317.2—Options**

#### **317.201 Definition.**

(a) An option must:

- (1) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;
- (2) Establish a price or specify a method of calculation which will make the price certain;
- (3) Be agreed to and included in the initial contract award; and