

**915.605**

**915.605 Content of unsolicited proposals. (DOE coverage—paragraph (b)).**

(b)(5) Unsolicited proposals for non-nuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 48 CFR 917.70.

**915.606 Agency procedures. (DOE coverage—paragraph (b)).**

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator, Office of Procurement and Assistance, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

**915.607 Criteria for acceptance of an unsolicited proposal. (DOE coverage—paragraph (c)).**

(c) DOE's cost participation policy, at 48 CFR 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

**PART 916—TYPES OF CONTRACTS**

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AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11972, Mar. 28, 1984, unless otherwise noted.

**Subpart 916.2—Fixed-Price Contracts**

**916.203 Fixed-price contracts with economic price adjustments.**

**916.203-4 Contract clauses.**

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of an economic price adjustment clause when appropriate in accordance with (FAR) 48 CFR 16.203-4.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

**Subpart 916.3—Cost-Reimbursement Contracts**

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

(c)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within their delegated authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

**916.307 Contract clauses.**

(j) The contracting officer shall insert the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

### Subpart 916.4—Incentive Contracts

#### 916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.* Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is determined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

### Subpart 916.5—Indefinite-Delivery Contracts

#### 916.504 Indefinite-quantity contracts. (DOE coverage—paragraph (c))

(c) The contracting officer shall establish minimum ordering guarantees with each awardee for all indefinite-quantity, multiple award contracts to ensure that adequate consideration exists to contractually bind each awardee

to participate in the ordering process throughout the term of the multiple award contract. Minimum ordering guarantees should be equal among all awardees, and shall be determined on a case-by-case basis for each acquisition commensurate with the size, scope and complexity of the contract requirements.

[62 FR 53757, Oct. 16, 1997]

#### 916.505 Ordering. (DOE coverage—paragraph (b))

(b) (4) The Director, Office of Management Systems, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(4).

(5) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(6) The Contracting Activity Ombudsman shall:

(i) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(ii) Not assume any duties and responsibilities pertaining to the evaluation or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(iii) Review complaints from contractors awarded a task or delivery order contract;

(iv) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees' contract;

(v) Maintain a written log to track each complaint submitted from receipt through disposition;

(vi) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(vii) Resolve complaints at the contracting activity for which they have cognizance.

(7) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

[62 FR 53757, Oct. 16, 1997]

## PART 917—SPECIAL CONTRACTING METHODS

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AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 11974, Mar. 28, 1984, unless otherwise noted.

## Subpart 917.6—Management and Operating Contracts

### 917.600 Scope of subpart.

This subpart implements FAR Subpart 17.6, Management and Operating Contracts. DOE implementing procedures and requirements to be followed in the selection, award, and administration of Management and Operating Contracts are at part 970. The requirements of this subpart apply to any Department of Energy management and operating contract, including performance-based management contracts as defined in 48 CFR (DEAR) 917.601. References in this subpart to "management and operating contracts" shall be understood to include "performance-based management contracts."

[49 FR 11974, Mar. 28, 1984, as amended at 62 FR 34861, June 27, 1997]

### 917.601 Definitions.

*Performance-based contracting* means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to the manner by which the work is to be performed or broad or imprecise statements of work.

*Performance-based management contract* means a management and operating contract that employs, to the maximum extent practicable, performance-based contracting concepts and methodologies through the application of results-oriented statements of work; clear objective performance standards and measurement tools; and incentives to encourage superior contractor performance.

[62 FR 34861, June 27, 1997]

### 917.602 Policy.

(a) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts, including performance-based management contracts.

(b) A management and operating contract may be awarded or extended at