

Health and Human Services

316.603-3

Information Act. Because of this possibility, the following notice shall be provided to all prospective offerors of unsolicited proposals:

The Government will attempt to comply with the "Use and Disclosure of Data" legend.

However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

[66 FR 4233, Jan. 17, 2001, as amended at 71 FR 76500, Dec. 20, 2006]

PART 316—TYPES OF CONTRACTS

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

SOURCE: 66 FR 4243, Jan. 17, 2001, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit) for research and development, 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 all solicitations and resultant cost-reimbursement contracts.

316.505 Ordering.

(b)(5) The Department's task-order and delivery-order ombudsman is the Director, Strategic Acquisition Service, Program Support Center (PSC). The task-order and delivery-order ombudsmen for each of the Department's contracting activities are as follows:

AHRQ—Director, Office of Performance Accountability, Resources and Technology

CDC—Chief Information Officer

CMS—Chief Operating Officer

FDA—Director, Office of Acquisitions and Grants Services

HRSA—Associate Administrator, Office of Administration and Financial Management

Indian Health Service—Director, Office of Management Services

NIH—Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (Other than R&D)

PSC—Director, Strategic Acquisition Service

SAMHSA—Executive Officer

[71 FR 76500, Dec. 20, 2006]

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

316.603 Letter contracts.

316.603-3 Limitations.

An official one level above the Contracting Officer shall make the written determination.

[71 FR 76500, Dec. 20, 2006]

316.603-70

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 a 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 one level above the contracting officer. Request for authority to issue letter contract modifications shall be processed in the same manner as requests for au-

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thority 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

316.770 Unauthorized types of agreements.

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 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.