

§ 35.937-1

40 CFR Ch. I (7-1-10 Edition)

as defined in paragraph (c)(1) of this section by subagreement under a grant.

§ 35.937-1 Type of contract (subagreement).

(a) *General.* Cost-plus-percentage-of-cost and percentage-of-construction-cost contracts are prohibited. Cost reimbursement, fixed price, or per diem contracts or combinations of these may be negotiated for architectural or engineering services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be used if the grantee submits an adequate independent cost estimate and price comparison under § 35.937-6.

(b) *Cost reimbursement contracts.* Each cost reimbursement contract must clearly establish a cost ceiling which the engineer may not exceed without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment to increase the scope of work.

(c) *Fixed price contracts.* An acceptable fixed price contract is one which establishes a guaranteed maximum price which may not be increased unless a contract amendment increases the scope of work.

(d) *Compensation procedures.* If, under either a cost reimbursement or fixed price contract, the grantee desires to use a multiplier type of compensation, all of the following must apply:

(1) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;

(2) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles of 41 CFR 1-15.2 and 1-15.4;

(3) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; and

(4) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work; the cost reimbursement con-

tract includes a fixed dollar profit which may not be increased except in case of a contract amendment which increases the scope of work.

(e) *Per diem contracts.* A per diem agreement expected to exceed \$10,000 may be utilized only after a determination that a fixed price or cost reimbursement type contract is not appropriate. Per diem agreements should be used only to a limited extent, e.g., where the first task under a step 1 grant involves establishing the scope and cost of succeeding step 1 tasks, or for incidental services such as expert testimony or intermittent professional or testing services. (Resident engineer and resident inspection services should generally be compensated under paragraph (b) or (c) of this section.) Cost and profit included in the per diem rate must be specifically negotiated and displayed separately in the engineer's proposal. The contract must clearly establish a price ceiling which may not be exceeded without formally amending the contract.

§ 35.937-2 Public notice.

(a) *Requirement.* Adequate public notice as paragraph (a)(1) or (2) of this section provide, must be given of the requirement for architectural or engineering services for all subagreements with an anticipated price in excess of \$25,000 except as paragraph (b) of this section provides. In providing public notice under paragraphs (a)(1) and (2) of this section, grantees must comply with the policies in §§ 35.936-2(c), 35.936-3, and 35.936-7.

(1) *Public announcement.* A notice of request for qualifications should be published in professional journals, newspapers, or publications of general circulation over a reasonable area and, in addition, if desired, through posted public notices or written notification directed to interested person, firms, or professional organizations inviting the submission of statements of qualifications. The announcement must clearly state the deadline and place for submission of qualification statements.

(2) *Prequalified list.* As an alternative to publishing public notice as in paragraph (b) of this section, the grantee may secure or maintain a list of qualified candidates. The list must: