

932.7004-2

except that any contrary provisions required by enabling legislation authorizing the loan shall govern.

[49 FR 12011, Mar. 28, 1984, as amended at 75 FR 29459, May 26, 2010]

932.7004-2 Criteria.

(a) The materials or services to be furnished by the contractor are necessary to the Government interest.

(b) The materials or services cannot as a practical matter be obtained from alternate sources without delay or impeding the Government's interest, except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(c) The contractor has demonstrated its inability to obtain the necessary financing in conventional credit channels without the guarantee.

(d) There is reasonable assurance that the loan can be repaid.

(e) The contractor is competent to perform the contract.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

932.7004-3 Eligibility.

The applicant's eligibility for a guaranteed loan will be based on—

(a) Contracting officer determinations and findings regarding items (a), (b) and (e) in 932.7004-2 as incorporated in a Certificate of Eligibility (48 CFR 32.304-2); and

(b) The Chief Financial Officer's determination for items (c) and (d) in 932.7004-2 based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the contracting activity concerned.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 74 FR 36367, July 22, 2009; 75 FR 29459, May 26, 2010]

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

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48 CFR Ch. 9 (10-1-10 Edition)

AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.

SOURCE: 51 FR 31336, Sept. 3, 1986, unless otherwise noted.

Subpart 933.1—Protests

SOURCE: 61 FR 41708, Aug. 9, 1996, unless otherwise noted.

933.102 General.

(b) The Heads of Contracting Activities (HCA), for contracts estimated to be within the limits of their delegated authority, may, without power of re-delegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

[63 FR 53758, Oct. 16, 1997, as amended at 74 FR 36367, July 22, 2009]

933.103 Protests to the agency.

(i) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(1) The protester requests that the protest be decided by the Senior Procurement Executive.

(2) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(3) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is

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appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in 48 CFR 33.104(a)(3)(iv). The Senior Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

[74 FR 36367, July 22, 2009, as amended at 75 FR 29459, May 26, 2010]

933.104 Protests to GAO.

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the Government Accountability Office (GAO) of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the HCA in accordance with 48 CFR 33.104(b). Before the HCA authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the HCA authorizes performance, the finding required by 48 CFR 33.104(c)(2) shall

be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at 48 CFR 33.104(f), shall be provided by the HCA making the award, after approval of the Senior Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Senior Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests. 933.106 Solicitation provisions.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36367, 36378, July 22, 2009; 75 FR 29459, May 26, 2010]

933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at 48 CFR 52.233-2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 952.233-2.

(b) The contracting officer shall include the provision at 952.233-4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 952.233-5 in solicitations for purchases above the simplified acquisition threshold.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36367, July 22, 2009; 75 FR 29459, May 26, 2010]