

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

935.010 Scientific and technical reports.

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935.071 Contract clause.

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

SOURCE: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

935.010 Scientific and technical reports.

(c) All research and development contracts which require reporting of research and development results conveyed in scientific and technical information (STI) shall include an instruction requiring the contractor to submit all STI, including reports and notices relating thereto, electronically to the U.S. Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System (E-link) at <http://www.osti.gov/mlink>. The phrase “reports and notices relating thereto” does not include reports or notices concerning administrative matters such as contract cost or financial data and information. The DOE Order 241.1B Scientific and Technical Information Management, or its successor version, sets forth requirements for STI management.

(d) As prescribed in DOE Order 241.1B, the contracting officer shall ensure that the requirements of the attendant Contractor Requirements Document are included in applicable contracts.

[75 FR 29458, May 26, 2010]

935.070 Research misconduct.

(a) *Applicability.* The DOE research misconduct policy set forth at 10 CFR part 733 addresses research misconduct by individuals who propose, perform or review research of any kind for the Department of Energy pursuant to a contract. The regulation applies regardless of where the research or other activity is conducted or by whom.

(b) *Definition.* Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. A finding of research misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred, including a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

[70 FR 37015, June 28, 2005]

935.071 Contract clause.

The contracting officer must insert the clause at 952.235-71, Research Misconduct, in contracts, including management and operating contracts, that involve research.

[70 FR 37015, June 28, 2005]

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 936.2—Special Aspects of Contracting for Construction

Sec.

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936.7101 Construction contracts.

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

SOURCE: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

Subpart 936.2—Special Aspects of Contracting for Construction

936.202-70 Specifications charges.

(a) To support all invitations for bids, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and equipment suppliers. Where the cost of reproduction is \$10 or more, the charge shall be a minimum of \$10 and subject to a maximum of \$500, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than \$10, the contracting officer has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(b) No refund for the return of plans and specifications will be made except when the invitation is canceled. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(c) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., builders and contractors exchanges in the locality in which the project is to be constructed, and others that maintain public plan display rooms.

(d) Payments received for plans and specifications shall be handled in accordance with internal financial procedures.

(e) If the contracting officer desires to have the architect-engineer or construction manager handle the furnishing of plans and specifications and payments, the invitations for bids should so state, and the architect-engineer or construction management contract shall provide the manner in which the receipts are to be handled, generally as a credit to the contract.

(f) No charge will be made to original receivers of plans and specifications for revised sheets of drawings and revised pages of specifications which are issued by amendments to invitations.

(g) Plans and specifications may be issued in complete sets only, or in com-

plete sets and parts of sets, as the Head of the Contracting Activity determines to be best. If less than complete sets of plans and specifications are issued, the distribution should be based on an applicant's request for specific pages and drawing sheets.

(h) When a non-refundable fee is to be charged, a provision substantially the same as 952.236-72 shall be included in the solicitation.

[49 FR 12016, Mar. 28, 1984, as amended at 60 FR 47308, Sept. 12, 1995; 74 FR 36367, July 22, 2009. Redesignated at 75 FR 29458, May 26, 2010]

936.202-71 Specifications.

When developing specifications for the work to be performed, plan for ways to ensure that construction and demolition debris can be diverted or recycled in sufficient quantities as to ensure that the Agency goal from section 2(e) of Executive Order 13514 of diverting at least 50% of the debris stream may be attained.

[75 FR 57693, Sept. 22, 2010]

EFFECTIVE DATE NOTE: At 75 FR 57693, Sept. 22, 2010, 936.202-71 was added, effective October 22, 2010.

Subpart 936.6—Architect-Engineer Services

936.602-70 DOE selection criteria.

Contracting officers or architect-engineer evaluation boards shall apply the evaluation criteria contained in this subsection, as appropriate, and any special criteria developed for individual selections. When special and additional criteria are to be used, they shall be set forth in the public announcement, and a written justification for their use shall be placed in the DOE file maintained for the project.

(a) *General qualifications, including—*

(1) Reputation and standing of the firm and its principal members;

(2) Experience and technical competence of the firm in comparable work;

(3) Past record in performing work for DOE, other Government agencies, and private industry, including projects or contracts implemented with no overruns; performance from the

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standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of contractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) (where applicable);

(4) The volume of past and present workloads;

(5) Interest of company management in the project and expected participation and contribution of top officials;

(6) Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required;

(7) Geographic location of the home office and familiarity with the locality in which the project is located; or

(8) In addition to these requirements, consider the Architect-Engineer firm's experience in energy efficiency, pollution prevention, waste reduction, and the use of recovered and environmentally preferable materials and other criteria at 48 CFR 36.602-1.

(b) *Personnel and organizations.* (1) Specific experience and qualifications of personnel proposed for assignment to the project, including, as required for various phases of the work—

(i) Technical skills and abilities in planning, organizing, executing, and controlling;

(ii) Abilities in overall project coordination and management; and

(iii) Experience in working together as a team;

(2) Proposed project organization, delegations of responsibility, and assignments of authority;

(3) Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately;

(4) Experience and qualifications of proposed consultants and subcontractors; and

(5) Ability to assign adequate qualified personnel from the proposed organization (firms own organization, joint-venture organizations, consulting firms etc.) including key personnel and a competent supervising representative.

(c) Additional (or special) criteria developed for the specific project shall be

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considered and evaluated as may be appropriate.

[49 FR 12016, Mar. 28, 1984, as amended at 68 FR 6358, Feb. 7, 2003; 74 FR 36367, July 22, 2009; 75 FR 29459, May 26, 2010]

936.609-3 Work oversight in architect-engineer contracts.

In addition to the clause at 48 CFR 52.236-24, the contracting officer shall insert the clause at 952.236-71 in architect-engineer contracts.

[49 FR 12016, Mar. 28, 1984, as amended at 75 FR 29459, May 26, 2010]

Subpart 936.7 [Reserved]

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.

This subpart implements and supplements 48 CFR part 36 by prescribing the policies and requirements for inspection and acceptance under construction contracts.

[49 FR 12016, Mar. 28, 1984, as amended at 75 FR 29459, May 26, 2010]

936.7101 Construction contracts.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a construction contractor with respect to its own work.

(b) When one contractor is to inspect the work of another, the inspection contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, to direct additional work, to waive any requirements of the contract, or to settle any claim or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority and limitations of the authority of the inspecting contractor.