

335.070-3

such, the amount of cost-sharing shall be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the R & D project, it is normally appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit is not normally paid to the performing organization, if the organization is to contribute to the cost of the R & D effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the R & D is expected to be of only minor value to the performing organization, and if a statute does not require cost-sharing, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project, so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate, if an area of R & D requires special stimulus in the national interest.

335.070-3 Method of cost sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed or by a fixed amount or stated percentage of the total allowable costs of the project. Contractors shall not charge costs contributed to the Government under any other instrument (e.g., grant or contract), including allocations to other instruments as part of any independent R & D program.

335.070-4 Contract award.

Consistent with HHS' objectives of competition and support of the small business program, Contracting Officers shall not award contracts solely on the basis of an organization's ability or willingness to cost-share. Contracting

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Officers shall make awards primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations, whenever possible. An offeror's willingness to share costs is not a technical evaluation consideration, but a business consideration, which is secondary to selecting the best qualified source.

335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads shall sign individual and class D & Fs for—

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in an R & D contract pursuant to 42 U.S.C. 241(a)(7).

PART 337—SERVICE CONTRACTING—GENERAL

Subpart 337.1—Service Contracts—General

Sec.

337.103-70 Solicitation provisions and contract clauses.

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

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 337.1—Service Contracts—General

337.103-70 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in 352.237-70, Pro-Children Act, in solicitations, contracts, and orders that involve (a) kindergarten, elementary, or secondary education or library services or (b) health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994.

(b) The Contracting Officer shall insert the clause in 352.237-71, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal

land or in a Federally operated (or contracted) facility and involve the professions/activities performed by persons specified in the Crime Control Act of 1990, including, but not limited to, physicians, nurses, dentists, health care practitioners, optometrists, psychologists, emergency medical technicians, alcohol or drug treatment personnel, child care workers and administrators, emergency medical technicians and ambulance drivers.

(c) The Contracting Officer shall insert the clause in 352.237-72, Crime Control Act—Requirement for Background Checks, in solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the Crime Control Act of 1990 (Act).

PART 339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 339.1—General

Sec.

339.101 Policy.

Subpart 339.2—Electronic and Information Technology

339.201 Clarification.

339.201-70 Required provision and contract clause.

339.203 Approval of exceptions.

Subpart 339.70—Use of General Services Administration Blanket Purchase Agreements for Independent Risk Analysis Services

339.7000 Policy.

339.7001 Request for approval to make an award to other than a GSA BPA holder.

339.7002 Notice of intended award.

Subpart 339.71—Information Security Management

339.7100 Definitions.

339.7101 Policy.

339.7102 Applicability.

339.7103 Solicitation and contract clause.

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

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 339.1—General

339.101 Policy.

(d)(1) The Contracting Officer shall insert the clause in 352.239-70, Standard for Security Configurations, in solicitations, contracts, and orders that involve the operation or acquisition of an information technology system (for definition of the latter term, see <http://www.hhs.gov/ocio/policy>).

An HHS information security policy waiver, the template for which is available at: http://intranet.hhs.gov/infosec/policies_memos.html, must be approved in order to deviate from HHS OCIO Standard 2009-0001.001S, HHS Standard for Security Configurations Language in HHS Contracts, dated January 30, 2009. A copy of the approved waiver shall be forwarded to the Contracting Officer who, in turn, shall request a comparable deviation for the clause in 352.239-70.

(2) The Contracting Officer shall insert the clause in 352.239-71, Standard for Encryption Language, in solicitations, contracts, and orders that involve the acquisition or lease of, or the requirement to use, desktop or laptop computers, mobile devices, or portable media to store or process HHS sensitive information that the Project Officer categorizes as moderate or high under Federal Information Processing Standard (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004. An HHS information security policy waiver, the template for which is available at: http://intranet.hhs.gov/infosec/policies_memos.html, must be approved in order to deviate from HHS OCIO Standard 2009-0002.001S, HHS Standard for Encryption Language in HHS Contracts, dated January 30, 2009. A copy of the approved waiver shall be forwarded to the Contracting Officer who, in turn, shall request a comparable deviation for the clause in 352.239-71.

Subpart 339.2—Electronic and Information Technology

339.201 Clarification.

FAR Subpart 39.2, *Electronic and Information Technology*, requires Federal