

of the acquisition process through application of reasonable controls, the DOE:

- (1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;
- (2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;
- (3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;
- (4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;
- (5) Assures that each proposal is evaluated in a fair and objective manner; and, (6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

915.603 General.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

915.605 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for non-nuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of subpart 917.70.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

915.606 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Manager, U.S. Department of Energy, National Energy Technology Laboratory P.O. Box 10940, MS 921-107, Pittsburgh, PA 15236-0940. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

[63 FR 56851, Oct. 23, 1998, as amended at 67 FR 14871, Mar. 28, 2002; 74 FR 36364, July 22, 2009]

915.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(c) DOE's cost participation policy, at subpart 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

[74 FR 36364, July 22, 2009]

PART 916—TYPES OF CONTRACTS

Subpart 916.2—Fixed-Price Contracts

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- 916.203 Fixed-price contracts with economic price adjustments.
- 916.203-4 Contract clauses.

Subpart 916.3—Cost-Reimbursement Contracts

- 916.306 Cost-plus-fixed-fee contracts.

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916.307 Contract clauses.

Subpart 916.4—Incentive Contracts

916.405 Cost-reimbursement incentive contracts.

916.405-2 Cost-plus-award-fee contracts.

Subpart 916.5—Indefinite-Delivery Contracts

916.504 Indefinite-quantity contracts.

916.505 Ordering.

Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts

916.601 [Reserved]

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

SOURCE: 49 FR 11972, Mar. 28, 1984, unless otherwise noted.

Subpart 916.2—Fixed-Price Contracts

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of an economic price adjustment clause when appropriate in accordance with 48 CFR 16.203-4.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994; 76 FR 7693, Feb. 11, 2011]

Subpart 916.3—Cost-Reimbursement Contracts

916.306 Cost-plus-fixed-fee contracts.

(c)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within their delegated authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

916.307 Contract clauses.

(a) When contracting with a commercial organization, modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase “as supplemented by

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subpart 931.2 of the DEAR” after “FAR subpart 31.2.”

(g) Insert the clause at 48 CFR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

[49 FR 11972, Mar. 28, 1984, as amended at 74 FR 36364, July 22, 2009; 76 FR 7693, Feb. 11, 2011]

Subpart 916.4—Incentive Contracts

916.405 Cost-reimbursement incentive contracts.

916.405-2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is determined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established

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in relation to each performance evaluation criterion against which contractor performance is measured.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994. Redesignated at 74 FR 36364, July 22, 2009]

Subpart 916.5—Indefinite-Delivery Contracts

916.504 Indefinite-quantity contracts.

(c) The contracting officer shall establish minimum ordering guarantees with each awardee for all indefinite-quantity, multiple award contracts to ensure that adequate consideration exists to contractually bind each awardee to participate in the ordering process throughout the term of the multiple award contract. Minimum ordering guarantees should be equal among all awardees, and shall be determined on a case-by-case basis for each acquisition commensurate with the size, scope and complexity of the contract requirements.

[62 FR 53757, Oct. 16, 1997]

916.505 Ordering.

(b)(6)(i) The Director, Office of Contract Management, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6). The Director, Office of Acquisition and Supply Management, is the designated NNSA Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6).

(ii) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(iii) The Contracting Activity Ombudsman shall—

(A) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(B) Not assume any duties and responsibilities pertaining to the evaluation

or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(C) Review complaints from contractors awarded a task or delivery order contract;

(D) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees' contract;

(E) Maintain a written log to track each complaint submitted from receipt through disposition;

(F) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(G) Resolve complaints at the contracting activity for which they have cognizance.

(iv) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

[74 FR 36364, July 22, 2009]

Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts

916.601 [Reserved]

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.6—Management and Operating Contracts

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917.600 Scope of subpart.

917.601 Definitions.

917.602 Policy.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

917.7001 Policy.