

PART 925—FOREIGN ACQUISITION

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

SOURCE: 49 FR 12003, Mar. 28, 1984, unless otherwise noted.

Subpart 925.1—Buy American Act—Supplies

925.103 Exceptions.

(a) Contracting officers may make the determination required by 48 CFR 25.103(a), provided such determination is factually supported in writing. If the contract is estimated to exceed \$1 million, the Head of the Contracting Activity shall approve the determination.

(b)(2)(ii) Proposals to add an article to the list of nonavailable articles at 48 CFR 25.104, with appropriate justifications, shall be submitted for approval by the Senior Procurement Executive and submission to the appropriate council.

[74 FR 36366, July 22, 2009, as amended at 75 FR 69013, Nov. 10, 2010]

925.202 Exceptions.

(a)(2) Contracting officers may make the determination required by 48 CFR 25.202(a)(2), if the cost of the materials is not expected to exceed \$100,000.

[75 FR 69013, Nov. 10, 2010]

Subpart 925.7—Prohibited Sources

925.701-70 Prohibited sources.

No contract may be awarded to a company owned by an entity controlled by a foreign government if performance of the contract will require access to proscribed information. See subpart 904.71 for additional guidance.

[74 FR 36366, July 22, 2009]

Subpart 925.9 [Reserved]

Subpart 925.10—Additional Foreign Acquisition Regulations

925.1001 Waiver of right to examination of records.

(b) *Determination and findings.* A determination and findings required by 48 CFR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Procurement and Assistance Management, or for the National Nuclear Security Administration (NNSA), to the Director, Office of Acquisition and Supply Management, for coordination of the Secretary's approval.

[75 FR 69013, Nov. 10, 2010]

Subpart 925.70—Acquisition of Nuclear Hot Cell Services

SOURCE: 58 FR 8910, Feb. 18, 1993, unless otherwise noted.

925.7000 Scope of subpart.

This subpart prescribes policies for selection for contract award of nuclear hot cell services when one of the competitors is a foreign company. This subpart does not apply to the acquisition and use of nuclear hot cell facilities on-site at a DOE-owned or -leased facility.

Department of Energy

925.7004

925.7001 Definitions.

Costs related to the decommissioning of nuclear facilities, as used in this subpart, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

Costs related to the storage and disposal of nuclear waste, as used in this subpart, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

Foreign company, as used in this subpart, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

Nuclear hot cell services, as used in this subpart, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as "hot cells."

Nuclear waste, as used in this subpart, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

United States company, as used in this subpart, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

[58 FR 8910, Feb. 18, 1993, as amended at 74 FR 36366, July 22, 2009]

925.7002 Policy.

In selecting offer(s) for award of contracts for nuclear hot cell services, costs related to the decommissioning of nuclear facilities and storage and disposal of nuclear waste are to be considered in a way which affords United States and foreign companies an equal competition in accordance with 925.7003. Upon determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this subpart will not apply.

925.7003 Requirements.

(a) For the acquisition of nuclear hot cell services under the conditions in paragraph (b) of this section, the selection official in evaluating competitive offers for selection purposes only shall—

(1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or

(2) Add these costs to offers of foreign companies.

(b) The requirements of this section apply under the following circumstances—

(1) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such costs; and

(2) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of costs in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

[58 FR 8910, Feb. 18, 1993, as amended at 74 FR 36366, July 22, 2009]

925.7004 Contract clause.

The contracting officer shall insert the clause at 952.225-70, Subcontracting for Nuclear Hot Cell Services, in solicitations and contracts involving nuclear

hot cell services. This clause does not flow down to second-tier subcontracts.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

Sec.

- 926.7001 Policy.
- 926.7002 Responsibilities.
- 926.7003 Review of the procurement request.
- 926.7004 Size standard for Energy Policy Act procurements.
- 926.7005 Preferences under the Energy Policy Act.
- 926.7006 Goal measurement and reporting requirements.
- 926.7007 Solicitation provisions and contract clauses.

Subpart 926.71—Implementation of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993

- 926.7101 Policy.
- 926.7102 Definition.
- 926.7103 Requirements.
- 926.7104 Contract clause.

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

SOURCE: 60 FR 22300, May 5, 1995, unless otherwise noted.

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

926.7001 Policy.

(a) Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) specifies that the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for competitively awarded contracts and subcontracts under the Energy Policy Act be expended with—

- (1) Small business concerns controlled by socially and economically disadvantaged individuals or by women;
- (2) Historically Black colleges and universities; or
- (3) Colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

(b) These three groups are collectively referred to in this section as “Energy Policy Act target groups.”

(c) Awards of Energy Policy Act procurements should be in the following descending order of preference—

- (1) Competitive awards pursuant to a set-aside for small disadvantaged business;
- (2) Competitive awards to small businesses owned and controlled by socially and economically disadvantaged individuals and by women for Energy Policy Act requirements under the Small Business Administration’s section 8(a) program; and
- (3) Competitive awards that provide an evaluation preference in accordance with 926.7006 to offerors from the Energy Policy Act target groups.

(d) The DOE implementation of Section 3021 requirements with regard to the award of subcontracts under Energy Policy Act procurements is discussed at 926.7006.

(e) Competitive procedures, for purposes of Energy Policy Act implementation, consist of awards under set-asides to small disadvantaged business and firms certified as 8(a) Small Business Administration and competitive procedures in accordance with 48 CFR subpart 15.6 and subpart 915.6.

[60 FR 22300, May 5, 1995, as amended at 75 FR 69013, Nov. 10, 2010]

926.7002 Responsibilities.

Offices initiating procurement requests have primary responsibility to identify potential contract requirements falling within the scope of section 3021 of the Energy Policy Act. Identification shall occur at the earliest possible point in time in the acquisition cycle, but not later than the submission of the procurement request to the contracting officer. For purposes of Section 3021, a contract requirement is any award that directly satisfies an Energy Policy Act program or requirement.

926.7003 Review of the procurement request.

Any Energy Policy Act procurement, including basic research contracts with educational institutions, shall be reviewed in accordance with the Small