

17.504

(4) A payment provision (*see* 17.502-2(d)) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (*see* 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502-2(c)) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including—

(i) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (*see* 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the ac-

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ceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (*See* 35.017; *see also* 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

[75 FR 77735, Dec. 13, 2010, as amended at 77 FR 186, Jan. 3, 2012]

17.504 Reporting requirements.

The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

Subpart 17.6—Management and Operating Contracts

17.600 Scope of subpart.

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

17.601 Definition.

Management and operating contract means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

[48 FR 42163, Sept. 19, 1983, as amended at 50 FR 52434, Dec. 23, 1985]

17.603 Limitations.

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart 22.5.

[61 FR 39204, July 26, 1996, as amended at 66 FR 27415, May 16, 2001; 72 FR 27384, May 15, 2007; 74 FR 34207, July 14, 2009; 75 FR 19177, Apr. 13, 2010]

17.604 Identifying management and operating contracts.

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial