

§ 70.45

28 CFR Ch. I (7–1–10 Edition)

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

[Order No. 1980–95, 60 FR 38242, July 26, 1995; Order No. 1998–95, 60 FR 57932, Nov. 24, 1995]

§ 70.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 70.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum:

- (a) Basis for contractor selection,
- (b) Justification for lack of competition when competitive bids or offers are not obtained, and
- (c) Basis for award cost or price.

§ 70.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 70.48 Contract provisions.

The recipient must include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold must contain suitable provisions for termination by the recipient, including the manner by which termination must be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Department may accept the bonding policy and requirements of the recipient, provided the Department has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements are to be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder must, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

Department of Justice

§ 70.52

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of appendix A to this part as applicable.

REPORTS AND RECORDS

§ 70.50 Purpose of reports and records.

Sections 70.51 through 70.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 70.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients must monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 70.26.

(b) Performance reports must be submitted based on each calendar quarter. Reports are due thirty days after the reporting period, unless stated dif-

ferently in the terms and conditions of the award. The final performance reports are due ninety calendar days after the expiration or termination of the award.

(c) Performance reports must contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) Recipients are required to submit the original and two copies of performance reports.

(e) Recipients must immediately notify the department, in writing, of developments that have a significant impact on the award-supported activities. Also, written notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(f) The Department will make site visits, as needed.

(g) The Department will comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

[Order No. 1980-95, 60 FR 38242, July 26, 1995; Order No. 1998-95, 60 FR 57932, Nov. 24, 1995]

§ 70.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) Recipients are required to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs.