

## Department of Energy

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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).

(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, as amended at 81 FR 45977, July 15, 2016]

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

SOURCE: 49 FR 11974, Mar. 28, 1984, unless otherwise noted.

## Subpart 917.6—Management and Operating Contracts

### 917.600 Scope of subpart.

(a) This subpart implements 48 CFR subpart 17.6, Management and Operating Contracts. Departmental policies, procedures, provisions and clauses to be used in the award and administration of management and operating contracts that either implement or supplement the Federal Acquisition Regulation and parts 901 through 952 of this chapter are contained in part 970.

(b) The requirements of this subpart apply to any Department of Energy management and operating contract, including performance-based management contracts as defined in 917.601. References in this subpart to “management and operating contracts” include performance-based management contracts.

[65 FR 81006, Dec. 22, 2000, as amended at 74 FR 36364, July 22, 2009]

### 917.601 Definitions.

*Performance-based contracting* has the meaning contained in 48 CFR 37.101.

*Performance-based management contract* means a management and operating contract that employs, to the maximum extent practicable, performance-based contracting concepts and methodologies through the application of results-oriented statements of work; clear objective performance standards and measurement tools; and incentives

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to encourage superior contractor performance.

[62 FR 34861, June 27, 1997, as amended at 65 FR 81006, Dec. 22, 2000]

### 917.602 Policy.

(a) The use of a management and operating contract must be authorized by the Secretary.

(b) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts, including performance-based management contracts.

(c) A management and operating contract may be awarded or extended at the completion of its term without providing for full and open competition only when such award or extension is justified under one of the statutory authorities identified in 48 CFR 6.302 and only when authorized by the Secretary. Documentation and processing requirements for justifications for the use of other than full and open competition shall be accomplished in accordance with internal agency procedures

[65 FR 81006, Dec. 22, 2000, as amended at 67 FR 14871, Mar. 28, 2002; 76 FR 7693, Feb. 11, 2011; 81 FR 45977, July 15, 2016]

## Subpart 917.70—Cost Participation

SOURCE: 61 FR 41706, Aug. 9, 1996, unless otherwise noted.

### 917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and/or demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

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### 917.7001 Policy.

(a) When DOE supports performer research, development, and/or demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided on a case-by-case basis.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations of technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

### Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

SOURCE: 61 FR 41706, Aug. 9, 1996, unless otherwise noted.

#### 917.7200 Scope of subpart.

(a) This subpart discusses the policy for the use of a program opportunity notice solicitation approach to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) This subpart applies to demonstrations performed by individuals, educational institutions, commercial or industrial organizations, or other private entities, public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrations of technological advances, field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

[61 FR 41706, Aug. 9, 1996, as amended at 74 FR 36365, July 22, 2009; 76 FR 7693, Feb. 11, 2011]

### 917.7201 Policy.

#### 917.7201-1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Each program opportunity notice shall as a minimum describe: the goal of the intended demonstration effort; the time schedule for award; evaluation criteria; program policy factors; the amount of cost detail required; and proposal submission information. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process.

### Subpart 917.73—Program Research and Development Announcements

SOURCE: 61 FR 41707, Aug. 9, 1996, unless otherwise noted.

#### 917.7300 Scope of subpart.

(a) This subpart discusses the policy for the use of a program research and development announcement (PRDA) solicitation approach to obtain and select proposals from the private sector for the conduct of research, development, and related activities in the energy field.

#### 917.7301 Policy.

##### 917.7301–1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

[61 FR 41707, Aug. 9, 1996, as amended at 76 FR 7693, Feb. 11, 2011]

### Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

SOURCE: 61 FR 41707, Aug. 9, 1996, unless otherwise noted.

#### 917.7401 General.

The acquisition of real estate requires the involvement of a DOE Certified Realty Specialist, as specified at 917.7402. Special circumstances and situations may arise under cost-type contracts when, in the performance of the contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease for which DOE will reimburse the contractor for the pre-approved costs incurred under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

[61 FR 41707, Aug. 9, 1996, as amended at 76 FR 7693, Feb. 11, 2011]

#### 917.7402 Policy.

It is the policy of the Department of Energy that, when real estate acquisitions are made, the following policies and procedures shall be applied to such acquisitions—

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition option considerations with the best acquisition method to be used, site investigation reports, site recommended for selection, property appraisal reports, and include the review and approval by the applicable DOE Certified Realty Specialist in accordance with DOE Order 430.1B, or its successor version; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

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(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by a DOE Certified Realty Specialist.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest cancellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws, regulations, and the DOE Order 430.1B, or its successor version, applicable to real estate acquisition.

(d) Any real property actions require the involvement of the applicable DOE Certified Realty Specialist.

[61 FR 41707, Aug. 9, 1996, as amended at 76 FR 7693, Feb. 11, 2011]

### **917.7403 Contract clause.**

The clause at 952.217-70, Acquisition of Real Property, shall be included in contracts including modifications where contractor acquisitions of real property are expected to be made.

[76 FR 7693, Feb. 11, 2011]