

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4251, Jan. 17, 2001, unless otherwise noted.

334.003 Responsibilities.

The Department's implementation of OMB Circular No. A-109 may be found in Chapter 1-150 of the General Administration Manual.

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

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335.070 Cost-sharing.

335.070-1 Policy.

(a) The use of cost-sharing type contracts should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost-sharing is intended to serve the mutual interests of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. Encouragement should be given to organizations to contribute to the cost of performing research under contracts unless the contracting officer determines that a request for cost-sharing

would not be appropriate because of the following circumstances:

(1) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government request for proposals for a specific project.

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost-sharing should generally not be requested if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b) The responsibility for negotiating cost-sharing is that of the contracting office. Each research contract file should show whether the contracting officer considered cost-sharing appropriate for that particular contract and in what amount. If cost-sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., "Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate." The contracting officer may wish to coordinate with the project officer before documenting this decision.

(c) If the contracting officer considers cost-sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost-sharing, if the contracting officer concludes that payment of the

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full cost of the research effort is necessary in order to obtain the services of that particular contractor.

335.070-2 Amount of cost-sharing.

When cost-sharing is determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor.

(a) The amount of cost participation should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development have little or no production or other service activities and may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, contractor cost participation could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost. Ultimately, the contracting officer should bear in mind that cost-sharing is a negotiable item. As such, the amount of cost-sharing should be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

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(d) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

335.070-3 Method of cost-sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program).

335.070-4 Contract award.

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads for health agencies shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).