

evaluated against each other since they are not submitted in accordance with a common work statement.

(e) The primary basis for selecting proposals for acceptance shall be technical, importance to agency programs, and fund availability. Cost realism and reasonableness shall also be considered to the extent appropriate.

(f) Synopsis under subpart 5.2, Synopses of Proposed Contract Actions, of individual contract actions based upon proposals received under the BAA is not required. The notice published pursuant to subparagraph (c), of this section, fulfills the synopsis requirement.

[53 FR 27467, July 20, 1988, as amended at 66 FR 27414, May 16, 2001]

### **35.017 Federally Funded Research and Development Centers.**

#### *(a) Policy.*

(1) This section sets forth Federal policy regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers (FFRDC's) and related sponsoring agreements.

(2) An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDC's enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation,

when the work is not otherwise available from the private sector.

(3) FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(4) Long-term relationships between the Government and FFRDC's are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

(b) *Definitions.* As used in this section—

*Nonsponsor* means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the FFRDC and is not a party to the sponsoring agreement.

*Primary sponsor* means the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

*Sponsor* means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the "primary sponsor." In the event of multiple sponsors, "sponsor" refers to the primary sponsor.

[55 FR 3885, Feb. 5, 1990 as amended at 66 FR 2132, Jan. 10, 2001]

#### **35.017-1 Sponsoring agreements.**

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, establish the FFRDC's mission, and ensure a periodic reevaluation of the FFRDC, a written agreement of sponsorship between the Government and the FFRDC shall be prepared when the FFRDC is established. The sponsoring agreement may take various forms; it may be included in a contract between the Government and

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the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it may be in a separate written agreement. Notwithstanding its form, the sponsoring agreement shall be clearly designated as such by the sponsor.

(b) While the specific content of any sponsoring agreement will vary depending on the situation, the agreement shall contain, as a minimum, the requirements of paragraph (c) of this subsection. The requirements for, and the contents of, sponsoring agreements may be as further specified in sponsoring agencies' policies and procedures.

(c) As a minimum, the following requirements must be addressed in either a sponsoring agreement or sponsoring agencies' policies and procedures:

(1) A statement of the purpose and mission of the FFRDC.

(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC's relationship with its sponsor(s).

(3) A provision for the identification of retained earnings (reserves) and the development of a plan for their use and disposition.

(4) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency request for proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. Requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor.

(5) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If non-sponsor work can be accepted, a delineation of the procedures to be followed, along with any limitations as to the nonsponsors form which work can be accepted (other Federal agencies, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement or sponsoring agencies' policies and procedures may also contain, as appropriate, other provisions, such as identification of—(1) Any cost elements which will require advance agreement if cost-type contracts are used; and (2) Considerations which will affect negotiation of fees where payment of fees is determined by the sponsor(s) to be appropriate.

(e) The term of the agreement will not exceed 5 years, but can be renewed, as a result of periodic review, in increments not to exceed 5 years.

[55 FR 3885, Feb. 5, 1990]

### 35.017-2 Establishing or changing an FFRDC.

To establish an FFRDC, or change its basic purpose and mission, the sponsor shall ensure the following:

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see 5.205(b)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in