

## Environmental Protection Agency

1516.307

(b) The Contracting Officer will monitor reports of in-kind costs as they are incurred or recognized during the contract period of performance to determine that the value of in-kind services does not exceed fair market values.

(c) The value of any services or the use of personal or real property donated by a contractor should be established when necessary in accordance with generally accepted accounting policies and Federal cost principles.

[61 FR 14505, Apr. 2, 1996]

### 1516.303-75 Amount of cost-sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

(b) Fee will not be paid to the contractor or any member of the contractor team (subcontractors and consultants) which has a substantial and direct interest in the contract, or is in a position to gain long term benefits from the contract. A vulnerability the Contracting Officer should consider in reviewing a prime contractor's request for consent to subcontract is whether subcontractors under prime cost-sharing contracts have a significant direct interest in the contract to gain long-term benefits from the contract.

(c) The Contracting Officer, with the input of technical experts, may consider the following factors in determining reasonable levels of cost sharing:

(1) The availability of the technology to competitors;

(2) Improvements in the contractor's market share position;

(3) The time and risk necessary to achieve success;

(4) If the results of the project involve patent rights which could be sold or licensed;

(5) If the contractor has non-Federal sources of funds to include as cost participation; and

(6) If the contractor has the production and other capabilities to capitalize the results of the project.

(d) A contractor's cost participation can be provided by other subcontractors with which it has contractual arrangements to perform the contract as long as the contractor's cost-sharing goal is met.

[61 FR 14505, Apr. 2, 1996]

### 1516.303-76 Fee on cost-sharing contracts by subcontractors.

(a) Subcontractors under prime cost-sharing contracts who do not have a significant direct interest in the contract or who are not in a position to gain long-term benefits from the contract may earn a fee.

(b) Contracting Officers should be alert to a potential vulnerability for the Government under cost-sharing contracts when evaluating proposed subcontractors or consenting to a subcontract during contract administration, where the subcontractor is a wholly-owned subsidiary of the prime. The vulnerability consists of the subsidiary earning a large amount of fee, which could be returned to the prime through stock dividends or other inter-company transactions. This could circumvent the objective of a cost-sharing contract.

[61 FR 14505, Apr. 2, 1996]

### 1516.303-77 Administrative requirements.

(a) The initial Procurement Request shall reflect the total estimated cost of the cost-sharing contract. The face page of the contract award shall indicate the total estimated cost of the contract, the Contractor's share of the cost, and the Government's share of the cost.

(b) The manner of cost-sharing and how it is to be accomplished shall be set forth in the contract. Additionally, contracts which provide for cost-sharing shall require the contractor to maintain records adequate to reflect the nature and extent of their cost-sharing as well as those costs charged the Agency. Such records may be subject to an Agency audit.

[61 FR 14505, Apr. 2, 1996]

### 1516.307 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216-71, Date of

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Incurrence of Cost, in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project.

(b) The Contracting Officer shall insert the clause at 1552.216-74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated, unless the Contracting Officer determines that such a provision would be detrimental to ensuring proper contract performance.

(c) The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.216-76, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

[49 FR 8852, Mar. 8, 1984, as amended at 56 FR 43711, Sept. 4, 1991; 61 FR 14505, Apr. 2, 1996; 61 FR 57338, Nov. 6, 1996]

### 1516.370 Solicitation provision.

The solicitation document shall state whether any cost-sharing is required, and may set forth a target level of cost-sharing. Although technical considerations are normally most important, the degree of cost-sharing may be considered in a selection decision when cost becomes a determinative factor in a selection decision.

[61 FR 14505, Apr. 2, 1996]

## Subpart 1516.4—Incentive Contracts

### 1516.404-2 Cost-plus-award-fee contracts.

#### 1516.404-272 Definitions.

(a) *Performance Evaluation Board (PEB)*. Group of Government officials responsible for assessing the quality of contract performance and recommending the appropriate fee.

(b) *Fee Determination Official*. Individual responsible for reviewing the recommendations of the PEB and making the final determination of the

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amount of award fee to be awarded to the contractor.

[60 FR 43404, Aug. 21, 1995]

#### 1516.404-273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed “above satisfactory” or “excellent” for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

[60 FR 43404, Aug. 21, 1995]

#### 1516.404-274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (d) of 1516.404-273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

[60 FR 43404, Aug. 21, 1995]

#### 1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216-70, Award fee (May 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216-75, Base Fee and Award Fee Proposal (SEPT 1995), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages.

[60 FR 43404, Aug. 21, 1995, as amended at 64 FR 3876, Jan. 26, 1999; 65 FR 31500, May 18, 2000]