

Part 35 - Research and Development Contracting

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35.000 Scope of part.

(a) This part prescribes policies and procedures specifically for research and development (R&D) contracting.

(b) R&D integral to acquisition of major systems is covered in part 34. Independent research and development (IR&D) is covered in part 31.

35.001 Definitions.

As used in this subpart—

Applied research (1) means the effort that—

- (i) Normally follows basic research, but may not be severable from the related basic research;
- (ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and
- (iii) Attempts to advance the state of the art.

(2) When being used by contractors in cost principle applications, this term does not include efforts whose principal aim is the design, development, or testing of specific items or services to be considered for sale; these efforts are within the definition of "development," given below.

Development, means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing; it excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product.

35.002 Policy.

(a) *Use of contracts*. Contracts must be used only when the principal purpose is the acquisition of supplies or services for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

(b) *Cost sharing*. Cost sharing policies (which are not otherwise required by law) under Government contracts must be in accordance with part 16, part 42 and agency procedures.

Subpart 35.1 - Presolicitation

35.101 Solicitations.

(a) Reviewing too many R&D proposals from unqualified sources wastes time and money for both industry and the Government. Therefore, contracting officers should first send solicitations only to sources with the technical qualifications to perform the research or development work. Technical personnel should recommend potential sources that appear qualified, based on—

- (1) Present and past performance of similar work;
- (2) Professional stature and reputation;
- (3) Relative position in a particular field of endeavor;
- (4) Ability to obtain and maintain the necessary professional and technical capability, including facilities, to perform the work; and
- (5) Other relevant factors.

(b) Proposals must generally be solicited from technically qualified sources, including sources identified through synopses or other means of publicizing requirements. When soliciting all qualified sources is not practical, the contracting officer may select a reasonable number to solicit. To promote competition, the contracting officer must provide the solicitation to other apparently qualified sources.

(c) Solicitations must require offerors to—

- (1) Describe their technical and management approach;
- (2) Identify any technical uncertainties;
- (3) Propose specific solutions to resolve uncertainties; and
- (4) Propose any planned subcontracting of scientific or technical work.

(d) Solicitations may require proposals to be organized with technical sections grouped together for efficient review by technical experts (see part 15). Both the solicitation process and proposal evaluation should be designed to reduce costs for both offerors and the Government.

(e) R&D solicitations should include evaluation factors to identify the most technically competent offerors (see part 15) such as—

- (1) The offeror's understanding of the scope of the work;
- (2) The quality of the offerors approach proposed to meet the scientific and technical objectives, or the merit of the ideas or concepts presented.
- (3) The offeror's access to qualified engineering, scientific, or other technical staff.
- (4) The offeror's experience is relevant.
- (5) Any innovative ideas the offeror proposes in the specific scientific or technical field.
- (6) The offeror's access to the necessary research, testing, laboratory, or shop facilities.

(f) Besides technical evaluation factors, the contracting officer must also consider management capability, as appropriate, including—

- (1) Management capabilities, including cost control methods;
- (2) Experience and past performance;
- (3) Subcontracting practices; and
- (4) Any other significant evaluation criteria (e.g., unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts.)
- (g) Although cost or price is not usually the deciding factor in selecting a contractor to perform R&D, it remains important. The final selection should be the offer that best satisfies the Government's requirement at a fair and reasonable cost.
- (h) The contracting officer should ensure potential offerors completely understand the details of the work, especially the Government interpretation of the work statement. For complex requirements, the contracting officer should give potential offerors a chance to comment on the details of the requirements as contained in the work statement, the contract schedule, and any related specifications. This may be done at a preproposal conference (see part 15).
- (i) When appropriate, solicitations should allow offerors to propose an alternative contract type (see part 16).
- (j) When a potential contractor wants to discuss a new idea or product based on their privately-funded independent R&D work, Government personnel should be willing to discuss it. However, the potential contractor must be informed that these discussions do not create any obligation for the Government. In such situations, direct negotiation with the potential contractor without competition may be appropriate. Also refer to part 15 regarding unsolicited proposals.
- (k) The Government may issue an exploratory request to identify existing ideas or prior work in a specific field of research. Any such request must clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract.

35.102 Broad agency announcement.

- (a) *General.* This paragraph prescribes procedures for the use of the broad agency announcement (BAA) with Peer or Scientific Review (see part 6) for the acquisition of basic and applied research, as well as that part of development not related to developing a specific system or hardware procurement. The BAA technique must only be used when meaningful proposals with varying technical/scientific approaches are reasonably expected.
- (b) The BAA, together with any supporting documents, must—

- (1) Describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;
 - (2) Explain how proposals will be selected, the relative importance of each criteria, and the evaluation methodology;
 - (3) Specify the proposal due date; and
 - (4) Contain clear instructions for preparing and submitting proposals.
- (c) Contracting officers must publicize the BAA through the Governmentwide point of entry (GPE) and, if authorized in accordance with part 5, may also be published in scientific, technical, or engineering periodicals, or other electronic platforms and communities used by the target audience. Publish the notice at least once per year.
- (d) Use a peer or scientific review process to evaluate proposals. Written evaluation reports are required for each proposal; however, proposals are not required to be evaluated against each other since they are responding to broad research areas rather than a common work statement.
- (e) Proposals should be selected based on—
- (1) Technical merit;
 - (2) Importance to agency programs; and
 - (3) Availability of funds.
- (f) Contracting officers must consider cost realism and reasonableness to the extent appropriate.
- (g) Contracting officers do not need to publish a synopsis under part 5 for individual contracts awarded through a BAA. The notice published pursuant to paragraph (c) of this section fulfills the synopsis requirement.

Subpart 35.2 - Evaluation and award

35.201 Evaluation for award.

- (a) R&D contracts should be awarded to the organization, including educational institutions, with the best ideas and highest level of expertise, but not such that the capabilities exceed the requirement.
- (b) The contracting officer should use the procedures in part 15 to notify and debrief offerors.

(c) Evaluating a contractor's cost or price estimate serves multiple purposes: it determines whether the estimate is reasonable, reveals the offeror's understanding of the project, shows how the offeror perceives risks, and demonstrates the offeror's ability to organize and perform the work. Cost or price analysis is an effective tool for this evaluation as appropriate (see part 15).

Subpart 35.3 - Postaward

35.301 Scientific and technical reports.

(a) R&D contracts must require contractors provide scientific and technical reports, consistent with the project's objectives. These reports serve as a permanent record of work completed under the contract.

(b) Agencies should share R&D contract results with other Government activities and the private sector. Contracting officers must follow agency regulations regarding national security, protection of data, and policies for sharing new technology. Reports should be sent to <https://www.ntis.gov/contact-us/index.xhtml> or -

National Technical Information Service (NTIS)

5285 Port Royal Road

Springfield, VA 22161.

Subpart 35.4 - Federally Funded Research and Development Centers.

35.401 Definitions.

As used in this subpart—

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.

35.402 Policy.

(a) This section explains Federal policy on establishing, using, reviewing, and terminating Federally Funded Research and Development Centers (FFRDCs) and related sponsoring agreements.

(b) An FFRDC meets special long-term research or development needs that cannot be met as effectively by existing Government or contractor resources. FFRDCs allow agencies to use private sector resources for work integral to the agency's mission. To fulfill its responsibilities, an FFRDC has special access to—

- (1) Government and supplier data, including sensitive and proprietary information;
- (2) Government employees; and
- (3) Government facilities, equipment, and real property.

(c) The FFRDC must—

- (1) Conduct business appropriately considering its special relationship with the Government;
- (2) Operate in the public interest with objectivity and independence;
- (3) Be free of organizational conflicts of interest; and
- (4) Fully disclose its affairs to the sponsoring agency.

(d) FFRDCs must not use their privileged access to information or facilities to compete with the private sector. However, an FFRDC may perform work for agencies other than its sponsor under the Economy Act or other applicable laws when the work is not otherwise available from the private sector.

(e) FFRDCs are operated, managed, and/or administered by—

- (1) A university or consortium of universities;
- (2) A nonprofit organization; or
- (3) An industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(f) Long-term relationships between the Government and FFRDCs are encouraged to provide the continuity that attracts high-quality personnel. This relationship should help the FFRDC stay current in its field(s) of expertise, maintain its objectivity and independence, understand its sponsor's needs, and provide a quick response capability.

35.403 Sponsoring agreements.

(a)

(1) When establishing an FFRDC, the Government and the FFRDC must create a written sponsorship agreement. This agreement serves three key purposes—

- (i) Establishes a long-term relationship;
- (ii) Defines the FFRDC's mission; and
- (iii) Ensures regular evaluation of the FFRDC.

(2) Regardless of its form, the sponsor must clearly identify it as a sponsoring agreement.

(b) While specific content will vary based on circumstances, all sponsoring agreements or sponsoring agency policies and procedures must include the following requirements at a minimum—

- (1) A clear statement of the FFRDC's purpose;
- (2) Provisions for orderly termination or nonrenewal, including how to handle assets and liabilities. The agreement must clearly define ownership of capital assets in the event the relationship ends;
- (3) A method to identify retained earnings (reserves) and a plan for using and disposing of these funds;
- (4) A prohibition preventing the FFRDC from competing with non-FFRDCs for Federal contracts except for FFRDC operations. This restriction does not apply to the FFRDC's parent organization or other subsidiaries in their non-FFRDC activities. The FFRDC may respond to requests for information, qualifications or capabilities unless restricted by the Sponsor; and
- (5) Clear rules about whether the FFRDC may accept work from organizations other than its sponsor(s). If allowed, the agreement must outline—
 - (i) Procedures to follow for non-sponsor work; and
 - (ii) Any limitations on which non-sponsors may provide work (e.g., other Federal agencies, state or local governments, or non-profit organizations.)
- (c) The sponsoring agreement or agency policies may also include other provisions as needed, such as—
 - (1) Cost elements requiring advance agreement when using cost-type contracts; and
 - (2) Factors affecting fee negotiations when the sponsor determines fee is appropriate.
- (d) The agreement term must not exceed 5 years, but may be renewed after review in increments of up to 5 years.

35.404 Establishing or changing an FFRDC.

To establish an FFRDC, or change its basic purpose and mission, the sponsor must—

- (a) Verify existing alternative sources cannot effectively meet the special research or development needs;
- (b) Publish at least one notice to the Government Point of Entry 90 days or more before issuing the contract action, indicating the agency's intention, and requesting comments. Notice is not required when the action is required by law;
- (c) Ensure the Government has expertise available to adequately and objectively evaluate the FFRDC's work;
- (d) Notify the Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506;
- (e) Establish controls to ensure the Government pays reasonable costs for services;
- (f) Define the FFRDC's purpose and mission clearly enough to distinguish work appropriate for the FFRDC vs. work for non-FFRDCs;
- (g) Maintain reasonable continuity in support levels, consistent with agency needs and the sponsoring agreement;
- (h) Ensure the FFRDC—
 - (1) Is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization;
 - (2) Works in the public interest;
 - (3) Remains free from organizational conflict of interest; and
 - (4) Discloses its affairs (as an FFRDC) to the primary sponsor;
- (i) Does not allow quantity production or manufacturing unless authorized by legislation; and
- (j) Obtain approval from the head of the sponsoring agency.

35.405 Using an FFRDC.

- (a) All work placed with the FFRDC must align with its purpose, mission, general scope of effort, or special competency of the FFRDC.
- (b) When permitted by the sponsor, Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with FAR Part 6. The nonsponsoring agency must-

- (1) Provide the documentation regarding competition with domestic private industry required by part 17 to the sponsoring agency; and
- (2) Prepare any required Economy Act determinations and findings (D&F) document and provide documentation required by part 17 to the sponsoring agency.

35.406 Limitation on the creation of new FFRDC's.

Pursuant to [10 U.S.C. 4126](#), the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

- (a) The head of the agency submits a report to Congress describing the center's purpose, mission, and general scope of the center's effort; and
- (b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

35.407 Reviewing FFRDC's.

(a) Before extending an FFRDC contract or agreement, the sponsor must conduct a comprehensive review of its use and need. Coordinate the review with any co-sponsors. If the sponsor decides to end its sponsorship, it must inform other agencies that use the FFRDC of its decision and give them an opportunity to assume sponsorship.

(b) The head of the sponsoring agency must approve continuing or terminating sponsorship, based on the results of the review described below:

- (1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.
- (2) Consideration of alternative sources to meet the sponsor's needs.
- (3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.
- (4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.
- (5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with the requirements of this subpart.

35.408 Terminating an FFRDC.

When a sponsor no longer needs the FFRDC, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it must be phased out.

35.409 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDCs. Primary sponsors must provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.