

**PART 17****SPECIAL CONTRACTING METHODS****17.000 Scope of part.**

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

- (a) Multiyear contracting;
- (b) Options; and
- (c) Leader company contracting.

**SUBPART 17.1—MULTIYEAR CONTRACTING****17.101 Definitions.**

“Advance acquisition,” as used in this subpart, means an exception to the full funding policy which allows acquisition of long leadtime items (advanced long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance acquisitions may include materials, parts, and components as well as costs associated with the further processing of those materials, parts, and components.

“Annual funding,” as used in this subpart, means the current Congressional practice of limiting authorizations and appropriations to 1 fiscal year at a time. The term should not be confused with 2-year or 3-year funds which permit the Executive Branch more than 1 year to obligate the funds.

“Cancellation,” as used in this subpart, means the cancellation of the total requirements of all remaining program years. Cancellation results when the contracting officer (a) notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or (b) fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

“Cancellation ceiling,” as used in this subpart, means the maximum amount that the Government will pay the contractor which the contractor would have recovered as a part of the unit price, had the contract been completed. The amount which is actually paid to the contractor upon settlement for unrecovered costs (which can only be equal to or less than the ceiling) is referred to as the cancellation charge. This ceiling generally includes only nonrecurring costs.

“Multiyear acquisition,” as used in this subpart, means contracting, to some degree, for more than the current year requirement. Examples include multiyear contracts and advance EOQ acquisition. Generally, advance long lead acquisitions in support of a single year’s requirement would not be considered in a multiyear acquisition.

“Multiyear contracts,” as used in this subpart, means contracts covering more than 1-year’s but not in excess of 5-year’s requirements, unless otherwise authorized by

statute. Total contract quantities and annual quantities are planned for a particular level and type of funding as displayed in a current 5-year development plan. Each program year is annually budgeted and funded and, at the time of award, funds need only to have been appropriated for the first year. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

“Multiyear funding,” as used in this subpart, means Congressional authorization and appropriation covering more than 1 fiscal year. The term should not be confused with 2-year or 3-year funds which cover only 1 fiscal year’s requirement but permit the Executive Branch more than 1-year to obligate the funds.

“No-year funding,” as used in this subpart, means Congressional funding that does not require obligation in any specific year or years.

“Nonrecurring costs,” as used in this subpart, means those production costs which are generally incurred on a one time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training (see 17.103-1(d)(2)).

“Recurring costs,” as used in this subpart, means production costs that vary with the quantity being produced such as labor and materials.

“Termination for convenience,” as used in this subpart, means the procedure which may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or a partial quantity (whereas cancellation must be for all subsequent fiscal years’ quantities).

“Termination liability,” as used in this subpart, means the maximum cost the Government would incur if a contract is terminated. In the case of a multiyear contract terminated before completion of the current fiscal year’s deliveries, termination liability would include an amount for both current year termination charges and outyear cancellation charges.

“Termination liability funding,” as used in this subpart, means obligating contract funds to cover the contractor’s expenditures plus termination liability but not the total cost of the completed end items.

**17.102 Policy.****17.102-1 Uses.**

(a) Multiyear contracting may be used when no-year or multiyear funds are available or, in the case of 1-year funds, when multiyear contracting is specifically authorized by statute. (Specific statutory authority is needed for an agency to make financial commitments for amounts

greater than those appropriated annually by the Congress. See 31 U.S.C. 1341(a)(1).

(b) The multiyear contracting method may be used for the acquisition of services or supplies (including, but not limited to systems, subsystems, major equipment, components, parts, materials, supplies and the advance acquisition thereof, and commercial and noncommercial items).

#### 17.102-2 General.

(a) Multiyear contracting is a special contracting method used to acquire known requirements in quantities and total cost not over planned requirements for 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated are not available at the time of contract award. This method may be used in sealed bidding or negotiated acquisition.

(b) Under multiyear contracting, contract requirements are budgeted and financed for the program year for which they are authorized. Prices are solicited both for the current 1-year program requirement alone and for the total multiyear requirements. Award is made on whichever alternative offers the lowest unit prices to the Government. (With respect to competitive contracting, award may be based only on price or price and other factors considered.) If award is made on the multiyear basis, funds are obligated only for the first year's requirement, with succeeding years' requirements funded annually.

(c) If funds do not become available to support the succeeding years' requirements, the agency must cancel the contract. Multiyear contracts may contain a contract term allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items to protect the contractor against loss resulting from cancellation.

#### 17.102-3 Objectives.

(a) Use of multiyear contracting is encouraged to take advantage of one or more of the following:

- (1) Lower costs.
- (2) Enhancement of standardization.
- (3) Reduction of administrative burden in the placement and administration of contracts.
- (4) Substantial continuity of production or performance, thus avoiding annual startup costs, pre-production testing costs, makeready expenses, and phaseout costs.
- (5) Stabilization of contractor work forces.
- (6) Avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contractor each year.
- (7) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
- (8) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(b) Contracts awarded under this multiyear procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(c) Given the longer performance period associated with multiyear acquisition, consideration in pricing contracts should be given to the use of economic price adjustment terms, profit objectives comparable with risk, and financing arrangements which reflect contractor cash flow requirements.

(d) Multiyear contracting is a flexible contracting method applicable to a wide range of acquisitions. The requirements of this subpart and the clauses at 52.217-1, Limitation of Price and Contractor Obligations, and 52.217-2 Cancellation of Items, respectively, may be modified in the following respects:

(1) *Level unit prices.* Multiyear contract procedures provide for the amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when economic price adjustment provisions apply) for all items or services under the multiyear contract. When level unit pricing is not in the Government's interest, the head of a contracting activity or a designee may approve the use of variable unit pricing, provided that for competitive proposals there is a valid method of evaluation.

(2) *Cancellation provisions.* Whether, or to what extent, cancellation provisions are used in multiyear acquisitions will depend on the unique circumstances of each acquisition. The head of a contracting activity or a designee may authorize the use of modified cancellation provisions or the exclusion of cancellation provisions from the contract.

(3) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head or a designee.

(4) *Annual and multiyear proposals.* Circumstances in which both annual and multiyear offers or only multiyear offers will be requested are prescribed in 17.103-2. Obtaining both provides reduced lead time for making an annual award in the event that the multiyear award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual proposals may increase administrative costs and workloads for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity or a designee may authorize the use of a solicitation requesting only multiyear prices, provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives listed in 17.102-3(a).

#### 17.103 Procedures.

##### 17.103-1 General.

(a) *Criteria.* Except as limited in 17.103-1(b), multiyear contracting may be used when one or more of the objectives in 17.102-3 can be met, and the following criteria are present:

(1) The use of such a contract will result in reduced total costs under the contract.

(2) The minimum need for the item to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, acquisition rate, and total quantities.

(3) There is a reasonable expectation that throughout the contemplated contract period the department or agency will request funding for the contract at the level required to avoid contract cancellation.

(4) There is a stable design for the item to be acquired and the technical risks associated with such items are not excessive.

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(b) *Limitations.* Except as permitted by statute, agencies shall not use multiyear contracts when—

(1) Funds covering the acquisition are limited by statute for obligation during the fiscal year in which the contract is executed; or

(2) Requirements exceed a 5-year planned program.

(c) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multiyear procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(d) *Cancellation.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for items included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.804-6) are estimated at 10 percent of the total multiyear price, and the percentages for each of the program-year requirements for 5-years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an “average” prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multiyear requirements.

Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly training and transportation of a specialized work force to and from the job site, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and indicating labor learning implications.

(3) The contracting officer shall establish cancellation dates for each program year’s requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(e) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(f) *Funding/payment of cancellation charges.* Cancellation charges need not be funded before cancellation. If cancellation occurs, the contractor is entitled to payment (see the clause at 52.217-2, Cancellation of Items).

(g) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(h) *Payment limit.* The contracting officer shall limit the Government’s payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(i) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including items subject to cancellation, the Government’s obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

(j) *Economic price adjustment clauses.* Economic price

adjustment clauses are adaptable to multiyear contracting needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 16.203).

(k) *Price adjustment clause.* When contracting for services, the contracting officer—

(1) Shall add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Act of 1965;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 16.203 when potential fluctuations require coverage, and are not included in cost contingencies provided for by the clause at 52.222-43.

#### 17.103-2 Solicitations.

Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item or service, for the—

(1) First program year; and

(2) Multiyear contract including the requirements for each program year.

(b) When previous acquisitions of the item or service have been made with competition, a provision that a price may be submitted—

(1) For the total requirements of the first program year, or for the total multiyear requirements, or both; or

(2) Only for the total multiyear requirement, and that prices on a single-year basis will not be considered when (i) competition in future acquisitions would be impracticable after award of a contract covering the first program year requirement and (ii) it is necessary to prevent a first program year “buy-in.”

(c) When previous acquisitions for the item or service have been made without competition, and a first program year “buy-in” is not anticipated, include—

(1) A provision that a price must be submitted for the first program year requirements, that a price may be submitted for the total multiyear requirements, and that an offer on only the multiyear requirements will be non-responsive; and

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirements and make an award only for the first program year requirements; or

(d) When competition after the first program year would

be impracticable after award of a contract covering the first program year requirement, and it is necessary to prevent a first program year “buy-in”, include—

(1) A provision that a price may be submitted only on the total multiyear requirement and that prices on a single-year basis will not be considered for the purpose of award.

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to cancel the solicitation and resolicit on a single-year basis by whatever procedures are then appropriate.

(e) A provision that the unit price of each item or service in the multiyear requirement shall be the same for all program years (level unit price) included. (See 16.203 for the use of an economic price adjustment clause which might effect the level unit price.)

(f) Criteria for comparing the lowest evaluated submission on the first program year’s requirement against the lowest evaluated submission on the multiyear requirements (see 17.103-3(e)).

(g) Criteria for evaluation factors other than price where the acquisition is on the basis of price and other factors.

(h) A provision that if the Government determines before award that only the first program year requirements are needed, the Government may evaluate offers and make award solely on the basis of price offered on that year’s requirements.

(i) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.103-1(d)).

(j) A prominently placed provision directing attention to the multiyear features of the solicitation, and to—

(1) The clause at 52.217-1, Limitation of Price and Contractor Obligations, which limits the payment obligation of the Government to the requirements of the first program year and to those requirements of succeeding program years funded by the Government (see 17.105);

(2) The clause at 52.217-2, Cancellation of Items, which allows the Government to cancel by a specific date or within a specific period, all remaining program years; and

(3) The cancellation ceiling set forth in the schedule.

(k) A statement that award will not be made on less than the first program year requirements.

(l) In the event the solicitation is only for supplies and delivery destinations are unknown—

(1) A definite place or places as the point to which transportation costs will be computed (but only for the purpose of evaluation); and

(2) Insert the provision at 52.247-49, Destination Unknown, which is prescribed at 47.305-5(b)(2).

(m) If Government administrative costs are to be used as a factor in evaluation (see 17.103-3(e)(2)), the dollar amount of those costs. Unless Government administrative

costs incident to annual contracting and administration can be reasonably established, they shall not be used as a factor for evaluation.

(n) Where the multiyear acquisition is being computed on a basis other than price alone, the solicitation shall advise of the relative importance of the evaluation factors.

(o) When Government property is provided, it may be used on a rent-free basis. The solicitation shall then contain detailed procedures for eliminating competitive advantage (see Subpart 45.2).

### 17.103-3 Evaluation.

In addition to the factors in 17.103-2, the contracting officer shall comply with the following:

(a) Evaluation of offers shall involve (1) determination of the lowest overall evaluated cost to the Government for both the multiyear and the first program year acquisition, and (2) comparison of the cost of buying the total requirement under a multiyear acquisition with the cost of buying the total requirement in successive independent acquisitions.

(b) The cancellation ceiling shall not be a factor for evaluation.

(c) If Government property is provided, the contracting officer shall, for evaluation purposes, add an amount for the use of such property computed to eliminate competitive advantage to each offeror's unit price for the first program year requirement and the unit price for the multiyear requirements.

(d) When the solicitation only provides for submission of prices for the total multiyear quantity, submission of prices for the single-year quantity will be disregarded but will not render the offer nonresponsive as to any alternative multiyear submission by the offeror.

(e) To determine the lowest evaluated unit price, the contracting officer shall compare the lowest evaluated offer on the first program year alternative against the lowest evaluated offer on the multiyear alternative as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first program year alternative by the total number of units of that item required by the multiyear alternative.

(2) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation.

(3) Compare this result against the total evaluated price of the lowest offer on the multiyear alternative.

(4) Where the multiyear acquisition is being computed on a basis other than price alone, the contracting officer shall conduct the evaluation based on the evaluation factors contained in the solicitation (see 17.103-2(n)).

(5) The evaluation procedures contained in this subpart may be modified if necessary to meet the unique circumstances of a particular acquisition.

### 17.103-4 Award.

(a) When the acquisition is on the basis of price only, the contracting officer shall award to firms offering the lowest evaluated unit price whether that price is on a single-year or a multiyear basis.

(b) When the acquisition is on the basis of price and other factors, the contracting officer shall award to the offeror submitting the proposal most advantageous to the Government, price and other factors considered.

(c) In the case of sole source acquisitions, awards shall be made only if a detailed review of the cost and technical proposals supports the objectives of 17.103-1, and significant benefits of cost savings will result from multiyear acquisitions.

(d) However, if only one responsive offer is received on the multiyear requirements from a responsible offeror, the contracting officer shall proceed as follows:

(1) If the solicitation gave the offeror the choice of submitting prices on a single-year or multiyear basis, or both, make the award under 17.103-4(a) or 17.103-4(b).

(2) If the solicitation required the submission of prices on the first program year requirements (see 17.103-2(c)(1)), make award to the lowest evaluated offeror on the single-year basis, even though the multiyear price submission may represent the lowest evaluated price submission. However, if the multiyear price offers distinct advantages to the Government, a multiyear award may be made with the advance approval of the head of the contracting activity.

(3) If the solicitation restricted the submission of prices to the multiyear basis only, cancel it and issue a new solicitation. However, if the multiyear price offers distinct advantages to the Government, a multiyear award may be made with the advance approval of the head of the contracting activity.

(e) If the contract is awarded for multiyear requirements, the Schedule shall state that the award was made under "multiyear contracting."

### 17.104 Related areas.

#### 17.104-1 Set-asides.

(a) Total small business set-asides and multiyear contracting are compatible and may be used together.

(b) Partial set-asides for small business concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors. However—

(1) Even when high startup costs are involved, partial set-asides combined with the multiyear procedure may be appropriate if the criteria for partial set-asides are met under Part 19 and it is likely that the broader competition will offset any duplication of startup costs; and

(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time.

(c) When considering combining multiyear contracting and set-asides, the contracting officer shall request the advice of the activity's small business specialist and the SBA representative, if one is assigned to the activity, and permit them to review the facts and make recommendations.

#### **17.104-2 Multiyear subcontracts.**

(a) The benefits and advantages of multiyear prime contracts may frequently be increased by multiyear subcontracts under the prime contracts. While prime contractors should be encouraged to employ multiyear subcontracts, the choice of the appropriate subcontract types remains with the prime contractor who should employ multiyear subcontracts only when in its judgment—

- (1) The subcontract item or service is of stable design and specification;
- (2) The quantity required is reasonably firm and continuing;
- (3) Effective competition may be enhanced; and
- (4) Multiyear subcontracts can reasonably be expected to result in reduced prices.

(b) Multiyear subcontracts may be particularly desirable under a multiyear prime contract awarded without full and open competition, since effective competition at the subcontract level may be enhanced and the attendant cost reductions realized by the prime contractor and the Government.

#### **17.104-3 Options.**

Benefits may accrue by providing for options with a multiyear contract. In that event, contracting officers must follow both the requirements of Subpart 17.2 and the following:

(a) Option prices should not include (1) charges for plant and equipment already amortized, or (2) other nonrecurring charges which were included in the basic contract price. Accordingly, solicitations should require offerors to submit prices for option quantities which do not include such charges.

(b) Contracting officers should also consider including a term allowing the Government the option, upon payment of the unamortized portion of the cost of the plant or equipment, to take title to them.

#### **17.104-4 Multiyear contracting using modified requirements contracts.**

(a) *Description of procedure.* Multiyear acquisition of supplies and/or services may be accomplished using a requirements contract, modified from the type discussed in 16.503 as described below. This type of contract will only be used when anticipated annual requirements, expressed as the Best Estimated Quantity (BEQ), can be projected with reasonable certainty. Under this method, a fixed-price contract is awarded for specified supplies and/or services

up to a designated maximum quantity with orders placed on an as-required basis during the multiyear period. Contracts awarded only on the first program year requirements will not include provision for cancellation charges. The modified requirements contract differs from the contract discussed in 16.503 in the following respects:

(1) Contract quantities anticipated to be acquired are set forth in the contract as the BEQ.

(2) Nonrecurring costs are to be amortized on the BEQ.

(3) The contractor is entitled to reimbursement for preproduction and other nonrecurring costs in accordance with the contract schedule cancellation ceiling in the event that the Government orders lesser quantities than the aggregate BEQ, or cancels program year requirements by cancellation notice.

(4) Quantities in excess of the aggregate BEQ and up to the maximum quantity set forth in the schedule will be priced exclusive of the nonrecurring costs amortizing on the BEQ.

(b) *Solicitation procedures.* Solicitation procedures shall be in conformance with those contained in 17.103-2 except the term "requirements" as used in 17.103-2 will be deemed to mean BEQ. The solicitation shall include the following:

(1) A BEQ and a maximum quantity for each item for both the first program year and for each subsequent program year. The maximum quantity for individual program years is not separately priced.

(2) A line item, essentially as follows, to apply to quantities exceeding the aggregate multiyear BEQ:  
 "The price established for this line item is applicable to all units ordered in excess of the aggregate BEQ of . . . and up to the total multiyear contract maximum quantity . . ."

(3) Applicable solicitation schedule notes, essentially as follows:

(i) “NOTE 1: Offeror will submit unit price for the single year requirement, which shall apply to all quantities up to the single year maximum in the event that a 1-year requirements contract is awarded only for the single-year requirement. If a contract is awarded only on the first program year requirements, such a contract will not provide for any cancellation charges.”

(ii) “NOTE 2: Offeror will submit a single unit price, inclusive of nonrecurring costs, to be entered on the schedule as the BEQ price for each program year, applicable to quantities within and up to the aggregate BEQ, under multiyear procedures.”

(iii) “NOTE 3: Offerors will also submit a single unit price, exclusive of nonrecurring costs amortized over the BEQ, applicable only to quantities ordered in excess of the aggregate BEQ and up to the total multiyear contract maximum quantity.”

(4) A statement that quantities ordered in excess of the program year BEQ but which do not exceed the aggregate BEQ will be priced inclusive of nonrecurring costs.

(5) A statement that evaluation will be on the basis of the lowest unit price offered for the first program year BEQ against the lowest unit price offered for the aggregate BEQ.

(6) A statement setting forth a single cancellation ceiling, applicable only in the event of contract award on the multiyear basis.

(7) A notification that the amount of cancellation charges payable shall be determined on the basis of the ratio between the total quantity ordered at the time of cancellation and the aggregate contract BEQ.

(8) A date of specific time period for Government notification to the contractor as to the availability or nonavailability of funds and any anticipated significant changes in the BEQ for the succeeding program year.

(9) A statement that in the event the contract is awarded for more than 1 program year, the contract will include the clause at 52.217-2, Cancellation of Items, with its Alternate I.

**17.105 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the following clauses in solicitations and contracts when a multiyear contract or a multiyear modified-requirements contract is contemplated:

(1) The clause at 52.217-1, Limitation of Price and Contractor Obligations.

(2) The clause at 52.217-2, Cancellation of Items. If a multiyear modified requirements contract is awarded for more than 1 program year, the contracting officer shall use the clause with its Alternate I.

(b) For purposes of determining the provisions and clauses applicable to solicitations and contracts under the procedure in 17.104-4 above, prescriptions pertaining to requirements contracts are applicable (see 16.505(a), 16.505(b), and 16.505(d)).

(c) Provisions and clauses prescribed elsewhere in the FAR shall also be used when the conditions specified in their prescriptions are applicable.

**SUBPART 17.2—OPTIONS**

**17.200 Scope of subpart.**

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) research and development services; (d) automatic data processing (ADP) equipment systems; and (e) telecommunications equipment and services. However, it does not preclude the use of options in those contracts.

**17.201 Definition.**

“Option” means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

**17.202 Use of options.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation, the contracting officer may include options in contracts when it is in the Government's interest. When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at 52.217-5, Evaluation of Options, in the solicitation. (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (i.e., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(c) The contracting officer shall not employ options if—

(1) The contractor will incur undue Page Number

price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the supplies or services involved are likely to change substantially; or

(3) The option represents known firm requirements for which funds are available unless (i) the basic quantity is a learning or testing quantity and (ii) competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of (1) the Government's need in certain service contracts for continuity of operations and (2) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

#### **17.203 Solicitations.**

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 17.208).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see 17.206).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) above applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; e.g., when (1) the option cannot be evaluated under 17.206, or (2) future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

(h) See 25.402(a)(5) regarding use of options in calcu-

lating the estimated contract amount for application of the Trade Agreements Act and North American Free Trade Agreement thresholds.

#### **17.204 Contracts.**

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period may extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

(f) Contracts may express options for increased quantities of supplies or services in terms of (1) percentage of specific line items, (2) increase in specific line items, or (3) additional numbered line items identified as the option.

(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; e.g., days, weeks, or months.

#### **17.205 Documentation.**

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by Part 6 shall specify both the basic requirement and the increase permitted by the option.

#### **17.206 Evaluation.**

(a) In awarding the basic contract, the contracting officer shall, except as provided in paragraph (b) of this section, evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See 17.208.)

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.



**17.207 Exercise of options.**

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) The contracting officer may exercise options only after determining that—

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need;

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered; and

(4) The option was synopsisized in accordance with Part 5 unless exempted by 5.202(a)(11) or other appropriate exemptions in 5.202.

(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under (c)(3) of this section should take into account the Government's need for continuity of operations and potential costs of disrupting operations.

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and Part 6. To satisfy requirements of Part 6 regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, e.g.—

(1) A specific dollar amount;

(2) An amount to be determined by applying provi-

sions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if—

(i) The option contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

**17.208 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) of this section.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, the contracting officer has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.

(d) The contracting officer shall insert a clause substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

(e) The contracting officer shall insert a clause substantially the same as the clause at 52.217-7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

(f) The contracting officer shall insert a clause substantial-

ly the same as the clause at 52.217-8, Option to Extend Services, in solicitations and contracts for services when the inclusion of an option is appropriate. (See 17.200, 17.202, and 37.111.)

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract.

### SUBPART 17.3—[RESERVED]

### SUBPART 17.4—LEADER COMPANY CONTRACTING

#### 17.401 General.

Leader company contracting is an extraordinary acquisition technique that is limited to special circumstances and utilized only when its use is in accordance with agency procedures. A developer or sole producer of a product or system is designated under this acquisition technique to be the leader company, and to furnish assistance and know-how under an approved contract to one or more designated follower companies, so they can become a source of supply. The objectives of this technique are one or more of the following:

- (a) Reduce delivery time.
- (b) Achieve geographic dispersion of suppliers.
- (c) Maximize the use of scarce tooling or special equipment.
- (d) Achieve economies in production.
- (e) Ensure uniformity and reliability in equipment, compatibility or standardization of components, and interchangeability of parts.
- (f) Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions.
- (g) Facilitate the transition from development to production and to subsequent competitive acquisition of end items or major components.

#### 17.402 Limitations.

(a) Leader company contracting is to be used only when—

- (1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower(s);
- (2) No other source can meet the Government's requirements without the assistance of a leader company;
- (3) The assistance required of the leader company is limited to that which is essential to enable the follower(s) to produce the items; and
- (4) Its use is authorized in accordance with agency procedures.

(b) When leader company contracting is used, the Government shall reserve the right to approve subcontracts between the leader company and the follower(s).

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#### 17.403 Procedures.

(a) The contracting officer may award a prime contract to a—

- (1) Leader company, obligating it to subcontract a designated portion of the required end items to a specified follower company and to assist it to produce the required end items;
- (2) Leader company, for the required assistance to a follower company, and a prime contract to the follower for production of the items; or
- (3) Follower company, obligating it to subcontract with a designated leader company for the required assistance.

(b) The contracting officer shall ensure that any contract awarded under this arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature.

### SUBPART 17.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

#### 17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include acquisitions from required sources of supplies prescribed in Part 8, which have separate statutory authority.

#### 17.501 Definition.

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

#### 17.502 General.

(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.

(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

(c) Acquisitions under the Economy Act are not exempt from the requirements of Subpart 7.3, Contractor Versus Government Performance.

(d) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act).

#### 17.503 Determinations and findings requirements.

(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—

(1) Use of an interagency acquisition is in the best interest of the Government; and

(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(b) If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable—

(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated of this section the senior procurement executive of the requesting agency.

#### **17.504 Ordering procedures.**

(a) Before placing an Economy Act order for supplies or services with another Government agency, the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.503) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for

furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the competition requirements of Part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by Part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

#### **17.505 Payment.**

(a) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(b) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(d) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

### **SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS**

#### **17.600 Scope of subpart.**

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

#### **17.601 Definition.**

“Management and operating contract” means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development,

special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

#### **17.602 Policy.**

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

#### **17.603 Limitations.**

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Providing Government Property to Contractors.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

#### **17.604 Identifying management and operating contracts.**

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or

mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

#### **17.605 Award, renewal, and extension.**

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

#### **17.503 Determination requirements.**

(a) The determination prescribed in 17.502 shall include a finding that—

(1) Legal authority for the acquisition otherwise exists; and

(2) The action does not conflict with any other agen-

cy's authority or responsibility; e.g., that of the Administrator of General Services under the Federal Property and Administrative Services Act (see 40 U.S.C. 481, 486, and 41 CFR 101-25.2).

(b) If the acquisition involves the use of a commercial or industrial activity operated by the servicing agency, the determination shall also include a finding that the acquisition conforms to the requirements of Subpart 7.3, Contractor Versus Government Performance.

#### **17.504 Ordering procedures.**

(a) When placing an order for supplies or services from another Government agency, the contracting officer shall first obtain the determination required in 17.502.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

- (1) A description of the supplies or services required;
- (2) Delivery requirements;
- (3) A funds citation;
- (4) A payment provision (see 17.505); and
- (5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures apply:

- (1) If a justification and approval or a determination and findings (D&F) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and the D&F.
- (2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing special contract terms or other requirements that must comply with any condition or limitation applicable to the funds of the requesting agency.
- (3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action and (ii) complying fully with the competition requirements of Part 6 (see 6.002).

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mis-

sion, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using less than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

#### **17.505 Payment.**

(a) Under the Economy Act—

(1) The servicing agency may request the requesting agency, in writing, for advance payment by check for all or part of the estimated cost of furnishing the supplies or services; or

(2) If approved by the servicing agency, payment by check for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(b) If advance payment is made, adjustments on the basis of actual costs shall be made as agreed by the agencies.

(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

### **SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS**

#### **17.600 Scope of subpart.**

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

#### **17.601 Definition.**

“Management and operating contract” means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

#### **17.602 Policy.**

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

#### **17.603 Limitations.**

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Providing Government Property to Contractors.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

#### **17.604 Identifying management and operating contracts.**

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable

or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

#### **17.605 Award, renewal, and extension.**

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

