

916.404-2

contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.* Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is determined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

[49 FR 11955, Mar. 28, 1984, as amended at 59 FR 9105, Feb. 25, 1994]

48 CFR Ch. 9 (10-1-06 Edition)

Subpart 916.5—Indefinite-Delivery Contracts

916.504 Indefinite-quantity contracts. (DOE coverage—paragraph (c))

(c) The contracting officer shall establish minimum ordering guarantees with each awardee for all indefinite-quantity, multiple award contracts to ensure that adequate consideration exists to contractually bind each awardee to participate in the ordering process throughout the term of the multiple award contract. Minimum ordering guarantees should be equal among all awardees, and shall be determined on a case-by-case basis for each acquisition commensurate with the size, scope and complexity of the contract requirements.

[62 FR 53757, Oct. 16, 1997]

916.505 Ordering. (DOE coverage—paragraph (b))

(b) (4) The Director, Office of Management Systems, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(4).

(5) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(6) The Contracting Activity Ombudsman shall:

(i) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(ii) Not assume any duties and responsibilities pertaining to the evaluation or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(iii) Review complaints from contractors awarded a task or delivery order contract;

(iv) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant

Department of Energy

917.601

and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees' contract;

(v) Maintain a written log to track each complaint submitted from receipt through disposition;

(vi) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(vii) Resolve complaints at the contracting activity for which they have cognizance.

(7) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

[62 FR 53757, Oct. 16, 1997]

Subpart 916.6—Time and Materials, Labor Hour, and Letter Contracts

916.601 Time and Materials (DOE coverage (c)).

(c) Limitations. The Contracting Officer is not required to execute a separate Determination and Findings as required by FAR 16.601 3(c) if other file documentation adequately justifies contract actions.

[67 FR 14871, Mar. 28, 2002]

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.6—Management and Operating Contracts

Sec.

917.600 Scope of subpart.

917.601 Definitions.

917.602 Policy.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

917.7001 Policy.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

917.7201 Policy.

917.7201-1 General.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.

917.7301 Policy.

917.7301-1 General.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7401 General.

917.7402 Policy.

917.7403 Application.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

SOURCE: 49 FR 11974, Mar. 28, 1984, unless otherwise noted.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.

(a) This subpart implements 48 CFR subpart 17.6, Management and Operating Contracts. Departmental policies, procedures, provisions and clauses to be used in the award and administration of management and operating contracts that either implement or supplement the Federal Acquisition Regulation and parts 901 through 952 of this chapter are contained in 48 CFR part 970.

(b) The requirements of this subpart apply to any Department of Energy management and operating contract, including performance-based management contracts as defined in 48 CFR 917.601. References in this subpart to "management and operating contracts" include performance-based management contracts.

[65 FR 81006, Dec. 22, 2000]

917.601 Definitions.

Performance-based contracting has the meaning contained in 48 CFR 37.101.

Performance-based management contract means a management and operating contract that employs, to the maximum extent practicable, performance-based contracting concepts and methodologies through the application of results-oriented statements of work; clear objective performance standards and measurement tools; and incentives