Part 35 - Research and Development Contracting

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Parent topic: Federal Acquisition Regulation

35.000 Scope of part.

(a) This part prescribes policies and procedures of special application to 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 at 31.205-18.

35.001 Definitions.

Applied research means the effort that (a) normally follows *basic research*, but *may* not be severable from the related *basic research*; (b) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (c) attempts to advance the state of the art. 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, as used in this part, 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.

Recoupment, as used in this part, means the recovery by the Government of Government-funded nonrecurring costs from contractors that sell, lease, or license the resulting *products* or technology to buyers other than the Federal Government.

35.002 General.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for *supplies* and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which *offer* little or no early assurance of full success. The *contracting* process *shall* be used to encourage the best sources from the scientific and industrial community to become involved in the program and *must* provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

35.003 Policy.

(a) *Use of contracts.* Contracts *shall* 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 *shall* be in accordance with 16.303, 42.707(a) and agency procedures.

(c) *Recoupment. Recoupment* not otherwise required by law *shall* be in accordance with agency procedures.

35.004 Publicizing requirements and expanding research and development sources.

(a) In order to obtain a broad base of the best contractor sources from the scientific and industrial community, agencies *must*, in addition to following the requirements of part 5, continually search for and develop information on sources (including small business concerns) competent to perform R&D work. These efforts *should* include-

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the *Governmentwide point of entry (GPE*) (see part 5);

(2) Cooperation among technical personnel, *contracting officers*, and Government small business personnel early in the *acquisition* process; and

(3) Providing agency R&D points of contact for potential sources.

(b) See subpart 9.7 for information regarding R&D pools and subpart 9.6 for teaming arrangements.

35.005 Work statement.

(a) A clear and complete work statement concerning the area of exploration (for *basic research*) or the end objectives (for *development* and *applied research*) is essential. The work statement *should* allow contractors freedom to exercise innovation and creativity. Work statements *must* be individually tailored by technical and *contracting* personnel to attain the desired degree of flexibility for contractor creativity and the objectives of the R&D.

(b) In *basic research* the emphasis is on achieving specified objectives and knowledge rather than on achieving predetermined end results prescribed in a statement of specific performance characteristics. This emphasis applies particularly during the early or conceptual phases of the R&D effort.

(c) In reviewing work statements, *contracting officers should* ensure that language suitable for a level-of-effort approach, which requires the furnishing of technical effort and a report on the results,

is not intermingled with language suitable for a task-completion approach, which often requires the *development* of a tangible end item designed to achieve specific performance characteristics. The wording of the work statement *should* also be consistent with the type and form of contract to be negotiated (see 16.207 and 16.306(d)). For example, the work statement for a cost-reimbursement contract promising the contractor's best efforts for a fixed term would be phrased differently than a work statement for a cost-reimbursement completion contract promising the contractor's best efforts for a defined task. Differences between work statements for fixed-price contracts and cost-reimbursement contracts *should* be even clearer.

(d) In preparing work statements, technical and *contracting* personnel *shall* consider and, as appropriate, provide in the *solicitation*-

(1) A statement of the area of exploration, tasks to be performed, and objectives of the research or *development* effort;

(2) Background information helpful to a clear understanding of the objective or requirement (*e.g.,* any known phenomena, techniques, methodology, or results of related work);

(3) Information on factors such as personnel, environment, and interfaces that *may* constrain the results of the effort;

(4) Reporting requirements and information on any additional items that the contractor is required to furnish (at specified intervals) as the work progresses;

(5) The type and form of contract contemplated by the Government and, for level-of-effort work statements, an estimate of applicable professional and technical effort involved; and

(6) Any other considerations peculiar to the work to be performed; for example, any *design-to-cost* requirements.

35.006 Contracting methods and contract type.

(a) In R&D *acquisitions*, the precise specifications necessary for sealed bidding are generally not available, thus making negotiation necessary. However, the use of negotiation in R&D *contracting* does not change the obligation to comply with part 6.

(b) Selecting the appropriate contract type is the responsibility of the *contracting officer*. However, because of the importance of technical considerations in R&D, the choice of contract type *should* be made after obtaining the recommendations of technical personnel. Although the Government ordinarily prefers fixed-price arrangements in *contracting*, this preference applies in R&D *contracting* only to the extent that goals, objectives, specifications, and cost estimates are sufficient to permit such a preference. The precision with which the goals, performance objectives, and specifications for the work can be defined will largely determine the type of contract employed. The contract type *must* be selected to fit the work required.

(c) Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack of confidence in cost estimates) normally precludes using fixed-price *contracting* for R&D, the use of cost-reimbursement contracts is usually appropriate (see subpart 16.3). The nature of *development* work often requires a cost-reimbursement completion arrangement (see 16.306(d)). When the use of cost and performance incentives is desirable and practicable, fixed-price

incentive and cost-plus-incentive-fee contracts *should* be considered in that order of preference.

(d) When levels of effort can be specified in advance, a short-duration fixed-price contract *may* be useful for developing system design concepts, resolving potential problems, and reducing Government risks. Fixed-price *contracting may* also be used in minor projects when the objectives of the research are well defined and there is sufficient confidence in the cost estimate for price negotiations. (See 16.207.)

(e) Projects having production requirements as a follow-on to R&D efforts normally *should* progress from cost-reimbursement contracts to fixed-price contracts as designs become more firmly established, risks are reduced, and production tooling, equipment, and processes are developed and proven. When possible, a final commitment to undertake specific product *development* and testing *should* be avoided until-

(1) Preliminary exploration and studies have indicated a high degree of probability that *development* is feasible and

(2) The Government has determined both its minimum requirements and desired objectives for product performance and schedule completion.

35.007 Solicitations.

(a) The submission and subsequent evaluation of an inordinate number of R&D proposals from sources lacking appropriate qualifications is costly and time-consuming to both industry and the Government. Therefore, *contracting officers should* initially distribute *solicitations* only to sources technically qualified to perform research or *development* in the specific field of science or technology involved. Cognizant technical personnel *should* recommend potential sources that appear qualified, as a result of-

(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 acquire and retain the professional and technical capability, including facilities, required to perform the work; and

(5) Other relevant factors.

(b) Proposals generally *shall* be solicited from technically qualified sources, including sources that become known as a result of synopses or other means of publicizing requirements. If it is not practicable to initially solicit all apparently qualified sources, only a reasonable number need be solicited. In the interest of competition, *contracting officers shall* furnish copies of the *solicitation* to other apparently qualified sources.

(c) *Solicitations shall* require *offerors* to describe their technical and management approach, identify technical uncertainties, and make specific proposals for the resolution of any uncertainties. The *solicitation should* require *offerors* to include in the proposal any planned subcontracting of scientific or technical work (see 35.009).

(d) *Solicitations may* require that proposals be organized so that the technical portions can be efficiently evaluated by technical personnel (see 15.204-5(b)). *Solicitation* and evaluation of proposals *should* be planned to minimize *offerors*' and Government expense.

(e) R&D *solicitations should* contain evaluation factors to be used to determine the most technically competent (see 15.304), such as-

(1) The *offeror*'s understanding of the scope of the work;

(2) The approach proposed to accomplish the scientific and technical objectives of the contract or the merit of the ideas or concepts proposed;

(3) The availability and competence of experienced engineering, scientific, or other technical personnel;

(4) The *offeror*'s experience;

(5) Pertinent novel ideas in the specific branch of science and technology involved; and

(6) The availability, from any source, of necessary research, test, laboratory, or shop facilities.

(f) In addition to evaluation factors for technical competence, the *contracting officer shall* consider, as appropriate, management capability (including cost management techniques), experience and *past performance*, subcontracting practices, and any other significant evaluation criteria (*e.g.,* unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts). Although cost or price is not normally the controlling factor in selecting a contractor to perform R&D, it *should* not be disregarded in arriving at a selection that best satisfies the Government's requirement at a fair and reasonable cost.

(g) The *contracting officer should* ensure that potential *offerors* fully understand the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the *contracting officer should* provide potential *offerors* an opportunity 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 15.201).

(h) If it is appropriate to do so, *solicitations should* permit *offerors* to propose an alternative contract type (see 16.103).

(i) In circumstances when a concern has a new idea or product to discuss that incorporates the results of independent R&D work funded by the concern in the private sector and is of interest to the Government, there *should* be no hesitancy to discuss it; however, the concern *should* be warned that the Government will not be obligated by the discussion. Under such circumstances, it *may* be appropriate to negotiate directly with the concern without competition. Also, see subpart 15.6 concerning *unsolicited proposals*.

(j) The Government *may* issue an exploratory request to determine the existence of ideas or prior work in a specific field of research. Any such request *shall* clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract.

35.008 Evaluation for award.

(a) Generally, an R&D contract *should* be awarded to that organization, including any educational institution, that proposes the best ideas or concepts and has the highest competence in the specific field of science or technology involved. However, an award *should* not be made to obtain capabilities that exceed those needed for successful performance of the work.

(b) In R&D *contracting*, precise specifications are ordinarily not available. The *contracting officer should* therefore take special care in reviewing the *solicitation* evaluation factors to assure that they are properly presented and consistent with the *solicitation*.

(c) When a small business concern would otherwise be selected for award but is considered not responsible, the SBA Certificate of Competency procedure *shall* be followed (see subpart 19.6).

(d) The *contracting officer should* use the procedures in subpart 15.5 to notify and debrief *offerors*.

(e) It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable but also to provide valuable insight into the *offeror*'s understanding of the project, perception of risks, and ability to organize and perform the work. Cost or price analysis, as appropriate (see 15.404-1(c)), is a useful tool.

35.009 Subcontracting research and development effort.

Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the contractor not subcontract technical or scientific work without the *contracting officer*'s advance knowledge. During the negotiation of a cost-reimbursement R&D contract, the *contracting officer shall* obtain complete information concerning the contractor's plans for subcontracting any portion of the experimental, research, or *development* effort (see also 35.007(c)). Also, when negotiating a fixed-price contract, the *contracting officer should* evaluate this information and *may* obtain an agreement that protects the Government's interests. The clause at 52.244-2, Subcontracts, prescribed for certain types of contracts at 44.204(a), requires the *contracting officer*'s prior approval for the placement of certain subcontracts.

35.010 Scientific and technical reports.

(a) R&D contracts *shall* require contractors to furnish scientific and technical reports, consistent with the objectives of the effort involved, as a permanent record of the work accomplished under the contract.

(b) Agencies *should* make R&D contract results available to other Government activities and the private sector. *Contracting officers shall* follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy. Reports *should* be sent to the-

National Technical Information Service (NTIS) 5285 Port Royal Road Springfield, VA 22161.

When agencies require that completed reports be covered by a report documentation page,

Standard Form (SF) 298, Report Documentation Page, the contractor *should* submit a copy with the report.

35.011 Data.

(a) R&D contracts *shall* specify the *technical data* to be delivered under the contract, since the data clauses required by part 27 do not require the delivery of any such data.

(b) In planning a developmental program when subsequent production contracts are contemplated, consideration *should* be given to the need and time required to obtain a technical package (plans, drawings, specifications, and other descriptive information) that can be used to achieve competition in production contracts. In some situations, the developmental contractor *may* be in the best position to produce such a technical package.

35.012 Patent rights.

For a discussion of patent rights, see agency regulations and part 27.

35.013 Insurance.

Nonprofit, educational, or State institutions performing cost-reimbursement contracts often do not carry *insurance*. They *may claim* immunity from liability for torts, or, as State institutions, they *may* be prohibited by State law from expending funds for *insurance*. When this is the case, see 28.311 for appropriate clause coverage.

35.014 Government property and title.

(a) The requirements in part 45 for establishing and maintaining control over Government property apply to all R&D contracts.

(b) In implementing 31 U.S.C.6306, and unless an *agency head* provides otherwise, the policies in paragraphs (1) through (4) following, regarding *title to equipment* (and other tangible *personal property*) purchased by the contractor using Government funds provided for the conduct of basic or applied scientific research, apply to contracts with nonprofit institutions of higher education and nonprofit organizations whose primary purpose is the conduct of scientific research:

(1) If the contractor obtains the *contracting officer*'s advance approval, the contractor *shall* automatically acquire and retain title to any item of equipment costing less than $5,000 (or a lesser amount established by agency regulations) acquired on a reimbursable basis.

(2) If purchased equipment costs $5,000 (or a lesser amount established by agency regulations) or more, and as the parties specifically agree in the contract, title *may*-

(i) Vest in the contractor upon *acquisition* without further obligation to the Government;

(ii) Vest in the contractor, subject to the Government's right to direct transfer of the title to the Government or to a third party within 12 months after the contract's completion or termination (transfer of title to the Government or third party *shall* not be the basis for any *claim* by the contractor); or

(iii) Vest in the Government, if the *contracting officer* determines that vesting of title in the contractor would not further the objectives of the agency's research program.

(3) If *title to equipment* is vested in the contractor, *depreciation*, amortization, or use charges are not allowable with respect to that equipment under any existing or future Government contract or subcontract.

(4) If the contract is performed at a Government installation and there is a continuing need for the equipment following contract completion, title need not be transferred to the contractor.

(c) The absence of an agreement covering *title to equipment* acquired by the contractor with Government funds that cost $1,000 or more does not limit an agency's right to act to vest title in a contractor as authorized by 31 U.S.C.6306.

(d)

(1) Vesting title under paragraph (b) of this section is subject to civil rights legislation, 42 U.S.C.2000d. Before title is vested, the contractor *must* agree that-

No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

(2) By signing the contract, the contractor accepts and agrees to comply with this requirement.

(e) The policies in paragraphs (b)(1) through (b)(3) and paragraph (d) of this section are implemented in the Government Property clauses.

35.015 Contracts for research with educational institutions and nonprofit organizations.

(a) General.

(1) When the R&D work is not defined precisely and the contract states only a period during which work is conducted (that is, a specific time for achievement of results is not required), research contracts with educational institutions and nonprofit organizations *shall*-

(i) State that the contractor bears primary responsibility for the research;

(ii) Give-

(A) The name of the principal investigator (or project leader), if the decision to contract is based on that particular individual's research effort and management capabilities; and

(B) The contractor’s estimate of the amount of time that individual will devote to the work;

(iii) Provide that the named individual *shall* be closely involved and continuously responsible for the conduct of the work;

(iv) Provide that the contractor *must* obtain the *contracting officer*’s approval to change the principal investigator (or project leader);

(v) Require that the contractor advise the *contracting officer* if the principal investigator (or project leader) will, or plans to, devote substantially less effort to the work than anticipated; and

(vi) Require that the contractor obtain the *contracting officer*’s approval to change the phenomenon under study, the stated objectives of the research, or the methodology.

(2) If a research contract does provide precise objectives or a specific date for achievement of results, the *contracting officer may* include in the contract the requirements set forth in paragraph (a)(1) of this section, if it is necessary for the Government to exercise oversight and approval over the avenues of approach, methods, or schedule of work.

(b) Basic agreements.

(1) A basic agreement *should* be negotiated if the number of contracts warrants such an agreement (see 16.702). Basic agreements *should* be reviewed and updated at least annually.

(2) To promote uniformity and consistency in dealing with educational institutions and nonprofit organizations, agencies are encouraged to use basic agreements of other agencies.

35.016 Broad agency announcement.

(a) *General.* This paragraph prescribes procedures for the use of the *broad agency announcement* (BAA) with Peer or Scientific Review (see 6.102(d)(2)) for the *acquisition* of basic and *applied research* and that part of *development* not related to the *development* of a specific system or hardware *procurement*. BAA’s *may* be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique *shall* only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

(b) The BAA, together with any supporting documents, *shall*-

(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) Describe the criteria for selecting the proposals, their relative importance, and the method of evaluation;

(3) Specify the period of time during which proposals submitted in response to the BAA will be accepted; and

(4) Contain instructions for the preparation and submission of proposals.

(c) The availability of the BAA *must* be publicized through the *Governmentwide point of entry (GPE*) and, if authorized pursuant to subpart 5.5, *may* also be published in noted scientific, technical, or engineering periodicals. The notice *must* be published no less frequently than annually.

(d) Proposals received as a result of the BAA *shall* be evaluated in accordance with evaluation criteria specified therein through a peer or scientific review process. Written evaluation reports on individual proposals will be necessary but proposals need not be evaluated against each other since they are not submitted in accordance with a common work statement.

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

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

35.017 Federally Funded Research and Development Centers.

(a) Policy.

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

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

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

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

quick response capability.

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

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

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

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

35.017-1 Sponsoring agreements.

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, establish the FFRDC's mission, and ensure a periodic reevaluation of the FFRDC, a written agreement of sponsorship between the Government and the FFRDC *shall* be prepared when the FFRDC is established. The sponsoring agreement *may* take various forms; it *may* be included in a contract between the Government and the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it *may* be in a separate written agreement. Notwithstanding its form, the sponsoring agreement *shall* be clearly designated as such by the *sponsor*.

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

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

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

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

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

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

(5) A delineation of whether or not the FFRDC *may* accept work from other than the *sponsor*(s). If *nonsponsor* work can be accepted, a delineation of the procedures to be followed, along with any

limitations as to the *nonsponsors* from which work can be accepted (other *Federal agencies*, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement or sponsoring agencies' policies and procedures *may* also contain, as appropriate, other provisions, such as identification of-

(1) Any cost elements which will require advance agreement if cost-type contracts are used; and

(2) Considerations which will affect negotiation of fees where payment of fees is determined by the *sponsor*(s) to be appropriate.

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

35.017-2 Establishing or changing an FFRDC.

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

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

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

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

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

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

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

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

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from *organizational conflict of interest*, and to disclose its affairs (as an FFRDC) to the *primary sponsor*.

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC *must* be within the purpose, mission, general scope of effort, or *special competency* of the FFRDC.

(b) Where the use of the FFRDC by a *nonsponsor* is permitted by the *sponsor*, the *sponsor shall* be responsible for compliance with paragraph (a) of this subsection.

(1) The nonsponsoring agency *shall* provide the documentation required by 17.503(e) to the sponsoring agency.

(2) When a D&F is required pursuant to 17.502-2(c), the nonsponsoring agency *shall* prepare the D&F and provide the documentation required by 17.503(e) to the sponsoring agency.

(3) When permitted by the *sponsor*, a *Federal agency may* contract directly with the FFRDC, in which case that *Federal agency* is responsible for compliance with part 6.

35.017-4 Reviewing FFRDC's.

(a) The *sponsor*, prior to extending the contract or agreement with an FFRDC, *shall* conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-*sponsors* and *may* be performed in conjunction with the budget process. If the *sponsor* determines that its sponsorship is no longer appropriate, it *shall* apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship *shall* rest with the head of the sponsoring agency. This determination *shall* be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review *should* include the following:

(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 35.017-1.

35.017-5 Terminating an FFRDC.

When a *sponsor*'s need for the FFRDC no longer exists, 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 *shall* be phased out.

35.017-6 Master list of FFRDC’s.

The National Science Foundation (NSF) maintains a master Government list of FFRDC’s. *Primary sponsors* will 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.

35.017-7 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 to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.