Subpart 970.17—Special Contracting Methods

Parent topic: PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.1706 Management and operating contracts.

970.1706-1 Award, renewal, and extension.

(a) *Contract term.* Effective performance under an M&O contract is facilitated by the use of a relatively long contract term. Only the Secretary can authorize the use of an M&O contract and only the Secretary can renew the original authorization of an M&O contract.

(1) An M&O contract shall—after the Secretary has authorized its original use (either by a competitive award or by a sole source award), its maximum term, and any other limits on its terms (options or other terms)—provide for a base term not to exceed the lesser of five years or the maximum term the Secretary authorized.

(2) The contract may include option terms provided no option term exceeds the lesser of five years or the maximum term the Secretary authorized (for options or the contract) and the sum of base term and the option terms does not exceed the lesser of 10 years or the maximum term the Secretary authorized for the contract. In addition to the base term and the option terms just described, an M&O contract for a national laboratory that is competitively awarded may provide for award term incentives provided none exceed the maximum term the Secretary authorized for each. The sum of base term, option terms, and award terms shall not exceed the lesser of 20 years or the maximum term the Secretary authorized for the contract.

(3) After the Secretary's original authorization of the use of the M&O contract has expired, any continuation of work under an M&O contract must be preceded by the Secretary's renewal of his/her authorization for use of an M&O contract. Whether work is to be continued by a competitive award to a new contractor or to the incumbent, by a sole source award to a new contractor, or by a sole source extension of the contract to the incumbent, the Secretary's renewal of his/her authorization for use of an M&O contract to perform the work is required before work may continue.

(4) In addition to requiring the Secretary's renewal of his/her authorization for use of an M&O contract, a sole source extension of an M&O contract to the incumbent must be justified under one of the statutory authorities listed in FAR 6.302 and authorized by the Secretary.

(5) The specific duration of the base term, option terms, and award terms of an M&O contract must be established concurrent with the Secretary's authorization (or renewal of his/her authorization) to use an M&O contract (for original use, sole source award to a new contractor, competitive award to a new contractor or to the incumbent, or sole source extension of the contract to the incumbent).

(b) *Exercise of option.* The contracting officer's decision to exercise an option (if the Secretary's authorization to use an M&O contract covers the option period) must be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). In deciding to exercise the option, the contracting officer shall:

(1) Consider the extent to which performance-based management contract provisions are present or can be negotiated into the contract.

(2) Make the determinations required by FAR 17.605 in the manner described therein. As part of the review required by FAR 17.605(b), the Contracting Officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the Contracting Officer's decision that the exercise of the option is in the Government's best interest. The Contracting Officer's decision shall be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). The determinations described in FAR 17.207(d) and (e)(2) are not required, and because of the way in which the evaluation of cost to the Government is performed in the award of an M&O contract that includes options, the Contracting Officer need only determine the option was evaluated as part of the initial competition and contains a maximum fee. The Contracting Officer need not, for example: issue a new solicitation; informally analyze prices; or determine the option is the more advantageous offer.

(c) *Conditional Authorization of Non-competitive Extension Made Pursuant to Authority Under CICA.* Authorization to extend a management and operating contract by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the Senior Procurement Executive no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

970.1706-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 52.217-9, Option to Extend the Term of the Contract, in all management and operating contracts when the inclusion of an option is appropriate.

970.1707 Strategic Partnership Projects.

970.1707-1 Scope.

Pursuant to 42 U.S.C. 2053 and 7259a, DOE is authorized to make its facilities available to other Federal and non-Federal entities (sponsors) for the conduct of certain research and development and training activities. Pursuant to 31 U.S.C. 1535 and 42 U.S.C. 7259a, or other applicable authority, other Federal entities may request DOE to conduct work. DOE has implemented these and other statutory authorities and requirements in its Strategic Partnership Projects Program.

970.1707-2 Purpose.

The purpose of DOE's Strategic Partnership Projects Program is to—

(a) Provide access for non-DOE entities to highly specialized or unique DOE facilities, services, or technical expertise, when private facilities are inadequate;

(b) Increase research and development interactions among DOE's management and operating contractors and industry in order to transfer DOE technologies to industry for further development or commercialization;

(c) Maintain facility core competencies;

(d) Enhance the science and technology capabilities at DOE facilities; and

(e) Provide assistance to other Federal agencies and non-Federal entities in accomplishing goals that may otherwise be unattainable and to avoid the possible duplication of effort at Federal facilities.

970.1707-3 Terms governing Strategic Partnership Projects.

(a) DOE's internal review and approval procedural requirements for strategic partnership projects agreements are set forth in the current version of DOE Order 481.1, and such other guidance as may be issued by DOE.

(b) A contractor may perform work for other Federal or non-Federal sponsors only if—

(1) The contractor is authorized by contract clause to perform such work;

(2) The work is not directly funded by DOE appropriations and is fully reimbursed by the sponsor; and

(3) The work is performed in accordance with DOE policies, procedures and directives applicable to the contract.

(c) Contracting officers must ensure that the requesting Federal entity certifies that—

(1) The interagency agreement with DOE complies with the Economy Act of 1932 (31 U.S.C. 1535) or other applicable statutory authorities and FAR 6.002, which prohibits the use of an Interagency Agreement for the purpose of avoiding the competition requirements of the Federal Acquisition Regulation (48 CFR chapter 1); and

(2) The work to be performed will not place the DOE contractor in direct competition with the domestic private sector.

970.1707-4 Contract clause.

Insert the clause at 970.5217-1, Strategic Partnership Projects Program (Non-DOE Funded Work), in any contract that may involve work under the Strategic Partnership Projects Program.

970.1708 Agreements for commercializing technology (ACT).

970.1708-1 Scope.

The scope of this subpart is to provide authorization for the M&O contractor to conduct third party-sponsored research at the M&O contractor's risk.

970.1708-2 General.

M&O contractors may elect to enter into agreements directly with non-Federal sponsors to conduct research at the facility the M&O contractor is responsible for managing and operating so long as the work does not present, or minimizes, any apparent COI, as well as avoiding or neutralizing any actual COI as a result of the agreement. This research is conducted at the M&O contractor's risk and the M&O contractor may obtain compensation beyond full-cost recovery for accepting the risk of performance.

970.1708-3 Contract clause.

The Contracting Officer shall insert the clause at 970.5217-2, Agreements for Commercializing Technology (ACT), in any contract that may involve ACT pursuant to 970.1708.