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# ~~PART 35 — RESEARCH AND DEVELOPMENT CONTRACTING~~

~~**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.~~

~~**Source:** 48 FR 42352, Sept. 19, 1983, unless otherwise noted.~~

## Part 35 - Research and Development Contracting

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### 35.000 Scope of part.

- (a) This part prescribes policies and procedures ~~of special application to~~specifically for research and development (R&D) contracting.
- (b) R&D integral to acquisition of major systems is covered in part 34. Independent research and development (IR&D) is covered ~~at 31.205-18~~in part 31.

~~[48 FR 42352, Sept. 19, 1983, as amended at 55 FR 3884, Feb. 5, 1990; 65 FR 36014, June 6, 2000]~~

### 35.001 Definitions.

As used in this subpart—

Applied research

~~Applied research~~(1) means the effort that—

(~~a~~) ~~normally~~Normally follows basic research, but may not be severable from the related basic research;

(~~b~~) ~~ii~~ ~~attempts~~Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and

(iii) Attempts to advance the state of the art.

(~~e~~) ~~2~~ ~~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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 53 FR 27467, July 20, 1988; 55 FR 3884, Feb. 5, 1990; 66 FR 2132, Jan. 10, 2001]~~

### ~~35.002~~ **General Policy.**

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

(b) *Cost sharing.* Cost sharing policies (which are not otherwise required by law) under Government contracts ~~shall~~must be in accordance with ~~16.303, 42.707(a)~~part 16, part 42 and agency procedures.

#### Subpart 35.1 - Presolicitation

~~(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.~~

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

~~[48 FR 42352, Sept. 19, 1983, as amended at 66 FR 27414, May 16, 2001]~~

### ~~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;~~

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~~(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~~

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

~~[48 FR 42352, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]~~

### ~~35.007~~35.101 Solicitations.

(a) ~~The submission and subsequent evaluation of an inordinate number of~~Reviewing too many R&D proposals from unqualified sources ~~lacking appropriate qualifications is costly and time-consuming to~~wastes time and money for both industry and the Government. Therefore, contracting officers should ~~initially distribute~~first send solicitations only to sources ~~technically qualified~~with the technical qualifications to perform ~~the~~ research or development ~~in the specific field of science or technology involved. Cognizant technical~~work. Technical personnel should recommend potential sources that appear qualified, ~~as a result of~~based on—

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

(b) Proposals must generally ~~shall~~ be solicited from technically qualified sources, including sources ~~that become known as a result of~~identified through synopses or other means of publicizing requirements. ~~If it is not practicable to initially solicit all apparently~~When soliciting all qualified sources, ~~only is not practical, the contracting officer may select~~ a reasonable number ~~need be solicited. In the interest of~~to solicit. To promote competition, the contracting ~~officers shall furnish copies of~~officer must provide the solicitation to other apparently qualified sources.

(c) Solicitations ~~shall~~must 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~~—

- (1) Describe their technical and management approach;
- (2) Identify any technical uncertainties;
- (3) Propose specific solutions to resolve uncertainties; and
- (4) Propose any planned subcontracting of scientific or technical work ~~(see 35.009).~~

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(d) Solicitations may require ~~that~~ proposals to be organized ~~so that the~~ with technical ~~portions can be efficiently evaluated~~ sections grouped together for efficient review by technical ~~personnel~~ experts (see ~~15.204-5(b)~~ part 15). Both the solicitation process and proposal evaluation ~~of proposals~~ should be ~~planned to minimize~~ designed to reduce costs for both offerors' and the Government ~~expense~~.

(e) R&D solicitations should ~~contain~~ include evaluation factors to ~~be used to determine~~ identify the most technically competent offerors (see ~~15.304~~ part 15); such as—

- (1) The ~~offeror's~~ offeror's understanding of the scope of the work;
- (2) The quality of the offerors approach proposed to ~~accomplish~~ meet the scientific and technical objectives ~~of the contract~~, or the merit of the ideas or concepts ~~proposed;~~ presented.
- (3) The ~~availability and competence of experienced~~ offeror's access to qualified engineering, scientific, or other technical ~~personnel;~~ staff.
- (4) The offeror's experience; is relevant.
- (5) ~~Pertinent novel~~ Any innovative ideas the offeror proposes in the specific ~~branch of science and technology involved;~~ and scientific or technical field.
- (6) The ~~availability, from any source, of~~ offeror's access to the necessary research, ~~test~~ testing, laboratory, or shop facilities.

(f) ~~In addition to~~ Besides technical evaluation factors ~~for technical competence~~, the contracting officer ~~shall~~ must also consider management capability, as appropriate, ~~management capability (including cost management techniques), experience and past performance, subcontracting practices, and any~~ —

(1) Management capabilities, including cost control methods;

(2) Experience and past performance;

(3) Subcontracting practices; and

(4) Any other significant evaluation criteria (*e.g.*, unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts).

(g) Although cost or price is not ~~normally the controlling~~ usually the deciding factor in selecting a contractor to perform R&D, it ~~should not be disregarded in arriving at a~~ remains important. The final selection should be the offer that best satisfies the Government's requirement at a fair and reasonable cost.

(gh) The contracting officer should ensure ~~that~~ potential offerors fully completely understand the details of the work, especially the Government interpretation of the work statement. ~~If the effort is~~ For complex requirements, the contracting officer should provide give potential offerors

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~~an opportunity~~ a chance to comment on the details of the requirements as contained in the work statement, the contract ~~Schedule~~ schedule, and any related specifications. This may be done at a preproposal conference (see ~~15.204~~ part 15).

(~~h~~) ~~If it is~~ When appropriate ~~to do so~~, solicitations should ~~permit~~ allow offerors to propose an alternative contract type (see ~~16.103~~ part 16).

~~(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) When a potential contractor wants to discuss a new idea or product based on their privately-funded independent R&D work, Government personnel should be willing to discuss it. However, the potential contractor must be informed that these discussions do not create any obligation for the Government. In such situations, direct negotiation with the potential contractor without competition may be appropriate. Also refer to part 15 regarding unsolicited proposals.

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

~~[48 FR 42352, Sept. 19, 1983, as amended at 62 FR 5271, Sept. 30, 1997; 67 FR 13056, Mar. 20, 2002]~~

## ~~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.~~



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~~(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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 62 FR 51271, Sept. 30, 1997]~~

### ~~**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(e)). 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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 63 FR 34060, June 22, 1998]~~

### ~~**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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 55 FR 3884, Feb. 5, 1990; 59 FR 67049, Dec. 28, 1994]~~

### ~~**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.~~

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~~(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 subparagraphs (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~~

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~~(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) above 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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 50 FR 26903, June 28, 1985; 68 FR 28083, May 22, 2003; 72 FR 27385, May 15, 2007]~~

## ~~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~~

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~~(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 subparagraph (1) above, 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.~~

~~[48 FR 42352, Sept. 19, 1983, as amended at 56 FR 15153, Apr. 15, 1991]~~

~~**35.016**~~ **35.102 Broad agency announcement.**

(a) *General.* This paragraph prescribes procedures for the use of the broad agency announcement (BAA) with Peer or Scientific Review (see ~~6.102(d)(2)~~part 6) for the acquisition of basic and applied research ~~and, as well as~~ that part of development not related to ~~the development of~~developing a specific system or hardware procurement. ~~BAAs 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~~must only be used when meaningful proposals with varying technical/scientific approaches ~~can be~~are reasonably ~~anticipated~~expected.

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(b) The BAA, together with any supporting documents, ~~shall~~must—

(1) Describe the ~~agency's~~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~~agency's requirements;

(2) ~~Describe the criteria for selecting the~~Explain how proposals, ~~their~~ will be selected, the relative importance of each criteria, and the ~~method of~~ evaluation methodology;

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

(4) Contain clear instructions for ~~the preparation and submission of~~preparing and submitting proposals.

(c) ~~The availability of the BAA must be publicized~~Contracting officers must publicize the BAA through the Governmentwide point of entry (GPE) and, if authorized ~~pursuant to subpart 5.5~~in accordance with part 5, may also be published in ~~noted~~ scientific, technical, or engineering periodicals. ~~The notice must be published no less frequently than annually, or~~ other electronic platforms and communities used by the target audience. Publish the notice at least once per year.

(d) ~~Proposals received as a result of the BAA shall be evaluated in accordance with evaluation criteria specified therein through~~Use a peer or scientific review process to evaluate proposals. Written evaluation reports ~~on individual~~are required for each proposal; however, proposals ~~will be necessary but proposals need not~~are not required to be evaluated against each other since they are ~~not submitted in accordance with~~responding to broad research areas rather than 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 subparagraph (c), of this section, fulfills the synopsis requirement.~~

~~[53 FR 27467, July 20, 1988, as amended at 66 FR 27414, May 16, 2001; 68 FR 56679, Oct. 1, 2003]~~

(e) Proposals should be selected based on—

(1) Technical merit;

(2) Importance to agency programs; and

(3) Availability of funds.

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(f) Contracting officers must consider cost realism and reasonableness to the extent appropriate.

(g) Contracting officers do not need to publish a synopsis under part 5 for individual contracts awarded through a BAA. The notice published pursuant to paragraph (c) of this section fulfills the synopsis requirement.

## **Subpart 35.2 - Evaluation and award**

### **35.201 Evaluation for award.**

(a) R&D contracts should be awarded to the organization, including educational institutions, with the best ideas and highest level of expertise, but not such that the capabilities exceed the requirement.

(b) The contracting officer should use the procedures in part 15 to notify and debrief offerors.

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

## **Subpart 35.3 - Postaward**

### **35.301 Scientific and technical reports.**

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

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

National Technical Information Service (NTIS)

5285 Port Royal Road

Springfield, VA 22161.

## **35.017 **Subpart 35.4 - Federally Funded Research and Development Centers.****

### **35.401 Definitions.**

As used in this subpart—

~~<https://www.eefr.gov/current/title-48/chapter-1/subchapter-F/part-35>~~  
~~<https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35>~~  
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*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.

**(a) 35.402 Policy.**

~~(1a)~~ This section ~~sets forth~~ explains Federal policy ~~regarding the establishment, use, review, and termination of~~ on establishing, using, reviewing, and terminating Federally Funded Research and Development Centers (~~FFRDC's~~ FFRDCs) and related sponsoring agreements.

~~(2b)~~ An FFRDC meets ~~some~~ special long-term research or development ~~need which~~ needs that cannot be met as effectively by existing ~~in-house~~ Government or contractor resources. ~~FFRDC's enable~~ FFRDCs allow agencies to use private sector resources ~~to accomplish tasks that are for work~~ integral to the agency's mission ~~and operation of the sponsoring agency. An FFRDC, in order to discharge. To fulfill~~ its responsibilities ~~to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to,~~ an FFRDC has special access to—

~~(1)~~ 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 information;

(2) Government employees; and

(3) Government facilities, equipment, and real property.

(c) The FFRDC must—

(1) Conduct business appropriately considering its special relationship with the Government;

(2) Operate in the public interest with objectivity and independence;

(3) Be free of organizational conflicts of interest; and

(4) Fully disclose its affairs to the sponsoring agency.

~~https://www.eefr.gov/current/title-48/chapter-1/subchapter-F/part-35~~  
~~https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35~~  
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~~not the Government's intent that an FFRDC use its~~ (d) FFRDCs must not use their privileged access to information or ~~access to installations equipment and real property~~ facilities to compete with the private sector. However, an FFRDC may perform work for agencies other than ~~the sponsoring agency~~ its sponsor under the Economy Act, ~~or other applicable legislation,~~ laws when the work is not otherwise available from the private sector.

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

~~(31) FFRDC's are operated, managed, and/or administered by either a~~ A university or consortium of universities, ~~other not-for-profit or nonprofit organization, or an~~ ;

(2) A nonprofit organization; or

(3) An industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

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

[55 FR 3885, Feb. 5, 1990, as amended at 66 FR 2132, Jan. 10, 2001; 72 FR 27385, May 15, 2007]

### ~~35.017-1~~ 35.403 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~~



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~~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.~~

(a)

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

(i) Establishes a long-term relationship;

(ii) Defines the FFRDC's mission; and

(iii) Ensures regular evaluation of the FFRDC.

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

~~(b) While 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, will vary based on circumstances, all sponsoring agreements may be as further specified in or sponsoring agencies' agency policies and procedures. must include the following requirements at a minimum—~~

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

~~(1) A clear statement of the FFRDC's purpose and mission of the FFRDC;~~

~~(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of, including how to handle assets and liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that agreement must clearly define ownership of capital assets may be readily and equitably determined upon termination of the FFRDC's in the event the relationship with its sponsor(s) ends;~~

~~(3) A provision for the identification of method to identify retained earnings (reserves) and the development of a plan for their use and disposition, using and disposing of these funds;~~

~~(4) A prohibition against preventing the FFRDC from 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 non-FFRDCs for Federal contracts except for FFRDC operations. This restriction does not apply to the FFRDC's parent organization or other subsidiary of the parent organization in its subsidiaries in their non-FFRDC operations. Requests activities. The FFRDC may respond to requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor. Sponsor; and~~

~~<https://www.eefr.gov/current/title-48/chapter-1/subchapter-F/part-35>~~  
~~<https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35>~~  
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(5) ~~A delineation of~~Clear rules about whether ~~or not~~ the FFRDC may accept work from organizations other than ~~the~~its sponsor(s). If ~~nonsponsor work can be accepted, a delineation of the procedures to be followed, along with any~~allowed, the agreement must outline—

(i) Procedures to follow for non-sponsor work; and

(ii) Any limitations as to the nonsponsors form on which non-sponsors may provide work ~~can be accepted ((e.g., other Federal agencies, State~~state or local governments, ~~nonprofit or profit~~or non-profit organizations, ~~etc.)~~).

(~~dc~~) The sponsoring agreement or ~~sponsoring agencies'~~agency policies ~~and procedures~~ may also ~~contain, as appropriate, include~~ other provisions as needed, such as ~~identification of—~~

(1) ~~Any cost~~Cost elements ~~which will require~~requiring advance agreement ~~if~~when using cost-type contracts ~~are used~~; and

(2) ~~Considerations which will affect negotiation of fees where payment of fees is determined by~~Factors affecting fee negotiations when the sponsor(s) ~~to be~~ determines fee is appropriate.

(~~ed~~) The agreement term ~~of the agreement will~~must not exceed 5 years, but ~~can~~may be renewed, ~~as a result of periodic~~ after review, in increments ~~not of up to~~ exceed 5 years.

[55 FR 3885, Feb. 5, 1990]

### ~~35.017-2~~35.404 Establishing or changing an FFRDC.

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

(a) ~~Existing~~Verify 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~~Publish at least one notice to the Government Point of Entry 90 days or more before issuing the contract action, indicating the agency's intention, and requesting comments. Notice is not required when the action is required. by law;

(c) ~~There is sufficient~~Ensure the Government has expertise available to adequately and objectively evaluate the FFRDC's work ~~to be performed by the FFRDC.;~~

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

(e) ~~Controls are established~~Establish controls to ensure ~~that the costs of the services being provided to~~ the Government arerepays reasonable. costs for services;

~~https://www.ecfr.gov/current/title-48/chapter-1/subchapter-F/part-35~~  
~~https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35~~

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(f) ~~The basic~~ Define the FFRDC's purpose and mission ~~of the FFRDC is stated~~ clearly enough to ~~enable differentiation between work which should be performed by~~ distinguish work appropriate for the FFRDC ~~and that which should be performed by non-FFRDC's.~~ vs. work for non-FFRDCs;

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

(h) Ensure the FFRDC—

~~(h1) The FFRDC is~~ 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.;~~

(2) Works in the public interest;

(3) Remains free from organizational conflict of interest; and

(4) Discloses its affairs (as an FFRDC) to the primary sponsor;

(i) ~~Quantity production~~ Does not allow quantity production or manufacturing ~~is not performed~~ unless authorized by legislation.;

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

~~[55 FR 3885, Feb. 5, 1990, as amended at 62 FR 12694, Mar. 17, 1997]~~

### ~~35.017-3~~ 35.405 Using an FFRDC.

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

(b) ~~Where the use of the FFRDC by a nonsponsor is~~ When permitted by the sponsor, ~~the sponsor shall be~~ Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with ~~paragraph (a) of this subsection.~~ FAR Part 6. The nonsponsoring agency must-

(1) ~~The nonsponsoring agency shall provide~~ Provide the documentation regarding competition with domestic private industry required by ~~17.503(e)~~ part 17 to the sponsoring agency.;

(2) ~~When a D&F is required pursuant to 17.502-2(e), the nonsponsoring agency shall prepare the D&F~~ Prepare any required Economy Act determinations and findings (D&F) document and provide ~~the~~ documentation required by ~~17.503(e)~~ part 17 to the sponsoring agency.

~~<https://www.eefr.gov/current/title-48/chapter-1/subchapter-F/part-35>~~  
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~~(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.~~

~~[55 FR 3886, Feb. 5, 1990, as amended at 75 FR 77737, Dec. 13, 2010; 77 FR 186, Jan. 3, 2012; 84 FR 19838, May 6, 2019]~~

### **35.406 Limitation on the creation of new FFRDC's.**

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

(a) The head of the agency submits a report to Congress describing the center's purpose, mission, and general scope of the center's effort; and

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

### ~~35.017-4~~**35.407 Reviewing FFRDC's**~~FERDC'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.~~

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

~~(b) Approval to continue or terminate the sponsorship shall rest with the~~The head of the sponsoring agency.~~This determination shall be~~must approve continuing or terminating sponsorship, based ~~upon~~on the results of the review ~~conducted in accordance with paragraph (c) of this subsection.~~described below:

~~(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.~~

~~<https://www.eefr.gov/current/title-48/chapter-1/subchapter-F/part-35>~~  
~~<https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35>~~  
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(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~~ [the requirements of this subpart](#).

[55 FR 3886, Feb. 5, 1990]

### ~~35.017-5~~ [35.408](#) Terminating an FFRDC.

When a ~~sponsor's need for~~ [sponsor no longer needs](#) 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~~ [must](#) be phased out.

[55 FR 3886, Feb. 5, 1990]

### ~~35.017-6~~ [35.409](#) Master list of ~~FFRDC's~~ [FFRDC's](#).

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

[55 FR 3886, Feb. 5, 1990]

### ~~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.~~

~~<https://www.ecfr.gov/current/title-48/chapter-1/subchapter-F/part-35>~~  
<https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-35>  
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[87 FR 73900, Dec. 1, 2022]

<b>Summary report:</b>	
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<b>Changes:</b>	
<u>Add</u>	348
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<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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