

315.605

contract. The importance of the development in furthering health and human services purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(B) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings, e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707. In these circumstances, the contractor should receive favorable consideration in developing the profit objective.

(C) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off-benefits as a direct result of the contract (e.g., products or services with commercial application).

(4) *Facilities capital cost of money.* When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost.

[66 FR 4233, Jan. 17, 2001, as amended at 71 FR 76499, Dec. 20, 2006]

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.604 resulting in an unfair advantage to an offeror, the contracting officer shall ensure that the following certification is furnished to the prospective

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offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL

Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

(a) This proposal has not been prepared under Government supervision.

(b) The methods and approaches stated in the proposal were developed by this offeror.

(c) Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.604.

(d) No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.606 Agency procedures.

(a) The HCA is responsible for establishing procedures to comply with FAR 15.606(a).

(b) The HCA or the HCA's designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals.

[66 FR 4233, Jan. 17, 2001, as amended at 71 FR 76500, Dec. 20, 2006]

315.606–1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the grounds that they lack scientific merit.

315.609 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.609(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of

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Information Act. Because of this possibility, the following notice shall be provided to all prospective offerors of unsolicited proposals:

The Government will attempt to comply with the "Use and Disclosure of Data" legend.

However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

[66 FR 4233, Jan. 17, 2001, as amended at 71 FR 76500, Dec. 20, 2006]

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.

316.307 Contract clauses.

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316.603 Letter contracts.

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316.603-71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770-2 Memorandums of understanding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4243, Jan. 17, 2001, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit) for research and development, modify the "Allowable

Cost and Payment" clause at FAR 52.216-7 by deleting from paragraph (a) the words "Subpart 31.2 of the Federal Acquisition Regulation (FAR)" and substituting "45 CFR Part 74 Appendix E."

(j) The contracting officer shall insert the clause at 352.216-72, Additional Cost Principles, in all solicitations and resultant cost-reimbursement contracts.

316.505 Ordering.

(b)(5) The Department's task-order and delivery-order ombudsman is the Director, Strategic Acquisition Service, Program Support Center (PSC). The task-order and delivery-order ombudsmen for each of the Department's contracting activities are as follows:

AHRQ—Director, Office of Performance Accountability, Resources and Technology

CDC—Chief Information Officer

CMS—Chief Operating Officer

FDA—Director, Office of Acquisitions and Grants Services

HRSA—Associate Administrator, Office of Administration and Financial Management

Indian Health Service—Director, Office of Management Services

NIH—Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (Other than R&D)

PSC—Director, Strategic Acquisition Service

SAMHSA—Executive Officer

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Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603-3 Limitations.

An official one level above the Contracting Officer shall make the written determination.

[71 FR 76500, Dec. 20, 2006]