



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

OCT - 2 1991

MEMORANDUM FOR: Those on Attached List

FROM: Patricia G. Norry, Director  
Office of Administration

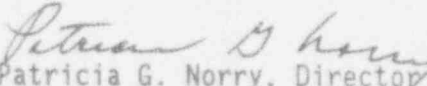
SUBJECT: REQUEST FOR OFFICE COMMENTS AND CONCURRENCE -  
FINAL RULE ENTITLED, "NUCLEAR REGULATORY  
COMMISSION ACQUISITION REGULATION"

Attached for your comment and concurrence is a final rule entitled, "Nuclear Regulatory Commission Acquisition Regulation (NRCAR)." This final rule supplements the Federal Acquisition Regulation (FAR) and specifies agency policies, procedures, contract clauses and solicitation provisions governing the contracting process. This rulemaking is required by Public Law 98-577 and FAR 1.303. A draft of this final rule was provided for your comment on March 28, 1989. All of your comments have been carefully considered and incorporated as appropriate.

There has been one significant change to the rule since the comment period. On August 15, 1991, the Commission approved a revised policy for the application of Organizational Conflict of Interest (COI) restrictions to task order type contracts. The new COI provisions are contained in the attached rule, beginning on page 110.

With the exception of the above, policies and procedures contained in the final rule are consistent with those currently in practice in the agency. No additional requirements are placed on NRC offices or contractors as a result of this rulemaking.

Please have your staff provide comments or concurrence directly to William H. Foster, Chief, Policy Branch, Division of Contracts and Property Management (x27348) by October 16, 1991.

  
Patricia G. Norry, Director  
Office of Administration

Attachment:  
As stated

Addressees for Memorandum dated OCT - 2 1991

Raymond F. Fraley, Executive Director for Operations  
Advisory Committee on Reactor Safeguards  
ATTN: Mabel F. Lee

B. Paul Cotter, Jr., Chairman  
Atomic Safety and Licensing Board Panel

David C. Williams, Inspector General

William C. Parler, General Counsel

Lloyd J. Donnelly, Administrator  
Office of Licensing Support System Administrator

Samuel J. Chilk, Secretary of the Commission

Ben B. Hayes, Director  
Office of Investigations

Harold R. Denton, Director  
Office of Governmental and Public Affairs

James M. Taylor, Executive Director for Operations

Michael Springer, Director  
Office of Consolidation

James Lieberman, Director  
Office of Enforcement

Edward L. Jordan, Director  
Office for Analysis and Evaluation of  
Operational Data

William B. Kerr, Director  
Office of Small and Disadvantaged Business  
Utilization and Civil Rights

Paul E. Bird, Director  
Office of Personnel

Addressees for Memorandum dated OCT - 2 1991

Robert M. Bernero, Director  
Office of Nuclear Material Safety and Safeguards

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Eric S. Beckjord, Director  
Office of Nuclear Regulatory Research

Gerald F. Cranford, Director  
Office of Information and Resources Management

Ronald Scroggins, Controller

Larry P. Cooper, Director  
Management Support Staff  
Office of Administration

Thomas T. Martin, Regional Administrator  
Region I

Stewart B. Ebner, Regional Administrator  
Region II

A. Bert Davis, Regional Administrator  
Region III

Robert D. Martin, Regional Administrator  
Region IV

John B. Martin, Regional Administrator  
Division of Resource Management and Administration  
Region V

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

Acquisition Regulation (NRCAR)

RIN: 3150-AC01

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

---

SUMMARY: The Nuclear Regulatory Commission (NRC) is establishing the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The NRCAR is necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs of the agency. The NRCAR is intended to implement and supplement the government-wide Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: January 21, 1992. This rule applies to contracts, including small purchases, where specified, awarded on or after that date, and to modifications awarded on or after that date which require a justification for other than full and open competition.

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347.

SUPPLEMENTARY INFORMATION:

## Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the Federal Register on September 19, 1983 (48 CFR 42102) with an effective date of April 1, 1984. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies and procedures within the agency and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementing of the FAR.

#### Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83-2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant." "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83-2. This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors.

#### D. PUBLIC COMMENTS

A proposed rule was published in the Federal Register on October 2, 1989 (54 FR40420). Three organizations commented, and all comments were considered in the development of this final rule. The comments and responses are summarized below, in the order of the NRCAR text.

One commenter suggested that NRCAR §2001.402, concerning policies for deviations from the FAR and the NRCAR, is instructional language that should be excluded from the NRCAR and issued through an NRC internal issuance. This policy, as much as any other internal concurrence or approval, affects the flow of the procurement process. Just as the FAR has a parallel Subpart 1.4, and numerous other specified internal concurrences and approvals, this section is an important part of the NRCAR. In addition, the place to specify the policies for deviating from any requirement is in the policy itself. This section remains in the NRCAR.

One commenter suggested that NRCAR §2001.602-3, Ratification of Unauthorized Commitments, is unnecessary. However, it specifies which officials within NRC may approve ratifications. It also specifies the information which must be provided to seek approval of a ratification. The contracting community can be profoundly affected by these policies. Therefore, this section remains in the NRCAR.

One commenter asked if NRCAR §2009.1, Responsible Prospective Contractors, provides special treatment to a firm predominantly staffed by former NRC employees, none of whom were employed by the NRC within the last

two years. It does not. NRCAR §2009.1 is designed to prevent preferential treatment under the "revolving door" concept. To extend this restriction beyond two years is not practical in terms of recordkeeping, and would be unduly restrictive for individuals whose firms which have either survived or formed after a reasonable hiatus from government employment.

One commenter suggested that the NRCAR requirement found at §2009.405-2(a) for a certification of debarment status is inconsistent with FAR clause §52.209.5. Since the FAR clause §52.209-5 was added to the FAR in 1989, the NRCAR clause is no longer necessary and has been removed from the final rule.

One commenter suggested that §2009.570-3(c) contains instructional language that should be excluded from the NRCAR and issued through one of the NRC internal issuances. This section contains examples of conflicts, for the information of potential contractors, as well as NRC staff and therefore, belongs in the survey. These examples are formatted to be similar to those in FAR 9.508, "Examples," but ones specific to NRC. The guidance provided after each example is used to illustrate, for potential contractors, as well as NRC staff, the possible resolution of each example situation. Therefore, this section remains in the NRCAR.

One commenter suggested that NRCAR §2009.570-5 and the additions to the general organizational conflicts of interest clause set forth under contract clauses §2052.209-76 and §2052.209-77 should only apply to work being performed under an NRC contract. The commenter stated that this would protect the NRC against situations which may (a) result in providing an offeror or contractor with an unfair competitive advantage, or (b) impair

the offeror's or contractor's objectivity in performing work for the NRC. Paragraph (2) of §2052.209-76, which would have required prior approval of the contracting officer to perform same or similar services has been deleted and a new paragraph (§2052.209.73(c)(3)) has been added to the final rule. The paragraph prohibits the contractor from performing any of the following activities for a period of one year upon completion of work at a licensee or applicant site: 1) soliciting work at that site; 2) performing work at that site; and 3) performing work in the same technical area for the licensee or applicant organization regardless of location. While the deletion may lead to some situations whereby NRC will not be able to issue some task orders to a contractor because of the contractor's other work for licensees started after the start of the NRC contract, the NRC believes that other alternatives exist to get the work accomplished. The new paragraph will minimize situations of unfair competitive advantage. Language has been added to NRCAR §2052.209-73(d)(3) to limit denial of approval under task order contracts to situations where NRC has issued or plans to issue a task order in the technical area or at the site.

One commenter questioned why §2014.201-670(b)(1) requires that past experience be described in all bids. This requirement has been edited to make it optional to fit circumstances.

One commenter suggested moving paragraphs (d) and (e) of Provision 2052.214-72, Bid Evaluations to a new section §2014.404-2. This information on materially unbalanced bids and separation charges remains in the provision because knowledge of this information can affect acceptance of the

bid, and these situations have occurred enough to merit including this information in the provision.

One commenter expressed concern that the requirement for all proposed work to be considered as stated in §2019.705-2, Determining the Need for a Subcontracting Plan, is inconsistent with Federal Acquisition Regulation 19.705-2. Both texts state that all proposed contract actions must be considered when determining whether a subcontracting plan will be required. NRCAR paragraph §2019.705-2 is therefore an unnecessary duplication and has been removed from the final rule.

One commenter suggested that NRCAR §2019.705-4, "Reviewing the Subcontracting Plan", duplicates the FAR (§19.7). However, the NRCAR text provides additionally that subcontracting plans may be requested from all concerns in the competitive range, and clarifies conditions for acceptance of master subcontracting plans. Because these provisions are not in the FAR, the NRCAR text is necessary to provide consistent treatment of proposers.

One commenter suggested that NRCAR §2020.102 duplicates the FAR (§20.3). However, the NRCAR text identifies the office that needs to be contacted for labor surplus area set-asides.

A commenter stated that the additional patent reporting requirements stated in NRCAR §2027.305-3 go beyond those required by the FAR. FAR §27.305-3(a) states that Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are

identified and disclosed." The reporting described in the NRCAR simply requires the contractor to certify a negative response that no patent or similar activities took place under the contract. Without a negative response, there is no certainty that the contractor has not generated work to which the Federal government might have technical or economic rights. This requirement remains in the NRCAR.

One commenter suggested that NRCAR §2035.71, Broad Agency Announcements, duplicates FAR §35.016, Broad Agency Announcement. The duplicative text has been removed from the final rule.

One commenter suggested that NRCAR §2042.803(b) be revised to state that audit cost issues will be resolved within 30 days when payment has not already been made to the contractor. The period in other situations would remain at six months. Contractors who have a need to receive payment due to a hardship currently can offer to help expedite the decision making process. Otherwise, six months is a reasonable period of time for receiving and reviewing audit reports, preparing positions and correspondence, and negotiations. Since the process is dependent on a number of inputs, including the contractor's, the language has been clarified to indicate that "within six months" is a goal, which should be sought.

A commenter suggested that paragraph (d), Disclosure After Award, be deleted in its entirety from clause §2052.209-74 (currently 2052.209-73(d)(3)). The commenter states that §2052.209-74(c) already requires contractors to make immediate and full disclosure. However, paragraph (d)(1) also requires the contractor to warrant that it does not

have such conflicts, if such is the case.

Paragraph (d)(3) additionally requires that any disclosure must include a description of action taken to avoid or mitigate such conflicts. NRCAR §2052.209-77 (currently 2052.209.73(d) requires that additional text be added to paragraph (d)(3), to clarify the applicability to task orders. Therefore, the paragraph (d)(3) is not deleted.

One commenter proposed that NRCAR clause §2052.209-77 (currently 2052.209.73(d)(3), Contractor Organizational Conflicts of Interest-Language for Task Order Contracts, imposes a burdensome information reporting requirement. Paragraph (d)(3) provides that the contractor will disclose all proposed new work of any type involving NRC licensees or applicants. The commenter suggested a change in the wording to "the same as, or substantially similar to." The commenter states correctly that this disclosure is necessary regardless of whether the proposed activities represent a potential or actual conflict of interest with work being performed for the NRC. The purpose of the disclosure is expressly for the purpose to determine whether there might be a conflict which needs to be addressed. This is a contracting officer decision. Therefore, no change is made to paragraph (d)(3) of this clause.

One commenter suggested that the contracting officer should be permitted to alter any conflict of interest clause. The clauses currently provide for basic policies to be applied in all or designated cases. Waivers or contracting officer decisions would provide flexibility. Open-ended altering of the basic policies would cause inequities and unnecessary delays

to the procurement process. Therefore, the language is not changed for this purpose.

One commenter suggested that a standard for financial assistance, OMB Circular A-110, Attachment H, Monitoring and Reporting Program Performance, be used, and took objection to monthly reporting requirements in NRCAR clause §2052.212-71, Technical Progress Report. The requirements of OMB Circular A-110 are applicable only to certain financial assistance awards; and are not appropriate for NRC contracts. However, the proscription for the NRCAR clause §2052.212-71 states that the contracting officer may alter the clause. This proscription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract, considering the size and complexity of the particular project or program.

One commenter suggested that a standard for financial assistance, OMB Circular A-110, Attachment G.3.a, Financial Status Report, should be used to set the frequency of submission for Financial Status Reports under NRC contracts. The proscription for NRCAR §2052.212-72, Financial Status Report, states that the contracting officer may alter the clause. This proscription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract.

Paragraph (a) of NRCAR provision §2052.214-72 is duplicative of FAR clause §52.214-4, False Statements, and has been removed from the final rule.

It was suggested by one commenter that NRCAR clause §2052.215-76 should be modified to require that cost related information on proposed subcontracts be included in the cost proposal, rather than the technical and management proposal. This change has been made to the final rule.

The same commenter recommended that paragraph (e) (4) of §2052.215-76 permit offerors to address the criteria enumerated under items (e)(4) (i) through (xix) in other than the manner and sequence outlined. This would lead to inconsistencies and difficulties in evaluating proposals. The commenter suggests that the proposed change would provide offerors with flexibility to develop and structure their respective technical and management proposals in a format consistent with the stated evaluation criteria contained in an NRC solicitation. However, NRCAR §2015.417-70 (b)(2) already states that the provision must be tailored to assure that all sections reflect the evaluation criteria. Therefore, no change has been made to the final rule.

One commenter suggested that the NRCAR clause §2052.215-76 should be expanded to include guidance for completion of the referenced Contractor Spending Plan. NRC's internal instructions provide only a suggested format which must, as the internal guidance states, be modified to meet each situation. The plan format developed for each specific proposed contract will appear in the Request for Proposal. While a Contractor Spending Plan is required for each applicable contract, the degree of flexibility permitted to the contracting officer is such that guidance for completion of each plan is not appropriate in this regulation. No change is made to the provision for this purpose.

Subpart 4.603, "Solicitation Provision" which requires in provision §52.204-4, that contractors provide Data Universal Numbering System (DUNS), was added to the FAR by Federal Acquisition Circular 84-50. Therefore, NRCAR provision §2052.215-73, "Data Universal Numbering System (DUNS)", is no longer required and has been removed from the final rule.

A comment was made that Section 24 Pub. L. 100-679, exempts universities from having to comply with the Federal Travel Regulations if they follow their own travel policies in accordance with OMB Circular A-21, Cost Principles for Educational Institutions. Therefore, the commenter stated, NRCAR §2052.215-79, Travel Reimbursement, should be modified in accordance with Part 31 of the FAR, and several OMB Circulars, including A-21 (cost principles applicable to universities). A second commenter suggested that the clause be amended to be consistent with FAR Part 31.205-46. NRCAR §2052.215-79 has been modified to make these clarifications. With these changes and the deletion of the word "domestic" from the first sentence of paragraph (c), paragraph (d) is no longer necessary and has been removed from the final rule.

One commenter states that NRCAR clause §2052.215-80, Travel Approvals, is inconsistent with OMB Circular A-21, when it says that "all domestic travel requires the prior approval of the project officer." OMB Circular A-21, Paragraph J.43.f of A-21, which is applicable to both direct and indirect costs, states that "domestic travel costs are allowable when permitted by the sponsoring agreement." Paragraph C.2 of A-21, Factors Affecting Allowability of Costs, states that in order for costs to be allowable, "they must conform to any limitations or exclusions set forth in these principles

or in the sponsored agreement as to types or amounts of cost items." The NRC has reserved to project officers, whose role includes monitoring work and associated costs, the ability to determine that domestic travel costs are necessary and prudent expenditures under the contract. No change to this provision has been made in the final rule.

One commenter suggested that provision §2052.216-74, Task Order Procedures, should specify the task order proposal due date which has been set by mutual agreement. Task ordering contracts are negotiated for needs that are not clearly defined and which will need to be provided for quickly. The NRC contract administrator is responsible for setting a due date which reflects the agency's needs. If circumstances arise which prevent it from meeting the due date, the contractor should alert the contract administrator at the earliest opportunity. Therefore, no change is made to the provision of the final rule.

NRCAR clause §2052.235-70, "Publication of Research Results", has been revised to clarify the requirements for the use of NRC Manual Chapters.

NRCAR clause §2052.245-71, "Private Use of Contract Information and Data" is deleted, since NRCAR clause §2052.209-70 and §2052.235-71 provide adequate coverage.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5).

Therefore, neither an environmental impact statement nor an environmental assessment is required for this final rule.

#### Paperwork Reduction Act Statement

The information collections requirements were submitted to the Office of Management and Budget (OMB) at the proposed rule stage. At that time, OMB denied approval of these collections. OMB believed that rather than promulgating an NRC regulation, NRC should forward those provisions appropriate for inclusion in the Federal Acquisition Regulation (FAR) to the FAR Councils for consideration in accordance with FAR 1.304(c). They further requested that publication relating to Conflict of Interest Policies Applicable to Consultants await implementation in the FAR. It is the agency's position that since we are required by law to have separate procurement regulations implementing the FAR and these provisions only apply to special circumstances of the NRC, they would be inappropriate for inclusion in the FAR for government wide usage. In addition, in accordance with Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. 2210a) NRC's organizational conflicts of interest takes precedence over the FAR 9.5, "Organizational and Consultant Conflicts of Interest." However, where non-conflicting guidance appears in FAR 9.5, that guidance shall be followed. With these considerations, NRC is therefore requesting OMB approval of the information collection requirements at the final rule stage.

This final rule amends information collection requirements that are subject to the paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq).

This rule has been submitted to OMB for review and approval of the paperwork requirements. The information collections will not become effective until after they are approved by OMB. Notice of OMB approval will be published in the Federal Register.

The public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOF-3019, (3150-0018), Office of Management and Budget, Washington, DC 20503.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule establishes the procedures and requirements necessary to implement and supplement the Federal Acquisition Regulation (FAR) which will govern the acquisition of goods and services by the NRC. To the extent that the final rule affects a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

## Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule, because this final rule does not involve any provision which would impose backfits as defined in 10 CFR Part 50.109(a)(1).

### List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and FAR Subpart 1.3, the NRC is proposing to add Chapter 20 to Title 48 of the Code of Federal Regulations.

1. Chapter 20 is added to Title 48 to read as follows:

#### CHAPTER 20 - NUCLEAR REGULATORY COMMISSION

##### SUBCHAPTER A - GENERAL

##### Part

2001 - Nuclear Regulatory Commission Acquisition Regulation System.

2002 - Definitions.

- 2003 - Improper business practices and personal conflicts of interest.
- 2004 - Administrative matters.

#### SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

- 2005 - Publicizing contract actions.
- 2009 - Contractor qualifications.
- 2010 - Specifications, standards, and other purchase descriptions.
- 2012 - Contract delivery or performance.

#### SUBCHAPTER C - CONTRACTING METHODS AND CONTRACT TYPES

- 2013 - Small purchase and other simplified purchase procedures.
- 2014 - Sealed bidding.
- 2015 - Contracting by negotiation.
- 2016 - Types of contracts.
- 2017 - Special contracting methods.

#### SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

- 2019 - Small business and small disadvantaged business concerns.
- 2020 - Labor surplus area concerns.
- 2022 - Application of labor laws of government acquisitions.
- 2024 - Protection of privacy and freedom of information.
- 2025 - Foreign acquisition.

#### SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS

- 2027 - Patents, data, and copyrights.
- 2030 - Cost accounting standards.
- 2031 - Contract cost principles and procedures.
- 2032 - Contract financing.
- 2033 - Protests, disputes, and appeals.

#### SUBCHAPTER F - SPECIAL CATEGORIES OF CONTRACTING

- 2035 - Research and development contracting.
- 2039 - Acquisition of information resources.

#### SUBCHAPTER G - CONTRACT MANAGEMENT

- 2042 - Contract administration.
- 2045 - Government property.

#### SUBCHAPTER H - CLAUSES AND FORMS

- 2052 - Solicitation provisions and contract clauses.
- 2053 - Forms. {Reserved}

#### SUBCHAPTER A - GENERAL

#### Part 2001 - NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

#### Subpart 2001.1 - Purpose, Authority, Issuance

Sec.

2001.101	Purpose.
2001.102	Authority.
2001.103	Applicability.
2001.104	Issuance.
2001.104-1	Publication and code arrangement.
2001.104-2	Arrangement of the regulations.
2001.104-3	Copies.
2001.105	Information collection requirements: OMB approval.

Subpart 2001.3 - Agency Acquisition Regulations

2001.301	Policy.
2001.303	Public participation.

Subpart 2001.4 - Deviations from the FAR and the NRCAR

2001.402	Policy.
2001.403	Individual deviations.
2001.404	Class deviations.

Subpart 2001.6 - Contracting Authority and Responsibilities

2001.600-70	Scope of subpart.
2001.601	General.
2001.602-3	Ratification of unauthorized commitments.
2001.603	Selection, appointment, and termination of appointment.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

## Subpart 2001.1 - Purpose, Authority, Issuance

### §2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

### §2001.102 Authority.

The NRCAR and amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c), as amended, FAR Subpart 1.3, and other applicable law.

### §2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made

from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

§2001.104            Issuance.

§2001.104-1    Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the Federal Register; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

§2001.104-2    Arrangement of the regulations.

(a) General. Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) Numbering. The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section or subsection being implemented or supplemented,

except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104-1 is shown as §2001.104-1 and the NRC's implementation of FAR 24.1 is shown as §2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 1/0A of the Atomic Energy Act of 1954 as amended requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as §2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR, as written, is applicable to the NRCAR and requires no further implementation.

(c) Citation. The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as §2001.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104-2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104-2." In the NRCAR,

any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1-104.

§2001.104-3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

§2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2015.607, 2019.705-4, 2027.305-3, 2042.803, 2052.204-70, 2052.204-71, 2052.209-71, 2052.209-72, 2052.209-73, 2052.210-71, 2052.212-70, 2052.212-71, 2052.212-72, 2052.214-71, 2052.214-72, 2052.214-74, 2052.215-70, 2052.215-71, 2052.215-75, 2052.215-76, 2052.216-74, 2052.235-70, 2052.235-71, 2052.235-72.

Subpart 2001.3 Agency Acquisition Regulations

§2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be issued through internal NRC issuances such as Management Directives, directives, or Division of Contracts and Property Management Instructions.

§2001.303      Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4 - Deviations from the FAR and the NRCAR

§2001.402      Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

§2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of

the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

§2001.404      Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6 - Contracting Authority and Responsibilities

§2001.600-70      Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

§2001.601      General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the

Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

§2001.602-3      Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be

effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Competition Advocate except that ratifications of procurement actions taken in emergency circumstances and valued at \$1,000 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Competition Advocate.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The requestor shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Director, Division of Contracts and Property Management, with any comments or information which should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

§2001.603      Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority must include a clear statement of the delegated authority, including responsibilities and limitations.

## PART 2002 - DEFINITIONS

### Subpart 2002.1 - Definitions

#### Section

#### 2002.100 Definitions

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

### Subpart 2002.1 - Definitions

#### §2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or Head of the Agency means the NRC Executive Director for Operations, for the purposes specified in this regulation and the Federal Acquisition Regulation. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98-369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period shall include the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF  
INTEREST

Subpart 2003.1 - Safeguards

Sec.

2003.101 Standards of conduct.

2003.101-3 Agency regulations.

Subpart 2003.2 - Contractor Gratuities to Government Personnel

2003.203 Reporting of suspected violation of the  
gratuities clause.

AUTHORITY: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42  
U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1 - Safeguards

§2003.101 Standards of conduct.

§2003.101-3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR  
Part O. The standards of conduct include requirements for financial  
disclosure (§0.735-28).

Subpart 2003.2 - Contractor Gratuities to Government Personnel

§2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3,  
must be reported orally or in writing directly to the NRC Office of the

Inspector General. A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735-42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

#### PART 2004 - ADMINISTRATIVE MATTERS

##### Sec.

#### Subpart 2004.4 - Safeguarding Classified Information Within Industry

##### §2004.404 Contract clauses.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

#### Subpart 2004.4 - Safeguarding Classified Information Within Industry

##### §2004.404 Contract clauses.

The security clauses used in NRC contracts are found at §2052.204.

They are:

(a) Security, §2052.204-70. This clause will be used in all contracts during performance of which the contractor may have access to, or contact with restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, §2052.204-71. This clause will be used in all contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

#### SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

#### Part 2005 - PUBLICIZING CONTRACT ACTIONS

#### Subpart 2005.5 Paid Advertisements

#### Sec.

#### 2005.502 Authority.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5 Paid Advertisements

§2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, for regional procurements.

Part 2009 - CONTRACTOR QUALIFICATIONS

Subpart 2009.1.00 - Responsible Prospective Contractors

Sec.

2009.105-70 Contract Provisions.

Subpart 2009.4 - Debarment, Suspension, and Ineligibility

2009.403 Definitions.

2009.404 Lists of parties excluded from Federal procurement or nonproducers programs.

2009.405 Effect of listing.

2009.405-1 Continuation of current contracts.

2009.405-2 Restrictions on subcontracting.

2009.406 Debarment.

2009.406-3 Procedures.

2009.407        Suspension.  
2009.407-3      Procedures.  
2009-470        Appeals.

Subpart 2009.5    Organizational Conflicts of Interest

2009.500        Scope of subpart.  
2009.570        NRC organizational conflicts of interest.  
2009.570-1      Scope of policy.  
2009.570-2      Definitions.  
2009.570-3      Criteria for recognizing contractor organizational  
                  conflicts of interest.  
2009.570-4      Representation.  
2009.570-5      Contract clauses.  
2009.570-6      Evaluation, findings, and contract award.  
2009.570-7      Conflicts identified after award.  
  
2009.570-8      Subcontracts.  
2009.570-9      Waiver.  
2009.570-10     Remedies.

AUTHORITY:    Sec. 161, 68 Stat. 948, as amended (42. U.S.C. 2201); Sec.  
201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat.  
796, as amended by Pub. L. 96-83, 93 Stat. 643, Pub. L. 98-577, 98 Stat.  
3074 (41 U.S.C. 401 et. seq.).

Subpart 2009.100- Responsible prospective contractors.

2009.100 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action or with any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees, unless it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task type contract arrangement or as a principal under a contract awarded non-competitively under the Small Business Administration's 8(a) Program. This policy shall also be applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) The term "NRC employee" includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if (a) the contract arises directly out of the individual's activity as a special employee, (b) the individual is in a position to influence the award of the contract, or (c) the Contracting Officer determines that another conflict of interest exists.

(c) Justifications explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) of this section on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to the justification and any approvals required by the Federal Acquisition Regulation for use of other than full and open competition.

(d) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

#### §2009.105-70 Contract Provisions

The contracting officer shall insert the following provisions in all solicitations:

(a) 2052.209-70, Qualifications of Contract Employees.

(b) 2052.209-71, Current/Former Agency Employee Involvement.

#### Subpart 2009.4 - Debarment, Suspension, and Ineligibility

#### §2009.403 Definitions.

As used in §2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, or the Head of the Contracting Activity (HCA), or the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

§2009.404 Lists of parties excluded from Federal procurement or non-procurement programs.

The cognizant contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)-(3).

§2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

§2009.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

§2009.405-2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

§2009.406 Debarment.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406-3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the

contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

§2009.407 Suspension.

§2009.407-3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the suspending official determines suspension is justified, the suspending official shall initiate the proposed

suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407-3(d) that the contractor is suspended.

#### §2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

#### Subpart 2009.5 Organizational Conflicts of Interest

##### §2009.500 Scope of subpart.

In accordance with Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. 2210a.), NRC acquisitions are processed in accordance with §2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance shall be followed.

##### §2009.570 NRC organizational conflicts of interest.

§2009.570-1 Scope of policy.

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely; the application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or

state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

§2009.570-2 Definitions.

As used in §2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in §2009.570-1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest including their

chief executives, directors, key personnel, proposed consultants or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term potential conflict of interest is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to information which has not been made available to the public, or to proprietary information. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

§2009.570-3      Criteria for recognizing contractor organizational conflicts of interest.

(a) General.

(1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) The ultimate determination by the NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) Situations or relationships. The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, such as a brief description of work being performed, the period of performance and the name and telephone number for a point of contact at the organization concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendation to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in §2009.570-5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications which are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs which could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(c) Policy application guidance. The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) Example. The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) Guidance. An NRC contract for that particular work normally would not be awarded to the ABC Corp. because

it would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) Example. The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component which is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) Guidance. An NRC contract may be awarded to the ABC Corp. because no conflict of interest exists which could bias the offeror with respect to the work. An appropriate clause should be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) Example. ABC Co. in response to a competitive RFP, submit a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 41 CFR Part 20. ABC Co. is the only firm determined to be technically acceptable. ABC Co. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) Guidance. This situation would place the firm in a role in which its judgment could be biased in relationship to its work for the NRC. Because the nature of the work required is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy in accordance with §2009.570-9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) Example. The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised the NRC that it intends to sell the new system to industry once

its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) Guidance. A contract could be awarded to the ABC Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs which is reported to the NRC by contractors will normally be disseminated by the NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When the NRC furnishes information about the reactor component to the contractor for the performance of contractor work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information developed about the performance of the reactor component under the contract is proposed to be used.

(5)(i) Example. The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and §2009.570-3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing

seismological studies for several utilities in the Eastern United States but none of the sites are within the geographic area contemplated by the NRC study.

(ii) Guidance. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. The work for others clause of §2052.209-74(c) must be used to preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(6)(i) AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct Divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services for an applicant or licensee that is required to be performed under the NRC's contract.

(ii) Guidance. An NRC contract for that particular work would not be awarded to the ABC Corp. because the AD Division could be placed in a position to pass judgment on work performed by the BC Division which could bias its work

for NRC. Further, the Conflict of Interest Provisions applies to ABC Corp. and not to separate or distinct Divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with §2009.570-9.

(d) Other considerations.

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

§2009.570-4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflict of interest representation provision at §2052.209-73 must be included in all solicitations and unsolicited proposals, including those for task orders and modifications for new work, for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion

would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

§2009.570-5 Contract clauses.

(a) General contract clause. All contracts and small purchases of the types set forth in §2009.570-4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in §2052.209-73.

(b) Other special contract clauses. If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with §2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

§2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror under the representation requirements of §2009.570-4(b) and other relevant information. After evaluating this information against the criteria of §2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, then the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures, or

(c) Award the contract under the waiver provision of §2009.570-9.

§2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do, in fact, exist and that it would not be in the best interest of the government to terminate the contract as provided in the clauses required by §2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate or, after obtaining a waiver in accordance with §2009.570-9, neutralize the effects of the identified conflict.

§2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors and consultants performing services in excess of \$10,000 in accordance with §2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with §2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this section.

§2009.570-9 Waiver.

(a) Determination with respect to the need to seek a waiver for specific contract awards is made by the contracting officer with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the contracting officer, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in

specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and

(3) Contractual and/or technical review and supervision methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC, unless release of such information is prohibited by law or regulation.

#### §2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010 - SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2010.004 - Brand name products or equal.

2010.011 - Solicitation provisions and contract clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2010.004 - Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may

result in a defective solicitation and the necessity to resolicit the requirements. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at §2052.210-70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

§2010.011 - Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at §2052.210-71, Drawings, Designs, Specifications, and Data in all contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses proscribed at FAR §27.409, Solicitation Provisions and Contract Clauses are included in the solicitation/contract, this clause will not be used.

#### PART 2012 - CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

#### Subpart 2012.104 - Contract clauses

§2012.104-70 NRC clauses.

(a) The contracting officer shall insert the clause at §2052.212-70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at §2052.212-71, Technical Progress Report, in all solicitations and contracts except (1) firm fixed price, and (2) indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at §2052.212-72, Financial Status Report, in all solicitations and contracts when detailed assessment of costs is warranted.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes only may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

#### SUBCHAPTER C - CONTRACTING METHODS AND CONTRACT TYPES

#### PART 2013 - SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2013.5 Purchase Orders

§2013.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

#### PART 2014 - SEALED BIDDING

##### Subpart 2014.2 Solicitation of Bids

Sec.

2014.201 Preparation of invitation for bids.

2014.201-670 Solicitation provisions.

Subpart 2014.4 Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406-3 Other mistakes disclosed before award.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2 Solicitation of Bids

§2014.201 Preparation of invitation for bids.

§2014.201-670 Solicitation provisions.

(a) The contracting officer shall insert the provision at §2052.214-70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids, except as noted, the provisions at:

- (1) Section 2052.214-71, Bidder Qualifications and Past Experiences. (optional, to fit circumstances)

(2) Section 2052.214-72, Bid Evaluation (paragraph f. is optional).

(3) Section 2052.215-73, Timely Receipt of Bids.

(4) Section 2052.214-74, Disposition of Bids.

#### Subpart 2014.4 Opening of Bids and Award of Contract

§2014.406 Mistakes in bids.

§2014.406-3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406-4.

#### Part 2015 - CONTRACTING BY NEGOTIATION

##### Subpart 2015.4 - Solicitation and Receipt of Proposals and Quotations

Sec.

2015.407-70 Solicitation provisions and contract clauses.

Subpart 2015.5 - Unsolicited Proposals

2015.506 Agency procedures.  
2015.506-1 Receipt and initial review.  
2015.506-2 Evaluation.  
2015.507 Contracting methods.

Subpart 2015.6 - Source Selection

2015.602 Applicability.  
2015.604 Responsibilities.  
2015.605 Evaluation factors.  
2015.607 Disclosure of mistakes before award.  
2015.608 Proposal evaluation.  
2015.610 Written or oral discussions.  
2015.611 Best and final offers.  
2015.612 Source Evaluation Panel (SEP) structure.  
2015.670 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.4 - Solicitation and Receipt of Proposals and  
Quotations

§2015.407-70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215-70, Key Personnel;

(2)(i) Section 2052.215-71, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(ii) Section 2052.215-72, Project Officer Authority - Alternate 1 (for solicitations for issuance of delivery orders for specific products/services).

(iii) Section 2052.215-72, Project Officer Authority - Alternate 1 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts);

(iv) This provision §2052.215-70 and Alternate 1 are intended for experienced, trained project officers, and may be altered to delete duties where appropriate.

(3) Section 2052.215-73, Timely Receipt of Proposals;

(4) Section 2052.215-74, Award Notification and Commitment of Public Funds; and

(5) Section 2052.215-75, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at §2052.215-76, Proposal Presentation and Format except that

(1) For all solicitations for negotiated task order contracts, paragraphs (e)(4)(xi) and (xii) shall be deleted (and the remainder renumbered), and the paragraph found at §2052.215-77 shall be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision §2052.215-76.

The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect a one-to-one relationship to the evaluation criteria.

(c) The contracting officer shall insert the provision at §2052.215-78, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit circumstances.

(d) The contracting officer shall insert the clauses at §2052.215-79, Travel Reimbursement, and §2052-215-80, Travel Approvals, in RFPs where there will be travel.

Subpart 2015.5 - Unsolicited Proposals

§2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Policy Branch (PB), is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to:

Chief, Policy Branch  
Division of Contracts and Property Management  
Mail Stop P-1118  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

This will ensure that the proposal is logged into the unsolicited proposal tracking system.

§2015.506-1 Receipt and initial review.

(a) The NRC, Division of Contracts and Property Management, Policy Branch (PB), shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) PB shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by the PB, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

§2015.506-2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the PB, in accordance with the criteria discussed in FAR 15.506-2(a).

§2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6 - Source Selection

§2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

§2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award. Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe these restrictions to ensure that they understand that unauthorized disclosure of information contained in or concerning proposals could compromise the acquisition process and is prohibited. A written acknowledgment of understanding must be obtained from each participant before he/she receives any proposal or participates in any discussion of proposals.

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict of interest problems with their evaluation duties. A form for this purpose must be

signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

#### §2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with §2015.407-70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/no go" evaluation factors.

#### §2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate proposals in accordance with the solicitation technical evaluation criteria, cost, and other terms of the solicitation. The SEP prepares the Competitive Range Recommendation Report for the review and approval of the Designating Official. The contracting officer uses this technical evaluation in determining the competitive range.

(b) The Designating Official (appointed by the requesting office) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Recommendation Report and the Final Evaluation Recommendation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in fully understanding the proposals and their strengths and weaknesses. Discussions also assure that the meanings and points of emphasis of solicitation

provisions have been

adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

§2015.611 Best and final offers.

The SEP evaluates the best and final offers. Proposals will be recorded and reranked by the SEP, as appropriate, and a Final Evaluation Recommendation Report will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Recommendation Report and will become part of the official file.

§2015.612 Source Evaluation Panel (SEP) structure.

(a) For all proposed contracts with total estimated values in excess of \$25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a Source Evaluation Panel (SEP).

(b) The SEP includes (1) at least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted

factors, and (2) a contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC. Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members notwithstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. For proposed procurements with a total estimated cost of less than \$500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be

carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to assure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

§2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at §2052.215-81, Contract Award and Evaluation of Proposals, in all solicitations except that:

(1) The contracting officer shall substitute the paragraph found at §2052.215-82 for paragraph (b) in all solicitations for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at §2052.215-83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and benchmarking criteria for ADP procurements.

#### Part 2016 - TYPES OF CONTRACTS

##### Subpart 2016.3 - Cost Reimbursement Contracts

###### Sec.

2016.307-70 Contract provisions and clauses.

##### Subpart 2016.5 - Indefinite-Delivery Contracts

2016.506-70 Contract provisions and clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2016.3 - Cost Reimbursement Contracts

§2016.307-70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at §2052.216-70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost plus award fee, cost plus fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216-71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216-72, Indirect Cost Rates - Alternate 1 (where predetermined rates apply).

(3) Section 2052.216-73, Indirect Cost Rates - Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5 - Indefinite-Delivery Contracts.

2016.506-70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216-74, Task Order Procedures;

(b) Section 2052.216-75, Accelerated Task Order Procedures.

#### Part 2017 - SPECIAL CONTRACTING METHODS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2017.2 - Options

##### §2017.204 - Contracts.

(a) The contracting officer may approve extensions to five year contracts, for up to a total of an additional six months, for the purpose of completing a competitive process which was begun not less than six months prior to the end of the fifth year.

(b) The Head of the Contracting Activity may approve extensions for up to a total of one year.

#### SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

#### Part 2019 - SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7 - Subcontracting with small business and small disadvantaged business concerns.

Sec.

2019.705           Responsibilities of the contracting officer under  
the subcontracting assistance program.

2019.705-4        Reviewing the subcontracting plan.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7 - Subcontracting with Small Business and Small  
Disadvantaged Business Concerns

§2019-705        Responsibilities of the contracting officer under the  
subcontracting assistance program.

§2019.705-4    Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns required to submit them and determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

#### Part 2020 - LABOR SURPLUS AREA CONCERNS

##### Subpart 2020.1 General

###### Sec.

2020.102 - General policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2020.1 - General

§2020.102 General policy.

Acquisitions that are in excess of \$25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from:

U.S. Department of Labor  
Employment and Training Administration  
U.S. Employment Service  
Office of Labor Market Information  
200 Constitution Ave., NW., Room N4456  
Washington, DC 20510  
Telephone Number: (202) 535-0157

Part 2022 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1 Basic Labor Policies.

Sec.

2022.103-4 Approvals.

Subpart 2022.9 Nondiscrimination Because of Age.

Sec.

2022.901-70 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2022.1 Basic Labor Policies

§2022.103-4 Approvals.

The agency approving official for approval of contractor overtime shall be the contracting officer.

Subpart 2022.9 - Nondiscrimination Because of Age.

§2022.901-70 Contract provisions.

The contracting officer shall insert the provision found at §2052.222-70, Nondiscrimination Because of Age, in all solicitations.

Part 2024 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1 Protection of Individual Privacy

Sec.

2024.103 Procedures.

Subpart 2024.2 - Freedom of Information Act

2024.202 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1 - Protection of Individual Privacy

§2024.103 Procedures.

The provisions at 10 CFR Part 9, Subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2 - Freedom of Information Act

§2024.202 Policy.

The provisions at 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations are applicable to the availability of NRC records to the public.

Part 2025 - FOREIGN ACQUISITION

Subpart 2025.1 - Buy American Act - Supplies

Sec.

2025.102 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2025.1 - Buy American Act - Supplies

§2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing.

For contracts exceeding \$1 million, the Head of the Contracting Activity shall approve the determination.

#### SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS

#### Part 2027 - PATENTS, DATA, AND COPYRIGHTS

#### Subpart 2027.3 - Patent Rights Under Government Contracts.

##### Sec.

2027.305 Administration of patent rights clauses.

2027.305-3 Follow-up by Government.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

#### Subpart 2027.3 - Patent Rights Under Government Contracts.

§2027.305 Administration of patent rights clauses.

The contracting officer shall assure that each contractor report is in writing on whether any patent rights are being claimed, prior to final payment and closeout of the contract.

§2027.305-3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or

royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or are there any to be paid directly to others.

(b) The contracting officer may waive any of the requirements paragraphs (a) (1)-(4) of this section, after documenting the file to indicate the -

(1) Impracticableness of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(c) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the

resolution to protect the Government's rights prior to making any final payment and closing out the contract.

#### Part 2030 - COST ACCOUNTING STANDARDS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2030.2 - CAS Program Requirements.

###### §2030.201-5 Waiver.

In accordance with the FAR 30.201-5(c), the Head of the Contracting Activity may waive CAS requirements.

#### Part 2031 - CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

##### Subpart 2031.1 - Applicability

###### §2031.109-70 Contract clauses.

The contracting officer shall insert the clause at §2052.231-70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor prior to the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

Part 2032 - CONTRACT FINANCING

Subpart 2032.4 - Advance Payments

Sec.

2032.402 General.

2032.406 Letters of credit.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4 - Advance Payments

§2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

§2032.406 - Letters of credit.

Prior to authorizing a letter of credit arrangement, the contracting officer shall coordinate with the Office of the Controller, Division of

Accounting and Finance, to ensure completeness of contractor submitted documentation.

## Part 2033 - PROTESTS, DISPUTES AND APPEALS

### Subpart 2033.1 - Protests

#### Sec.

2033.103 Protests to the agency.

2033.203 Applicability.

2033.211 Contracting officer's decision.

2033.214 Contract clause.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

### Subpart 2033.1 Protests

#### §2033.103 Protests to the agency.

(a) The agency may not process, or shall cease processing, agency level protests that are protested outside the agency.

(b) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial

solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals.

(c) In cases other than those covered in paragraph (b) of this section, protests shall be filed not later than ten working days after the basis of protest is known or should have been known, whichever is earlier.

#### §2033.203 Applicability.

(a) Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract of Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR Part 1023.

#### §2033.211 Contracting officer's decision.

(a) Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

#### §2033.214 Contract clause.

(a) The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to National security, the public health and safety, critical and major agency

programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

## SUBCHAPTER F - SPECIAL CATEGORIES OF CONTRACTING

### Part 2035 - RESEARCH AND DEVELOPMENT CONTRACTING

#### Sec.

2035.70 Contract clauses.

2035.71 Broad agency announcements.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

§2035.70 Contract clauses.

The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

(a) §2052.235-70, Publication of Research Results, except that in the case of universities, the contracting officer shall substitute the paragraph found at §2052.235-71 for paragraph c.

(b) §2052.235-72, Safety, Health and Fire Protection.

§2035.71 Broad agency announcements.

(a) Criteria for selecting contractors will include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or socio-economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

#### Part 2039 - ACQUISITION OF INFORMATION RESOURCES

##### Sec.

2039.001 Policy.

2039.002 Delegations of procurement authority.

AUTHORITY: 42 U.S.C 2201; 42 U.S.C. 5841; AND 41 U.S.C. 418(b).

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Management Directives, the Office of Information Resources Management will be responsible for development and approval of information resources studies, including analyses of alternatives, system life determinations, software conversion studies, and other requirements analyses for information resources management procurements in excess of \$25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Director, Office of Information Resources Management.

## SUBCHAPTER G - CONTRACT MANAGEMENT

### Part 2042 - CONTRACT ADMINISTRATION

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

#### Subpart 2042.8 - Disallowance of Costs

§2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a

written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at Subpart FAR 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs.

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall-

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision including any disallowance of questioned costs, and inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR Subpart 33.2, and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Requesting that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deducting the disallowed costs from the next invoice submitted under the contract;

(C) Deducting the disallowed costs on a schedule determined by the contracting officer after discussion with

the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advising the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

#### PART 2045 - GOVERNMENT PROPERTY

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

#### Subpart 2045.3 - Providing Government Property to Contractors

##### §2045.370 Providing government property (in general).

(a) A contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation,

installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property: and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware prior to the submission of the request for procurement action (RFP) that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFP to the Division of Contracts and Property Management.

#### SUBCHAPTER H - CLAUSES AND FORMS

#### Part 2052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 2052.2 Text of Provisions and Clauses

##### Sec.

2052.200 authority.

2052.204-70	Security.
2052.204-71	Site access badge requirements.
2052.209-70	Qualifications of contract employees.
2052.209-71	Current/former agency employee involvement.
2052.209-72	Contractor organizational conflicts of interest (representation).

2052.209-73	Contractor organizational conflicts of interest.
2052.210-70	Brand name products or equal.
2052.210-71	Drawings, designs, specifications, and other data.
2052.212-70	Preparation of technical reports.
2052.212-71	Technical progress report.
2052.212-72	Financial status report.
2052.214-70	Prebid conference.
2052.214-71	Bidder qualifications and past experiences.
2052.214-72	Bid evaluation.
2052.214-73	Timely receipt of bids.
2052.214-74	Disposition of bids.
2052.215-70	Key personnel.
2052.215-71	Project officer authority.
2052.215-72	Project officer authority - Alternate 1.
2052.215-73	Timely receipt of proposals.
2052.215-74	Award notification and commitment of public funds.
2052.215-75	Disposition of proposals.
2052.215-76	Proposal presentation and format.
2052.215-77	Proposal presentation and format - language for negotiated task order contracts.
2052.215-78	Preproposal conference.
2052.215-79	Travel reimbursement.
2052.215-80	Travel approvals.
2052.215-81	Contract award and evaluation of proposals.

2052.215-82	Contract award and evaluation of proposals - cost more important than technical merit.
2052.215-83	Contract award and evaluation of proposals - cost and technical merit of equal value.
2052.216-70	Level of effort.
2052.216-71	Indirect cost rates.
2052.216-72	Indirect cost rates - Alternate 1.
2052.216-73	Indirect cost rates - Alternate 2.
2052.216-74	Task order procedures.
2052.216-75	Accelerated task order procedures.
2052.222-70	Nondiscrimination because of age.
2052.231-70	Preaward costs.
2052.235-70	Publication of research results.
2052.235.71	Publication of research results - universities.
2052.235-72	Safety, health, and fire protection.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

#### Subpart 2052.2 Text of Provisions and Clauses

§2052.200 Authority.

§2052.204-70 Security.

As prescribed at §2004.404(a), insert the following clause in applicable solicitations and contracts:

### Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors or others (e.g., bidders) who have or may have an NRC contractual relationship which requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The

certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of National Security Information. The term "National Security Information," as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term "Restricted Data," as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this clause, means all data removed from the Restricted Data category under Section 142-d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also be required to execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with classification guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment shall provide that the subcontractor or supplier assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished by the contractor.

(End of Clause)

§2052.204-71 Site access badge requirements.

As prescribed at §2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirements

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with. Adherence to special requirements for Foreign Nationals, in accordance with NRC Manual Chapter 2101, Part VII.C is the responsibility of the contractor.

(End of Clause)

§2052.209-70 Qualifications of contract employees.

As prescribed at §2009.105-70(a), insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel and consultants are accurate.

(End of Provision)

§2052.209-71 Current/former agency employee involvement.

As prescribed at §2009.105-70(b), insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105-70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees can adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are no current/former NRC employees (including special Government employees

performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering or performing any contract, consultant agreement or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

§2052.209-72 Contractor organizational conflicts of interest  
(representation).

As prescribed in §2009.570-4(b) and 2009.570-8, insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to \_\_\_\_\_ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in §2009.570-3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in §2009.570-3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of §2009-570-9.

(b) The refusal to provide the representation required by §2009.570-4(b), or upon request of the contracting officer, the facts required by §2009.570-3(b), must result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for awards; or if nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(End of Provision)

§2052.209-73 Contractor organizational conflicts of interest.

As prescribed at §2009.570-5(a) and 2009-570-8, insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor: (1) is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor as defined in 48 CFR 2009.570-2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all of its employees under this

contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate) except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work at the site or work on the same technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570-2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(3) It is recognized that the scope of work of this task order type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task order type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Such disclosure must be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must be received by the NRC at least 15 days prior to the proposed award date in any event. The disclosure must include the statement of work and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task

order which includes the technical area and, if site specific, the site, or when such work violates 2052.973(c)(3).

(e) Access to and use of information.

(1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public, or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570-2(g), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in 48 CFR 2009.570-9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

§2052.210-70 Brand name products or equal.

As prescribed at §2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offerors (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to quality of the product(s) offered.

§2052.210-71 Drawings, designs, specifications, and other data.

As prescribed at §2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors.

These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use. These data must be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

§2052.212-70 Preparation of technical reports.

As prescribed at §2012.104-70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

§2052.212-71 Technical progress report.

As prescribed at §2012.104-70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, FIN number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period; milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution; (if the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact).

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

§2052.212-72 Financial status report.

As prescribed at §2012.104-70(c), insert the following clause in applicable solicitations and contracts:

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

- (1) Total estimated contract amount.
- (2) Total funds obligated to date.

- (3) Total costs incurred this reporting period.
- (4) Total costs incurred to date.
- (5) Provide a detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.
- (6) Balance of obligations remaining.
- (7) Balance of funds required to complete contract/task order.
- (8) Contractor Spending Plan (CSP) status:

(i) Projected percentage (%) of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(ii) Indicate if there has been a significant change in the original CSP projection in either dollars or percentage of completion. Identify what the change is, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to this item 8.

- (9) A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(b) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as backup to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232-20) or the Limitation of Funds (LOF) Clause FAR 52.232-22.

(End of Clause)

§2052.214-70 Prebid conference.

As prescribed in §2014.201-670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:

Date:	*
Location:	*
Time:	*

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than \* working day(s) prior to the conference date. Receipt of late questions may

result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify \* by letter or telephone \* , no later than close of business \* . Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled. (Optional statement: Due to space limitations, each potential bidder is limited to \* representatives at the conference.)

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission  
Division of Contracts and Property Management  
ATTN: \*  
Mail Stop \*  
Washington, DC 20555

(d) The envelope must be marked "Solicitation No. \* /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

\*To be incorporated into the solicitation.

(End of Provision)

§2052.214-71 Bidder qualifications and past experiences.

As prescribed in §2014.201-670(b)(1), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list \* previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.: \_\_\_\_\_

Name and address of

Government agency or

commercial entity: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Point of Contact and

Telephone Number: \_\_\_\_\_

\_\_\_\_\_

(2) Contract No.: \_\_\_\_\_

Name and address of

Government agency or

commercial entity: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Point of Contact and

Telephone Number: \_\_\_\_\_  
\_\_\_\_\_

(3) Contract No.: \_\_\_\_\_

Name and address of

Government agency or

commercial entity: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Point of Contact and

Telephone Number: \_\_\_\_\_  
\_\_\_\_\_

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Representative Name \_\_\_\_\_

Title \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

(2) Contracts/Business

Representative Name \_\_\_\_\_

Title\_\_\_\_\_

Telephone No. ( )\_\_\_\_\_

\*To be incorporated into the solicitation

(End of Provision)

§2052.214-72 Bid evaluation.

As prescribed at §2014.201-670(b)(2), insert the following provision in applicable solicitations:

Bid Evaluation

(a) Award will be made to that responsive, responsible bidder within the meaning of Federal Acquisition Regulation Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this IFB constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed

for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1 and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within \* hours after such request: (1) concerning their ability to meet any of the minimum standards set forth in FAR 9.104, (2) samples of work, and (3) names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity will cause the bid to be rejected as nonresponsive.

\*To be inserted into solicitation.

(End of Provision)

§2052.214-73 Timely receipt of bids.

As prescribed at §2014.670(b)(3), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§2052.214-74 Disposition of bids.

As prescribed at §2014.670(b)(4), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management. Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

§2052.215-70 Key personnel.

As prescribed at §2015.407-70(a)(2), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

\*

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work, is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the

contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss or damage.

(End of Clause)

\* To be incorporated into any resultant contract

§2052.215-71 Project officer authority.

As prescribed in §2015.407-70(a)(2)(1), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: \*

Address: \*

Telephone Number: \*

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term "technical direction" is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the Changes Clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to §52.233-1 - Disputes.

(i) In addition to providing technical direction as defined above, the project officer shall---

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

(End of Clause)

§2052.215-72 Project officer authority - Alternate 1.

As prescribed at §2015.407-70(2)(ii)&(iii), insert the following clause in applicable solicitations and contracts:

Project Officer Authority - Alternate 1

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: \*

Address: \*

Telephone Number: \*

(b) The project officer shall--

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

\*To be incorporated into any resultant contract

(End of Clause)

§2052-215-73 Timely receipt of proposals.

As prescribed in §2015.407-70(a)(3), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§2052.215-74 Award notification and commitment of public funds

As prescribed at §2015.407-70(a)(4), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided prior to award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include ---

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

§2052.215-75 Disposition of proposals.

As prescribed in §2015.407-70(a)(5), insert the following provision in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management. Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

§2052.215-76 Proposal presentation and format.

As prescribed at §2015.407-70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and \* copies of the "Cost Proposal" must be submitted.

(3) One (1) original and \* copies of the "Technical and Management Proposal" must be submitted.

(c) Correctness of the Proposal.

Caution--offerors are hereby notified that all information provided in its proposals, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all such representations made by the offeror both in the evaluation process and for the performance of the work by the offeror

selected for award. The Commission may require the offeror to substantiate the credentials, education and employment history of its employees, subcontractor personnel and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost Proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds \$100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(3) For any subcontract discussed under the Technical and Management Proposal, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(e) Technical and Management Proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must set forth as a minimum, the manner and sequence outlined below:

(i) Discussion of the statement of work to substantiate the offeror's understanding of the work requirements.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(vi) Identification of "Key Personnel," and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumes for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explanation of the need for such services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list of proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation of technical evaluation leading to the selection.

(xi) A detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Projected scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Description of the management organizational structure delineating areas of responsibility and authority under the proposed contract. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls and subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) List of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of \* previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title and full telephone number for the proposer's technical representative and contracts/business representative.

(xix) \* \_\_\_\_\_ \* \* \_\_\_\_\_ \* \* \_\_\_\_\_ \* \* \_\_\_\_\_ \* \* \_\_\_\_\_ \*

\* To be incorporated into the solicitation

(End of Provision)

§2052.215-77 Proposal presentation and format - language for negotiated task order contracts.

As prescribed at §2015.407-70(b)(1), insert the following language in provision §2052.215-76.

(d) Cost Proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

(End of Provision)

§2052.215-78 Preproposal conference.

As prescribed at §2015.407-70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date:	*
Location:	*
Time:	*

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation.

You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than \* working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify \* by letter or telephone \* , no later than close of business \* . Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled. (Optional statement: Due to space limitations, each potential proposer is limited to \* representatives at the conference.)

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission  
Division of Contracts and Property Management  
ATTN: \*  
Mail Stop \*  
Washington, DC 20555

(d) The envelope must be marked "Solicitation No. \* /Preproposal Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

\*To be incorporated into the solicitation.

(End of Provision)

\*To be incorporated into any resultant contract

§2052.215-79 Travel reimbursement.

As prescribed at §2015.407-70(d), insert the clauses in applicable solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed \*\_\_\_\_\_ without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to participate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined in accordance with the specific travel regulations cited in FAR §31.205-46, as are in effect on the date of the trip. Travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100-679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A-87, Cost Principles for State and Local Governments; OMB Circular A-122, Cost Principles for Nonprofit Organizations; and OMB Circular A-21, Cost Principles for Educational Institutions.

(d) When the Government changes the Federal Travel Regulations, or other applicable regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

\*To be incorporated into any resultant contract

(End of Clause)

§2052.215-80 Travel approval

As prescribed in §2015.407-70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

\*To be incorporated into any resultant contract

(End of Clause)

§2052.215.81 Contract award and evaluation of proposals.

As prescribed in §2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation of Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph \* below. These factors are listed in their relative order of importance.

Award is made to the offeror (1) whose proposal is technically acceptable, (2) whose technical/cost relationship is most advantageous to the Government, and (3) who is considered to be responsible within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may --

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan

(CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

\* To be incorporated into the solicitation.

(End of Provision)

§2052.215-82 Contract award and evaluation of proposals - cost more important than technical merit.

As prescribed at §2015.670(1), substitute the following paragraph for paragraph (b) in the clause at §2052.215.81:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

§2052.215-83 Contract award and evaluation of proposals - cost and technical merit of equal value.

As prescribed at §2015.670(2), substitute the following paragraph for paragraph (b) in the clause at §2052.215.81:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

§2052.216-70 Level of effort.

Level of Effort

As prescribed at §2016.307-70(a), insert the following provision in applicable solicitations:

The NRC's estimate of the total effort for this project is approximately \* professional and \* clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

\*To be incorporated into any resultant contract

(End of Provision)

§2052.216-71 Indirect cost rates.

As prescribed at §2016.307-70(b)(1), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

★

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

\*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-72 Indirect cost rates - Alternate 1.

As prescribed at §2016.307-70(b)(2), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates - Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined (fixed) rates:

\*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-73 Indirect cost rates - Alternate 2.

As prescribed at §2016.307-70(b)(3), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates - Alternate 2

(a) For this contract, the amount reimbursable for indirect costs is as follows:

\*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

\*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-74 Task order procedures.

As prescribed at §2016.506-70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task Order Request for Proposal.

When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which includes the following, as appropriate --

- (1) Scope of work/meetings/travel and deliverables;
- (2) Reporting requirements;
- (3) Period of performance - place of performance;
- (4) Applicable special provisions;
- (5) Technical skills required; and
- (6) Estimated level of effort.

(b) Task Order Proposal.

By the date specified in the TORP, the contractor shall deliver to the contracting officer a written proposal that provides the following technical and cost information, as appropriate --

(1) Technical Proposal Content;

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience and a list of any pertinent publications authored by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost Proposal.

The contractor's cost proposal for each task order must be prepared using Standard Form 1411, Contract Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds \$100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task Order Award.

The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following --

- (1) Statement of work/meetings/travel and deliverables;
- (2) Reporting requirements;
- (3) Period of performance;
- (4) Key personnel;
- (5) Applicable special provisions; and
- (6) Total task order amount including any fixed fee.

(End of Clause)

§2052.216-75 Accelerated task order procedures.

As prescribed at §2016.506-70(b), insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233-1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

§2052.222-70 Nondiscrimination because of age.

As prescribed at §2022.901-70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that (a) contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements, and (b) that contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

§2052.231-70    Preaward costs.

As prescribed in §2031.109-70, insert the following clause in applicable solicitations and contracts:

Preaward Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from \* and including \* to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed \* which is included in the estimated cost of this contract.

\*To be incorporated into any resultant contract

(End of Clause)

§2052.235-70 Publication of research results.

As prescribed in §2035.70, insert the following clause in applicable solicitations and contracts:

Publication of Research Results

The principal investigator(s)/contractor shall comply with the provision of NRC Management Directive 3.8 (formerly MC 3206) regarding publication in referred scientific and engineering journals or dissemination to the public of any information, oral or written concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

The principal investigator(s)/contractor may publish the results of this work in referred scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

Prior to any such publication, the contractor shall submit the proposed publication to the NRC Contracting Officer and Project Officer for review and approval.

(End of Clause)

§2052.235-71 Publication of research results - universities

As prescribed at §2052.235-70, substitute the following paragraph (c) below, for paragraph (c) in §2052.235-70.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is (1) subject to

Commission approval, or (2) has not been ruled upon, or (3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's Sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

§2052.235-72 Safety, health, and fire protection.

As prescribed in §2035.70, insert the following clause in applicable solicitations and contracts:

Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the

work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

Part 2053 - Forms [RESERVED]

Dated at Bethesda, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry, Director,  
Office of Administration.