

**DEPARTMENT OF ENERGY**

**48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971**

**RIN 1991-AB25**

**Acquisition Regulation; Regulatory Reinvention**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR) in its continuing effort to streamline and simplify the acquisition process and to meet the objectives of several Executive Orders (EO), including: EO 12861, Elimination of One-Half of Executive Branch Internal Regulations; EO 12931, Federal Procurement Reform; and EO 12866, Regulatory Planning and Review. This rule revises certain regulatory material and deletes other material that has been determined to be nonregulatory and unnecessary. Specific material that is revised or deleted from the DEAR is summarized in the "Section-by-Section Analysis" appearing later in this document.

**EFFECTIVE DATE:** This final rule is effective September 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Smith, Office of Policy (HR-51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586-8189.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

Executive Order (EO) 12861, dated September 11, 1993, Elimination of One-Half of Executive Branch Internal Regulations, was issued by the President to streamline Government operations, improve productivity, and improve customer service. EO 12931, dated October 13, 1994, Federal Procurement Reform, calls for significant changes to make the Government procurement process more effective and efficient. EO

12866, dated September 30, 1993, Regulatory Planning and Review, requires agencies to review regulations to improve effectiveness and to reduce regulatory burden. This rule represents DOE's third action to eliminate existing regulatory material that is unnecessary. In promulgating this rule, the Department will further the objectives of the EOs by reducing the volume of the DEAR; streamlining operations; reducing constraints, prescriptive requirements, and administrative processes; making requirements outcome oriented vs. process oriented; and, defining roles and assigning responsibilities at the lowest appropriate level within the procurement organization. This rule makes three types of changes to the DEAR. Certain regulatory coverage is being revised and condensed to simplify and streamline the acquisition process; substantive policy changes have not been made in these areas. In addition, to implement certain requirements of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, regarding the availability of protest files and agency protest reviews, two new solicitation provisions are being added. Consistent with the requirements of E.O. 12979, dated October 25, 1995, Agency Procurement Protests, language also is being added to encourage the use of alternative dispute resolution procedures in appropriate circumstances. Finally, other material that has been determined to be nonregulatory in nature is being removed from the DEAR, including informational material and internal guidance and procedures.

**II. Section-by-Section Analysis**

1. Part 901 is revised to simplify the language, remove informational material, and remove internal procedures addressing deviations to the regulation, ratification of unauthorized commitments, and selection of contracting officers and their representatives.
2. Subpart 905.4, addressing the internal DOE process for release of contract information, is removed.
3. Section 906.302, citing the Atomic Energy Act authority for circumstances permitting other than full and open competition, is removed.
4. Section 906.303, addressing the internal procedures for processing noncompetitive justifications, is removed.
5. Subpart 908.3, addressing the acquisition of utility services, is moved to the new Part 941.
6. Subpart 908.8, addressing the acquisition of printing and related

supplies, and Subpart 908.11, addressing the leasing of motor vehicles, are revised to simplify the language and to remove informational material.

7. Subpart 915.5, addressing unsolicited proposals, is revised to simplify the language, remove informational material, and remove internal procedures.

8. Subpart 915.6, addressing internal source selection procedures, is removed.

9. Subsection 915.970-8, addressing weighted guidelines application considerations, is revised to remove informational material and internal guidance.

10. Section 916.405, containing recommended language for award fee contract clauses, is removed.

11. Subpart 917.70, addressing cost participation, is revised to simplify the language, remove informational material, and remove internal procedures.

12. Subpart 917.72, addressing Program Opportunity Notices for commercial demonstrations, is revised to simplify the language, remove informational material, and remove internal procedures.

13. Subpart 917.73, addressing Program Research and Development Announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

14. Subpart 917.74, addressing the acquisition, use and disposal of real estate, is revised to simplify the language, remove informational material, and remove internal procedures.

15. Subpart 917.75, providing guidance for the use of multiple awards-phased acquisitions, is removed.

16. Section 922.805, providing guidance to the contracting officer for obtaining affirmative action program posters, is removed.

17. Subpart 922.70, providing guidance regarding construction laborers and mechanics, is removed.

18. Subpart 928.1, addressing the use of bonds, is revised to simplify the language, remove informational material, and remove internal procedures.

19. Section 932.102, providing information on contract financing, is revised to simplify the language, remove informational material, and remove internal procedures.

20. Subpart 932.7, providing information on contract financing, is removed.

21. Section 932.802, providing information on the use of partial assignments, is removed.

22. Section 932.805, providing internal procedures for the information to be furnished to assignees, is removed.

23. Subpart 932.9, addressing prompt payments, is revised to simplify the language, remove informational material, and remove internal procedures.

24. Section 932.7000, providing introductory information on loan guarantees, is removed.

25. Section 932.7001, providing definitions, is removed.

26. Subpart 933.1, addressing protests, is revised to update and simplify the language, remove informational material, remove internal procedures, add two new solicitation provisions that address protest file availability and agency protest review, and add alternative dispute resolution procedures.

27. Section 935.016, addressing research opportunity announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

28. Sections 936.601, 936.602-2, 936.602-3, and 936.602-4, providing internal procedures for contracting for architect-engineer services, are removed.

29. Sections 936.603, 936.605, and 936.606, providing internal procedures for contracting for architect-engineer services, are removed.

30. Subpart 936.72, providing internal information and guidance for the acquisition of special equipment, is removed.

31. Part 941, addressing the acquisition of utility services, is added to include the coverage, as revised, that was previously contained in Part 908.

32. Subsection 942.705-1, addressing final indirect cost rate determinations, is revised to simplify the language.

33. Subsection 942.705-3, addressing negotiated rates for educational institutions, is revised to simplify the language.

34. Subsection 942.705-4, addressing negotiated rates for state and local governments, is revised to simplify the language.

35. Subsection 942.705-5, addressing negotiated rates for nonprofit organizations other than educational and state and local governments, is revised to simplify the language.

36. Subpart 942.70, providing internal guidance and procedures for obtaining audit support services, is removed.

37. Subsection 945.505-5, providing internal guidance for making records of plant equipment, is removed.

38. Subsection 945.505-14, providing information for the completion of Government property reports, is removed.

39. Section 952.214, addressing clauses related to sealed bidding, is removed as there is no material under that section title.

40. Section 952.215, addressing clauses related to contracting by negotiation, is removed as the prescriptions for those clauses were removed in an earlier final rule.

41. Subsection 952.233-2 is revised to change the DOE office that receives copies of protests.

42. Subsection 952.233-4 is added to include a new solicitation provision regarding the availability of protest files.

43. Subsection 952.233-5 is added to include a new solicitation provision regarding agency protest reviews.

44. Subsection 952.251-70 is amended to correct the date of the contract clause Contractor Employee Travel Discounts.

45. Part 971, providing internal procedures for the review and approval of contract actions, is removed.

### III. Comments on the Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the Federal Register on May 3, 1996 (61 FR 19891). Interested parties were invited to participate in this rulemaking by submitting comments with respect to the DEAR amendments set forth in the Notice of Proposed Rulemaking. The public comment period closed on July 2, 1996, a period of 60 days. During this period, comments were received from one corporation. These comments focused on the deletion of internal guidance material directed to the Department's acquisition personnel. The corporation stated that some of the information being removed may be helpful to businesses, especially those that are relatively new to contracting with the Government. While we agree that some of this information may be helpful, the material being removed is not regulatory in nature and is not suitable for inclusion in the DEAR pursuant to the direction and guidance provided in the Executive Orders cited above. Removal of this material does not change the Department's acquisition policies. Information on the issues identified in the comments (1) is already publicly available in statutes or the Federal Acquisition Regulation, (2) will be provided in solicitations or announcements issued by the Department for particular acquisitions, or (3) is in internal agency Guides that are available to the public.

No revisions to the rulemaking have been made based on the one submission of comments. However, the final rule does reflect changes from the proposed

rule in two areas. The first is in § 908.71, which addresses the acquisition of special items. The rule as proposed would have rewritten this subpart to streamline it. Based on further internal review, Subpart 908.71 will not be amended in this rulemaking and will remain unchanged. The second change is in Part 933, which addresses protests. This final rule makes technical changes in Part 933 by removing references to the General Services Administration Board of Contract Appeals (GSBCA). Pursuant to the Federal Acquisition Reform Act of 1996, the GSBCA will not perform bid protest functions after August 8, 1996.

### IV. Procedural Requirements

#### A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is

unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

#### *C. Review Under the Regulatory Flexibility Act*

The proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. In the preamble to the proposed rule, DOE noted that the proposed rule would reduce the volume of the DEAR, streamline procurement processes, reduce constraints, prescriptive requirements, and administrative processes, and make requirements outcome oriented rather than process oriented. As this rule eliminates regulatory requirements from the acquisition process, it will likely ease the burden placed on small businesses that contract with DOE. Based on this review, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

#### *D. Review Under the Paperwork Reduction Act*

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

#### *E. Review Under Executive Order 12612*

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

#### *F. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

List of Subjects in 48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971

#### *Government procurement.*

Issued in Washington, D.C., on July 29, 1996.

Richard H. Hopf,  
*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below: 1. The authority citation for Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Part 901 is revised to read as follows:

### **PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM**

#### **Subpart 901.1—Purpose, Authority, Issuance**

Sec.

901.101 Purpose.

901.102 Authority.

901.103 Applicability.

901.104 Issuance.

901.104-1 Publication and code arrangement.

901.104-2 Arrangement of regulations.

901.104-3 Copies.

901.105 OMB control numbers.

#### **Subpart 901.3—Agency Acquisition Regulations**

901.301-70 Other issuances related to acquisition.

#### **Subpart 901.6—Contracting Authority and Responsibilities**

901.601 General.

901.602-3 Ratification of unauthorized commitments.

#### **Subpart 901.1—Purpose, Authority, Issuance**

##### **901.101 Purpose.**

The Department of Energy Acquisition Regulation (DEAR) in this chapter establishes uniform acquisition policies which implement and supplement the Federal Acquisition Regulation (FAR).

##### **901.102 Authority.**

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 486(c)), and other applicable law.

##### **901.103 Applicability.**

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this chapter.

##### **901.104 Issuance.**

##### **901.104-1 Publication and code arrangement.**

(a) The DEAR and its subsequent changes are published in the Federal Register, cumulative form in the Code of Federal Regulations, and a separate loose-leaf edition.

(b) The DEAR is issued as chapter 9 of Title 48 of the Code of Federal Regulations.

##### **901.104-2 Arrangement of regulations.**

(a) General. The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR.

(b) Numbering. The numbering illustrations at (FAR) 48 CFR 1.104-2(b) apply to the DEAR, but the DEAR numbering will be preceded with a 9 or a 90. Material which supplements the FAR will be assigned the numbers 70 and up.

##### **901.104-3 Copies.**

Copies of the DEAR published in the Federal Register or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

##### **901.105 OMB control numbers.**

The Paperwork Reduction Act of 1980, Public Law 98-511, and the Office of Management and Budget's implementing regulations at 5 CFR part 1320, require that reporting and record

keeping requirements affecting 10 or more members of the public be cleared by that Office. The OMB control number for the collection of information under 48 CFR chapter 9 is 1910-4100.

### **Subpart 901.3—Agency Acquisition Regulations**

#### **901.301-70 Other issuances related to acquisition.**

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

### **Subpart 901.6—Contracting Authority and Responsibilities**

#### **901.601 General.**

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of Contracting Activities (HCA). These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

#### **901.602-3 Ratification of unauthorized commitments. (DOE coverage—paragraph (b))**

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of \$25,000 or under. The ratification authority of the HCA is nondelegable.

## **PART 905—PUBLICIZING CONTRACT ACTIONS**

### **Subpart 905.4—[Removed]**

3. Subpart 905.4 (sections 905.403, 905.403-70, and 905.404-1) is removed.

## **PART 906—COMPETITION REQUIREMENTS**

### **906.302 and 906.302-7 [Removed]**

4. Section 906.302 and 906.302-70 are removed.

### **906.303 and 906.303-1 [Removed]**

5. Section 906.303 and 906.303-1 are removed.

## **PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

### **Subpart 908.3—[Removed]**

6. Subpart 908.3 (sections 908.303, 908.303-70, 908.303-71, and 908.307) is removed.

7. Subpart 908.8 is revised to read as follows:

#### **Subpart 908.8—Acquisition of Printing and Related Supplies**

Sec.  
908.802 Policy.

#### **Subpart 908.8—Acquisition of Printing and Related Supplies**

**908.802 Policy. (DOE coverage—paragraph (b))**

(b) Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35-2 through 35-4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 48 CFR 952.208-70.

8. Subpart 908.11 is revised to read as follows:

#### **Subpart 908.11—Leasing of Motor Vehicles**

Sec.  
908.1102 Presolicitation requirements.  
908.1104 Contract clauses.  
908.1170 Leasing of fuel-efficient vehicles.

#### **Subpart 908.11—Leasing of Motor Vehicles**

##### **908.1102 Presolicitation requirements. (DOE coverage—paragraph (a))**

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

##### **908.1104 Contract clauses. (DOE coverage—paragraph (e))**

(e) The clause at 48 CFR 952.208-7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by (FPMR) 41 CFR 101-38.6.

##### **908.1170 Leasing of fuel-efficient vehicles.**

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and

Conservation Act of 1975 (EPCA), Public Law 94-163 and of Executive Order 12003 and subsequent implementing regulations.

(b) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

## **PART 915—CONTRACTING BY NEGOTIATION**

9. Subpart 915.5 is revised to read as follows:

### **Subpart 915.5—Unsolicited Proposals**

Sec.  
915.502 Policy.  
915.503 General.  
915.505 Content of unsolicited proposals.  
915.506 Agency procedures.  
915.507 Contracting methods.

### **Subpart 915.5—Unsolicited Proposals**

#### **915.502 Policy.**

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;

(5) Assures that each proposal is evaluated in a fair and objective manner; and,

(6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals

shall be processed in accordance with the procedures at 48 CFR 943.170.

**915.503 General. (DOE coverage—paragraph (f))**

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.

**915.505 Content of unsolicited proposals. (DOE coverage—paragraph (b))**

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 48 CFR 917.70.

**915.506 Agency procedures. (DOE coverage—paragraph (b))**

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator, Office of Procurement and Assistance, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

**915.507 Contracting methods. (DOE coverage—paragraph (d))**

(d) DOE's cost participation policy, at 48 CFR 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

**Subpart 915.6—[Removed]**

10. Subpart 915.6 (sections 915.610, 915.612, and 915.613) is removed.

11. Subsection 915.970–8 is revised to read as follows:

**915.970–8 Weighted guidelines application considerations.**

The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.

**PART 916—TYPES OF CONTRACTS**

**916.405 [Removed]**

12. Section 916.405 is removed.

**PART 917—SPECIAL CONTRACTING METHODS**

13. Subpart 917.70 is revised to read as follows:

**Subpart 917.70—Cost Participation**

Sec.  
917.7000 Scope of subpart.  
917.7001 Policy.

**Subpart 917.70—Cost Participation**

**917.7000 Scope of subpart.**

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and/or demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

**917.7001 Policy.**

(a) When DOE supports performer research, development, and/or demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided on a case-by-case basis.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations of technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

14. Subpart 917.72 is revised to read as follows:

**Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations**

Sec.  
917.7200 Scope of subpart.  
917.7201 Policy.  
917.7201–1 General.

**Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations**

**917.7200 Scope of subpart.**

(a) This subpart discusses the policy for the use of a program opportunity notice solicitation approach to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) This subpart applies to demonstrations performed by individuals, educational institutions, commercial or industrial organizations, or other private entities, public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrations of technological advances, field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

**917.7201 Policy.****917.7201-1 General.**

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Each program opportunity notice shall as a minimum describe: the goal of the intended demonstration effort; the time schedule for award; evaluation criteria; program policy factors; the amount of cost detail required; and proposal submission information. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process.

15. Subpart 917.73 is revised to read as follows:

**Subpart 917.73—Program Research and Development Announcements**

Sec.

917.7300 Scope of subpart.

917.7301 Policy.

917.7301-1 General.

**Subpart 917.73—Program Research and Development Announcements****917.7300 Scope of subpart.**

(a) This subpart discusses the policy for the use of a program research and development announcement (PRDA) solicitation approach to obtain and select proposals from the private sector for the conduct of research, development, and related activities in the energy field.

**917.7301 Policy.****917.7301-1 General.**

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's

intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

(2) Consistent with paragraph (c)(1) of this section, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in paragraph (c)(1) of this section.

(d) Each PRDA shall as a minimum describe: the area(s) of program interest;

time schedule for award; proposal submittal information; evaluation criteria; and program policy factors. The PRDA should clearly emphasize to proposers that program policy factors are essentially beyond their control and will affect the selection process. The PRDA should also state that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement.

16. Subpart 917.74 is revised to read as follows:

**Subpart 917.74—Acquisition, Use, and Disposal of Real Estate**

Sec.

917.7401 General.

917.7402 Policy.

917.7403 Application.

**Subpart 917.74—Acquisition, Use, and Disposal of Real Estate****917.7401 General.**

Special circumstances and situations may arise under cost-type contracts when, in the performance of the contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

**917.7402 Policy.**

It is the policy of the Department of Energy that, when real estate acquisitions are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest cancellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

#### **917.7403 Application.**

The clause at 48 CFR 952.217-70 shall be included in contracts or modifications where contractor acquisitions are expected to be made.

#### **Subpart 917.75—[Removed]**

17. Subpart 917.75 (sections 917.7500, 917.7501, and 917.7502) is removed.

### **PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION**

#### **922.805 [Removed]**

18. Section 922.805 is removed.

#### **Subpart 922.70—[Removed]**

19. Subpart 922.70 (sections 922.7000 and 922.7001) is removed.

### **PART 928—BONDS AND INSURANCE**

20. Subpart 928.1 is revised to read as follows:

#### **Subpart 928.1—Bonds**

Sec.  
928.101-1 Policy on use.  
928.103-3 Payment bonds.  
928.103-70 Review of performance and payment bonds for other than construction.

#### **Subpart 928.1—Bonds**

##### **928.101-1 Policy on use.**

In addition to the restriction on use of bid guarantees in FAR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

##### **928.103-3 Payment bonds.**

A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

##### **928.103-70 Review of performance and payment bonds for other than construction.**

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

### **PART 932—CONTRACT FINANCING**

21. Section 932.102 is revised to read as follows:

#### **932.102 Description of contract financing methods. (DOE coverage—paragraph (e))**

(e)(2) Progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

#### **Subpart 932.7—[Removed]**

22. Subpart 932.7 (section 932.703-1) is removed.

#### **932.802 [Removed]**

23. Section 932.802 is removed.

#### **932.805 [Removed]**

24. Section 932.805 is removed.

25. Subpart 932.9 is revised to read as follows:

#### **Subpart 932.9—Prompt Payment**

Sec.  
932.970 Implementing DOE policies and procedures.

#### **Subpart 932.9—Prompt Payment**

##### **932.970 Implementing DOE policies and procedures.**

(a) *Invoice payments.* (1) *Contract Settlement Date.* For purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments.* Contracting officers may specify payment due dates that are less than the standard 30 days when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing

payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

#### **932.7000 [Removed]**

26. Section 932.7000 is removed.

#### **932.7001 [Removed]**

27. Section 932.7001 is removed.

### **PART 933—PROTESTS, DISPUTES AND APPEALS**

28. Subpart 933.1 is revised to read as follows:

#### **Subpart 933.1—Protests**

Sec.  
933.103 Protests to the agency.  
933.104 Protests to GAO.  
933.106 Solicitation provisions.

#### **Subpart 933.1—Protests**

##### **933.103 Protests to the agency. (DOE coverage—paragraphs (f), (i), (j), and (k))**

(f) If FAR 33.103(f) requires that award be withheld or performance be suspended or the awarded contract be terminated pending resolution of an agency protest, authority to award and/or continue performance of the protested contract may be requested by the Head of the Contracting Activity (HCA), concurred in by counsel, and approved by the Procurement Executive.

(i)(1) Protests filed with the contracting officer before or after award shall be decided by the Head of the Contracting Activity except for the following cases, which shall be decided by the Procurement Executive:

(i) The protester requests that the protest be decided by the Procurement Executive.  
(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on DOE acquisition policy.



(2) Upon receipt of a protest requesting a decision by the Procurement Executive, the contracting activity shall immediately provide a copy of the protest to the Office of Clearance and Support.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral. Upon receipt of a protest requesting a decision at the Headquarters level, the Office of Clearance and Support will explore with the protester whether the use of ADR techniques would be appropriate to resolve the protest. Both parties must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iii). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Office of Clearance and Support within 21 calendar days of being notified of such a protest with a proposed response to the protest. The Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i)(1) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

#### **933.104 Protests to GAO. (DOE coverage—paragraphs (a), (b), (c), and (g))**

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the Head of the Contracting Activity in accordance with FAR 33.104(b). Before the Head of the Contracting Activity authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive. The

finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the Head of the Contracting Activity authorizes performance, the finding required by FAR 33.104(c)(2) shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at FAR 33.104(f), shall be provided by the HCA making the award, after approval of the Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests. 933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at FAR 52.233-2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 48 CFR 952.233-2.

(b) The contracting officer shall include the provision at 48 CFR 952.233-4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 48 CFR 952.233-5 in solicitations for purchases above the simplified acquisition threshold.

#### **PART 935—RESEARCH AND DEVELOPMENT CONTRACTING**

29. Subsections 935.016-3 through 935.016-7 and 935.016-9 are removed, and section 935.016 and subsections 935.016-1, 935.016-2 and 935.016-8 are revised to read as follows:

##### **935.016 Research opportunity announcements.**

###### **935.016-1 Scope.**

(a) FAR 35.016 sets forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation FAR 6.102(d)(2). Within DOE, broad agency announcements will be designated as

Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and funds availability.

###### **935.016-2 Applicability.**

(a) This section applies to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Public Law 97-258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, or commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with 48 CFR 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with 48 CFR 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with FAR part 15;



(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) The following limitations are applicable to the use of ROAs:

(1) The use of broad agency announcements for the acquisition of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from, and contracts shall not be awarded to, any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities. This limitation shall not be used to preclude the parent organization of the entity operating the Government-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates from proposing, or receiving awards, under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

#### **935.016-8 Selection of proposals.**

(a) After considering the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, the Selection Official shall determine whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, as appropriate, such issues as:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the program office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within six (6) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than six (6) months have passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination.

### **PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

#### **936.601 through 936.602-4 [Removed]**

30. Sections 936.601, 936.602-2, 936.602-3, and 936.602-4 are removed.

#### **936.603 through 936.606 [Removed]**

31. Sections 936.603, 936.605, and 936.606 are removed.

#### **Subpart 936.72—[Removed]**

32. Subpart 936.72 (sections 936.7200, 936.7201, and 936.7202) is removed.

33. Part 941 is added at the end of Subchapter F as follows:

### **PART 941—ACQUISITION OF UTILITY SERVICES**

#### **Subpart 941.2—Acquiring Utility Services**

Sec.

941.201-70 DOE Directives.

941.201-71 Use of subcontracts.

#### **Subpart 941.2—Acquiring Utility Services**

##### **941.201-70 DOE Directives.**

Utility services (defined at FAR 41.101) shall be acquired in accordance with FAR part 41 and DOE Directives in subseries 4540 (Public Services).

##### **941.201-71 Use of subcontracts.**

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water and/or sewerage at facilities owned or leased by DOE shall not be acquired under a

subcontract arrangement, except as provided for at 48 CFR 970.0803 or if the prime contract is with a utility company.

### **PART 942—CONTRACT ADMINISTRATION**

34. Subsection 942.705-1 is revised to read as follows:

#### **942.705-1 Contracting officer determination procedure. (DOE coverage—paragraphs (a) and (b))**

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A list of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b) (1) Pursuant to FAR 52.216-7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates.

The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

35. Subsection 942.705-3 is revised to read as follows:

#### **942.705-3 Educational institutions. (DOE coverage—paragraph (a))**

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A-88 are distributed to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor by the Office of Policy, within the Headquarters procurement organization.

36. Subsection 942.705-4 is revised to read as follows:

#### **942.705-4 State and local governments.**

A list of cognizant agencies for State/local government organizations is periodically published in the Federal Register by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities is distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

37. Subsection 942.705-5 is revised to read as follows:

#### **942.705-5 Nonprofit organizations other than educational and state and local governments.**

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of

indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. There is no published list of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

**Subpart 942.70—[Removed]**

38. Subpart 942.70 (sections 942.7000, 942.7001, 942.7002, 942.7003, 942.7003-1 through 942.7003-9, and 942.7004) is removed.

**PART 945—GOVERNMENT PROPERTY**

**945.505-5 [Removed]**

39. Subsection 945.505-5 is removed.

**945.505-14 [Removed]**

40. Subsection 945.505-14 is removed.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**952.214 [Removed]**

41. Section 952.214 is removed.

**952.215 [Removed]**

42. Section 952.215 and subsections 952.215-22 and 952.215-23 are removed.

43. Subsection 952.233-2 is revised to read as follows:

**952.233-2 Service of protest.**

As prescribed in 48 CFR 933.106(a), add the following to the end of the clause at FAR 52.233-2:

(c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

44. Subsection 952.233-4 is added to read as follows:

**952.233-4 Notice of protest file availability.**

As prescribed in 933.106(b), insert the following provision:

Notice of Protest File Availability (Sep 1996)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the contracting officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents

available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

45. Subsection 952.233-5 is added to read as follows:

**952.233-5 Agency protest review.**

As prescribed in 48 CFR 933.106(c), insert the following provision:

Agency Protest Review (Sep 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

**952.251-70 [Amended]**

46. Subsection 952.251-70 is amended by revising the date of the clause to read "(June 1995)".

**PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS [REMOVED]**

47. Part 971 is removed.

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