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Part 5135 - Research and Development Contracting

(Revised 01 October 2024)

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5135.006 Contracting methods and contract type.

(b)(i) The Contracting officer cannot release the solicitation until the milestone decision authority approves the contract method and contract type.

5135.014 Government property and title.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the determination as set forth in FAR 35.014(b). See [Appendix GG](#) for further delegation.

5135.014-90 Special requirements for research and development contracts.

(a) Prior to entering into a contract for research or development or both which provides for the acquisition or construction by, or furnishing to, the contractor of research, development, or test facilities and equipment, the Secretary of the Army must determine that the facilities and equipment are necessary for the performance of the contract (10 U.S.C. 2353). See AFARS 5101.707.

(b) Send each request for secretarial determination to the addressee in AFARS 5101.290(b)(2)(ii)(B). Each request must contain the following:

(1) A detailed description of the acquisition supporting a finding that the contract is for research or development or both.

(2) The contract type.

(3) The type of funds, appropriation and amount.

(4) Required property or services.

(5) Name of the potential contractor.

(6) Any urgency considerations.

(7) A description of the research, development or test facilities and associated equipment and specialized housing which the contractor will acquire or construct or which the Government will furnish to the contractor. Include the contractor or Government-furnished property estimated cost and the reasons this property is necessary for the performance of the contract.

(8) When the Government will furnish property to the contractor, an explanation of how it will do so, e.g., loan, lease, sale, or other. When the Government will seek reimbursement under a lease or sale, provide the fair market value that Government will charge to the contractor.

(9) Details concerning ownership of land on which the facilities or equipment are to be located, e.g., Government owned, private, etc.

(10) Details concerning whether the installed or constructed facilities will be removable or separable without unreasonable expense or unreasonable loss of value.

(11) In the case of installed or constructed facilities on property the United States does not own, and that are not removable or separable without unreasonable expense or unreasonable loss of value, describe the provisions to be included in the contract for -

(i) Reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(ii) An option for the United States to acquire the underlying land; or

(iii) An alternative provision considered adequate to protect the interests of the United States in the facilities and an explanation of why it is adequate.

5135.015 Contracts for research with educational institutions and nonprofit organizations.

5135.015-70 Special use allowances for research facilities acquired by educational institutions.

(c) The HCA may approve special use allowances as described at DFARS 235.015-70(c). See [Appendix GG](#) for further delegation.

(d)(3)(ii) The HCA shall make the determination at DFARS 235.015-70(d)(3)(ii). See [Appendix GG](#) for further delegation.

5135.070 Indemnification against unusually hazardous risks.

5135.070-1 Indemnification under research and development contracts.

- (1) Send requests for authorization through contracting channels to the addressee in AFARS 5101.290(b)(2)(ii)(B) in time to reach the addressee at least 30 working days prior to the planned release of the solicitation.
- (2) Each secretarial request for authorization must contain -
 - (i) The information required by FAR 50.104-3(b) except (b)(1)(iii);
 - (ii) The clause and facts showing that the contract is for research or development or both;
 - (iii) A statement that the proposed indemnification clause complies fully with the requirements of 10 U.S.C. 2354;
 - (iv) The reasons the use of the indemnification clause would be in the Government's interest; and
 - (v) The signatures of the head of the contracting activity or the senior contracting official and the Contracting officer.
- (3) Handle requests for indemnification under Pub. L. 85-804 in accordance with FAR 50.104-3 and DFARS 250.104-3-70.