

## Chapter 35.2 Cost Sharing in Research and Development Contracting

**References** Public Law 109-58, Energy Policy Act of 2005 and FAR Part 35, Research and Development Contracting

### **Overview**

This section discusses implementation of the cost sharing requirements in Section 988 of the Energy Policy Act (EPAAct) of 2005, Public Law 109-58.

### **Background**

Section 988, Cost Sharing, establishes Department-wide cost sharing requirements for most research, development, demonstration, and commercial application activities initiated after the date of enactment of EPAAct 2005 (August 8, 2005). Some programs authorized in other sections of EPAAct 2005 may have specific cost sharing requirements. The requirements of Section 988 will take the place of the current patchwork of cost sharing requirements that have been contained in previous authorization and appropriations laws. Section 988 also provides guidance, in addition to the applicable cost principles, for determining allowable costs. Furthermore, under this Section, repayment of the Federal share of a cost-shared activity shall not be required as a condition of making an award.

### **Guidance**

The cost sharing requirements generally require a 20 percent cost share for research and development, with an exemption for basic or fundamental research and development, and a 50 percent cost share for demonstration and commercial application activities. The Secretary has been granted the authority to reduce or eliminate cost sharing requirements for applied research and development as necessary and appropriate. This authority was delegated to the Under Secretary in Delegation Order 00-002-00G. The Secretary may reduce cost sharing requirements for demonstration and commercial application activities as necessary and appropriate, taking into consideration any technological risk relating to the activity.

#### 1. Contracting Officer Responsibilities

##### a. Solicitations and Award Agreements

Contracting officers shall include the requisite cost sharing requirement and information in any solicitation for research and development, demonstration, and commercial application programs and activities.

The following is suggested language:

- 1) The cost share must be at least 20% of the total allowable costs for research and development projects and must come from non-Federal sources.

- 2) The cost share must be at least 50% of the total allowable costs for demonstration and commercial application and must come from non-Federal sources.
- 3) The cost share must be at least 20% of the total allowable costs for research and development projects and 50% of the total allowable costs for demonstration and commercial application projects and must come from non-Federal sources.

Contracting Officers should incorporate the cost sharing requirement and the agreed upon cost share amount (dollar or percentage) in all contracts for research and development, demonstration, and commercial application programs and activities.

#### b. Calculation of Amount

In accordance with section 988 (d), Calculation of Amount, when calculating the amount of the non-Federal contribution, the Contracting Officer:

i) may include the following costs as allowable in accordance with the applicable cost principles:

- (a) cash;
- (b) personnel costs;
- (c) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;
- (d) indirect costs or facilities and administrative costs; or
- (e) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

ii) shall not include--

- (a) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
- (b) proceeds from the prospective sale of an asset of an activity; or
- (c) other appropriated Federal funds.

The terms and conditions of the contract should include appropriate provisions on cost allowability.

## 2. Royalties and Repayment

The Federal share of a cost shared activity under section 988 shall not be required to be repayed as a condition of award. Royalties should not be used to repay or recover the Federal share, but may be used as a reward for technology transfer activities.

### 3. Reduction and Exclusion

Section 988 generally requires a cost share of not less than 20 percent for research and development and not less than 50 percent for demonstration and commercial application activities. The percentage of cost share may be reduced or eliminated according to the following standards:

Research or Development Activities of a Basic or Fundamental Nature – If an appropriate officer of the Department (as designated by the Secretary) determines that a research or development activity is of a basic or fundamental nature, then the activity is excluded from the cost sharing requirement.

Research or Development Activities of an Applied Nature - The Secretary or his/her designee may reduce or eliminate non-Federal cost sharing if he/she determines that the reduction is necessary and appropriate.

Demonstration and Commercial Application – The Secretary or his/her designee may reduce non-Federal cost sharing if he/she determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.