

Chapter 35.3 Competition under the Energy Policy Act of 2005

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 competition requirements in Section 989 of the Energy Policy Act (EPAAct) of 2005, Public Law 109-58.

Background

Section 989, Merit Review of Proposals, provides general provisions covering the award of funds for programs authorized by EPAAct 05. Awards of funds for programs authorized under EPAAct, including research, development, demonstration and commercial applications, shall be accomplished competitively to the maximum extent practicable. The regulations (Federal Acquisition Regulations (FAR) and Department of Energy Acquisition Regulations (DEAR), DOE Directives (DOE O 412.1A) and other DOE guidance (ALs, guides, etc) provide for the types of competitive processes applicable to competitions, as well as guidance for those circumstances in which the use of competitive processes are deemed inappropriate.

Guidance

Competitive awards under EPAAct 05 shall involve competitions open to all qualified entities within one or more of the following categories of organizations:

- (1) Institutions of higher education.
- (2) National Laboratories.
- (3) Nonprofit and for-profit private entities.
- (4) State and local governments.
- (5) Consortia of entities described in paragraphs (1) through (4).

Any award of funds for programs authorized under EPAAct 05 or an amendment made by this Act, whether competitive or non-competitive, shall be made only after an impartial review of the scientific and technical merits of the proposal(s)/applications(s). Such a review shall be accomplished by complying with the applicable FAR regulation, including Parts 8, 12, and 15.

For purposes of this AL, National Laboratories are those defined by Section 2 of EPAAct 05 as any of the following laboratories:

- (A) Ames Laboratory.
- (B) Argonne National Laboratory.
- (C) Brookhaven National Laboratory.
- (D) Fermi National Accelerator Laboratory.
- (E) Idaho National Laboratory.

- (F) Lawrence Berkeley National Laboratory.
- (G) Lawrence Livermore National Laboratory.
- (H) Los Alamos National Laboratory.
- (I) National Energy Technology Laboratory.
- (J) National Renewable Energy Laboratory.
- (K) Oak Ridge National Laboratory.
- (L) Pacific Northwest National Laboratory.
- (M) Princeton Plasma Physics Laboratory.
- (N) Sandia National Laboratories.
- (O) Savannah River National Laboratory.
- (P) Stanford Linear Accelerator Center.
- (Q) Thomas Jefferson National Accelerator Facility.

Section 989 provides authority for DOE Contracting Officers to permit the National Laboratories, which are otherwise precluded from responding to a Federal Request for Proposal (RFP) (FAR 37.017-1) to submit a proposal in response to an RFP. As such, Program Officials need to decide whether a particular opportunity authorized under EPO is appropriate for participation by the National Laboratories and discuss the issue with the cognizant Contracting Officer. The RFP must indicate whether or not National Laboratories are eligible to compete.

Nothing herein obviates the requirement for a contractor operating a national laboratory to obtain DOE approval prior to responding to an RFP/FOA which would require the use of DOE facilities in performance of the statement of work. All RFPs that allow the National Laboratories to compete shall be submitted to the Office of Contract Management (MA-62) for DOE, or the Office of Acquisition and Supply Management (NA-63) for NNSA, for review, unless such review is waived by the cognizant office.