

39.301 Definitions.

As used in this subpart—

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

- (i) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or
- (ii) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Savings means—

- (1) Monetary savings to an agency; or
- (2) Savings in time or other quantifiable benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

Share-in-Savings contract means a contract under which—

- (1) A contractor provides solutions for improving the agency's mission-related or administrative processes or for accelerating the achievement of agency missions; and

- (2) The Government pays the contractor an amount equal to a portion of the quantifiable savings derived by the agency from—

- (i) Any improvements in mission-related or administrative processes that result from implementation of the solution; or

- (ii) Acceleration of achievement of agency missions.

39.302 Authority.

The E-Government Act of 2002 (Public Law 107-347) authorizes the head of an agency to enter into a Share-in-Savings contract for information technology. This authority expires on September 30, 2005.

39.303 Applicability.

This subpart applies only to information technology projects that are appropriate for Share-in-Savings contracting techniques.

- (a) In general, use of Share-in-Savings contracts should be considered only for projects involving significant innovation or process transformation.

- (b) Agencies intending to use this subpart are encouraged to complete the "Share-in-Savings Project Screening Template" at: <http://www.gsa.gov/shareinsavings>. The information provided in this template will help the General Services Administration to assist agencies in determining the potential effectiveness of using the authority of this subpart.

- (c)(1) The capital programming requirements of OMB Circular A-11 shall apply to—

- (i) Share-in-Savings projects for which funds are not being made specifically available for the full costs of cancellation or termination; and

- (ii) Other Share-in-Savings projects that qualify as major IT investments, as provided in the Circular.

- (2) Share-in-Savings projects not covered by paragraph (c)(1) shall be the subject of a business case appropriate for the size and complexity of the project as determined by the agency and the Office of Management and Budget.

39.304 Limitations on Share-in-Savings contract period of performance.

- (a) Except as provided in paragraph (b) of this section, a Share-in-Savings contract shall be awarded for a period of not more than 5 years.

- (5) A Share-in-Savings contract may be awarded for a period greater than 5 years, but not more than 10 years, if other applicable requirements do not otherwise limit the length of the contract and the head of the agency determines in writing prior to award of the contract that—

- (1) The level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the Government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of 5 years or less; and

- (2) Use of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the Government.

39.305 Use of performance-based contracts.

Share-in-Savings contracts shall be performance-based contracts. Objective outcomes and performance standards shall be used to measure achievements and milestones that must be met before payment is made (*see* subpart 37.6).

39.306 Share-in-Savings baseline.

- (a) Share-in-Savings contracts shall include a clause containing a quantifiable baseline that is to be the basis upon which a saving share ratio is established to govern the amount of payment a contractor is to receive under a contract.

- (b) Before award of a Share-in-Savings contract, the agency senior procurement executive shall determine in writing that the terms of the baseline clause are quantifiable and will likely yield value to the Government.

39.307 Managing retained savings.

- (a) Agencies may retain savings in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in paragraph (b) of this section, savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

- (b) Amounts retained by the agency under this subpart shall—

- (1) Without further appropriation, remain available until expended; and

- (2) Be applied first to fund any cancellation or termination liabilities associated with Share-in-Savings procurements that are not fully funded.

39.308 Cancellation or termination.**39.308-1 Paying for cancellation or termination.**

- (a) The amount payable in the event of cancellation or termination of a Share-in-Savings contract shall be negotiated with the contractor at the time of contract award.

- (b) If funds are not made available for the continuation of a Share-in-Savings contract in a subsequent fiscal year, the contract shall be cancelled or terminated. The costs of cancellation or termination may be paid out of—

- (1) Appropriations available for the performance of the contract;

- (2) Appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

- (3) Funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in 39.308-2.

39.308-2 Funding of cancellation or termination liability.

- (a) Except as provided in paragraph (b) of this subsection, the funds obligated for Share-in-Savings contracts must be sufficient to cover any potential cancellation and/or termination costs.

- (b)(1) The head of an agency may enter into Share-in-Savings contracts even if funds are not made specifically available for the full costs of cancellation or termination of the contract provided that—

- (i) The action is approved as provided in paragraph (b)(1)(iii) of this subsection;

- (ii) Funds are available and sufficient to make payments with respect to the first fiscal year of the contract; and