

(iii) The following conditions are met regarding the funding of cancellation and termination liability:

(A) The amount of unfunded liability does not exceed the lesser of 25 percent of the estimated costs of a cancellation or termination, or \$5 million.

(B) An unfunded cancellation or termination liability in excess of \$1 million has been approved by the Director of the Office of Management and Budget.

(C) Notification has been provided to OMB in accordance with paragraph (c) of this subsection.

(2) The aggregate number of Share-in-Savings contracts that may be entered into under this paragraph may not exceed 5 in each of fiscal years 2003, 2004, and 2005 for each of the following groups of agencies:

(i) The Department of Defense, NASA, and the Coast Guard.

(ii) All other agencies.

(c) In addition to the requirements specified in paragraph (b) of this subsection, an agency planning to award a Share-in-Savings contract having an unfunded cancellation or termination liability in any amount must notify the Office of Management and Budget at least 30 days prior to solicitation issuance.

39.309 Solicitation requirements.

(a) Solicitations for Share-in-Savings contracts shall use competitive procedures to the maximum extent practicable. Each solicitation shall include provisions and evaluation criteria ensuring that—

(1) The contractor's share of savings reflects the risks involved and market conditions; and

(2) The Government will realize best value from the contract.

(b) Contracting officers should consider the use of a technology refreshment clause to ensure the information technology provided under the contract incorporates desired technological advancements throughout the entire period of contract performance. In developing such a clause, contracting officers should consider similar terms and conditions available on the commercial market.

(c) Contracting officers may include other appropriate clauses not specifically prescribed in the FAR to ensure that the goals of the Share-in-Savings contract are attained, provided that such clauses are consistent with applicable statutes and regulations.

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