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POLICY FLASH #	TITLE OF FLASH	DATED	ACTION OFFICER (orig.)
2006-01	Hurricane Relief on Federal Research Awards	10/7/05	J. Kniskern
2006-02	Federal Acquisition Circular 2005-06	10/13/05	R Langston
2006-03	Records Retention Related to Hurricane Katrina	10/19/05	D. Wright
2006-04	Electronic Subcontracting Reporting System (eSRS)	10/27/05	S. Zvolensky
Jo\>b-0	Post Katrina Relief + Reconstructing Requisitions	\b\25(t>S-	·2volens."1
2006-06	FY 2006 Subcontracting Goals	n12,lDs	S • V.JU/'
2006-07	ba,o-o.<:o'{') A:d -;-SRxu:(.;,(.. a.c.;f- -ltcl- \.\la Determinations + RelatW !.S.	11/ oo	f-J. Ox: f'
2006-08	Update to DOE Acquisition Guide Chapter 15.1	lv\ 1 | t)$'	D - Y((lt;,n fl,,. L«..-NGS4n
2006-09	AL 2006-02+03 FAC 2006-01+02 & Energy Policy Act of 2005 Sec 988+989	t;;r} o (oS	G - ;vlt_
2006-10	Acquiring Information Technology	12/14/05	M. Righi
2006-11	Publication of DOE Order 580.1	12/20/05	M. Righi
2006-12	~~Appropriation Riders FY06~~ DOE Smart Buy	01/13/06	~~R Langston~~ Denise Wright

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2006-13	Appropriation Riders FY06	1/15/06	K. Langston
2006-14	Federal Acquisition Circular 2005-07	1/18/06	K. Langston
2006-15	Update of FAR & DEAR Matrices	1/23/06	S. Zvolensky
2006-16	FY 2006 Final Small Business Contracting Goals	2/08/06	S. Zvolensky
2006-16R	FY 2006 Small Business Goals Rescinded	2/13/06	R. LANGSTON
2006-17	How EPACT 2005 Affects the Eligibility Requirements in 10 CFR 600, Subpart F.	2/23/06	Judy Hood
2006-18	Updated Policy and Procedures Guide for Use of the GSA SmartPAY Purchase Card – Acquisition Guide Chapter 13	3/16/06	K. Langston
2006-19	Ordering Procedures For Contract Audit Services (DCAA, DCMA, HHS, and ONR)	3/17/06	Denise Knight
2006-20	Greening The Government Acquisition Guide Chapter 23 pt 0	3-21	R Langston
2006-21	...J4:1_,4n 1¼½i-" "I>0E Sedecl ea. x!?""""->"#;,,J:4r-neegy Personal Property Manage A?bx1/	3/17/06	Sandra Covey
2006-22	Neg; ½Cm Guide Chapter S:t 4/J'jP ,d?'Yk d dLv Type 6 ,ype Item and 6.1; Compi»'16o;n y b?xi	3/22/06	Jacqueline Knisley

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2006-23	Final Rule – Elimination of the Make-or-Buy Plan Requirement for Management and Operating Contracts	4/04/06	Richard Langston
2006-24	Updated Acquisition Guide Chapter 38.1 Strategic Acquisition Transition; A Guide for Using Federal Supply Schedules; Multiple Award Contracts; and Government-wide Agency Contracts	4/05/06	Helen Oxberger
2006-25	Award of Contracts to Alaska Native Corporations	4/20/06	Stephen Zvolensky
2006-26	DOE Notice – Contractor Employee Pension and Medical Benefit Policy NEVER SENT OUT	4/25/06	Stephanie Beakley
2006-27	Aquisition Guide Chapter 6.1 - Competition Requirements	5/02/06	Jackie Kniskern
2006-28	Federal Acquisition Circular 2005-09	5/01/06	Richard Langston
2006-29	Strategic Sourcing at the Department of Energy	5/05/06	John Bashista
2006-30	Acq Guide Chapter 6.2 - Revised May 2006	5/11/06	Jackie Kniskern
2006-31	Technology Investment Agreements (TIAs) (FAL	5/15/06	Judy Wood
2006-32	Revision to AL 2005-08 and DOE Form 4220.2 and Award of Contracts to Alaska Native Corporation	5/16/06	Steve Zvolensky
2006-33	Revision to AL 2005-08 and DOE Form 4220.2	5/18/06	Steve Zvolensky

Same FF - different dates

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2006-34	OFPP Determination of Executive compensation Benchmark Amount for Costs Allowable Under Government Contracts during Contractor's Fiscal Years (FY) 2006	5/25/06	Helen Overbergen
2006-35	DOE Small Business Conference, Continuing Learning Points June 27-29, 2006 in Seattle, WA	6/14/06	Stephen Zochansky
2006-36	Office of Inspector General (OIG) Audit Program (See AL 2006-10 & Acquisition Guide Chapter 970.4) THIS NUMBER ISSUED BECAME -38	6/14/06	Bob Webb
2006-37	The DOE Guide to Financial Assistance and Financial S -(¼.,u..e. ;;4,;., d_c;>O(p -0/	r,,2-8/b,	Jackie
2006-38	0/&— —,;/ audit v--4, c"../4c M 7',,d.& as-E&G y Conf 4 vf"?,	/	K1J
2006-39	Acquisition Letters Remaining in Effect	7J,6,	M. Leg;,(,:
2006-40	Federal Acquisition Circulars 2005-10 & 11	8flv	s%I.
2006-41	Acquisition Guide Chapter 48 "Value Engineering" and Cancellation of Acquisition Letter 2003-04 "Value Engineering"	7/13/06	M. Leigh.
2006-42	Project Management and Financial Assistance	7/14/06	Jackie Knisken
2006-43	Acquisition Letter 2006-09 on Energy Efficiency	7/18/06	Richard Langston
2006-44	Acquisition Letter 2006-07 on Acquisition Career Development Program	8/10/06	Cynthia Lee

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2006-45	Federal Acquisition Circular 2005-12	8/9/06	Richard Langston
2006-46	[illegible]	8/16/06	Denise Hught
2006-47	[illegible]	8/11/06	Bob Webb
2006-48	Revision to [illegible] Review of Contract Financial Assistance Actions of the DOE Acquisition Guide	8/15/06	Jackie Kniskern
2006-49	Corrected Chapter 71.1 Adghs. Review of Contract & Financial Assistance Actions of the DOE Acquisition Guide	8/16/06	Jackie Kniskern
2006-50	Acquisition [illegible] Guide		Richard Langston
2006-51	FAC 2005-09 (FAR Part 22.17, Combating Trafficking in Persons)	8/29/06	Helen Ochregen
2006-52	Fiscal Year 2007 Subcontract Goals	9/05/06	Stephen Zudenky
2006-53	Code of Federal Regulations Correction	9/01/06	Richard Langston
2006-54	Correction of Code of Federal Regulations Clause	9/ /06	Richard Langston
2006-55	Issuance of AL 2006-11 on Site Utilization Management Plans (SUMP)	9/16/06	Denise Hught

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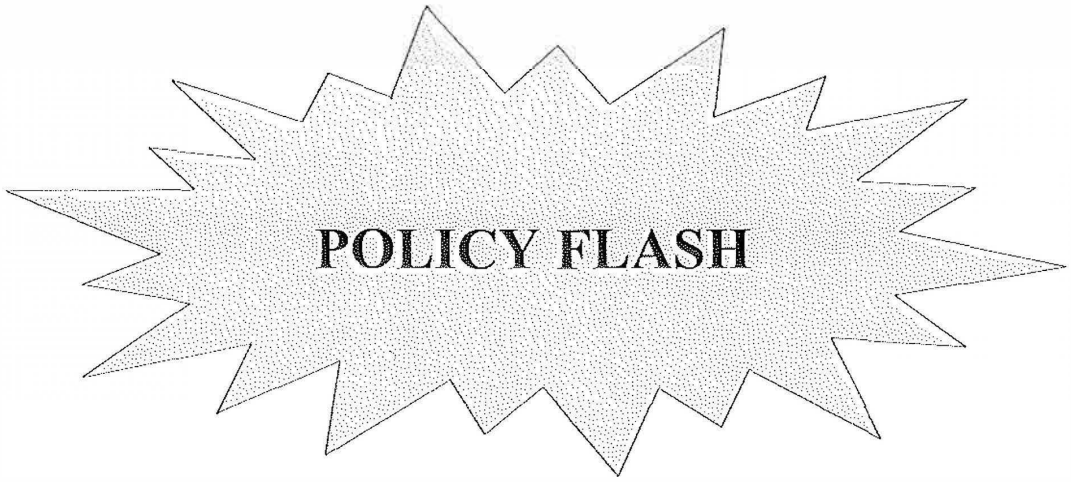
2006-56	Interim Cyber Security Guidance Concerning Disposal of Computer Storage Media, Including Hard Disk Drives	9/20/06	Denise Wright
2006-57	[illegible]	9/21/06	Jackie Kniskern
2006-58	[illegible]	9/27/06	M. Righi
2006-59	Acquisition Guide Chapter 18, "Contingency Contracting"	9/28/06	S. Cover
2006-60	[illegible]	9/29/06	D. Webb
2006-61	[illegible]	9/29/06	D. Wright
2006-62	[illegible]	9/29/06	L. Jones



POLICY FLASH 2006-01

DATE: October 7, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Hunicane Relief on Federal Research Awards

SUMMARY: Federal research agencies, the Office of Management and Budget (0MB), and the Office of Science and Technology Policy have been coordinating activities with institutions and individuals in the Gulf region to provide assistance to restore and maintain the high quality of research supported by Federal grants and cooperative agreements.

0MB issued guidance (attached) on September 30, 2005, granting relief on short term administrative and financial management requirements under 0MB grant circulars. This relief is intended to help recipients recover from hurricane damage without compromising accountability requirements.

DOE Contracting Officers are encouraged to refer to the 0MB guidance for financial assistance with affected universities, non-profits and other recipients in granting requests for relief. In particular, requests for extensions of budget and project periods, and report due dates should be viewed favorably. DOE Contracting Officers should include a memorandum to the file indicating that the request was granted for hmTicane relief reasons and reference the 0MB September 30 memorandum. The agreement itself should be amended to reflect any changes.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or jacqueline.kniskern@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachments (1) Joint Announcement, Hurricane Relief on Federal Research Awards dated October 5, 2005

(2) Joint Announcement, Agency Links and Points of Contact

(3) Office of Management and Budget Memorandum "Administrative Relief for Grantees Impacted by Hurricane Katrina and Rita," dated September 30, 2005

POLICY FLASH 2006-02

POLICY FLASH 2006-02

DATE: October 13, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular 2005-06

SUMMARY: Federal Acquisition Circular 2005-06 has been issued. It makes numerous changes as highlighted on the attachment.

Questions may be referred to Richard Langston (202) 287-1339 or richard.ltmgston@hq.doc.gov

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy, OMBE

Attachment: Federal Acquisition Circular 2005-06

Item	Subject	FAR case
I	Information Technology Security (Interim)	2004-018
II	Improvements in Contracting for Architect-Engineer Service	2004-001
III	Title 40 of United States Code Reference Corrections	2005-010
IV	Implementation of the Anti-Lobbying Statute [This had been the oldest Case on the CAAC inventory]	1989-093
V	Increased Justification and Approval Threshold [Applicable to DOD, NASA, and Coast Guard only]	2004-037
VI	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program	2004-036
VII	Powers of Attorney for Bid Bonds	2003-029
VIII	Expiration of the Price Evaluation Adjustment Interim Rule	2005-002
IX	Accounting for Unallowable Costs	2004-006
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003-002
XI	Training and Education Cost Principle	2001-021

Item !--Information Technology Security (FAR Case 2004-018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002.

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The **intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.**

Item II--Improvements in Contracting for Architect-Engineer Services (FAR Case 2004-001)

This final rule implements Section 1427(b) of the Services Acquisition **Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Government-wide** task and delivery order contracts unless they are awarded using the **procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Government-wide task and delivery order contracts.**

Item III--Title 40 of United States Code Reference Corrections (FAR Case 2005-010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

Item IV--Implementation of the Anti-Lobbying Statute (FAR Case 1989-093)

This final rule converts the interim rule published in the Federal Register at 55 FR 3190, January 30, 1990 to a final rule with minor changes. It amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a **new section 1352 to Title 31 of the United States Code, entitled \\Limitations on the use of funds to influence certain Federal contracting and financial transactions." Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan. It also requires that each person who requests or receives a contract, grant or cooperative agreement in excess of $100,000 or a Federal commitment to insure or guarantee a loan in excess** of $150,000 must disclose lobbying with other than appropriated funds. The **rule requires contracting officers, in accordance with FAR 3.808, to insert** in all solicitations and contracts expected to exceed $100,000 the provision **at FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction," and the clause at FAR 52.203-12, \\Limitations on Payments to Influence Certain Federal Transactions.** "

Item V--Increased Justification and Approval Threshold for DOD, NASA, and Coast Guard (FAR Case 2004-037)

This final rule converts the interim rule published in the Federal Register at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50 million to $75 million. This change implemented section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f) (1) (B). In addition, corresponding changes have been made to FAR **13.501. The rule will reduce administrative burden for ordering activities.**

Item VI--Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004-036)

This final rule finalizes, without change, the interim rule published in the Federal Register at 70 FR 11740, March 9, 2005. The rule implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 821 amended Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 by adding landscaping and. **pest control services to the program. As a result, agencies are precluded from considering acquisitions for landscaping and pest control services over the emerging small business reserve amount, currently $25,000, for small business set-asides unless the set-asides are needed to meet their assigned goals. The change may impact small businesses because these awards were previously set-aside for small businesses.**

Item VII--Powers of Attorney for Bid Bonds (FAR Case 2003-029)

This final rule is of particular interest to contracting officers and offerors in acquisitions of construction that require a bid bond. This rule was initiated at the request of the Office of Federal Procurement Policy to **resolve the controversy surrounding contracting officers' decisions regarding** the evaluation of bid bonds and accompanying powers of attorney. This rule amends the FAR to revise the policy relating to acceptance of copies of powers of attorney accompanying bid bonds. This revision to FAR parts 19 and 28 removes the matter of authenticity and enforceability of powers of **attorney from a contracting officer's responsiveness determination, which is** based solely on documents available at the time of bid opening. Instead, the **rule instructs contracting officers to address these issues after bid** opening.

Item VIII--Expiration of the Price Evaluation Adjustment (FAR Case 2005-002)

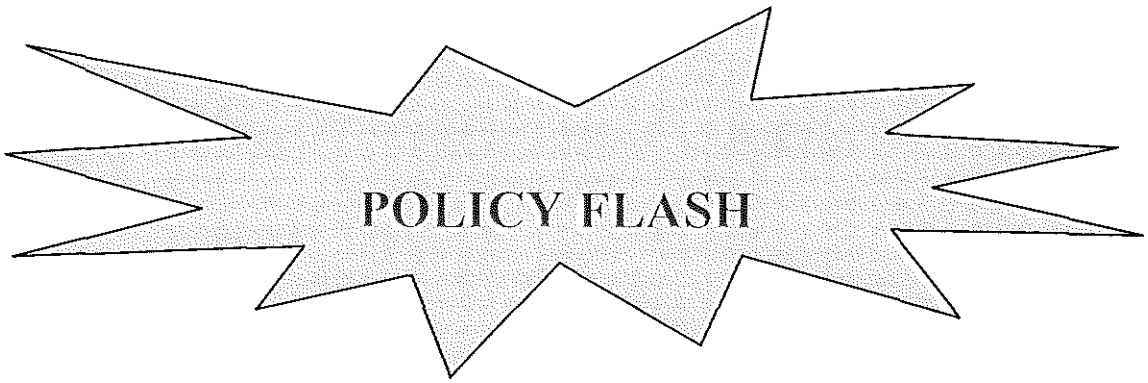
This interim rule cancels the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to **certain small disadvantaged business concerns in competitive acquisitions.** The change is required because the statutory authority for the adjustments **has expired. As a result, certain small disadvantaged business concerns will** no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item IX--Accounting for Unallowable Costs (FAR Case 2004-006)

This final rule amends FAR 31.201-6, Accounting for unallowable costs, by adding paragraphs (c) (2) through (c) (5) to provide specific criteria on the use of statistical sampling as an acceptable practice to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also amends FAR 31.109, **Advance agreements, by adding \\statistical sampling methodsu as an example of** the type of item for which an advance agreement may be appropriate. The case **was initiated by the Director, Defense Procurement and Acquisition Policy, who established an interagency ad hoc committee to perform a comprehensive review of FAR Part 31, Contract Cost Principles and Procedures. The rule is of particular importance to contracting officers and contractors who negotiate contracts and modifications, and determine costs in accordance with** FAR Part 31.

Item X--Reimbursement of Relocation Costs on a Lump-Sum Basis (FAR Case 2003-002)

This final rule amends FAR 31.205-35 to permit contractors the option of **being reimbursed on a lump-sum basis for three types of employee relocation** costs: (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are **in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.**



POLICY FLASH 2006-03

DATE: October 19, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Records Retention Related to Hurricane Katrina

SUMMARY: This notice serves to provide information pertaining to records retention as it relates to Hurricane Katrina, the resulting flooding, or the aftermath.

Wltat is the purpose of this Information?

The objective is to identify the actions taken, what went right, areas for improvement, and lessons learned. Accordingly, the Homeland Security Council may request the Depa1tment to provide records for review at an undetermined date.

How will this affect work processes?

Contracting officers should segregate records created and those that will be created for "Katrina" related incidences so that they may be available upon request.

Attached is a letter from the Chief Counsel's Office providing further information on records retention related to Hurricane Katrina.

Questions concerning this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hg.doe.gov

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachment: Memo from General Counsel on Hurricane Katrina

Department of Energy
Washington, DC 20585

September 27, 2005

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: David R. Hill
General Counsel

SUBJECT: Retention of Records Related to Hurricane Katrina

The President has ordered a comprehensive review of the Federal response to Hurricane Katrina, in order to determine what went wrong, what went right, and lessons learned. As a part of this effort, the Homeland Security Council may request the Department of Energy to provide records for review.

Accordingly, you are to ensure that, until further notice and in accordance with all applicable laws, your office retains all records relating to Hurricane Katrina, the resulting flooding, or their aftermath ("Records"), whether presently existing or created in the future. For purposes of clarity, "Records" is meant in the broadest sense, and includes all documents, reports, writings, letters, memoranda, notes, communications (including e-mails, faxes, and telephone records, and all communications with other Federal Departments and Agencies, State and local governments, and private sector entities), contracts, agreements, schedules, spreadsheets, travel records, data, electronically stored information, audio and video recordings, computer disks and hard drives, drawings, graphs, charts, photographs, and all other records of any kind. "Records" includes, but is not limited to, all records required to be preserved pursuant to the Federal Records Act of 1950, as amended, 44 U.S.C. § 3101 et seq.

If you have any questions, please contact Susan F. Beard, Assistant General Counsel for General Law, at 202-586-8618.

Thank you in advance for your assistance,

Printed with soy ink on recycled paper

RECEIVED
OCT 1 3 2005
BY:

Wright, Denise

From: Fischetti, Michael
Sent: Tuesday, October 18, 2005 12:59 PM
To: Wright, Denise
Cc: Robinson, Sherry
Subject: FW: FYI ONLY: Numbered Memorandum RM 06-03, "Retention of Records Related to Hurricane Katrina"

Denise,

Could you put a Flash together for this. Just for info. Not guidance from us required.
-----Original Message-----
From: Hopf, Richard
Sent: Tuesday, October 18, 2005 12:51 PM
To: Fischetti, Michael
Subject: RE: FYI ONLY: Numbered Memorandum RM 06-03, "Retention of Records Related to Hurricane Katrina"

send as an infogram

-----Original Message-----
From: Fischetti, Michael
Sent: Tuesday, October 18, 2005 12:42 PM
To: Hopf, Richard
Subject: FW: FYI ONLY: Numbered Memorandum RM 06-03, "Retention of Records Related to Hurricane Katrina"
Importance: High

We need not send out anything separate, need we? Policy and procedure already require us to document the file, should someone wish to review it lately.

-----Original Message-----
From: Baptist, Douglas
Sent: Tuesday, October 18, 2005 10:05 AM
To: Fischetti, Michael
Subject: FW: FYI ONLY: Numbered Memorandum RM 06-03, "Retention of Records Related to Hurricane Katrina"
Importance: High

Another policy flash?
-----Original Message-----
From: ITC Mailbox
Sent: Tuesday, October 18, 2005 7:48 AM
To: DL-IM CIO Council
Subject: FYI ONLY: Numbered Memorandum RM 06-03, "Retention of Records Related to Hurricane Katrina"
Importance: High

FYI Only. Data call will be satisfied by the Records Management Officer of your organization.

DATE: OCTOBER 17, 2005

TO: PROGRAM RECORDS OFFICIALS

FROM: DEPARTMENTAL RECORDS OFFICER, IM-11

SUBJECT: Numbered Memorandum RM 06-03, "ACTION REQUEST FROM GENERAL COUNSEL"

\Please find attached a copy of an action request from the Office of General Counsel. The }white House has asked that all records relating to Hurricane Katrina and the resulting flooding, aftermath, and resumption of operations be identified and held for possible review by the Homeland Security Council (HSC), The objective is to identify the actions **taken, what was right, areas for improvement, and lessons learned. Records already** created and those that will be created for future activities/actions should be segregated **and placed on hold. If records have not yet been created on actions taken, "documentation** to the file" should be created as soon as possible. (Please note in the attachment that this request was also sent to the Heads of Departmental Elements.)

Please canvas your organization and provide IM-11 with a listing of categories of records identified (as defined in the attachment), media, and a point of contact. (It is not **necessary to list every record; however, you *may* do so for future reference purposes.)** Updates as additional records are created should be provided until further notice from **General Counsel.**

Although General Counsel did not set a due date for identification of the records, I ask that you respond to this Office no later than November 9th. Negative responses are requested. Questions on this request may be addressed to me at 301-903-3455, Please **forward your responses to Roxzanne Jones at jones.roxzanne@hq.doe.gov**

Attachment

Cc: FYI ITC Council

POLICY FLASH 2006-04

DATE: October 27, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Electronic Subcontracting Reporting System (eSRS)

SUMMARY: This Policy Flash transmits Acquisition Letter AL 2006-01, which provides guidance to the Department on the implementation of the new government-wide Electronic Subcontracting Reporting System (eSRS). This Internet-based tool will streamline the process of reporting and provide agencies with access to analytical data on subcontracting performance. The eSRS eliminates paper submission and processing of the SF 294's, Individual Subcontracting Reports (ISRs), and SF 295's, Summary Subcontracting Reports (SSRs), replacing them with an electronic process to collect the data.

Mara Grissom is providing the initial DOE training for eSRS. She is available at (202) 287-1769 or mara.grissom@hq.doe.gov. For those who did not participate in the October 25th eSRS training, another video conference will be held on Thursday, November 10th, from 2pm to 4pm eastern standard time. All Small Business Program Managers, Contract Specialists and Contracting Officers and OSDBU staff must attend one of these training sessions. After the initial training sessions, the eSRS point of contact established at each HCA will be responsible for training the contracting office.

The Small Business Administration (SBA) will offer training for contractors by their Commercial Market Representatives (CMRs). The CMR listing at http://www.sba.gov/GC/cmr.html provides the names, addresses, phone numbers, fax numbers, and e-mail addresses of SBA's CMRs (approximately 36 people). Contractors using the eSRS with policy questions should call their nearest CMR.

Questions concerning this policy flash should be directed to Steve Zvolensky at 202-287-1307 or stephen.zvolensky@hq.doe.gov.

/t:A: .¼

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy, OMBE

Attachment: AL2006-01 Electronic Subcontracting Reporting System (eSRS)

Department of Energy
Acquisition Regulation

No. AL-2006-01
Date 10/27/05

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Electronic Subcontracting Reporting System (eSRS)

References:

FAR Subpart 19.7	The Small Business Subcontracting Program
DEAR 919.705-6	Postaward responsibilities of the contracting officer
AL 2005-07	Small Business Procurement Goals

What is the Effective date of this Acquisition Letter (AL)?

This AL is effective immediately after the eSRS goes online.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

What are the Points of Contact?

Contact Stephen Zvolensky, Department of Energy (DOE) Office of Procurement and Assistance Policy, at (202) 287-1307, stephen.zvolensky@hq.doe.gov, or Gary Lyttek, National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management, at (202) 586-8304 or gary.lyttek@nnsa.doe.gov, Yosef Patel, OSDBU Associate Director, at (202) 586-7377 or Yosef.Patel@hq.doe.gov.

What is the Purpose of this AL?

The purpose of this AL is to make available guidance on implementing the new electronic Subcontracting Reporting System.

What is the Background?

As part of the President's Management Agenda for Electronic Government, the Small Business Administration (SBA), the Integrated Acquisition Environment (IAE) and a number of Agency pai1ners collaborated to develop an internet-based tool for collecting subcontracting accomplishments, known as

the electronic Subcontracting Reporting System (eSRS). This tool will streamline the process of rep01iing and provide agencies with access to analytical data on subcontracting performance. The eSRS eliminates paper submission and processing of the SF 294, Individual Subcontracting Report (ISR), and SF 295, Summary Subcontracting Report (SSR), replacing them with an electronic process to collect the data. In the initial release of eSRS, Contractors and their subcontractors will need to report data through a web browser, which requires logging on to this site and reporting accomplishments using a data entty process. Future plans, under full operational capability, include the development of a back office interface for those businesses that collect their accomplishments electronically.

When eSRS is fielded, Government contractors and subcontractors will have an easier process to repoti their subcontracting activity. This process will give timely and transparent visibility into subcontract awards to small businesses.

Initial Operational Capability (IOC) is expected in the near future. Full Operating Capability is scheduled for eight weeks after IOC. The eSRS web site is www.esrs.gov.

What are the eSRS Repo1·ting Features?

Contracting Officers (COs), federal and contractor Small Business Program Managers (SBPMs) and the Office of Small and Disadvantaged Business Utilization (OSDBU) staff will be able to log on to the eSRS to view contractors' subcontracting reports and tun comprehensive subcontracting reports for achievements. The system will provide a variety of standard reports, including *Analysis of Subcontracting Plan Goal Attainment* (SBA Form 1907), as well as ad hoc repotiing tools for users who wish to design their own repotis. DOE will not prepare a subcontracting achievements report for SBA. Instead, SBA will tun a report from eSRS annually that will provide subcontracting achievements government-wide. It is important that all SSRs are reviewed in the system prior to SBA running the achievements report. If these reports are not reviewed, then the subcontracting achievements on those reports will not be counted towards DOE subcontracting goals.

The eSRS will automatically remind contractors when reports are due and generate delinquent notices when contractors fail to submit reports by the due date. These notices can only go out to contractors registered in the system, with identified contracts for that reporting period, which are missing reports in their eSRS contract worklist. This reminder feature will be most effective once the system has experienced its first reporting period and has the necessary data to send out notices.

What is the Guidance?

Contractors will be responsible for entering accurate and complete repotis into eSRS. In addition, prime contractors are responsible in passing down subcontracting reporting requirements to their subcontractors and lower tier subcontractors, as appropriate.

The standard timeframe for subcontracting reports to be submitted by the contractors to the government is 30 days after the close of each rep01iing period. For the first reporting period under the new system, contractors will have 60 days, after the launch of eSRS, to submit their data for the following periods:

1) FY04 - SF 295s only. Even if previously submitted in paper copy, contractors must enter the data into eSRS.
2) FY05 - SF 295s.
3) FY05 [September 30th report]- SF294s.

Contracting Officers and Small Business Managers will have 30 days beyond the 60-day contractor reporting period to review the reports. There will be no extensions thereafter.

Since eSRS pulls select information from the Central Contractor Registration (CCR) database, contractors need to verify that their CCR information is accurate. If it is not, that misinformation will follow into eSRS. Additionally, contractors will need to use the appropriate DUNS and related contract number to enter the ISRs.

Contractors must know the appropriate DOE contracting officer or SBPM who will review their reports as well as their colTect email addresses. These addresses will be used within eSRS for notification purposes.

Currently FAR requires contractors to submit the SF 294 and SF 295 in accordance with paragraph (j) of FAR 52.219-9 and ensure that its subcontractors agree to submit SF 294 and SF 295. SBA will submit a formal case to the FAR Council to revise the paragraphs and clauses **in** the FAR that need to be changed. Until FAR 52.219-9 is modified to require eSRS requirements, Contracting Officers should include a clause similar to the sample one attached to this AL in all solicitations and contracts where a subcontracting plan is contemplated.

How are Problems Handled?

If contractors have any issues with their CCR data, they should contact the CCR Assistance Center at 888-227-2423. Issues pertaining to the data in FPDS-NG (i.e., eSRS not locating the contract number entered for reporting purposes) should go to the Contracting Officer for that contract. Only Contracting Officers can enter the data in FPDS-NG, and thus they are the only ones who can correct it. Any issues concerning eSRS functionality should go to the eSRS Helpdesk, which will be identified on the eSRS site. Policy issues for the ISRs should be directed to Steve Zvolensky, Department of Energy (DOE) Office of Procurement and Assistance Policy, at (202) 287-1307 or stephen.zvolensky@hq.doe.gov. Questions concerning the SSR should be directed to John Shea, DOE Office of Small and Disadvantage Business, at 202-586-7898 or john.shea@hq.doe.gov. Contracting officials that have issues with registering in eSRS should contact the eSRS point of contact for their particular Head of Contracting Activity (HCA).

What are the DOE Roles and Responsibilities under eSRS?

A. **Contracting Officers** are responsible for reviewing the ISR that relates to the contract they administer. It is their responsibility to ensure that contractors are aware of their subcontracting reporting requirements and that they properly and timely enter their reports into eSRS. COs must inform contractors who will be reviewing their ISRs and SSRs of the email address for that reviewer. The contractor must enter that address on the report in order that eSRS will properly notify the report's reviewer.

B. **Small Business Program Managers,** designated by the HCA, should review all SSRs. The SBPM will be the eSRS Point of Contact (POC) and approve all registrations for their HCA and the affiliated contracting offices. SBPMs will report to OSDBU any issues concerning the SSRs.

C. **The Office of Small and Disadvantaged Business Utilization** has the overall responsibility for the SSRs. OSDBU shall ensure that the SBPMs review the SSRs for completeness and accuracy prior to the SBA extracting the government-wide subcontracting goal report.

D. **The Head of Contracting Activity** should ensure that proper quality control systems are in place to ensure repo1ting and accuracy of subcontracting reports. This will require accurate data in FPDS-NG, since eSRS relies on this data for its repo1ts.

What Training is Required?

The initial DOE training for eSRS will be provided by Mara Grissom. She can be reached at (202) 287-1769 or mara.grissom@hq.doe.gov. For those who did not pa1ticipate in the October 25th eSRS training, another video conference will be held on Thursday, November 10th from 2pm to 4pm eastern standard time. All SBPMs, Contract Specialists and COs and OSDBU staffmust attend training sessions. After the initial training sessions, the eSRS point of contacts that have been established at each HCA will be responsible for training their contracting offices.

The SBA's Commercial Market Representatives (CMRs) will offer training for contractors. The CMR listing is at http://www.sba.gov/GC/cmr.html. Contractors using eSRS with policy questions should call their nearest CMR.

Contract Clause

Currently FAR requires contractors to submit the SF 294 and SF 295 in accordance with paragraph G) of FAR 52.219-9 and ensure that its subcontractors agree to submit the SF 294 and SF 295. SBA will submit a formal case to the FAR Council to revise the paragraphs and clauses in the FAR that need to be changed. Until FAR 52.219-9 is modified to address the eSRS requirements, COs should include a clause similar to the sample one attached to this AL in all solicitations and contracts where a subcontracting plan is contemplated.

Attachment 1 to AL 2006-01
Sample Clause

Electronic Subcontracting Reporting System

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The offeror's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Repotis at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

POLICY FLASH 2006-05

DATE: October 28, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Post-Katrina Relief and Reconstruction Acquisitions

SUMMARY: Attached is a joint memorandum, issued by the Procurement Executives, which includes and provides guidance on controls for a "Stewardship Plan" applicable to Post-Katrina acquisitions, to be implemented by each Procurement Director.

Questions concerning this policy flash should be directed to Steve Zvolensky at 202-287-1307 or stephen.zvolensky@hq.doe.gov.

W/,

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy, OMBE

Attachments: Post-Katrina Relief and Reconstruction Memo
Stewardship Plan
Policy Flash 2005-52
Policy Flash 2005-56

Department of Energy
Washington, DC 20585

MEMORANDUM FOR DISTRIBUTION

FROM: RICHARD H, HOPF
DIRECTOR, OFFICE OF PROCUREMENT
AND ASSISTANCE MANAGEMENT

ROBERT C. BRADEN
DIRECTOR, OFFICE OF ACQUISITION AND SUPPLY
MANAGEMENT

TO: PROCUREMENT DIRECTORS

SUBJECT: POST-KATRINA RELIEF AND RECONSTRUCTION ACQUISITIONS

Over the last several weeks, we have provided you a number of documents relating to emergency authorities available to support post-Katrina (including hurricanes Rita and Wilma) acquisitions. We have also provided direction on associated controls, expectations and requirements including direction regarding the identification of post-Katrina acquisitions in the Federal Procurement Data System - Next Generation. Although DOE acquisitions in support of post-Katrina relief and reconstruction have been minimal and notwithstanding the fact that these have few applications of emergency authorities, we are putting into place a formal control plan to ensure that transactions to date, as well as any to be taken in the future are the subject of risk-based reviews and other controls. Accordingly, please find attached the Stewardship Plan for post-Katrina Acquisitions for your implementation.

Although the plan will have little impact on you, we will nonetheless periodically check in with you over the next few months to confirm the nature and level of post-Katrina transactions under your organization. As noted in this plan, if you expect to be engaged in any such transactions in the future, please contact Mr. Stephen Zvolensky at 202-287-1307 to help us identify and publicize requirements that may offer opportunities for small businesses, particularly those in the affected areas,

Thank you for your attention to this matter.

Attachments

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STEWARDSHIP PLAN:

POST-KATRINA ACQUISITIONS

I. Purpose

DOE's Stewardship Plan for Acquisitions is intended to ensure that federal acquisition funds: are expended only on real/authorized requirements of the government; are obligated through appropriate contract vehicles and in conformance with applicable polices, methods, and procedures; and result in verified performance. Procurements in suppo1t of post-Katrina (including hurricanes Katrina, Rita and Wilma) relief and reconstrnction efforts will be effected through valid transactions, and the use of emergency authorities will be the subject of risk-based controls. In addition, problems and issues will be identified as early as possible and prevented to the maximum practical extent.

II. Critical Features

The plan centers on the following critical features:

(A) Comprehensive identification and communication of those post-Katrina relief and reconstrnction efforts that are effected or suppo1ted by DOE purchasing activities;

(B) Identification and communication of, and, as necessary, training on the contracting vehicles, methods, and procedures available to support such activities and the circumstances under which those other methods and procedures are available;

(C) Assurance that adequate numbers of qualified acquisition officials, including contract specialists, contracting officers, and contracting officer representatives, are available to apply those vehicles, methods, and procedures in an effective and efficient manner;

(D) Application of the control mechanisms normally associated with purchasing vehicles, methods and procedures as defined by the Federal Acquisition Regulation, Department of Energy Acquisition Regulation, and internal DOE directives, as well as those additional and specialized controls that may be established and applied in conjunction with newly authorized acquisition methods and processes targeted to post-Katrina relief and reconstrnction.

(E) Regular communication of information relative to acquisition support activities to provide early warnings of problems and issue and facilitate prophylactic or corrective measures.

(F) Integration with control plans and control activities related to the management and disposition of government property that may be acquired by DOE in support of post-Katrina relief and reconstruction efforts, loaned to other organizations providing such suppoti, or otherwise dispensed to other organizations as part of the relief effort.

III. Applicability

This plan applies to all DOE organizations, including the National Nuclear Security Administration (NNSA), that suppoti post-Katrina relief or reconstmction effotis through acquisitions that have a direct relationship to those efforts. This plan will remain in effect until cancelled.

IV. Responsible Parties

(A) Chief Financial Officer
Responsible for DOE's Comprehensive Stewardship Program and control plans, and data collection. (Contact: Mr. Sterling Ross, at sterling.ross@hg.doe.gov; 202-586-8662).

(B) Chief Acquisition Officer
Responsible for the overall development, coordination and communication of the acquisition Stewardship Plan; liaison for procurement matters with Office of Management and Budget, Department of Homeland Security and Federal Emergency Management Agency, and Department of Commerce.

(C) Senior Procurement Executives for NNSA and DOE
Responsible for identifying appropriate vehicles, methods, procedures and ensuring that applicable controls are in place.

(D) Heads of Contracting Activities; Contracting Officers
Responsible for the conduct of procurement operations, application of appropriate procurement vehicles, methods, procedures, and controls. Responsible for identifying post-Katrina procurement actions and providing other information to other DOE Coordinator as may be required.

V. Emergency Procurement Authorities

(See Attachment)

VI. Definition

A post-Katrina acquisition is a procurement or purchase transaction effected to accomplish: a tasking of the Federal Emergency Management Agency (FEMA); a request of another agency pursuant to the Economy Act or the Department of Homeland Security Act (DHS Reimbursable Authorization) or the Atomic Energy Act (Work for Others); or an internal DOE procurement request for prope1ty or

services related to post-hurricane Katrina, or Wilma relief or reconstrnction eff01is.

VII. Special Control Measures

(A) The authority identified in paragraph one of the attachment to this order shall only be exercised in exceptional circumstances and only by those individuals specifically authorized in advance by the cognizant Senior Procurement Executive. The Senior Procurement Executive shall coordinate any such authorization with the Office of Management and Budget (0MB).

(B) All post-Katrina-related acquisitions in excess of $2,500 in dollar value effected prior to the issuance of this plan and all post-Katrina acquisitions with an estimated value in excess of $25,000 effected subsequent to the issuance of this plan, whether effected by DOE or by a Management and Operating (M&O)contractor, shall be identified to the cognizant Senior Procurement Executive by the cognizant DOE contracting officer. The identification shall include the name and telephone number of the contracting officer or contractor purchasing official effecting the transaction, the actual or estimated value of the acquisition, and a brief description as to the nature and purpose of the acquisition, including the identification of the internal and/or external party that generated the requirement.

(C) Mandatory Reviews for post-Katrina acquisition other than Purchase Card Transactions:

(i) All Federal and M&O acquisitions in excess of $2,500 effected prior to the issuance of this plan shall be the subject of a post-award review. Cognizant DOE contracting officers will be responsible for the review of transactions effected by the M&O and the offices of Contract Management (MA-60) or, for NNSA, the NNSA Board of awards, will be responsible for the review of Federal contracts. The review may be conducted in any manner determined by the DOE contracting officer or the cognizant Senior Procurement Executive as appropriate to the nature of the acquisition.

(ii) Federal acquisitions in excess of $2,500 in value utilizing other than competitive procedures or one or more of the authorities contained in the attachment to this plan and other acquisitions with an actual or estimated value in excess of $100,000 shall be reviewed prior to award by the Office of Contract Management (MA-60) or, for NNSA, the NNSA Board of Awards except that if, in the opinion of the cognizant Contracting Officer, human health or safety would be endangered by the delay inherent in such review, the review shall be accomplished as soon after award as is practical. The review may be conducted in any manner determined by the cognizant Senior Procurement Executive appropriate

to the nature and urgency of the acquisition, including a telephonic or electronic review of appropriate information.

(iii) M&O contractor acquisitions in excess of $2,500 in value utilizing noncompetitive procedures and other acquisitions with actual or estimated value in excess of $100,000 in support of Katrina relief or reconstruction efforts shall be reviewed by the cognizant DOE contracting officer prior to award, except that, if in the opinion of the DOE contracting officer, human health or safety would be endangered by the delay inherent in such review, the review shall be accomplished as soon after award as is practical. The review may be conducted in any manner determined by DOE contracting office appropriate to the nature and urgency of the acquisition, including a telephonic or electronic review of appropriate information.

(iv) Records related to each acquisition and review shall be retained and maintained in accordance with DOE policies and procedures.

(D) The recording and accounting for acquisition obligations and expenditures for all Katrina-related acquisitions shall be in accordance with regular DOE/contractor policies, procedures, and local practices. Where the nature of the transaction requires that DOE be reimbursed from another agency or organization such reimbursement shall be required and obtained in accordance with regular DOE/contractor policies, procedures, and local practices and documentation of that reimbursement shall be maintained in appropriate financial and contract files.

(E) Interagency transactions. Where a DOE component organization has been tasked to provide goods or services by acquisition to another agency, the requirements of the Economy Act, FAR 17.500, and, as appropriate, DOE Orders and other directives shall be complied with. The DOE contracting officer, in coordination with the cognizant field or headquarters ChiefFinanial Officer, shall also ensure that the appropriate financial requirements are met by the requiring agency including the cetiification of availability of funds. See Acquisition Letter 2005-05, 4/22/05, for additional information on the appropriate content administration of such transactions.

(F) The cognizant contracting officer shall ensure that sufficient personnel resources are available to suppoti the award and administration of post-Katrina relief and reconstruction contracts, including as necessary technical support in the form of contracting officer representatives or technical monitors necessary for the surveillance and verification of contract performance. If the contracting officer determines that such resources are inadequate he/she shall immediately notify the cognizant Head of Contracting Activity through the applicable chain of command. If resource issues can not resolved by the HCA, they shall be referred to the cognizant Senior Procurement Executive.

(G) The Contracting Officer shall include in the contract file a statement that reflects the government's verification that supplies and services acquired by the contract have been received consistent with contract requirements.

(H) Purchase Card Transactions

(i) The DOE wide Program Coordinator will:

(a) require all DOE local coordinators to review a random sampling of purchase card transactions effected in support of post-Katrina relief efforts and shall maintain a file documenting the results of these reviews

(b) utilize data mining to identify Katrina-related purchases, by using an automated test for changes in single purchase limits

(c) work closely with Bank of America's account manager to monitor all changes in cardholder single purchase limits (all requests for changes to single purchase limit requires manual input by the Bank's account manager)

(d) communicate with local Program Coordinators and closely monitor activities for 60 days after rescinding emergency authority

(ii) Local Program Coordinators will:

(a) report all Katrina-related purchase card transactions to the DOE-wide Program Coordinator

(b) assist in conducting 60-day follow-up reviews for all Katrina purchase card transactions

(I) Contracting Officers shall coordinate with the cognizant Organizational Prope1ty Management Officer those contract actions that may result in government owned personal property being loaned, given, or otherwise disposed of to another agency or other recipients. Contracting officers with cognizance over M&O and other major site/facility management contracts shall ensure that contractor purchasing officials similarly coordinate these property-related transactions with contractor property managers.

VIII. Additional Responsibilities

(A) Post-Katrina acquisitions should be identified as such in the FPDS-NG in accordance with instructions separately provided.

(B) Contracting personnel are reminded to ensure that prices associated with Katrina related acquisitions are reasonable under the circumstances of the transaction and the unique circumstances of recovery operations.

(C) To the maximum extent practicable, consistent with applicable regulations, contracting personnel should facilitate contracting opportunities for local businesses - particularly small businesses - in or near the areas of post-Katrina relief and reconstruction. Note that section 307 of the Stafford Act (Pub.L.93-288) establishes a preference for contracting with local organizations for

emergency assistance activities. The Department of Commerce has established a small business clearinghouse to facilitate small business participation in post-Katrina related procurements. Contracting officers should alert Stephen Zvolensky, DOE's point of contact with the Department of Commerce, at stephen.zvolensky@hg.doe.gov or 202-287-1307, to identify any anticipated requests for post-Katrina purchasing.

Attachment: Emergency Authorities

POLICY FLASH 2006-06

DATE: November 21, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: FY 2006 Subcontracting Goals

SUMMARY:

This Flash provides the DOE FY 2006 Subcontracting Goal and announces the roll-out of the Government-wide Electronic Subcontracting Reporting System (eSRS).

The DOE Subcontracting Goal for FY 2006 is 41.3%. Contracting Officers should ensure that each contractor's Subcontracting Plan reflects a maximum effort by the contractor to award subcontracts to small business, thereby contributing to the Depaiiment's ability to achieve the DOE-wide goal. Remember that AL 2005-08 requires Subcontracting Plans reflecting less than the DOE-wide goal be submitted to the OSDBU prior to approval/disapproval by the Contracting Officer. As part of contract administration, Contracting Officers must evaluate each contractor's effort to implement its subcontracting plan and call to the contractor's attention any deficiencies.

Contracting Officers aie encouraged to remind their contractors that eSRS provides contractors the ability to file subcontracting reports on-line and provides agencies with on-line access to analytical data on the award of subcontracts. eSRS eliminates the need for paper submissions and processing of the SF 294's, Individual Subcontracting Repo1is, and SF 295's, Summaiy Subcontracting Reports, streamlining the collection of subcontracting data. The system has been fully operational since October 1, 2005. All contractors subject to subcontract repo1iing requirements should now be in the process of moving to the new system.

Questions concerning this policy flash should be directed to Sandra Cover at 202-287-1344 or Sandra.Cover@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy

Attachment: FY 2006 Subcontracting Goals

POLICY FLASH 2006-07

DATE: November 23, 2005
TO: Prncurement Directors
FROM: Office of Procurement and Assistance Policy, MA 61
Office of Procurement and Assistance Management

SUBJECT: Davis Bacon Act and Service Contract Act Wage Determinations and Related Statutes

SUMMARY: This notice serves to provide information pertaining to the Depa1iment of Labor (DOL)'s final mle (effective September 26, 2005) amending regulations to fully implement the Wage Determinations Online (WDOL) website (http://www.wdol.gov).

What is the purpose of this information?

The objective is to notify contracting officers that they may use the Wage Detetmination Online website when obtaining wage determinations issued by the DOL for service contracts subject to the Service Contract Act and construction contracts subject to the Davis Bacon Act and related statutes.

An amendment to the Federal Acquisition Regulation (FAR) is in process and upon publication, will revise the wage determination processes in the FAR to comply with the new DOL regulations.

How will this affect work processes?

Effective immediately, contracting officers may use the website for the purposes of obtaining wage determinations for official contract actions and forego submitting a paper request to DOL.

Questions concerning this policy flash should be directed to Helen Oxberger at 202-287-1332 or helen.oxberger@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement
and Assistance Policy, OMBE

POLICY FLASH 2006-08

DATE: December I, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

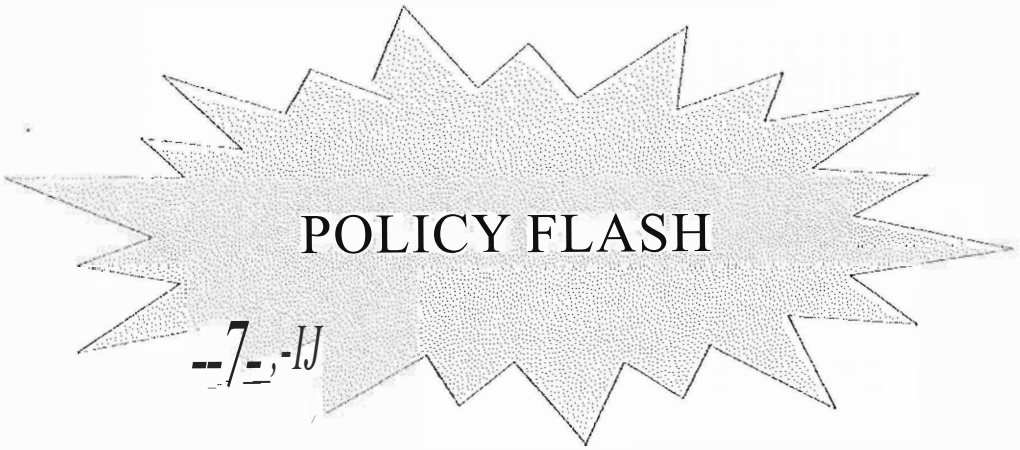
SUBJECT: Update to DOE Acquisition Guide-Chapter 15.1, "Source Selection Guide"

SUMMARY: Par(XII, Contents ofan Evaluation Report, has been updated within Chapter 15.1. Two sets of briefing charts have also been added. One set is for use by Source Selection Officials and the other is to be used by Source Selection Board members. These new or revised materials have been added to the Home Page. A change bar in the margin indicates where changes were made.

Questions may be referred lo Donald Sloan (202) 287-1386 or clo11ald.sloa11@hq.doc.gov .

Michael P. Fischetti, Acting Director
Office of Procurement
and Assistance Policy, OMBE

Attachment



POLICY FLASH 2006-09

DATE: December 2, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Letters (AL) 2006-02 and 2006-03, Financial Assistance Letters (FAL) 2006-01 and 2006-02; Energy Policy Act of 2005 (EPAct 05) Sections 988 (Cost Sharing) and 989 **(ComJ)etition and Merit Review Requirements)**

SUMMARY: This Flash transmits combined ALs and FALS that provide implementing guidance on the reqniremcnts of Seel ion 988 and 989 of EP Act 05. Section 988, Cost Sharing, establishes Department-wide cost sharing requirements for most research, development, demonstration, and commercial application activities. Section 989, Merit Review of Proposals, provides general provisions covering the impartial review of the scientific and technical merits of proposals or applications prior to the award.

Questions may be directed lo Ms. Jackie Kniskem at (202) 287-1342 or iackic.kniskern@l_g doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement
and Assistance Policy

Atachments

POLICY FLASH

POLICY FLASH 2006·10

DATE: December 14, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Acquiring Information Technology - Requirement to Comply with Internet Prntocol Version *6* (IPv6)

SUMMARY: This Policy Flash transmits Acquisition Letter AL2006-04, which Provides guidance on a new requirement in acquiring information technology that uses Internet Protocol. In some instances, modifying existing contracts or amending active solicitations will be required. A model contract clause is attached to the Acquisition Letter.

Questions regarding this Policy Flash may be directed to Michael Righi at (202) 287-1337 or michael.righi@hq.doe.gov.

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Michael P. Fischetti, Acting Director
Office of Procurement
and Assistance Policy

Ataclunent: AL2006-04 Acquiring Information Technology- Requirement to Comply with Internet Protocol Version 6 (IPv6)

POLICY FLASH

POLICY FLASHI 2006-11

DATE: December 20, 2005
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Publication of DOE Order 580.1, Department of Energy Personal Property Management Program.

SUMMARY: This Policy Flash is to inform you that DOE Order 580.1, DOE Personal Property Management Program and its companion Implementation Guides, DOE Guide 580.1, were signed by the Secretary. The Order promulgates policy for personal property management and will replace 41 CFR 109, Department of Energy Property Management Regulation, except for three provisions governing High Risk Property, Fleet Management, and Energy Related Laboratory Equipment. 111e Order and Guide are accessible on the Directives Portal and the Office of Procurement and Assistance Management homepage.

Questions concerning this policy flash should be directed to Jerry Hanley, DirectOl', Property Management at 202-287-1563 o erry.h y hq .gov.

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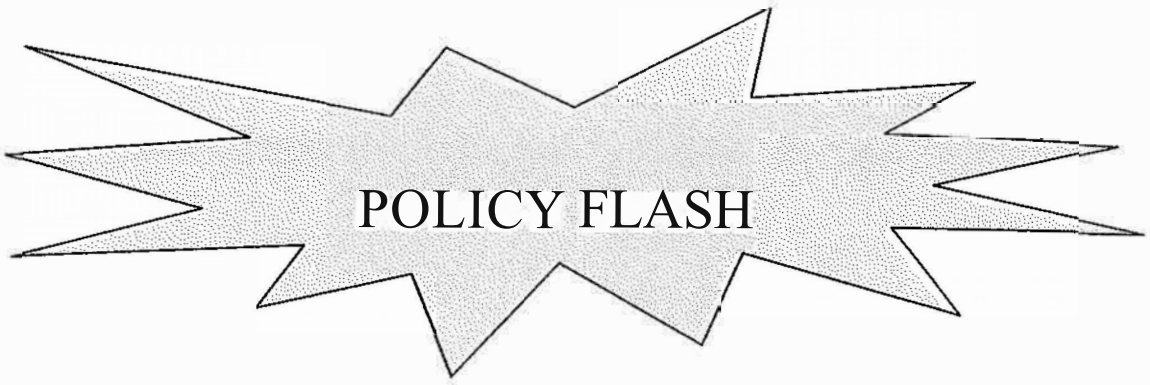
Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy



POLICY FLASH 2006·12

DATE: January 31, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Implementation of DOE SmartBUY**

SUMMARY: The purpose of this notice is to provide information on the DOE-wide implementation of SmartBUY, an e-government initiative.

Background:

SmartBUY is a government-wide enterprise software licensing initiative. Consistent with Section 5112 of the Clinger-Cohen Act, the Office of Management and Budget (0MB), as part of its statutory direction to improve the acquisition and use of1T in the federal government, has designated the General Services Administration (GSA) as the lead agency to negotiate government-wide enterprise licenses for software. The SmartBUY initiative may include the following types of software licenses: Office Automation; Network Management; Antivirus; Database; Business Modeling Tools; and Open source software support.

What is the purpose of this initiative?

The purpose of this initiative is far-reaching in assuring that the federal government is leveraging its immense buying power to achieve the maximum cost savings and best quality for commercially available IT products and services. In addition, obtaining supplies and services through SmartBUY should decrease administrative lead time because preliminary contract preparations, source selection, and optimum price negotiations have already been accomplished, thus conserving scarce resources.

How will this affect work processes?

- ► Contracting Officers and purchase card holders should ensure that Program Office personnel have vetted SmartBUY IT requirements through the Office of ChiefInformation Officer SmartBUY Program Manager for approval prior to acquisition processing.

- ► Contracting Officers and purchase card holders are advised that new SmartBUY contracts may become available for use from time to time. The CIO's office will publish electronic notification to all users as these events occur. Access the CIO SmartBUY website at http://cio.doe.gov/SProjects/smartbuy.htrnl for cunent actions and related guidance.

- ► Contracting Officers are advised that the acquisition of bundled or tum-key systems containing hardware and pre-loaded software are outside the parameters of the SmartBUY initiative, according to cu!l'ent policy and procedural guidance from GSA.

- ► The processing and approval of SmattBUY program waivers are the responsibility of the CIO. If waivers occur, they will be coordinated internally by the OCIO with DOE/NNSA procurement offices and GSA.

Attached is the Department's SmattBUY memorandum issued by the OCIO. Additional information regarding DOE's SmartBUY initiative may be obtained from Cuttie Bacon IV, Director of Business Management, OCIO. He can be reached on (202) 586-2000 or e-mail at Cuttie.Bacon@hg.doc.gov.

Questions concerning this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denisc.Wright@hg.doc.gov

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy, OMBE

Attachment

Department of Energy
Washington, DC 20585

November 18, 2005

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: ROSITA O. PARKES
CHIEF INFORMATIO(OF ;?;,,.;'.

r ·;; :hl STAA RF GEMENT
AND ADMINISTRATION

SUBJECT: DOE and NNSA Policy for Utilization of GSA SmaitBUY

The Office of Management and Budget (0MB) established the SmartBUY program on June 2, 2003 (Attachment I). SmartBUY policy and procedural guidance, as outlined by 0MB and the General Services Administration (GSA), are provided in Attachments 2, 3 and 4.

SmartBUY is a government-wide enterprise software licensing initiative established to maximize the buying power of the government and decrease the cost of widely used commercial software. Agencies are required to use SmartBUY agreements to purchase any commercial off-the-shelf software that is available under those agreements, such as Novell and WinZip (Attachment 5).

- DOE and NNSA procurement staff shall determine if the requirement may be fulfilled through SmmtBUY prior to completing any procurement action. This applies to all purchase card holders.
- If the required software is available under existing SmartBUY agreements, the requirement shall be processed through SmartBUY. (Attachment 2)
- If the required software is not available under existing SmartBUY agreements, the requirement shall be processed internally by DOE/NNSA Procurement offices.
- Waiver requests arc discouraged and must prove a significant impact on Departmental operations or funding. Waivers will be managed by DOE/NNSA technology and procurement offices, but may only be granted by the General Services Administration (GSA). Attachment 6 provides a GSA sample waiver request. NNSA waiver requests shall be forwarded through the NNSA CIO and coordinated with the DOE CIO. NNSA will provide DOE an advance copy of any waiver request submitted to GSA.

Printed with soy ink on recycled paper

- When a SmartBUY agreement exists, Facilities and Management contractors are authorized and encouraged to consider Smar!BUY as a first alternative when procuring IT software.

Implementation procedures are forthcoming. For additional SmartBUY information, please see http://cio.doe.gov/SProjects/smartbuy.html. Please contact Mr. Cullie W. Bacon IV, Director of Business Management, OCIO, with inquiries regarding the DOE SmartBUY initiative at cutlie.bacon@hg.doe.gov or at (202) 586-2000.

Attachments:

1. Office of Management and Budget Memorandum; M-03-14, dated June 2, 2003 http://www.whitehouse.gov/omb/memoranda/m03-I4.html
2. Maximizing Use of the SmartBUY Program, dated March 26, 2004
3. Office of Management and Budget Memorandum; M-04-08, dated February, 25, 2004 http://www.whitehO\tse.gov/omb/memoranda/fy04/m04-08.pdf
4. Office of Management and Budget Memorandum; M-04-16, dated July I, 2004 http://www.whitehouse.gov/omb/memoranda/fy04/m04-I6.html
5. Current SmartBUY Agreements in Place http://www.cio.gov/index.cfm?function= showdocs&category=agreements%20in%20place
6. SmartBUY Waiver Process, GSA, dated August 6, 2004 http://www.cio.gov/documents/20040708finalwaiver-cUpdate.doc

Policy Flash 2006-13

DATE: January 26, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Implementation of Fiscal Year (FY) 2006 Legislative Provisions

SUMMARY: Acquisition Letter 2006-05 has been issued to implement the Energy and Water Development Appropriations Act, 2006. It provides detailed procedures regarding the Department's implementation of Sections:

- 301; Competitive Procedures for Management Contracts,
- 304; Prohibits Preparation of RFP for Unfunded Program,
- 307; Special Procedures for User Facilities, and,
- 501; Lobbying Restrictions.

This Flash and the Acquisition Letter may be viewed at http://professionals.pr.doe.gov

Questions may be referred to Richard Langston (202) 287-1339 or richard.langston@hg.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Department of Energy
Assistance Regulation

No. AL-2006-05
Date 01/26/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Implementation of Fiscal Year (FY) 2006 Legislative Provisions

References:

DEAR917.6	Management and Operating Contracts
DEAR 970.1706-1	Award, Renewal, and Extension

When is this Acquisition Letter (AL) Effective?

The statutory provisions addressed in this AL are effective on the date of the enactment of the Act. The Energy and Water Development Appropriations Act, 2006, was enacted November 19, 2005. The Energy Policy Act of 2005 (EPAct 05) was effective August 8, 2005.

When Does This AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Richard Langston of the Office of Procurement and Assistance Policy at (202) 287-1339 or at richard.langston@hq.doe.gov or Stephen Law, of the National Nuclear Security Administration at (202) 586-4321 or at stephen.law@nnsa.gov.

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

The purpose of this Acquisition Letter (AL) is to provide information and guidance regarding the Department's implementation of the following statutory provisions.

Sections 301, 304, 307, and 501 of the Energy and Water Development Appropriations Act, 2006.

BP Act 05 which was previously discussed in Acquisition Letters 2005-14, 2006-02 and 2006-03.

What is the Background?

This AL implements ce1iain provisions contained in the Energy and Water Development Appropriations Act, 2006, Public Law 109-103. Unlike prior years, consistent with the reorganization of the subcommittees within the House Committee on Appropriations, all Department of Energy programs are funded within this bill rather than being contained in the Interior and Related Agencies Appropriations Act, as well as in the Energy and Water Development Appropriations Act.

There were additional procedures relating to competitive procedures for management and operating contracts in Section 995 of the BP Act 05. That section provides an exemption from the Congressional notification requirements of the prior year's appropriation act for Lawrence Livermore, Los Alamos, Sandia, and Savannah River National Laboratories on the ground that they have been or are being competed.

Sections 301,304,307, and 501, of the Energy and Water Development Appropriations Act, 2006, are carried-over from the FY 2005 Energy and Water Development Appropriations Act, Pub. L. 108-447.

Guidance Included in this Acquisition Letter

I. **Summary of Relevant Provisions, Legislative Direction, and Statutory l1npact** 3
II. **Competitive Procedures** 4
III. **Preparation and Issuance of Procurement Documents for Unfu11ded Programs** 6
IV. **User Facility** 6
V. **Lobbying Restrictions** 7

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I. Summary of Relevant Provisions, Legislative Direction, and Statutory Impact

Energy and Water Development Appropriations Act, 2006,

Section 301. (a)(l) Prohibits the use of funds appropriated by this or any other Appropriations Act, for FY 2006, or any previous year, to make *payments* for a noncompetitive management and operating contract unless the Secretary of Energy has published in the Federal Register and has submitted to the Committees on Appropriations of the House and Senate a written notification of the Secretary's decision to use competitive procedures for the award of the contract, or to not renew the contract when the term of the contract expires.

(a)(2) Notwithstanding paragraph (l), this does not apply to an extension for up to 2 years of a noncompetitive management and operating contract, if the extension is for purposes of allowing time to competitively award a new contract in order to provide continuity of service between contracts, or complete a contract that will not be renewed.

(b)(1) The term "noncompetitive management and operating contract" means a contract that was awarded more than 50 years ago without competition for the management and operation of Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory.

(b)(2) The term "competitive procedures" means procedures under which an agency enters into a contract pursuant to full and open competition" and includes competition procedures other than a procedure that solicits a proposal from only one source.

(c) For all management and operating contracts other than the five identified Laboratory contracts [(b)(l) above], none of the funds appropriated by this Act may be used to *award* a management and operating contract, or award a significant extension or expansion to an existing management and operating contract, unless such contract is awarded using competitive procedures or the Secretary of Energy grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver. At least 60 days before a contract award for which the Secretary intends to grant such a waiver, the Secretary shall submit, to the Committees on Appropriations of the House of Representatives and the Senate, a report notifying the Committees of the waiver and setting fo1ih, in specificity, the substantive reasons why the Secretary believes the requirement for competition should be waived for this particular award.

Section 304. Prohibits the use of funds appropriated in the Energy and Water Development Appropriations Act, 2006, to prepare or initiate a Request For Proposals (RFPs) for a program if the program has not been funded by Congress.

Section 307. Directs the Department of Energy to ensure that broad public notice be given when a user facility is available to universities and other potential users or when the Depaitment of Energy seeks input f'om universities and other potential users regarding

significant characteristics or equipment in a user facility or a proposed user facility. In addition, this provision further requires the Department of Energy to employ "full and open competition" in selecting a university or other potential users as a formal partner in the establishment or operation of a user facility. The term user facility includes but is not limited to (1) a user facility as described in section 2203(a)(2) of the Energy Policy of 1992 (42 U.S.C. 13503(a)(2); (2) A National Nuclear Security Administration Defense Programs Technology Development Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

Section 501. Prohibits the use of funds appropriated in the Act, either directly or indirectly, to influence congressional action on any legislation or appropriation matter pending before Congress, other than to communicate to Members of Congress as described in section 1913 of title 18, United States Code.

Energy Policy Act of 2005

Section 995 Prohibits the use of funds authorized in the appropriation to award a management and operating contract for a National Laboratory (excluding Lawrence Livermore, Los Alamos, Sandia, and Savannah River National Laboratories) unless the contract is awarded competitively or the Secretary grants a waiver. The Secretary may not delegate authority to make the waiver and shall submit to Congress a report notifying it of the waiver and setting forth the reasons for the waiver at least 60 days prior to the date of award of such contract.

II. Competitive Procedures for Management and Operating Contracts

What is the scope of this requirement?

The requirements of Section 301 of the Energy and Water Development Appropriations Act, 2006, apply to 5 management and operating contracts (Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory) which are Federally Funded Research and Development Centers (FFRDC), *and to all other management and operating contracts,* including awards of significant extensions or expansions to existing contracts.

Section 301 of the Energy and Water Development Appropriations Act, 2006, provides that funding may be used to maintain operations of the five FFRDCs identified when the Secretary of Energy publishes in the Federal Register and submits to the Committees on Appropriations of the House and Senate a written notice of the decision to use competitive procedures for the award of the contract, or not to renew the contract when the term of the contract expires. However, this requirement does not apply to an extension of up to 2 years of a noncompetitive management and operating contract, if the extension is for the purpose of allowing time to competitively award a new contract in order to provide continuity of services between contracts, or complete a contract that will not be renewed.

For all other management and operating contracts and all awards of a significant extension or expansion to an existing management and operating contract, the Energy and Water

Development Appropriations Act, 2006 requires the award to be based on competitive procedures unless the Secretary of Energy grants, on a case-by-case basis, a waiver to allow for a deviation. This waiver decision may not be delegated *This requirement affects new management and operating contracts, amendments, and modifications* that extend existing management and operating contracts beyond the term provided for in the contract (except as noted below) that are awarded using funds appropriated in this Act without providing for full and open competition in accordance with the policies and procedures set forth at DEAR 917.602(b) and FAR Subpart 6.3. Section 301 and the guidance set forth herein, do not apply to the exercise of an option in accordance with DEAR 970.1706-1.

Similarly, Section 995 of the EP Act 05 provides that *all management and operating contract awards* with the exception of the Lawrence Livermore, Los Alamos, Sandia and Savannah River National Laboratories, must be competitively awarded unless the Secretary grants a waiver after Congressional notification is provided. Section 995 of the Energy Policy Act is covered in Acquisition Letter (AL) 2005-14.

What procedures need to be followed to implement this requirement?

In order to execute a noncompetitive extension of a management and operating contract, the Contracting Activity shall use the existing policy and procedures regarding the extend/compete process found in AL 96-09, which provides for the use of competition in the award of management and operating contracts while maintaining the benefits of long term contract relationships. Al 96-09 uses a class deviation to FAR 17.605(b), which allows a 10 year term for management and operating contracts, consisting of a 5 year base period and a 5 year option period. When the Head of the Agency has approved the use of a long term contract, the Head of the Contracting Activity, with the concunence of the Program Assistant Secretary, may execute an option to extend the contract if performance under the base period has been satisfactory.

Should a Contracting Activity believe a noncompetitive extension of a management and operating contract to be necessary, the Head of the Contracting Activity shall have the Contracting Officer begin an extend-compete review, prepare the necessary documentation specified at Attachment A of AL 96-09, and forward the documentation to the Procurement Executive. These procedures are not required for noncompetitive extensions, not to exceed 2 years, needed to compete the contract or to complete and closeout the contract.

The Procurement Executive will coordinate the request with other appropriate Headquaiters Officials, prepare a waiver and supporting documentation required by Section 301 of the Energy and Water Development Appropriations Act, 2006, and refer the matter to the Secretary for consideration. If the Secretary supp01ts the waiver, the Secretary will notify the Congress. Sixty days following the Congressional notification of the Department's intent to grant a waiver for a noncompetitive extension, the Secretary will approve the notice, unless the Congress has directed some other action. The Secretary will notify the Procurement Executive of the appropriate action to be taken.

III. Preparation and Issuance of Procurement Documents for Unfunded Programs

What is the scope of this requirement?

The requirement of Section 304 of the Energy and Water Development Appropriations Act, 2006, applies to Departmental initiatives for a program or project that has not been funded by Congress:

Section 304 of the Energy and WateiDevelopment Appropriations Act, 2006, requires that funds appropriated by the Act shall not be used to prepare or initiate RFPs for a program if the program has not been funded.

What procedures need to be followed to implement this requirement?

Contracting activities shall not prepare or initiate RFPs in suppo1t of a program or project for which funds have not been appropriated.

IV. User Facility

What is the scope of this requirement?

There are three circumstances under which Departmental processes are affected by Section 307:

The first circumstance is where the Department or its management and operating contractor makes a user facility available to universities and other potential users;

The second is where the Depatiment seeks advice or information from universities or other potential users on the significant characteristics or equipment to be used in a user facility or a proposed user facility; and

The third instance is where the Department seeks to create a formal partnership with a university or other potential user for the establishment or operation of a user facility. This can occur in two ways: (1) the Department seeks to enter into a formal partnership with a private party to establish or operate a user facility; or (2) a DOE contractor responsible for the management and operation of a DOE user facility seeks to enter into a formal partnership with a university or other potential user to establish or operate a user facility.

Note: Normally, neither DOE nor its management and operating contractors enter into formal partnerships for the management or operation of a DOE user facility. Rather, the operation of a user facility is accomplished under contractual service arrangements, which do not contain legal indicia of a formal partnership. Accordingly, it is not anticipated that this circumstance will arise.

What procedures need to be followed to implement this requirement?

In the first two circumstances as noted on the previous page, DOE should assure that the activities are conducted in a manner that promotes broad participation by all potential scientific and technical users of the facility. The DOE or contractor program element with responsibility for a user facility should ensure that broad public notice of these two activities is provided through publication in the Federal Register or FedBizOpps, in addition to relevant scientific journals.

The third circumstance requires that any fotmal pattnership between DOE, its management and operating contractor, and a private party for the establishment or operation of a user facility be accomplished through a selection process based on "full and open competition"[1].

Contracting officers should assure that, in the unlikely event that DOE or its management and operating contractor seeks to establish a formal pattnership for the establislnnent or operation of a user facility, the competition requirements conform to this AL.

V. Lobbying Restrictions

What is the scope of this requirement?

Section 501 of the Energy and Water Development Appropriations Act, 2006, applies to all solicitations and awards of DOE contracts under which funds appropriated in the Act are obligated.

What procedures need to be followed to implement this requirement?

The following clause shall be incorporated into solicitations and awards of contracts where the expenditure of funds is made available under the Energy and Water Development Appropriations Act, *2006,:*

Lobbying Restriction (Energy and Water Act 2006)

The contractor agrees that none of the fund<! obligated on this award shall be expended, directly or indirectly, to influence congressional action on any l e g islation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S. C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

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1 Section 307 uses the phrase "full and open competition." That phrase is a te1m of art in the Government procurement process. If DOE is not awarding a contract creating a formal partnership, but instead is using a financial assistance instrnment or allowing a management and operating contractor to subcontract the requirement, a broad public announcement of the funding opportunity will satisfy the statute.

POLICY FLASH
2006-14

Policy Flash 2006-14

DATE: January 31, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular 2005-07

SUMMARY: Federal Acquisition Circular 2005-07 has been issued to implement various interim final and final rules amending the Federal Acquisition Regulation. A listing of the contents is attached.

This Flash may be viewed at http://prol'cssionals.pr.cloc.gov

The Circular may be viewed at http://www.acqnct.gov/l'ar

Questions may be referred to Richard Langston (202) 287-1339 or richard. langston((v,hq.doc.gov.

Michael P. Fischetti, Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachment

I Transportation, Standard Industry Practice - This rule is amending the Federal Acquisition Regulation (FAR) to implement changes to the Interstate Commerce Act, which abolished tariff-filing requirements for motor carriers of freight and the Interstate Commerce Commission (ICC). Also, the rule implements changes to the Federal Management Regulation that require use of commercial bills of lading for domestic shipments.

II Common Identification Standard for Contractors - This rule is amending the Federal Acquisition Regulation (FAR) to address the contractor personal identification requirements in Homeland Security Presidential Directive (HSPD-12), "Policy for a Common Identification Standard for Federal Employees and Contractors," and Federal Info1mation Processing Standards Publication (FIPS PUB) Number 201, "Personal Identity Verification (PIV) of Federal Employees and Contractors." See Acquisition Letter 2005-16 dated October 4, 2005.

III Change to Performance-based Acquisition - This rule is amending the Federal Acquisition Regulation (FAR) by changing the terms "performance-based contracting (PBC)" and "performance-based service contracting (PBSC)" to "performance-based acquisition (PBA)" throughout the FAR; adding applicable PBA definitions of "Performance Work Statement (PWS)" and "Statement of Objectives (SOO)" and describing their uses; clarifying the order of precedence for requirements; eliminating redundancy where found; modifying the regulation to broaden the scope of PBA and give agencies more flexibility in applying PBA methods to contracts and orders of varying complexity; and reducing the burden of force-fitting contracts and orders into PBA, when it is not appropriate. The title of the rule has also been changed to reflect the deletion of "service." The Department will be modifying its supplemental guidance to reflect this change.

IV Free Trade Agreements - This rule is amending new Free Trade Agreements with Australia and Morocco as approved by Congress (Public Laws 108-286 and 108-302), These Free Trade Agreements were scheduled to become effective on or after January 1, 2005. However, the Moroccan Free Trade Agreement has not yet been implemented and is therefore removed from this final rule. The rule also established a table of services excluded from the coverage of the various trade agreements, corrected the threshold for Canadian services, revised the list of Least Developed Countries, revised FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA), and revised the FAR clauses that implement application of the Buy American Act (41 U.S.C. 10a, 10b, l0b-1, and 10c) and trade agreements to construction material. Acquisition Letter 2002-06 may be updated or a Policy Flash will be issued to explain the change.

V Deletion of the Very Small Business Pilot Program - This rule is amending the Federal Acquisition Regulation (FAR) to delete the Very Small Business Pilot Program. Under the pilot program, contracting officers were required to set-aside for very small business concerns certain acquisitions with an anticipated dollar value between $2,500 and $50,000. The Councils

removed the FAR provisions because the legislative authority for the program terminated on September 30, 2003. See Acquisition Letter 2005-08 dated June 10, 2005. The next Small Business related AL will reflect this change.

VI Purchases from Federal Prison Industries, Requirement for Market Research - This rule is amending the Federal Acquisition Regulation (FAR) to implement Section 637 of Division H of the Consolidated Appropriations Act, 2005. Section 637 provides that no funds made available under the Consolidated Appropriations Act for fiscal year 2005, or under any other Act for fiscal year 2005 and each fiscal year thereafter, shall be expended for purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making the purchase determines that the offered product or service provides the best value to the buying agency. See Policy Flash 2004-14 dated April 5, 2004.

VII Exception from Buy American Act, Commercial Information Technology - This rule is implementing Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). Section 517 authorizes exemption from the Buy American Act for acquisitions of information technology that are commercial items.

VIII Removal of Sanctions Against Libya - This rule implements Executive Order 13357 which removed sanctions against Libya.

IX Elimination of Certain Subcontract Notification Requirements - This rule is amending the Federal Acquisition Regulation (FAR) to modify the language regarding advance notification requirements. The change eliminates the requirement for advance notification of certain subcontract awards if the contractor has an approved subcontracting program. This change is required to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, which resulted in revisions to 10 U.S.C. 2306(e).

X Annual Representations and Certifications, NAICS Code/Size Standards - This rule amended the Federal Acquisition Regulation (FAR) to modify the provision regarding Annual Representations and Certifications to include a section whereby the contracting officer can insert the appropriate North American Industry Classification System (NAICS) code and small business size standard for the procurement. Its exclusion in the original drafting of the subject provision was an oversight. When the FAR provision is included in a solicitation, the provision regarding Small Business Program Representations, where this information is normally placed, is not included. Without this change, there is no standard way in which the NAICS code and small business size standard can be communicated to the vendor.

XI Technical Amendments - This rule makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial corrections and updates.

POLICY FLASH 2006-15

DATE: January 27, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Update of FAR & DEAR Clause and Provision Matrices for Management and Operating Contracts

SUMMARY: The purpose of this flash is to provide a new Acquisition Guide Chapter 70.52, M&O Clause Matrices, and furnish the updated FAR and DEAR contract clause matrices. These matrices are current through FAC 05-08 which was issued on January 5, 2006 and DEAR Final Rule dated November 25, 2005.

We have made revisions/updates to the contract matrices. They identify the contract clauses by number, date, and FAR/DEAR prescription. They have been placed on the Home Page http://professionals.pr.doc.gov under Regulations and Guidance. They are at M&O Contract Clause Matrices. Part I is the FAR clauses and Part II is the DEAR clauses. Questions regarding this policy flash may be directed to Stephen Zvolensky (202) 287-1307 or Stephen.Zvolensky@hg.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

Management and Operating Contract Matrices for the Use of Solicitation Provisions and Contract Clauses

[Reference: FAR 52; DEAR 952: DEAR 970.521

Overview

The Office of Policy maintains management and operating contract matrices for the use of solicitation provisions and contract clauses. They contain instructions for use of all the FAR and DEAR provisions and clauses which may be needed for management and operating contracts. The matrices are at http://professionals.pr.doe.gov/ma5/MA-5Web.nsfi'Procurement/Clause+Matrix

Staff Contact

Questions or conunents may be addressed to Stephen Zvolensky (202) 287-1307 or Stephen.Zvolensky@hg.doe.gov.

Clause Matrix. for Department O f Energy
Management and Operating Contracts
Part I - F A R Clauses
(Thru FAC 05-08 and DEAR I-'h1al Rule dated November 25, 2005)

(1/10/2006)

K

KEY:

R=Required
A = Required when applicable
O = Optional

M&O = Management and Operating contract
UCF = Unifom1 Contract Fom1at

General instruction: Set forth below are clauses prescribed in FAR Part 52 (identified in the FAR Matrix for use in CR R&D, CR SVC, or CR CON contracts) which are to be used in DOE M&O contracts.

Tilis listing does not include solicitation provisions.

FAR Clause Number Title	Secondary DEAR CJause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52,202-1 Definitions Jul2004	952.202-1	R	R	J	2.201	Insert the clause at 52.202·1, Definitions, in solicitations and contracts that exceed the simplified acquisition threshold. Note: DEAR 952.202•1 alters FAR clause 52.202·1.
52,203-3 Gratuities Apr 1984		R	R	I	3.202	The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal serviOOi and those between military departments or defense agencies and forei$_{gn}$ governments that do not obligate any funds appropriated to the Department of Defense.
52.203-5 Covenant Against Contingent Fees Apr 1984		R	R	I	3.404	The contracting officer shall insert the clause at 52.203•5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see FAR Parts 2 and 12).
52.203-6 Restrictions on Subcontractor Sales to the Government Jul 1995		R	R	I	3.503-2	TIle contracting officer shall insert the clause at 52.203-6, Restriclions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition o f commercial items, the contracting officer shall use the clause with its Allemate I.
52.203-7 Anti-Kickback Procedures Jul 1995		R	R	I	3.502-3	The contracting officer shall insert the clause at 52,203-7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see FAR Part 12).
52.203-8 Cancellation, Rescission, and Recovery o f Funds for Illegal or Improper Activity Jan 1997		R	R	I	3.104-9(a)	The contracting officer shall insert the clause at 52.203-8, Cancellation, Rescission, and Recovery o f Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold,
52.203-10 Price or Fee Adjustment for Jllegal or Improper Activity Jan 1997		R	R	I	3.104-9(b)	The contracting officer shall insert the clause at 52.203 · 10, Price or Fee Adjustment for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold,

FAR Clause Number }Title	Secondaty DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed fil	FAR Prescription/Notes
52.203-12 Limitation on Payments to Influence Certain Federal Transactions Jw,2003		R	R	I	3.808(b)	TIle clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed $100,000.
52.204-1 Approval o f Contract Dec 1989		A	A	I	4.103	The contracting officer shall insert the clause at 52.204-l, Approval o fContract, in solicitations and contracts if required by agency procedures.
52.204-4 Printed or Copied Double-Sided on Recycled Paper Aug2000		A	A	I	4.303	Insert the clause at 52.204-4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.
52.207-3 Right o f First Refusal o f Employment Nov 1991		A	A	I	7.305(c)	The contracting officer shall insert the clause at 52,207-3, Right o f First Refusal o f Employment, in aU solicitations which may result in a conversion from in-house perfomiance to contract perfonnance o f work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted. The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.
52.207-5 Option to Purchase Equipment Feb 1995 I		A	A	I	7.404	1lte contracting officer shall insert a clause substantiaUy the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.
52.208-8 Helium Requirement Forecast and Required Sources for Helium Apr2002		A	A	I	8.505	Insert the clause at 52.208-8, Helium Requirement Forecast and Required Sources for Helium, in solicitations and contracts i f it is anticipated that perfonnance o f the contract involves a major helimn requirement
52.208-9 Contractor Use o f Mandatory Sources o f Supply Jul 2004		A	A	I	8.004	The contracting officer shall insert the clause at 52.208-9, Contractor Use o f Mandatory Sources o f Supply, in solicitations and contracts which require a contractor to purchase supply items for Government use that are available from the Conuniltee for Purchase fiom People Who Are Blind or Severely Disabled. Tite contracting officer shall identify in the contract schedule the items which must be purchased from a mandatoty source and the specific source.
52.209-1 Qualification Requirements Feb 1995		A	A	I	9.206-2	The contracting officer shall insert lhe clause at 52.209_I, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.
52.209-6 Protecting the Govemmenfs Interest Wl1en Subcontracting With Contraclors Debarred, Suspended, or Proposed for Debannent Jan 2005		R	R	I	9.409(b)	'llIe contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debannent, in solicitations and contracts where the contract value exceeds $25,000.
52.21 J.5 Material Requirements Aug2000		A	A	I	I1.304	Insert the clause at 52.211-5, Material Requirements, in solicitations and contracts for supplies that are not commercial ilems.

FAR Clause Number)Title	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.211-8 Time o f Delivery Jun 1997		0	0	F	1l.404(aX2)	The conlracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.211-8, Time o f Delivery, i f the Govemment requires delivery by a particular time and the delivery schedule is to be based on the date o f the contract
Alternate I Jun 1997		0	0		1l.404(aX2)	I f the delivery schedule is expressed in tcnns o f sped-fie calendar dates or specific periods and is based on an assumed date o f award, the contracting officer may use the clause with its Alternate J.
Alternate Il Jun 1997		0	0		11.404(aX2)	I f the delivery schedule is expressed in tenns o f specific calendar dates or specific periods and is based on an asswned date the contractor will receive notice o f award, the contracting officer may use the clause with its Alternate II.
Alternate III Jun 1997		0	0		11.404(aX2)	I f the delivery schedule is to be based on the actual date the contractor receives a written notice o f award, the contracting officer may use the clause with its Alternate Jll.
52.211-9 Desired and Required Time o f Delivery Jun 1997		0	0	F	1I.404(aX3)	TIle contracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.211-9, Desired and Required Time o f Delivery, i f the Government desires delivery by a certain time but requires delivery by a specified later time, and the delivery schedule is to be based on the date o f the contract.
Alternate I Jun 1997		0	0		ll.404(aX3)	I f the delivery schedule is expressed in terms o f specific calendar dates or specific periods and is based on an assumed date o f award, the contracting officer may use the clause with its Alternate I.
Alternate Il Jun 1997		0	0		I1.404(aX3)	I f the delivery schedule is expressed in terms o f specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice o f award, the contracting officer may use the clause with its Altemate II.
Alternate ID Jun 1997		0	0		1I.404(aX3)	I fthe delivery schedule is to be based on the actual date the contractor receives a written notice o f award, the contracting officer may use the clause with its Alternate m.
52.211-12 Liquidated Damages-Construction Sep2000		0	0	F	I1.503(b)	Use the clause at 52.211-12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer detennines that liquidated damages are appropriate (sec ll.501(a)). I f the contract spe<:ifies more than one completion date for separate parts or stages o f the work, revise paragraph (a) o f the clause to state the amount o f liquidated damages for delay o f each separate part or stage o f the work.
52.211-13 Time Extensions Scp2000		A	A	F	1l.503(c)	Use the clause at 52.211-13, Time Extensions, in solicitations and contracts for construction that use the clause at 52.211-12, Liquidated Damages——Construction, when that clause has been revised as provided in paragraph (b) o f this section.
52.215-8 Order o f Precedence-Unifonn Contract Fonnat Oct 1997		A	A	I	15.209(h)	The contracting officer shall insert the clause at 52.215-8, Order o f Precedence--Unifonn Contract Fonnat, in solicitations and contracts using the format at 15.204.

FAR Clause Number ille	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.215-12 Subcontractor Cost or Pricing Data Oct 1997		A	A	I	15.408(d)	The contracting officer shall insert the clause at 52.215-12, Subcontractor Cost or Pricing Data, in solicitations and contracts when lhe clause at 52.215-10 is included.
52.215-13 Subcontractor Cost or Pricing Data-Modifications Oct 1997		A	A	I	15.408(e)	The contracting officer shall insert the clause at 52.215- 13, Subcontractor Cost or Pricing Data-- Modifications, in solicitations and contracts when the clause at 52.215-11 is included.
52.215-14 Integrity o f Unit Prices Oct 1997		A	A	I	15.408(1)(])	The contracting oflker shaU insert the clause at 52.215-14, Integrity o f Unit Prices, in solicitations and contracts except for- (i) Acquisitions at or below the simplified acquisition threshold; (ii) Construction or architect-engineer services mlder Part 36; (iii) Utility services under Part 41; (iv) Service contracts where supplies are not required; (v) Acquisitions o fcommercial items; and (vi) Contracts for petroleum products.
Alternate I Oct 1997		A	A		15.408(1)(2)	The contracting officer shall insert the clause with its Alternate I when contracting without adequate price competition or when prescribed by agency regulations.
52.216-IO Incentive Fee Mar 1997		A	A	I	l6.307(d)	The contracting officer shall insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus• incentive-fee contract (other than a facilities contract) is contemplated.
52.216-11)cost Contract-No Fee Apr 1984		A	A	I	l6.307(eXI)	The contracting officer shall insert the clause at 52.216-11, Cost Contract-No Fee, in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract.
A1tematel Apr 1984		A	A		16.307(eX2)	If a cost-reimbursement research and development contract with an educational instihltion or a nonprofit organization that provides no fee or other payment above cost and is not a cost-sharing contract is contemplated, and i f the contracting officer determines that withholding o f a portion o f allowable costs is not required, the contracting officer shall use the clause with its Alternate].
52.216-12 Cost Sharing Contract-No Fee Apr 1984		A	A	I	16.307(1)(1)	The contracting officer shall insert the clause at 52.216-12, Cost-Sharing Contract-No Fee, in solicitations and contracts when a cost-sharing contract(otber than a facilities contract) is contemplated.
Alternate I Apr 1984		A	A		16.307(1)(2)	I f a cost-sharing research and development contract with an educational institution or a nonprofit organization is contemplated, and i f the contracting officer determines that withholding o f a portion o f allowable costs is not required, the contracting officer shall use the clause with its Alternate I.
52.216-23 Execution and Commencement o f Work Apr 1984		A	A	I	16.603-4(bX1)	The contracting officer shall insert the clause at 52.216-23, Execution and Commencement o f Work, in Jetter contracts, except that this clause may be omitted from letter contracts awarded on SF 26.
52.216-24 Limitation o f Government Liability Anr 1984		A	A	I	16.603-4(bX2)	The contracting officer shall insert the clause at 52,216-24, Limitation o f Government Liability, with dollar amounts completed in a manner consistent wilh 16.603-2(d).

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52.216-25 Contract Definitization Oct 1997		A	A	I	16.603-4(bX3)	The contracting officer shall insert the clause at 52.216-25, Contract Defmitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c), in letter contracts.
Alternate I Apr 1984		A	A		16.603-4(bX3)	If, at the time o fentering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria o f 15.403-1 for not requiring submission o f cost or pricing data, the words "and cost or pricing data supJX}rting its proposal" may be deleted from paragraph (a) o f the clause. If the Jetter contract is being awarded on the basis o f price competition, the contracling officer shall use the clause with its Alternate I.
52.216-26 Payments o f Allowable Costs Before Definitization Dec2002		A	A	I	16.603-4(c)	The contracting officer shall also insert the clause at 52.216-26, Payments o f Allowable Costs Before Definitiution, in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair o f ships.
52.217-9 Option to Extend the Term o f the Contract Mar2000	970.1706-2	A	A	I	17.208(g) 970.1706--2	Insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Tenn o f the Contract, in solicitations and contracts when the inclusiOn o f an option is appropriate (see FAR 17.200 and 17.202) and it is necessary to include in the contract any or all o f the following: (1) A requirement that the Government must give the contractor a preliminary written notice o f its intent to extend the contract. (2) A statement that an extension o f the contract includes an extension o f the option. (3) A spe<:ified limitation on the total duration o f the contract.
52.219-6 Notice o f Total Small Business Set-Aside Jun2003		A	A	1	19.508(c)	The contracting officer shall insert the clause at 52.219-6, Notice o f Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides.
Alternate I Oct 1995		A	A		19.508(c)	The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(1)(4) and (5)).
Alternate II Mar2004		A	A		19.508(c)	Use the clause at 52.219-6 with its Alternate II when including FPI in the competition in accordance with 19.504.
52.219-7 Notice o f Partial Small Dusiness Set-Aside June2003		A	A	1	19.508(d)	The contracting officer shall insert the clause at 52.219-7, Notice o f Partial Small Dusiness Set-Aside, in solicitations and COlltracts involving parlial small business set-asides.
Alternate I Oct 1995		A	A		l9.508(d)	TIlc clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(1)(4) and (5)).
Alternate Il Mar2004		A	A		19.508(d)	Use the clause at 52.219-7 with its Alternate TI when including FPI in the competition in accordance with 19.504.
52.219-8 Utilization o f Small Business Concerns May2004		R	R	I	19.708(a)	The contracting officer shall insert the clause at 52.219-8, Utilization o f Small Business Concerns, in solicitations and contracts when the contract amount is expected to be over the simplified acquisition threshold unless – (I) A personal services contract is contemplated (see 37.104); or (2) The contract, together with all its subcontracts, is to be performed entirely outside the United States and its outlying areas.

FAR Clause Number ,:ritte	Secondary DEAR Clause Citation	M&O For Profit	M&O Non.- Profit	UCF	Prescribed In	FAR PrescdptionJNotes
52.219-9 Small Business Subcontracting Plan Jul 2005		R	R	I	l9.708(bXI)	Insert the clause at 52.2 19-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and are required to include the clause at 52.2 19-8, Utilization of Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program.
Alternate I Oct2001		A	A		19.708(bXI)	When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.
AJtemate II Oct2001		A	A		19.708(bXI)	When contracting by negotiation, and subcontracling plans are re.quired with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.
52.219-10 Incentive Subcontracting Program Oct2001		O	O	I	19.708(cXll	The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702). and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business. HUBZone small business. and women-owned small business conccms, and is commensurate with the efficient and economical performance of the contract unless the conditions in paragraph (cX3) of this section are applicable. The contracting officer may vary the tenns of the clause as specified in paragraph (cX2) of this section.
52.219-16 Liquidated Damages-Subcontracting Plan Jan 1999		R	R	I	19.708(bX2)	The contracting officer shall insert the clause at 52.2 19-16, Liquidated Damages-..Subcontracting Plan, in all solicitations and contracts containiog the clause at 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or the clause with its Alternate I or IL
52.219-25 Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting Oct 1999		A	A	I	19.1204(b)	The contracting officer shall insert the clause at 52.219-25, Small Disadvantaged Business Participation Program -Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.
52.219-3 Notice of Total HUBZone Set-Aside Jan 1999		A	A	I	19.1308(a)	The contracting officer shall insert the clause at 52.219-3, Notice of Total HUBZone Set-Aside, in solicitations and contracts for acquisitions that are set aside for HUBZone small business concerns under 19.1305 or 19.1306.
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns July2005		A	A	I	19.1308(b)	111e contracting officer shall insert the clause at 52.2 19-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that do not exceed the simplified acquisition threshold.
52.222-1 Notice to the Government of Labor Disputes Feb 1997		A	A	I	22.103-5(a)	The contracting officer shall insert the clause at 52.2 22-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under 2 2.101-1(e).

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52.222-3 Convict Labor Jun2003		R	R	I	22.202	The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; unless - (a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor; (b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or (c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.
52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation Jul 2005		A	A	I	22.305	Insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act---Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts-- (a) Valued at or below the simplified acquisition threshold; (b) For commercial items; (c) For transportation or the transmission of intelligence; (d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf lands Act (43 U.S.C. 1331)(29CFR5.15); (e) For work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6); (f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or (g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).
52.222-6 Davis•Bacon Act Jul2005		A	A	I	22.407(aXI)	The contracting officer shall insert the clause in solicitations and contracts in excess of$2,000 for conslruction within the United States.
52.222-7 Withholding of Funds Feb 1988		A	A	I	22.407(aX2)	The contracting officer shall insert the clause in solicitations and contracts in excess of$2,000 for constmction within the United States.
52.222-8 Payrolls and Basic Records Feb 1988		A	A	I	22.407(a)	The contracting officer shall insert the clause in solicitations and conlracts in excess of$2,000 for construction within the United States.
52.222-9 Apprentices and Trainees July2005		A	A	I	22.407(a)	The contracting officer shall insert the clause in solicitations and contracts in excess of$2,000 for constmction within the United States.
52.222-IO Compliance with Copeland Act Requirements Feb 1988		A	A	I	22.407(a)	The contracting officer shall insert the clause in solicitations and contracts in excess of$2,000 for construction within the United States.

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52.222-11 Subcontracts (Labor Standards) Jul 2005		A	A	I	22.407(a)	The contracting officer shall insert the clause in solicitations and contracts in excess o f$2,000 for construction within the United States.
52.222-12 Contract Tennination-Debannent Feb 1988		A	A	I	22.407(a)	The contracting officer shall insert the clause in solicitations and contracts in excess of$2,000 for construction within the United States.
52.222-13 Compliance with Davis-Bacon and Related Act Regulations Feb 1988		A	A	I	22.407(a)	The contracting officer shall insert lhe clause in solicitations and contracls in excess o f$2,000 for construction within the United States.
52.222-14 Disputes Concerning Labor Standards Feb 1988		A	A	I	22.407(a)	1l1e contracting officer shall insert the clause in soficitations and contracts in excess of$2,000 for construction within the United States.
52.222-15 Certification o f Eligibility Feb 1988		A	A	I	22.407(•)	The contracting officer shall insert the clause in solicitations and contracts in excess o f$2,000 for construction within the United States.
52.222-16 Approval o f Wage Rates Feb 1988		A	A	I	22.407(b)	Insert the clause at 52.222-16, Approval o f Wage Rates, in solicitations and contracts in excess of$2,000 for cost-reimbursement construction to be perfom1ed within the United States, except for contracts with a State or political subdivision thereof.
, 52.222-17)Labor Standards for Construction Work-Facilities Contracts Feb 1988		A	A	I	22.407(d)	Insert the clause at 52.222-17, Labor Standards for Construction Work-Facilities Contracts, in solicitations and contracts, if a facilities contract (see 45.301) n1ay require covered construction work (see 22.402(b)) to be perfonned in the United States.
52.222-20 Walsh-Healey Public Contracts Act Dec 1996		A	A	I	22.610	The contracting officer shall insert the clause at 52.222-20, Walsh-Healey Public Contracts Act, in solicitations and contracts covered by the Act (see 22.603, 22.604, and 22.605).
52.222-21 Prohibition o f Segregated Facilities Feb 1999		A	A	I	22.810(aX1)	When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer sl1all insert the clause at 52.222-21, Prohibition o f Segregated Facilities, in solicitations and contracts.
52.222-26 Equal Opportunity Apr2002		A	A	I	22.8l0(e)	The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all o f the requirements of E.O. 11246 (sec 22.807(a)).
Alternate I Feb 1999		A	A			If the contract is exempt from one or more, but not all, o f the requirements o f E.0. 11246, the contracting officer shall use the clause with its Alternate I.
52.222-27 Affinnative Action Compliance Requirements for Construction Feb 1999		A	A	I	22.810(!)	The contracting officer shall insert the clause at 52.222-27, Affimmtivc Action Compliance Requirements for Construction, in solicitations and contracls for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount o f the contract is expected to be in excess of$10,000.

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52.222-29 Notificalion o fVisa Deuial Jun 2003		A	A	I	22.810{g)	The conlracting officer shall insert the .clause at 52.222-29, Notification o fVisa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, i fthe contractor is required to perfonn in or on behalfo f a foreign counby.
52.222.35 AfTlffilative Action for Disabled and Vietnam Era Veterans Dec2001		A	A	I	22.13IO(aXl)	Insert the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans o fthe Vietnam Era, and Other Eligible Veterans, in solicitations and contracts i f the expected value is $25,000 or more, except when- (i) Work is perfom1ed outside the United States by employees recruited outside the United States; or (ii) The Deputy Assistant Secretary o f Labor has waived, in accordance with 22.1305(a) or the head o fthe agency has waived, in accordance with 22.1305(b) all o fthe tem1s o fthe clause.
AltemateI Dec2001		A	A		22.1310{a)(\2)	Ifthe Deputy Assistant Secretary o f Labor or the head o fthe agency waives one or more (but notall)ofthe tem1s o fthe clause, use the basic clause with its Alternate I.
52.222-36 Affinnative Action for Workers with Disabilities Jun 1998		A	A	I	22.1408(a)	Insert the clause at 52.222-36, Affinnative Action for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed $10,000, except w h e n - (1) Both the perfonnance o fthe work and the recruitment o fworkers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin fslands, and Wake Island; or (2) The agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms o fthe clause.
Alternate I Jun 1998		A	A		22.1408(b)	Ifthe agency head waives one or more (but not all) oflhe terms o fthe clause in accordance with 22.1403(a) or 22.14 03(b), use the basic clause with its Alternate I.
52.222-37 Employment Reports on Disabled Veterans alld Veterans o f the Vietnam Era Dec2001		A	A	I	22.1310{b)	Insert the clause at 52.22237, Employment Reports on Special Disabled Veterans, Veterans o fthe Vietnam Era. and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.22235, Equal Opportunity for Special Disabled Veterans, Veterans o fthe Vietnam Era, and Other Eligible Veterans.
52.222-38 Compliance with Veterans' Employment Reporting Requirements Dec 2001		A	A	I	22.1310{c)	Insert the provision at 52.22238, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition o f commercial items.
52.223-3 Hazardous Material Identification and Material Safety Data Jun 1997		A	A	I	23.303(a)	The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts i f the contract wilt re.quire the delivery o f hazardous materials as defined in 23.301.
Alternate I Jul 1995		A	A		23.303(b)	If the contract is awarded by an agency other than the Department o fDefense, the contracting officer shall use the clause at 52.223-3 with its Alternate I.
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FAR Clause Number '/itle	Secondary.• DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.223-5 Pollution Prevention and Right-to-know Jnfonnation Aug2003		A	A	I	23.1005(a)	Insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Infonnation, in solicitations and conlracts tllat provide for performance, in whole or in part, on a Federal facility.
Alternate I Aug2003		A	A		23.1005(b)	Use the clause with its Alternate I if the contract provides for contractor- (1) Operation or maintenance o f a Federal facility at which the agency has implemented or plans to implement an EMS; or (2) Activities and operations- (i) To be perfonned at a Government-operated Federal facility that has implemented or plans to implement an EMS; and (ii) That the agency has determined are covered within the EMS.
Alternate II Aug2003		A	A		23.1005(c)	Use the clause with its Alternate II if (1) The contract provides for contractor activities on a Federal facility; and (2) The agency has detennined that the contractor aclivities should be included witllin the FCA or an environmental management system audit.
52.223-6 Drug-Free Workplace May2001		A	A	I	23.505	Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, except as noted below, in solicitalions and contracts. The clause at 52.223–6 shall be omilted if the clause at DEAR 970.5223-4 is used.
52.223-7 Notice o f Radioactive Materials Jan 1997		A	A	I	23.602	The contracting officer shall insert the clause at 52.223 7, Notice o f Radioactive Materials, in solicitatiohs and contracts for supplies which are. or which contain - (a) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act o f 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.0 I microcuries. Such supplies include, but are not limited to, aircraft, anununition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.
52.223-9 Estimate o f Percentage o f Recovered Material Content for EPA-Designated Products Aug2000		A	A	I	23.406(b)	Insert the clause at 52.223-9, Estimate o f Percentage o f Recovered Material Content for EPA-Designated Products, in contracts exceeding $100,000 that include the provision at 52.223-4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.
52.223-10 Waste Reduction Program Aug2000		A	A	I	23.705	hlsert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation o f Government-ovmed or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

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52.223-11 Ozone-Depleting Substances May200I		A	A	I	23.804(a)	Except for contracts to be perfonued outside the United States, its possessions, and Puerto Rico, the contracting officer shall insert the clause at 52.223-11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.
52.223-12 Refrigeration Equipment and Air Conditioners May 1995		A	A	I	23.804(b)	Except for contracts to be perfonned outside the United States, its possessions, and Puerto Rico, the contracting officer shall insert the clause at 52.223· 12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal o f any equipment or appliance using ozone--depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigeralors, chillers, or freezers.
52.223-13 Certification o f Toxic Chemical Release Reporting Aug2003		A	A	I	23.907(a)	Except for acquisitions o f commercial items as defined in Part 2, the contracting officer shall insert the provision at 52.223-13, Certification o f Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed $100,000. and competitive 8(a) contracls, unless it has been detem1ined in aceordance wilh 23.905(b) that to do so is not practicable.
52.223-14 Toxic Chemical Release Reporting Aug2003		A	A	I	23.907(b)	When the solicitation contains the provision at 52,223· 13, Certification o f Toxic Chemical Release Reporting, insert the clause at 52.223•14, Toxic Chemical Release Reporting, in the resulting contract, i f the contract is expected to exceed $100,000.
52.224-1 Privacy Act Notification Apr 1984		A	A	I	24.104(a)	When the design, development, or operation o f a system o f records on individuals is required to accomplish an agency function, the contracting officer shalt insert the clause at 52.224•1, Privacy Act Notification.
52.224-2 Privacy Act Apr 1984		A	A	I	24.I04(b)	When the design, development, or operation o f a system o f reeords on individuals is required to aC<!omplish an agency function, the contracting officer shall insert the clause at 52.224-2, Privacy Act.
52.225-1 Buy American Act-Supplies Jun2003		A	A	I	25.II0l(aXI)	Insert the clause at 52.225·1, Buy American Act-Supplies, in solicitations and contracts with a value exceeding $2,500 ($15,000 for acquisitions as described in 13.20l(g)(l)) but not exceeding $25,000; and in solicitations and contracts with a value exceeding $25,000, ifnoncoftheclauses prescribed in paragraphs (b)and (c) o f this section apply, except i f - (i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3; (ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies *(eg.* nonavailability, public interest, or infonnation technology that is a commercial item); or (iii) The acquisition is for supplies for use outside the United States.

FAR Clause Number)Title	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescrjbed In	FAR Prescription/Notes
52.225-9 Buy American Act-Construction Materials Jan 2005		A	A	I	25.ll02(a)	Insert the clause at 52.225-9, Buy American A c t - Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than $7,407,000. (1) List in paragraph (bX2) o f the clause all foreign construction material excepted from the require111ents o f the Buy American Act. (2) If the head o f the agency detennines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (bX3Xi) o f the clause. (bXl) Insert the provision at 52.225-10, Notice o f Buy American Act Requirement--Construction Materials, in solicitations containing the clause at 52.225-9.
52.225-13 Restrictions on Certain Foreign Purchases Mar2005		R	R	I	25.IIOJ(a)	*Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding $2,500, $15,000 for acquisitions as described in 13.201(gX1), unless an exception applies.
52.225-14 Inconsistency Bet,,,-een English Version and Translation o f Contract Fcb2000		A	A	I	25.l10J(b)	Insert the clause at 52.225-14, Inconsistency Between English Version and Translation o f Contract, in solicitations and contracts i f anticipating translation into another language.
52.226-1 Utilization o f Indian Organiutions and Indian-Owned Economic Enterprises Jun2000		A	A	I	26.!04(b)	Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization o f Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts i f - (1) In the opinion o f the contracting officer, subcontracting possibilities exist for Indian organiz.ations or Indian.owned economic enterprises; and (2) Funds are available for any increased costs as described in paragraph (cX2) of the clause at 52.226-1.
52.227-10 Filing o f Patent Applications-Classified Subject Matter Apr 1984		A	A	I	27.207-2	The contracting officer shall insert the clause at 52.227-10, Filing o f Patent Applications--Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature o f the work or classified subje<:t matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.
52.227-23 Rights to Proposal Data Jun 1987		R	R	I	27.409(s) 970.2702-5	Contracting officers must include the clause at 52.227-23, Rights to Proposal Data, in all solicitations and contracts for the management and operation o f DOE sites and facilities.
52.228-2 Additional Bond Security Oct 1997		A	A	I	28.I06-4(a)	The contracting officer sliall insert the clause at 52.228 2, Additional Bond Security, in solicitations and contracts when bonds are required.
52.228-4 Workers' Compensation and War Hazard Insurance Overseas Apr 1984		A	A	I	28.309(b)	Tite contracting officer shall insert the clause at 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary o f Labor waives !he applicability o f the Defense Base Act (see 28.305(d)).

FAR Clause Number fitle	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.228-11 Pledges of Assets Feb 1992		A	A	I	28.203-6	Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.
52.228-12 Prospective Subcontractor Requests for Bonds Oct 1995		A	A	I	28.106-4(b)	In accordance with Section 806(aX3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, the contracting officer shaU insert the clause at 52.228-12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with resp((,t to which a payment bond will be furnished pursuant to the Miller Act (sec 28.102-1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.
52.228-13 Alternative Payment Protections Jun 2000		A	A	I	28.102-3(b)	Insert the clause at 52.228-13, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds $25,000 but does not exceed $100,000. Complete the clause by spedfying the payment protections selected (see 28.102-l(b)(l)) and the deadline for submission.
52.228-14 Irrevocable Letter of Credit Dec 1999		A	A	I	28.204-4	Insert the clause at 52.228-14, hrevocablc letter of Credit, in solicitations and contracts for se1Vices, supplies, or construction, when a bid guarantee, or perfonnance bonds, or perfonnance and payment bonds are required.
52.228-15 Performance and Payment Bonds-Construction Jul 2000		A	A	I	28. I02-3(a)	The contracting officer shall insert a clause substantially the same as the clause at 52.228-15, Pcrfommnce and Payment Bonds--Construction, in solicitations and contracts for construction that contain a requirement for perfonnance and payment bonds if the resultant contract is expected to exceed $100,000. The penal amount of the performance bonds may be decreased in accordance with 28,102-2(a). Where the provision at 52.228-1 is not included in the solicitation, the contracting officer shall set a period of time for return of executed bonds.
52.228-16 Pcrfonnance and Payment Bonds-Other Than Construction Jul2000		A	A	I	28.103-4	Tiic contracting officer shall insert a clause substantially the same as the clause at 52.228-16, Performance and Payment Bonds--Other than Constmction, in solicitations and contracts that contain a requirement for both payment and perfom1ance bonds. The contracting officer shall detennine the amount of each bond for insertion in the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for retum of executed bonds.
Alternate I Jul 2000		A	A		28.103-4	Alternate I shall be used when only pcrfonnance bonds arc required.
52.229-2 North Carolina State and Local Sales and Use Tax Apr 1984		A	A	I	29.401-2	The contracting officer shall insert the clause at 52.229_2, North Carolina State and Local Sales and Use Tax. in solicitations and contracts for constntclion to be perfomied in North Carolina.
Alternate I Apr 1984		A	A		29.401-2	If the requirement is for vessel repair to be perfonned in North Carolina, the clause shall be used with its Allcmate I.
52.229-8 Taxes-Foreign Cost-Reimbursement Contracts Mar 1990		A	A	I	29.402-2(a)	The contracting officer shall insert the clause at 52.229-8, Taxes--Foreign Cost-Reimbursement Contracts, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract is to be perfonned wlmlly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign govemment.

FAR Clause Number \Title	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.229-10 New Mexico Gross Receipts Compensating Tax Apr2003	970.2904-l(a)	A	A	I	29.401-4(b) 970.2904-l(a)	The contracting officer shall insert the clause at 52.229-10, State of New Mexico Gross Receipts and Compensating Tax. in solicitations and contracts issued by the agencies identified in paragraph (c) of this subsection when all three of the following conditions exist: (1) The contractor will be perfonning a cost-reimbursement contract. (2) The contract directs or authorizes the contractor to acquire tangible personal property as a di t cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor. (3) The contract will be for services to be perfonned in whole or in part within the State of New Mexico. DEAR 970.2904-l(a) alters the FAR clause.
52.230-2 Cost Accounting Standards Apr 1998		A	A	I	30.20l-4(a)	Cost accounting standards. (1) The contracting officer shall insert the clause at FAR 52.230-2. Cost Accounting Standards, in negotiated contracts, wlless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is subject to modified coverage (sec 48 CFR 9903.201-2 (FAR Appendix)), or the clause at FAR 52.230-4 is used.
52.230-3 Disclosure and Consistency of Cost Accom1ting Practices Apr 1998		A	A	I	30.20l-4(bXI)	111e contracting officer shall insert the clause at FAR 52.230-3. Disclosure and Consistency of Cost A unting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $25 million. and the offcror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause at FAR 52.230-4 is used.
52.230-4 Consistency in Cost Accounting Practices Aug 1992		A	A	I	30.201-4(c)	Tl1e contracting officer shall insert the clause at FAR 52.230-4, Consistency in Cost Accounting Practices. in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be av,-arded to a United Kingdom contractor and is to be perfonned substal1tially in the United Kingdom (see 48 CFR 9903.201-l(bX12) (FAR Appendix)).
52.230-5 Cost Accounting Standards-Educational htstitution Apr 1998		-	A	I	30.201-4(e)	11te contracting officer shall insert the clause at FAR 52.230-5, Cost Accounting Slandards••Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is to be perfom1cd by an FFRDC (see 48 CFR 9903.201-2(cX5) (FAR Appendix)), or the provision at48 CFR 9903.201-2(cX6) (FAR Appendix) applies.
52.230-6 Administration of Cost Accounting Standards Apr2005		A	A	1	30.201-4(dXI)	The contracting officer shall insert the clause at FAR 52.230-6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of subsection.

FAR Clause Number Title	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.232-17 Interest Jun 1996		A	-	I	32.617(a)and (b)	The contracting officer shall insert the clause at 52.232-17, Interest, in solicilations and contracts, unless it is contemplated that the contract will be in one or more of the following categories: (I) Contracts at or below the simplified acquisition threshold. (2) Contracts with Government agencies. (3) Contracts with a State or local government or instrumentality. (4) Contracts with a foreign government or instrumentality. (5) Contracts without any provision for profit or fee with a nonprofit organization. (6) Contracts described in Subpart *5.5,* Paid Advertisements. (7) Any other exceptions authorized under agency procedures. The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified above.
52.232-18 Availability of Funds Apr 1984		A	A	I	32.705-l(a)	The contracting officer shall insert the clause at 52.232-18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contracting action is to be initiated before the funds are available.
52.232-19 Availability of Funds for Next Fiscal Year Apr 1984		A	A	I	32.705-l(b)	The contracting officer shall insert the clause at 52.232-19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefmite-quantity or requirements contract for services is contemplated and the contract- (J) Is funded by annual appropriations; and (2) Is to extend beyond the initial fiscal year (see 32.703-2(b)).
52.232-23 Assignment of Claims Altematel Apr 1984		A A	A A	I	32.806(aXl) 32.806(aX2)	The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts expected to exceed the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). If a no-setoff commihnent has been authorized (see FAR 32.803 (d)), the contracting officer shall use the clause with ils Alternate f.
52.232-24 Prohibition of Assignment of Claims Jan 1986		A	A	I	32.806(b)	The contracting officer shall insert the clause at 52.232-24, Prohibition of Assignment ofClain1s, in solicitations and contracts for which a dctennination has been made ooder agency regulations that the prohibition of assignment of claims is in the Government's interest.
52.232-33 Payment by Electronic Funds Transfer• Central Contractor Registration 0<:t 2003		A	A	I	32.lllO(aXI)	111c contracting officer shall insert the clause a t - (1) 52.232-33. Payment by Electronic Funds Transfer-Central Contractor Registration, in solicitations and contracts that include the clause at 52.204-7 or an agency clause that requires a contractor to be registered in the CCR database and maintain registration until final payment, unless- (i) Payment will be made through a third party arrangement (see 13.301 and paragraph (d) of this section); or (ii) An exception listed in 32.l I03(a) through (i) applies.
52.232-34 Payment by Electronic Funds Transfer - Other than Central Contractor Registration May 1999		A	A	I	32.lll0(aX2)	The contracting officer shall insert the clause at 52.232-34, Payment by Electronic Funds Transfer- Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office doos not have the ability lo make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

FAR Clause Number Title	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Infom1ation May 1999		A	A	I	32.ll!0(c)	If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Tnfonnation, or a clause substantially the same as52.232--35 that clearly infonns the contractor where to send the EFT infonnation.
52.232-36 Payment by Third Party May 1999		A	A	I	32.I l!O(d)	I f a payment under a written contract will be made by a charge to a Government account with a third party such as a Government-wide conunercial purchase card, then the contracting officer shall insert the clause at 52.232-36, Payment by a Third Party, in solicitations and contracts.
52.232-37 Multiple Payment Arrangements May 1999		A	A	I	32.IIIO(e)	I f the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method o f payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable the clauses a t - (1) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration; (2) 52.232-34, Payment by Elecl ronic Funds Transfcr--Other than Central Contractor Registration and (3) 52.232-36, Payment by Third Party.
52.233-l Disputes Jul2002		R	R	I	33.215(a)	The contracting officer shall insert the clause at 52.233-1, Disputes in solicitations and contracts, unless the conditions in 33.203(b) apply.
Alternate I Dec 199!		A	A		33.2l5(a)	I f it is detennincd under agency procedures that continued perfonnance is necessary pending resolution of any clain1 arising under or relating to the contract, the contracting officer shall use the clai,se with its Alternate I.
52.233-3 Protest after Award Aug 1996		R	R	I	33.!06(b)	Tite contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts.
Altemalel Jun 1985		R	R		33.106(b)	I f a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.
52.234-l Industrial Resources Developed Under Defense Production Act Titleill Dec 1994		A	A	I	34.104	Insert the clause at 52.234-1, Industrial Resources Developed under Title ID, Defense Production Acl, in all contracts for major systems and items of supply.
52.236-8 Other Contracts Apr !984	970.3605-1	A	A	I	36.508 970.3605-1	The contracling officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price constmction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

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52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts Aprl984		A	A	I	36.518	Tite contracting officer shall insert the clause at 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts. in solicitations and contracts when a cost-rein1bursement construction contract is contemplated.
52.237-2 Protection o f Government Buildings, Equipment, and Vegetation Apr 1984		A	A	I	37.llO(b)	The contracting officer shall insert the clause at 52.237-2, Protection o f Government Buildings, Equipment. and Vegetation, in solicitations and contracts for services to be perfonned on Government installations, unless a construction contract is contemplated.
52.237-3 Continuity o f Services Jan 1991		O	O	I	37.llO(c)	TIle contracting officer may insert the clause at 52.237-3, Continuity o f Services, in solicitations and contracts for services, when – (1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and (2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples o f instances where use o f the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.
52.239-1 Privacy or Security Safeguards Aug 1996		A	A	I	39.107	The contracting officer shall insert a clause substantially the same as the clause at 52.239-1, Privacy or Security Safeguards, in solicitations and contracts for infonnation technology which require security o f infonnation technology, and/or are for the design, development, or operation o f a system o f records using commercial information technology services or support services.
52.242-1 Notice oflnteot to Disallow Costs Apr 1984		R	R	I	42.802	Tite contracting officer shall insert the clause at 52.242-1, Notice oflntent to Disallow Cosls, in solicitations and contracts when a cost-reimbursement contract, a ltxed-price incentive contract, or a contract providing for price redetermination is contemplated.
52.242-2 Production Progress Reports Apr 1991		A	A	I	42.1107(a)	The contracting officer shall insert the clause at 52.242-2, Production Progress RefH)rts, in solicitations and contracts when production progress reporting is required; unless a facilities contract, a construction contract. or a Federal Supply Schedule contract is contemplated.
52.242-3 Penalties for Unallowable Costs Mar2001		A	A	I	42.709-6	Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over $500,000 except fixed-price contracts without cost incentives or any finn-ftxed-price contract for the purchase o f commercial items. Generally, covered contracts are those which contain one o f the clauses at 52.216-7, 52.216-13, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.
52.242-10 F.o.b. Origin-Government Dills ofl.ading or Prepaid Postage Apr 1984		A	A	I	42.1404-2(a)	The contracting officer shall insert the clause at 52.242 10. F.o.b. Origin•-Govemment Bills o f Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills oflading or prepaid postage.

FAR Clause Number l'itle	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.242-11 F.o.b. Origin-Government Bills of Lading or Indicia Mail Feb 1993		A	A	I	42.!404-2(b)	The contracting officer s11all insert the clause at 52.242-11·, F.o.b. Origin--Govemment Bills o f Lading or lndicia Mail, in solicitations and contracts when f.o.b. origin shipments arc to be made using Government bills o f lading or indicia mail, i f indicia mail has been authorized by the U.S. Postal Service.
52.242-12 Report ofShi1)mcnt (REPSHIP) Jun 2003		A	A	I	42.1406-2	The contracting officer shall insert the clause at 52.242-12, Report o f Shipment (REPSHIP),.in solicitations and contracts when advance notice o f shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.
52.242-13 Bankruptcy Jul 1995		R	R	I	42.903	The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the simplified acquisition threshold.
52.242-15 Stop-Work Order Aug 1989 Alternate I Aur 1984		O O	O O	F	42.l305(bXl) 42.1305(bX2)	The contracting officer may, when contracting by negotiation, insert the clause at 52.242-15, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development. If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.
52.243-6 Change Order Accounting Apr 1984		O	O	I	43.205(1)	The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, CJlange Order Accounting, in solicitations and contracts for supply and research and development contracts o f significant technical complexity, i f numerous changes are anticipated. The clause may be included in solicitations and contracts for construction i f deemed appropriate by the contracling officer.
52.243-7 Notification o f Changes Apr 1984		O	O	I	43.107	The contracting officer may insert a clause substantially the same as the clause at 52.243 7, Notification o f Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition o f major weapon systems or principal subsystems. I f the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.
52.244-5 Competition in Subcontracting Dec 1996		A	A	I	44.204(c)	The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts whe11 the contract amount is expected to exceed the simplified acquisition threshold, unless - (1) A firm-ltxed-price contract, awarded on the basis o fadequate price competition or whose prices are set by law or regulation, is contemplated; or (2) A time-and matcrials, Jabor ltour, or architect-engineer contract is contemplated.
52.244-6 Subcontracts for Commercial Items and Commercial Components Dec2004		R	R	I	44.403	The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts other those for commercial items.

FAR Clause Number)Tille	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/N"otes
52.246-3 Inspection o f Supplies-Cost-Reimbursement Mar2001		A	A	E	46.303	The contracting officer shall insert the clause at 52.246-3, Inspection o f Supplies-Cost Reimbursement, in solicitations and contracts for supplies, or services tl1at involve the furnishing o f supplies, when a cost-reimbursement contract is contemplated.
52.246.5 Inspection o f Services-Cost-Reimbursement Apr 1984		A	A	E	46.305	The contracting officer shall insert the clause at 52.246-5, Inspection o f Services--Cost Reimbursement, in solicitations and contracts for services, or supplies that i1wolve the furnishing o f services, when a cost-reimbursement contract is contemplated.
52.246-8 Inspection o f Research and Development-Cost Reimbursement May2001		A	A	E	46.308	The contracting officer shall insert the clause at 52.246-8, Inspection o f Research and Development- Cost Reimbursement, in solicitations and contracts for research and development when (a) the primary objective o f the contract is the delivery o f end items other than designs, drawings, or reports. and (b) a cost-reimbursement contract is contemplated; unless use o f the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.
Alternate I Apr 1984		A	A		46.308	If it is contemplated that the contract will be on a no-fee basis, the contracting officer shall use the clause with its Alternate I.
52.246-9 Inspection o f Research and Development (Short Fom1) Apr 1984		A	A	E	46.309	The contracting officer shall insert the clause at 52.246-9, Inspection o f Research and Development (Short Fonn), in solicitations and contracts for research and development when the clause at 52.246-7 or the clause at 52.246•8 is not used.
52.246-11 Higher-Level Contract Quality Requirement (Govetrunent Specification) Feb 1999		A	A	E	46.311	The contracting officer shall insert the clause at 52.246-11, Higher.Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion o f a higher-level contract quality requirement is appropriate (see 46.202-4).
52.246-12 Inspection o f Construction Aug 1996		A	A	E	46.312	The contracting officer shall insert the clause at 52.246-12, Inspection o f Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. 'Die contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.
52.246-15 Certificate o f Conformance Apr 1984		A	A	E	46.315	The contracting officer shall insert the clause at 52.246-15, Certificate o f Confonnance, in solicitations and contracts for supplies or services y,11en the conditions in 46.504 apply.
52.246-23 Limitation o f Liability Feb 1997		A	A	1	46.805(aXl) and(3)	Insert the clause at 52.246-23, Limitation o f Liability, in solicitations and contracts requiring delivery o f end items that are not high-value items when Ute contract amount is expeeted to be in excess o f the simplified acquisition threshold and the contract is subject to the requirements o f subpart 46.8, as indicated in 46.801.
52.246-24 Limitation o f Liability-High Value Items Feb 1997		A	A	I	46.805(a)(2)	Insert the clause at 52.246-24, Limitation o f Liability-High Value Items, in solicitations and contracts requiring delivery o f high-value items when the contract amount is expected to be in excess o f the simplified acquisition threshold and the contract is subject to the requirements o f subpart 46.8, as indicated in 46.801.

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Alternate I Apr 1984		A	A		46.805(aX3)	In contracts requiring delivery o f both high-value items and other end items, insert both clauses at 52.246-23 and 52.246-24, Alternate I o f the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.
52.246-25 Limitation o f Liability-Services Feb 1997		A	A	I	46.805(aX4)	Insert the clause at 52.246-25, Limitation o f in solicitations and contracts In contracts requiring the performance o f services when the contract amount is expected to be in excess o f the simplified acquisition threshold and the contract is subject to the requirements o f subpart 46.8, as indicated in 46.801.
52.247-1 Commercial Bill o f Lading Notations Apr 1984		A	A	I	47.I044(a)l(b)	The contracting officer, in order to ensure the application o f section 10721 rates, shall insert the clause at 52.247-1, Conuncrcial Bill o f Lading Notations, in solicitations and contracts when the contracts will be--(1) Cost-reimbursement contracts, including those that may involve the movement o f household goods (see 47.104·3(b)); or (2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold) (see 47.104-Z(b) and 47.104-3). The contracting officer may insert the clause at 52.247-1, Commercial Bill o f Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold when it is contemplated that the delivery tem1s will be f.o.b. origin.
52.247-63 Preference for U.S.-Flag Air Carriers Jun 2003		R	R	I	47.405	The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation o f personnel (and their personal effects) or property will occur In the perfom1ance o f the contract This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13 or contracts for commercial items (see Part 12).
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels Apr 2003		A	A	I	47.507(aXI)	Insert the clause at 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation o f supplies subject to the Cargo Preference Act o f 1954. (For application o f the Cargo Preference Act o f 1954, see 47.502(aX3), 47.503(a), and 47.504.)
Alternate I Apr2003		A	A		47.507(aX2)	If an applicable statute requires, or i f it has been detennined under agency procedures, that the supplies to be furnished under the contracts must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(aXI) and 47.503(b)), use the clause with its Alternate I.
Alternate JI Apr2003		A	A		47.507(aX3)	Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate ll i f any o f the supplies to be transported are commercial items that are shipped in direct support o f U.S. military- (i) Contingency operations; (ii) Exercises; or (iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or pcaceke-eping operations.

FAR Clause Number Title	Secondruy DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.247-67 Submission o f Commercial Transportation Bills to the General Services Administration for Audit Jun 1997		A	A	I	47.l04-4(c)	The contracting officer shall insert the clause at 52.247-67, Submission o f Commercial Transportation Dills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement o f transportation as a direct charge to the contract or subcontract.
52.248-l Value Engineering Feb2000		A	A	I	48.201(aj(b)	The conlracting officer shall insert a value engineering clause in solicitations and contracts when the contract amount is expected to be $100,000 or more. except as specified in subparagraphs (aXI) through (5) and in paragraph (f) below. A value engineering clause may be included in contracts o f lesser value i f the contracting officer sees a potential for significant savings. Unless the chief o f the contracting office authorizes its inclusion. the contracting officer shall not include a value engineering clause in solicitations and contracts -- (1) For research and development other than full-scale development; (2) For engineering services from not-for-profit or nonprofit organizations; (3) For personal services (see Subpart 37.l); (4) Providing for product or component improvement, unless the value engineering incentive application is restricted to areas not covered by provisions for product or component improvement; (5) For commercial products (see Part 11) that do not involve packaging specifications or other special requiremenls or specifications; or (6) When the agency head has exempted the contract (or a class o f contracts) from the requirements o f this Part 48. To provide a value engineering incentive, the contracting officer shall insert the clause at 52.248-1, Value Engineering, in solicitations and contracts except as provided above (but see subparagraph (e) below).
Alternate I Apr 1984		A	A		48.20l(c)	If a mandatory value engineering effort is appropriate (i.e., if the contracting officer considers that substantial savings to the Government may result from a sustained value engineering effort o f a specified level)., the contracting officer shall use the clause with its Alternate! (but see subparagraph (e) below). Tite value engineering program requirement may be specified by the Government in the solicitation or, in the case o f negotiated contracting, proposed by the contractor as part o f its offer and included as a subject for negotiation. The program requirement shall *be* shown as a separately priced line item in the contract Schedule.
Alternate II Feb2000		A	A		48.201(d)	If both a value engineering incentive and a mandatory program requirement are appropriate, the contracting officer shall use the clause with its Alternate ll (but see subparagraph (e) below). The contract shall restrict the value engineering program requirement to weU–defined areas o f perfonnance designated by line item in the contract Schedule. Alternate II applies a value engineering program to the specified areas and a value engineering incentive to the remaining areas o f the contract.
Alternate m Apr 1984		A	A		48.201(e)	If the head o f the contracting activity determines for a contract or class o f contracts that the cost o f computing and tracking collateral savlllgs will exceed the benefits to be derived, the contracting officer shall use the clause with its (l) Alternate III if a value engineering incentive is involved; (2) Alternate Ill and Alternate I if a value engineering program requirement is involved; or (3) Altcmate Ill and AltemateJI if both an incentive and a program requirement are involved.

FAR Clause Number Title	Secondary DEAR Clause Cilalion	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.248-3 Value Engineering-Construction Feb 2000		A	A	I	48.202	The contracting officer shall insert the clause at 52,248-3, Value Engineering--Construction. in construction solicitations and contracts when the contract amount is estimated to be $100,000 or more, unless an incentive contract is contemplated. The contracting officer may include the clause in contracts oflesser value if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts.
Alternate I Apr1984		A	A		48.202	If the head of the contracting activity detennines that the cost of computing and tracking collateral savings for a contract will exceed the benefits to be derived, the contracling officer shall use the clause with its Altemate I.
52.249-{i Tennination (Cost Reimbursement) May2004	970.4905-1	R	R	I	49.503(aXI)	Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.
					970.4905-1	The contracting officer shall modify paragraph (i) of the clause to insert "as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation," after the phrase, "part 31 of the Federal Acquisition Regulation."
52.249-14 Excusable Delays Apr 1984		A	A	I	49.505(d)	The contracting officer shall insert the clause at 52.249- 14, Excusable Delays, in solicitations and contracts for supplies, services, construction, and research and development on a fee basis, when a cost-reimbursement contract is contemplated. The contracting ofi1cer shall also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracls.
52.250-l Indemnification Under Public l a w 85-804 Apr 1984	970.5004-1	A	A	I	50.403-3	The contracting officer shall insert the clause at 52.250-1, Indemnification Under Public Law 85-804, in contracts whenever the approving official detcnnines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-Z(c)).
Alternate I Apr 1984		A	A			When use of the clause at 52.250-1, Indemnification Under Public Law 85-804, is appropriate, the contracting officer may substitute the words "Obligation of funds" for the words "Limitation of Cost or Limitation of Funds."
					970.5004-1	In cost-reimbursement contracts, the contracting officer shall use the cla1,lse with its Altemate I.
52.251-1 Government Supply Sources Apr 1984		A	A	I	51.107	The contracting ofiicer shall insert the clause at 52.251-1, Government Supply Sources, in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source.
Alternate I Apr 1984		A	A			If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate I.
52.251-2 Interagency Fleet Management System Vehicles and Related Services Jan 1991		A	A	I	*51.205*	The contracting officer shall insert the clause at 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts when a cost rei.Jnburscment contract is contemplated and the contracting officer may authorize the contractor to use interagency fleet management system (IFMS) vehicles and related services.

FARCJause Number ,I'ille	Secondary DEAR Clause Citation	M&O For Profit	M&O Non-Profit	UCF	Prescribed In	FAR Prescription/Notes
52.252-2 Clauses Incorporated by Reference Feb 1998		A	A	I	52.I07(b)	The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference.
52.252-4 Alterations in Contract Apr 1984		A	A	I	52.!07(d)	The contracting officer shall insert the clause at 52.252--4, Alterations in Contract, in soJicitations and contracts in order to revise or supplement, as necessary, other parts o fthe contract, or parts o fthe solicitations that apply to the contract phase, except for any clause authorized for use with a deviation.
52.252-6 Authorized Deviations in Clauses Apr 1984		A	A	I	52.!07(!)	The contracting officer shall insert the clause at 52.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert •(DEVIATION)" after the date o fthe clause.
52.253-1 Computer Generated Forms Jan 1991		A	A	I	53.111	Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit dala on Standard or Optional Fomis prescribed by tllis regulation; and, unless prohibilcd by agency regulations, forms prescribed by agency supplements.

Clause Matrix for Department OfEuergy
Management and Operating Contracts
Part II - DEAR Clauses (Parts 952 and 970)
(fhru DEAR Final Rule dated 9/25/2005)
(1/13/2006)

KEY:

R=Required
A = Required when applicable
O=Optional

M&O = Management and Operating contract
UCF = Unifon Contract Format

General instruction: Set forth below are clauses prescnl>ed in DEAR Parts 952 and 970 to be used in addition to the FAR Part *52* contract clauses set forth in Part I. Prior tc inoorporating a clause identified below, the clause prescription and the nFARIDEAR Clause Secondary Citation" should be reviewed.

This listing does not inclu e solicitation provisions.

DEAR Clause Number Title	FAR/DEAR 952 Secondary Clause Citation	Prescribed lo	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescription/Notes
952.202-1 Defmitions Mar2002	FAR 52.202-1	902.200	R	R	I	As prescnbed by 48 CFR Subpart 2.2, insert the clause at 48 CPR 52.202-1, Definitions, but modify the clause to limit the definition at paragraph (a) to encompass only the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy, and the Cbainnan, Federal Energy Regulatory Commission. The contracting officer shall also add a paragraph at the end of the clause that defines "DOE" as meaning the United States Department of Energy and "FERC" as meaning the Federal Energy Regulatory Commission. Additional definitions may be included, provided they are consistent wi h the clause, the Federal Acquisition Regulation and this Deruirtment ofEneray Acouisition Rem1lation.
952.203-70 Whistleblower Protection for Contractor Employees Dec 2000		903.971	A	A	I	The contracting officer shall insert the clause at 952.203-70, Whistleblower Protection for Contractor Employees, in contracts that involve work to be done on behalf of DOE directly related to activities at DOE-ownd or leased sites.
952.204-2 Security May2002		904.404(dXl)	A	A	I	The contracting officer shall insert the clause at 952.204-2 in all contracts which involve access to classified infonnation, nuclear materiai or access authorizations.
952.204-70 Classification/Declassification Sep 1997		904.404(dX2)	A	A	I	The contracting offie r shall insert the clause at 952.204-70 in all contracts which involve access to classified information, nuclear material, or access authorizations.
952.204-71 Sensitive Foreign Nations Controls Apr 1994		904.404(dX3)	A	A	I	The contracting officer shall insert the clause at 952.204-71 in unclassified reseatch contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations included in DOB 1240.2, (see current version) Attachment 3, and any subsequent changes. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

DEAR Clause Number	FAR/DEAR 952 Secondazy Clause Citation	Prescribed In	M&O For Profit	M&O l'lon-Profit	UCF	DEAR Prescription/Notes
952.204-72 Disclosure o fInformation Apr 1994		904.404(dX4)	-	A	I	This clause should be used in place o fthe clauses entitled "Security" and "Classification" in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.
952.204-75 Public Affairs Dec2000		904.7201	A	A	I	The contracting officer shall insert the clause at 952.204-75 in solicitations and contracts that require the C(?ntractor to rel e a s e unclassified infomlation related to efforts wtder its contract regarding DOE pnlicies, pro....s. and activities.
Conditional Payment o fPee or Profit- Safeguarding Restricted Data and Other Classified Infonnation Jan2004		904.404(dX6)	A	A	I	Except as prescribed in 48 CFR 970.l504-5(c), the oontracting officer shall insert the clause at 48 CFR 952.204-76, Conditional Payment o fFee or Profit- Safeguarding Restricted Data and Other Classified Information, in all contracts that contain the clause at 48 CFR 952.204-2, Security, but that do not contain the clause at 48 CFR 952.250-70, Nuclear hazards indemnity agreement.
952.208-7 Tagging o fLeased Vehicles Apr 1984		908.1104(e)	A	A	I	The clause at 48 CFR 952.208-7, Tagging o fLeased Vehicles, shall be inserted whenever a vehic1e(s) is to be leased over 60 days, except for those vehicles exempted by (FP.MR) 41 CFR 101-38.6.
952.209-72 Organizational Conflicts o f Interest Jun 1997		970.0905 909.507•2 (aXl)	A	A	I	Management and operating contracts shall contain an organizational conflict o finterest clause substantially similar to the clause at 48 CFR 952.209-72, Organizational Conflicts o f Interest, and which is appropriate to the statement o fwork o f the indiVidual contract. In addition, the contracting officer shall assure that the clause contains appropriate restraints on intra.-corporate I'C!ations betwelt the contractor's organization and personnel O$_{pe}$ rating the Department's facility and its parent corporate body and affiliates. Such restraints shall include personnel access to the facility, technica1 transfer o f information :from the facility, and the availability from the facility o f other advantages flowing from perfonnance o fthe contract. The contracting officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award o f subcontracts that will meet the Department's need to safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts o finterest clause in management and operating contracts shall include Alternate I. The contracting officer shall insert the clause at 48 CFR 952.209-n, Organizational Conflicts o f Interest, in each solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.Note: Contracting officers may make appropriate modifications where necessary to address the potential for organizational conflicts o finteiest in individual contracts. Contracting officers shall determine the appropriate term o f the bar o f paragraph (bXlXi) o f the clause at 48 CFR 952.209-72 and enter that term in the blank provided. In the usual case o f a contract for advisory and assistance services a period o fthree, four, or five years is appropriate; however, in individual cases the contracting officer may insert a term o f greater or lesser duration.
952.211-71 Prion1ies and Allocations (Atomic Energy) Jun 1996		911.604(b)	A	A	I	The contracting officer shall insert the clause at 952.211 71, Priorities and Allocations (Atomic Energy), in contracts that are placed in support o f authorized DOE atomic energy programs.

DEAR Clause N!!mber 'e	FAR/DEAR 952 Secondary CJause Citation	Prescribed In	M&O For Profit	M&O on-Profit	UCF	DEAR Prescription/Notes
iV' 952.215-70 Key Personnel Dec2000		915.408-70	A	A	I	The contracting officer (after deleting "under the clause at 48 CFR 970.5203-3, Contractor's Organization" from paragraph (a} if not a management and operating contract) shall insert the clause at 952.215-70, Key Personnel, in contracts under which performance is largely dependent on the expertise of sn,,,,i:fic kEY personnel.
952.217-70 Acquisition of Real Property Apr 1984		917.7403	A	A	I	The clause at 48 CFR 952.217-70 shall be included in contracts or modifications where contractor acquisitions are expected to be made.
952.223-72 Radiation Protection and Nuclear Criticality Apr 1984		970.2303-2(b)	A	A	I	The clause set forth in 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its stahrtory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regu]atory Commission licensing requirements (including agreements with States under section 274 of the Atomic Energy Act).
952.223-75 Preservation of Individual Occupational Radiation Exposure Records Apr 1984		952.223-75	A	A	I	The contracting officer shall insert this clause in contracts containing 952.223-71, Integration of environment. safety, and health into work planning and execution, or 952.223-72, Radiation protection and nuclear criticality.
952.223-77 Conditional Payment of Pee or Profit- Protection of Worker Safely and Health Jan2004		923.7003(g)	A	A	I	Except as prescribed in 48 CFR 970.1504-5(c), the contracting officer shall insert the clause at 48 CFR 952223-77, Conditional Payment of Pee or Profit- Protection of Worker Safety and Health, in all contracts that do not contain the clause at 48 CFR 952.204-2, Security, but that do contain the Clause at 48 CFR 952.250-70, Nuclear hazards indemnity agreement.
952.224-70 Paperwork Reduction Act Apr 1994		952.224-70	A	A	I	The contracting officer shall insert the clause at 952.224-70 if it is anticipated that infonnation collection from 10 or more persons will be necessary under the contract.
952.225-70 Subcontracting for Nuclear Hot Cell Services Mar 1993		925.7004	A	A	I	The contracting officer shall insert the clause at 952.225-70 in solicitations and contracts involving nuclear hot cell services. This clause does not flow do\111 to second-tier subcontracts.
952.226-71 Utilization of Energy Policy Act Target Entities Jun 1996		926.7007(b)	A	A	I	The contracting officer shall insert this clause in contracts containing 952.223-71, Integration of environment, safety, and health into work planning and execution, or 952.223-72, Radiation protection and nuclear criticality.
952.226-72 Energy Policy Act . Subcontracting Goals and Reporting Requirements Jun 1996		926.7007(c)	A	A	I	The contracting officer shall insert the clause at 952.226-72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $500,000 ($1,000,000 in the case of construction). Note: The clause requires the incorporation of percentage goals by the contractine: officer.

DEAR Clause N nber	FAR/DEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O on• Profit	UCF	DEAR Prescription/Notes
"952.226-74 Displaced Employee Hiring Preference Jun 1997		926.7104	A	A	I	The contracting officer shall insert the clause at 952.226-72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $500,000 ($1,000,000 in the case o fconstruction).
952.227-9 Refund o fRoyalties Feb 1995		927.206--2	A	A	I	The contracting officer shall insert the clause at 952.227•9 in solicitations and contracts for experimen research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor o f any tier.
952.231-70 Date o fIncunence o f Cost Apr 1984		931.205-32(•)	A	A	I	To the extent practical, known expenditures o f precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date ofIncurrence o f Cost" clause specified at 952.231-70.
952.236-71 Inspection in Architect-Engineer contracts Apr 1994		936.609-3	A	A	E	In addition to the clause at FAR 52.236-,24, the contracting officer shall insert the clause at 952.236-71 in architect-engineer contracts.
952.237-70 Collective Bargaliling Agreements-Protective Services Aug 1993		937.7040	A	A	I	The contracting officer shall insert the clause at 952.237•70 in all protective services solicitations and contracts involving DOE-owned facilities requiring continuity o fservices for public safety and national defense reasons. See also, 922.103.5, Contract clauses, which prescnbes use of the clause at FAR 52.222-1, Notice to the Government o fLabor Disputes.
952.242-70 Technical Direction D<:c2000		942.270-2	O	O	I	The clause at 952.242-?0, or a clause substantially the same, rit$_{a\,y}$ be inserted in solicitations and contracts when a designated Contracting Officers Representative will issue technical direction to the contractor under the contract.
952.247-70 Foreign Travel Dec2000		947.7002	A	A	I	When foreign travel may be required under the contract. the contracting officer shall insert the clause at 48 CFR 952.247-70, Foreign Travel.
952,250-70 Nuclear Hazards Indemnity Agreement Jun 1996		970.5070-3 (a)	A	A	I	The clause at48 CPR952.250-70, Nuclear Hazards Indemnity Agreement. shall be included in all management and operating contracts involving therlsk o fpublic liabilityfor the occurrence o fa nuclear incident or precautionary evacuation arising out o f or in connection with the contract work, including such events caused by a product delivered to a DO:&owned, facility for use by OOE or its contractors. The clause at 48 CFR952.250-70 also shall be included in any management and operating contract for the design o f a DOE facility, the coruitruction or operation ofwhich may involve the risk o fpublic liability for a nuclear incident or a precautionary evacuation. Note: The clause at48 CFR 952.250-70 shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. o fthe Act orNRC agreements o findemnification under section 170 c. or k. o f the Act for activities to be performed under the contract.

DEAR Clause l'jumber) e	FARJDEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O J-ion-Profit	UCF	DEAR Prescription/Notes
952.251-70 Contractor Employee Travel Discounts Dec2000		951.7002	A	A	I	The contracting officer shall insert the clause at 952.251-70, Contractor employee travel discounts, in all cost-reimbursable solicitations and contracts when significant costs for rail travel, car rental, or lodging will be required to perform the contract. The contracting officer may furnish the contractor with appropriate identification letters.
970.5203-1 Management controls Dcc2000		970.0370-2(a) . 970.3270(aX4)	R	R	I	The contracting officer shall insert the clause at 970.5203-1, Management Controls, in all management and operating contracts.
970.5203-2 Perfonnance improvement and collaboration Dcc2000		970.0370-2(b)	R	R	I	The contracting officer shall insert the clause at 970.5203-2, Perfonnance Improvement and Collaboration, in all management and operating contracts.
970.5203-3 Contractor's organization Dcc2000		970.0371-9	R	R	I	The contracting officer shall insert the clause at 970.5203-3, Contractor's Organization, in all management and operating contracts. The approval authority o fthe Secretary o fEnergy required in paragraph (c) may not be delegated. In paragraph (a) the words "and managerial personnel (see 48 CPR 970.5245-10))' may be inserted after '(see 48 CFR 952.215-70)".
970.5204-1 Counterintelligence Dcc2000		970.0404-4(a)	A	A	I	The contracting officer shall insert the clause at 970.5204-1, Counterintelligence, into all management and operating contracts and other contracts for the management o fDOE-owned facilities which include the security and classification/declassification clauses. Note: The contracting officer shall refer to 904.404 and 904.7103 for the prescription o fsolicitation provisions and contract clauses relating to safeguarding classified infom1ation and foreign ownership, control, or influence over contractors.
970.5204-2 laws, regulations, and DOE directives Dcc2000		970.0470-2	R	R	I	The contracting officer shall insert the clause at DEAR 970.5204-2, laws, Regulations, and DOE Directives, in management and operating contracts. The contracting officer may modify the clause to indicate the location in the contract o fList A, ListB, or both.
970.5204-3 Access to and ownership o f records Jul 2005		970.0407-1-3.	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5204-3, Access to and Ownership o f Records, in management and operating contracts.
970.5208-1 Printing Dcc2000		970.0808-3	R	R	I	The contracting officer shall insert the clause at 970.5208-1, Printing. in all management and operating contracts.

DEAR Clause umber }e	FAR/DEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescription/Notes
970.5215-1 Total Available Fee: Base fee amount and perfonnance fee amount Dec2000		970.1504-5(a)	A	A	I	(a) The contracting officer shall insert the clause at 48 CFR 970.5215-1, Total Available Fee: Base Fee Amount and Perfonnance Fee Amount, llt management and operating contracts, and other contracts detennined by the Procurement Executive, or designee, that include cost-plus-award-fee arrangements. (I) The contracting officer shall include the clause with its Alternate I when the award fee cycle consists o f two or more evaluation periods. (2) The contracting officer shall include the clause with its A1temate II when the award fee cycle consists of one evaluation period._ (3) The contracting officer shaJI include the clause with its Alternate ID when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment. (4) The contracting officer shaJI include the clause with its Alternate IV when the OOE Operations/Field Office Manager, or designee, pem1its the contractor to submit a self-assessment at the contractor's option.
970.5215-2 Mako-or-Buy Plan Dec2000		970.1504-5(b)	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5215-2, Make-or-Buy Plan, in management and operating contracts. The contracting officer may add a sentence at the end of paragraph (d) of the clause to identify where in the contract the make-or-buy plan is located.
970.5215-3 Conditional payment o f fee, profit, or incentives Jan 2004		970.1504-5(c)	R	R	I	The contracting officer shaJI insert the clause at 48 CFR 970.5215-3, Conditional Payment of Fee, Profit, or Incentives, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee.
970.5215-4 Cost reduction Dec2000		970.1504-5(d)	A	A	I	The contracting officer shall insert the clause at 48 CFR 970.5215-4, Cost Reduction, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, if cost savings programs are contemplated.
970.5217-1 Work for Others Program (Non-DOE Funded Work) Jan2005		970.1707-4	A	A	I	Insert the clause at 970.5217-1, Work for Others Program (Non-DOE Funded Work), in any contract that may involve work under the Work for Others Program, pursuant to 970.1707-3(b).
970.5222-1 Collective bargaining agreements-management and operating contracts Dec2000		970.2201-1-3	R	R	I	In addition to the clause at 48 CFR 52.222-1, Notice to the Government of Labor Disputes, the contracting officer shall insert the clause at 970.5222-1, Collective Bargaining Agreements-Management and Operating Contracts, in all management and operating contracts.
970.5222-2 Overtime management Dec2000		970.2201-2-2	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5222-2, Overtime Management, in management and operating contracts.

DEARCJause Number Ile	FAR/DEAR 952 Secondary Clause Cilation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescription/Notes
970.5223-1 Integration o f environment, safety, and health into work planning and execution Dec2000		970.2303-2(a)	A	A	I	When work under management and operating contracts and subcontracts thereunder is to be performed at a facility where DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions o f the contractor and subcontractor employees at such facility, the clause at 48 CFR 970.5223-1, Integration o f Environment, Safety and Health into Work Planning and Execution, shall be used in such contract or subcontract and made applicable to the work i f conditions in paragraphs (aXI) through (3) o fthis section, are satisfied: (I) DOE work is segregated from t!Je coi1tractor's or subcontractor's other work; (2) The operation is o f sufficient size to support its own safety and health services; and (3) The facility is government-owned, or leased by or for the accom1t o f the government.
970.5223-2 Affinnative Procurement Program Mar2003		970.2304•2	R	R	I	The contracting officer shall insert the clause at 970.5223-2. Affinnative Procurement Program, in contracts for the management o f DOE facilities, including national laboratories.
970.5223-4 Workplace Substance Abuse Programs at DOE sites Dec2000		970.2305-4(b)	A	A	I	The contracting officer shall insert the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites. in contracts for the management and operation o f DOE-owned or.controlled sites operated under the authority o f the Atomic Energy Act o f *1954,* as amended.
970.5223-5 DOE Motor Vehicle Fleet Fuel 4 Efficiency Oct2003		970.2307-2	A	A	I	Include the clause at 970.5223•5, DOE Motor Vehicle Fleet Fuel Efficiency, in all management contracts providing for Contractor management o f the motor vehicle fleet.
970.5226-1 Diversity plan Dec2000		970.2671-2	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5226·1, Diversity Plan, in all management and operating contracts.
970.5226-2 Workforce restructuring under Section 3161 o f the National Defense Authorization Act for Fiscal Year 1993. Dec2000		970.2672-3	A	A	I	The contracting officer shall insert the clause at 48 CFR 970.522()..2, Workforce Restructuring Under Section 3161 o f the NationaJ Defense Authorization Act for Fiscal Year 1993, in contracts for the management and operation o f Department o f Energy Defense Nuclear Facilities and, as appropriate, in other contracts that include site management responsibilities at a Department o f Energy Defense Nuclear Facility.
970.5226-3 Community commitment Dec2000		970.2673-2	R	R	I	The contracting officer shall insert the clause at 48 CFR 970,5226--3, Community Commitment, in all management and operating contracts.
970.5227-1 Rights in data-facilities Dec2000		970.2704-3(a)	A	A	I	The contracting officer shall insert the clause at 48 CFR 970.5227-1. Rights in Data-Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5227-2, Rights in Data-Technology Transfer. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C-24 restricted data, as set forth in 10 CFR part 725 is to be provided to contractors.

DEAR Clause Number) e	FAR/DEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescdption/Notes
970.5227-2 Rights in data-technology transfc;r Dec2000		970.2704-3(b)	A	A	I	The contracting officer shall insert the clause at 970.5227-2. Rights in Data-Technology Transfer, in management and operating contracts which contain the clause at 970.5227-3, Technology Transfer Mission. The contracting officer sliall include the clause with its Alternate I in contracts where access to Category C-24 restricted data. as set forth in 10 CFR part 725, is to be provided to contractors.
970.5227-3 Technology transfer mission Aug2000		970.2770-4(a)	A	A	I	The contracting officer shall insert the clause at 970.5227-3, Technology Transfer Mission, in each solicitation for a new or an extension o f an existing laboratory or weapon production facility management and operating contract
970.5227-4 Authorization and consent Aug2000		970.2702-1	R	R	I	Contracting officers must use the clause at 970.5227-4, Authorization and Consent, lllstead o f the clause at 48 CFR 52.227-1.
970.5227-5 Notice and assistance regarding patent and copyright infringement Aug2000		970.2702-2	R	R	I	Contracting officers must use the clause at 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement, instead o f the clause at 48 CFR 52.227-2,
970.5227-6 Patent indemnity-subcontracts)Dec2000		970.2702-3	R	R	I	Contracting officers must use the clause at 970.5227-6, Patent Indemnity-Subcontracts to assure that subcontracts appropriately address patent indemnity.
970.5227-7 Royalty information. Dec2000		970.2702-4	R	R	I	Contracting officers must use the solicitation provision at 970.5227-7, Royalcylnfonnation, and the clause at 970.5227-8, Refund o fRoyalties instead o f the provision at 48 CFR.52.227-8 and the clause at 48 CFR 52.227-9, respectively.
970.5227-8 Refund o f royalties Dec2000		970.2702-4	R	R	I	Contracting officers must use the solicitation provision at 970.5227-7, Royalty Information, aud the clause at 970.5227-8, Refund o fRoyalties instead o f the provision at 48 CFR52.227-8 and the clause at 48 CFR 52.227-9, respectively.
970.5227-10 Patent rights-management and operating contracts, nonprofit organization or small business firm contractor Aug2000		970.2703-l(bX2) 970.2703-2(g)	-	R	I	If the M&O contractor is a nonprofit organization or small business finn having technology transfer authority, the following clauses are inserted into the M&O contract: 970.5227-3 and 970.5227-10. Alternate I-Weapons Related Research or Production. If DOE grants techno1ogy transfer authority to a DOE facility, pursuant to Public Law 101-189, section 3!33(d), and the DOE owned facility is involved in weapons related research and development, or production, then Alternate 1 o f the patent rights clauses must be inserted into the M&O contract. Alternate 1 defmes weapons related subject inventions and restricts the contractor's rights with respect to such inventions.
970.5227-11 Patent rights-management and operating contracts, for-profit contractor, non-technology transfer Dec2000		970.2703-I(bX4)	A	-	I	If the M&O contract does not have a technology transfer mission and is to be performed by a for-profit, large business firm and does not have advance class waiver under IO CFR part 784, the patent rights clause at 970.5227-11 is inserted into the M&O contract, and the Technology Transfer Mission clause is ina,,licable.

DEAR Clause Number - , e	FAR/DEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescription/Notes
,0.5227-12 Patent rights.rnanagement and operating contracts, for-profit contractor, advance class waiver Aug2000		970.2703-I(bX3) 970.2703-2(g)	A	-	I	If the M&O contract has technology transfer as a mission and is to be perfonned by a for-profit, large business firm that has been granted an advance class waiver, the following clauses are inserted into the M&O contract: 970.5227-3 and 970.5227-12. The tenns of the clause at 970.5227-12 are subject to modification to conform to the tenns of the class waiver. Alternate I-Weapons Related Research or Production. If DOE grants technology transfer authority to a DOE facility, pursuant to PubJi Law 101-189, section 3133(d), and the OOE owned facility is involved in weapons related research and development, or production, then Alternate l of the patent rights clauses must be inserted into the M&O contract. Alternate 1 defines weapons related subject inventions and restricts the contractor's rights with respect to such inventions.
970.5228-l Insurance-Litigation and claims Mar2002		970.2803-2	R	R	I	The contracting officer shall insert the clause_ at 48 CFR 970.5228-1, Insurance-Litigation and Claims, in all management and operating contracts. Paragraphs (hXJ) and GX2) of that clause apply to a nonprofit contractor only to the extent specifically provided in the individual contract.
970.5229-1 State and local taxes Dec2000		970.2904-l(b)	R	R	I	Pursuantto48 CFR29.401-6(b), the clause at48 CFR52.229-10, State ofNew Mexico Gross Receipts and Compensating Tax, is applicable to management and operating contracts that meet the three conditions stated. The contracting officer shall modify paragraph (b) of the clause to replace the phrase "Allowable Cost and Payment clause" with the phrase "Payments and advances."
j970.5231-4 Preexisting conditions Dec2000		970.3170	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5231-4, Preexisting Conditions, in all management and operating contracts. (a) The contracting officer shall include the clause with its Alternate I in contracls with incumbent management and operating contractors. (b) The contracting officer shall include the clause with its Alternate TI in contracts with management and operating contractors not previously working at that particular site or facility.
970.5232-1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud Dec2000		970.320Q.1-I	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5232·1, Reduction or suspension of contract payments, in management and operating contracts.
970.5232-2 Payments and advances Dec2000		970.3270(aXI)	R	R	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-2, Payments and Advances, in all management and operating contracts: (i) The contracting officer shall insert the basic clause with its Alternate I if a separate fixed-fee is provided for a separate item of work. (ii) The contracting officer shall insert the basic clause with its Alternate Il when total available fee provisions in the basic clause are used. (iii) The contracting officer shall insert the basic clause with its Alternate ill in management and operating contracts with integrated accounting systems. (iv) The contracting officer shall insert the basic clause with its Alternate IV in management and operating contracts without inteQTated accounting systems.

DEARCJause Number	FAR/DEAR 952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescdption/Notes
970.5232-3 Accounts, records, and inspection Dec2000		970.3270(aX2)	R	R	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-3, Accounts, records, and inspection , in all management and operating contracts. (i) If the contract includes the clause at 48 CFR 52.215-11, Price Reduction for Defective Cost or Pricing Data, the contracting officer shall use the clause with its Alternate I. (ii) If the contract is a cost-reimbursement contract involving an estimated cost exceeding $5 million and expected to run for more than 2 years, or any other cost-reimbursement contract detemiined by the Head o f the Contracting Activity in which the contractor has an established internal audit organization, the contracting officer shall insert the clause with its A11emate II.
970.5232-4 Obligation o f funds Dec2000		970.3270(aX3J	R	R	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-4, Obligation o f Funds, in all management and operating contracts. Note: The contracting officer may use the clause with its Alternate I in contracts which, expressly or otherwise, provide a contractual basis for equivalent controls in a separate clause.
970.5232-5);iability with respect to cost ccounting standards Dec2000		970.3270(aX5)	R	R	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CPR 970.5232-5, Liability with res ct to cost accounting standards, in all management and operating contracts.
970.5232-6 Work for others funding authorization Dec2000		970.3270(aX6J	R	R	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-6, Work for others funding authorization, in all management and operating contracts.
970.5232-7 Financial management system Dec2000		970.3270(bXl)	A	A	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-7, Financial management system, in all management and operating contracts with integrated accounting systems.
970.5232-8 Integrated accounting Dec2000		970.3270(bX2)	A	A	I	The following DEAR clause is a standard financial management clause. The contracting officer shall insert the clause at 48 CFR 970.5232-8, Integrated accounting, in all management and operating contracts with integrated accounting systems.
970.5235-1 Federa1ly funded research and development center sponsoring agreement Dec2000		970.3501-4	A	A	I	The contracting officer shall insert the clause at 48 CFR 970.5235-1, Federally Funded Research and Development Center Sponsoring Agreement, in an solicitations and contracts for the management and operation o fan FFRDC sponsored by the Department o f Energy.
970.5236-1 Government facility subcontract approval Dec2000		970.3605-2	A	A	I	The clause in 48 CFR 970.5236-1, Government Facility Subcontract Approval, shall be used in management and operating contracts when the contractor will not perform covered work with its own forces but may procure construction by subcontract.

DEAR Clause Number	FARIDEAR952 Secondary Clause Citation	Prescribed In	M&O For Profit	M&O Non-Profit	UCF	DEAR Prescription/Notes
970.5237-2 Facilities management Dec2000		970.3770-2	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5237-2, Facilities Management. in all management and operating contracts.
970.5242-1 Penalties for unallowable costs Dec2000		970.4207--03-70	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5242-1, Penalties for unallowable costs, in all management and operating solicitations and contracts.
970.5243-1 Changes Dec2000		970.4302-1	R	R	I	The contracting officer shall insert the clause at 48 CFR 970.5243-1, Changes, in all management and operating contracts.
970.5244-1 Contractor purchasing system Dec2000		970.4403	R	R	I	The contracting officer shall insert the clause at 970.5244-1, Contractor Purchasing System, in all management and operating contracts.
970.5245-1 Property Dec2000		970.4501-l(a)	R	R	I	The contracting officer shall insert the clause at 970.5245-1, Property, in management and operating contracts. Paragraph (l)(IXiXc) of the clause applies to a non-profit contractor only to the extent specifically provided in the individual contract. Specific managerial personnel may be listed in paragraph (j), provided their listing is consistent with the clause and the DEAR. The contracting officer shall insert the basic clause with its Alternate I in contracts with nonprofit contractors

POLICY FLASH
2006-16

POLICY FLASH 2006 16

DATE: February 8, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: FY 2006 Final Small Business Contracting Goals

SUMMARY: The Small Business Administration (SBA) has just notified DOE this week that it finalized our FY 06 small business contracting goals. SBA is requiring goals of at least the statutory level for Women-Owned Small Business, HUBZone, and Service-Disabled Veteran-Owned Small Businesses. SBA will no longer accept Small Business, 8(a), or Small Disadvantaged Business goals that are below the previous year's goal. SBA increased all proposed goals that fell below the statutory level or the previous year's goals.

The final negotiated small business goals for FY 2006 and (unless notified otherwise by July 31, 2006) for FY 2007 are listed below:

Goaling Catee;orv	FY04Goal	FY 04 Actual	FY OSGoal	FY 06/07 Goal
Small Business Contracing	5.06%	4.18%	5.50%	5.50%
8(a)	2.20%	0.97%	2.20%	2.20%
Small Disadvantaged Business	1.00%	1.39%	1.00%	1.00%

Goaling Catelmry	FY04Goal	FY04Actual	FY OSGoal	FY 06/07 Goal
Women Owned Small Business	3.30%	0.56%	3.30%	5.00%
HubZone	1.50%	0.13%	1.50%	3.00%
Service-Disabled Veteran Owned Small Business	1.50%	0.05%	1.50%	3.00%

Questions regarding this policy flash may be directed to Stephen Zvolensky (202) 287-1307 or Stephen.Zvolensky@ q.clge.gcry.

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Michael P. Fischetti, Acting Director
Office o f Procurement and
Assistance Policy

POLICY FLASH
2006-16R

Policy Flash 2006-16R

DATE: February 13, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: FY 2006 Small Business Contracting Goals

SUMMARY: Policy Flash 2006-16, issued February 10, 2006, was issued prematurely and is hereby rescinded. DOE's small business contracting goals for FY 2006 will be communicated at such time as they become final.

Questions may be referred to Stephen Zvolensky (202) 287-1307 or Stcphen.Zvolensky@hq.doc.gov .

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

POLICY FLASH 2006-17

DATE: February 24, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **How EPACT 2005 Affects the Eligibility Requirements In 10 CFR 600, Subpart F**

SUMMARY: This Policy Flash provides additional guidance relating to eligibility determinations required by Section 2306 of the Energy Policy Act (EPACT) of 1992, as implemented in 10 CFR 600, Subpart F, and supplemented by the guidance in Financial Assistance Letter (FAL) 2005-03.

BACKGROUND

Section 2306 of EPACT 1992 establishes eligibility requirements for companies that receive financial assistance under titles XX through XXIII of that Act. The terms of Section 2306 are limited to those activities specifically authorized under titles XX through XXIII. These titles cover a myriad of programs undertaken by DOE in the various energy-related activities of EE, FE, NE, SC, EM and RW.

In August 2005, Congress passed the Energy Policy Act (EPACT) of 2005, which established a new set of priorities for DOE to undertake. In establishing these new priorities, EPACT 2005 did not include a specific sunset provision for EPACT 1992, nor did it include a similar eligibility requirement except for certain specific programs (e.g., Ultra Deepwater Petroleum Reserves program). In fact, Section 1005 of EPACT 2005 requires the Secretary to carry our research,

development, demonstration, and commercial application projects authorized by the Act in accordance with the provisions of a number of Acts that were identified in the section. Energy Policy Act of 1992 was included in the list of Acts identified.

However, EPACT 2005 does not directly correspond to EPACT 1992. EPACT 2005 contains only 18 titles and has no titles XX through XXXIII.

GUIDANCE

If a specific activity is authorized under EPACT 2005, the eligibility requirements in 10 CFR 600, Subpart F, do not apply. However, if previous years funds are used for an activity covered under titles XX through XXIII of EPACT 1992, the eligibility requirements in 10 CFR 600, Subpart F, as supplemented by FAL 2005-03, apply. Although unlikely, if a current DOE program is not authorized under the 2005 EPACT legislation and relies solely on the 1992 legislation for authorization, the eligibility requirements in 10 CFR 600, Subpart F, apply.

If a contracting officer does not know if a program has been authorized under EPACT 2005, he/she should check with the program official and counsel. If the activities are included in both Acts, the contracting officer may conclude that the activity is now being undertaken under the new EPACT 2005 authority and not under the old titles.

10 CFR 600, Subpart F, and FAL 2005-03 have not been canceled, but will rarely apply to financial assistance undertaken after August 2005. The Office of Procurement and Assistance Policy plans to delete the EPACT eligibility requirements contained in the current DOE announcement template in the near future, since they would apply rarely to new programs and may be inserted inadvertently if they remain in the template. Nevertheless, if the contracting officer determines that the Section 2306 eligibility requirements apply to a specific program, he/she must include the requirement in the program announcement and make the a determination of eligibility prior to making an award.

The guidance in this Policy Flash will be incorporated into the next revision of the Financial Assistance Guide.

Questions

Questions concerning this guidance should be directed to Ms. Trudy Wood at (202) 287-1336 or to trudy.wood@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

POLICY FLASH
2006-18

P()L[CY FLASH 2006-18

DATE: March 16, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Updated Policy and Operating Procedures Guide for Use of the GSA SmartPAY Purchase Card

SUMMARY: This Flash issues revised Chapter 13 of the DOE Acquisition Guide, which consists of the March 2006 Edition of the Policy and Operating Procedures for Use of the GSA SMARTPAY Purchase Card and a Summary of operating revisions.

This Flash and the Guide Chapter may be viewed at http://prolessionals.nr.cloe.gov.

Questions may be referred to Richard Langston (202) 287-1339 or richarcl.langston@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachment

Summary of Revisions to the Policy and Procedures for Use of the GSA SmartPAY Purchase Card (DOE Acquisition Guide Chapter 13)

1. Added a provision to explain that contractors are being issued new cards without the "U.S. Government Tax Exempt" logo (Section 2.j.).

2. Added a provision to require approving Officials to be appointed in writing (Section 3.a.(2)).

3. Prohibited the use of third party payment vendors (such as PayPay) except with OPC approval (Section 8.a.(7)).

4. Oral purchase limitation is lowered from $25,000 to $2,500 (Section 13(1)).

S. Clarified the need for the HCA to document the annual review and forward a copy to the APC (Section 27).

6. Federal Prison Industries are still a mandatory source for items on the schedule at (http://www.unicor.gov) but special best value analysis is needed for such purchases. Non-procurement cardholders consult their local procurement office unless cardholders have been trained in the technique (Section 29.b.).

7. Convenience checks are limited to $2,500 for any cardholder, with an exception allowed for transactions up to $10,000 in emergency situations, when authorized by the Organization Program Coordinator. Previously, contracting officers could exceed the limit (Section 39).

8. Deleted some outdated guidance in the "Office Supplies and Affirmative Procurement" sections (Sections 30 and 37).

9. Added a reference to the Energy Policy Act of200S in the "Energy Efficiency" section (Section 38).

10. Added language addressing SmartBuy and IPv6 section (Section 43).

11. Made other editorial corrections.

POLICY FLASH-19

POLICY FLASH 2006-19

DATE: March 17, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: Ordering Procedures for Contract Audit Services (DCAA, DCMA, HHS, and ONR)

SUMMARY: The purpose of this Flash is to expedite the issuance of uniform ordering procedures for various audit services required by the Department. Such agreements involve the Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), Health and Human Services (HHS), and Office of Naval Research (ONR). An Acquisition Letter (AL) providing more comprehensive policy and procedural information is forthcoming.

What is the purpose of this process change?

To establish consistent corporate audit ordering procedures, which enable the Department to provide standardized and cost effective processes with audit service providers, as well as ensure efficient and effective implementation of a corporate audit management program (CAMP).

How will this affect work processes?

- Contracting officers should ensure and verify that no audits are performed on a Federal Supply Schedule (FSS) contract where rates have been previously established as fair and reasonable by GSA.

- ► Contracting officers should ensure that the need for an audit is addressed in the acquisition planning stage of an anticipated requirement in accordance with FAR Part 7. This includes verifying that funding has been budgeted for audit services prior to the audit taking place.

- ► Contracting Officers are reminded that the initiation of an audit and obligation of Department funds to support it may only be incurred as a result of their final review and approval.

This information will be discussed as an upcoming Procurement Policy and Assistance Group (PPAG) meeting. Questions concerning this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denisc.Wright(7i),hq.doc.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy, OMBE

POLICY FLASH
2006-20

Policy Flash 2006-20

DATE: March 22, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: DOE Acquisition Guide Chapter 23 - Greening the Government - Environmental Considerations in Acquisition

SUMMARY: This new Guide Chapter is issued to replace Acquisition Letter 2002-05 issued July 10, 2002. The Acquisition Letter is cancelled. The Guide Chapter continues the DOE practice of a Green Acquisition Advocate for each contracting activity. It also begins the implementation of the US Department of Agriculture's Biobased Products Procurement Preference Program. That Program is being implemented as a subset of the Affirmative Procurement Program because of the similarities between it and the Environmental Protection Agency Program for Recycled Content Products.

A summary of changes is attached.

Questions may be referred to Richard Langston (202) 287-1339 or Richarcl.Langston(i:1lhq.cloc.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachment

SUMMARY OF CHANGES

1. Coverage of the US Department of Agriculture's Biobased Products Procurement Preference Program has been added. That Program implements requirements of Section 9002 of the Farm Security and Rural Investment Act. FAR Case 2005-038 is in process to amend the Federal Acquisition Regulation. Federal agencies have a period of 1 year from March 16, 2006 to implement the program. Any contracting activity having requirements for these products is encouraged to procure them in advance of the mandatory date.

2. A new section on the proper use of environmental solicitation provisions and contract clauses is added.

3. Attachment 3, Internet Information Resources, was updated.

4. Attachment 6, List of USDA-Designated Products, was added.

5. Attachment 7, List of ENBRGYSTAR and FEMP Designated Products was added.

6. Attachment 8, Green Acquisition Advocates, was updated.

7. Attachment 9, Greening Requirement in Executive Orders, the FAR and the DEAR, was added.

8. Other editorial changes were made.

Acquisition Guide: - - -

program as a tool to increase and expand markets for recovered materials through greater Federal preference and demand for such products.

Section 302 of Executive Order 13101 and Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA)(7 U.S.C. 8102) require the Department of Agriculture (USDA) to develop and implement a biobased product procurement program designed to increase the purchase and use of products with biobased content, consistent with applicable provisions of Federal procurement law. The statute models the program along the lines of the EPA Designated Products Program except that USDA rather than EPA will be designating the products and the products will be designated to promote the use of biobased content products rather than recycled content products. Once products are designated, the Federal agencies will have one year to implement the program and begin buying the products with their designated biobased content. It is so similar to the Affirmative Procurement Program that the Federal Acquisition Regulation (FAR) coverage is in FAR 23.4, Affirmative Procurement Program. A Final rule identifying the first 6 products was published March 16, 2006. Attachment 6 is a list of the biobased products.

Executive Order 13123, Greening the Government Through Efficient Energy Management, promotes the acquisition of energy efficient products and services. It requires the Federal government to provide leadership by significantly improving its energy management to save dollars and to reduce emissions that contribute to air pollution and global climate change. It provides that the Federal government as a major consumer will promote energy and water efficiency and the use of renewable energy products and will foster markets for emerging technologies. It requires Federal agencies, when acquiring energy using products, to acquire Energy Star labeled products. If Energy Star labeled products are unavailable, agencies will acquire products in the upper 25% of energy efficiency as designated by the Federal Energy Management Program. It encourages the procurement of renewable energy including solar energy. It also promotes the use of Energy Savings Performance Contracts to improve the energy efficiency of Federal facilities.

Executive Order 13148, Greening the Government Through Leadership in Environmental Management, is very broad. It promotes Federal environmental leadership through the establishment of environmental management systems at Federal facilities. It requires environmental audits at Federal facilities to ensure compliance with environmental standards. It requires Federal facilities to be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations under the Emergency Planning and Community Right to Know Act. It sets goals and calls on Federal facilities to reduce their releases and uses of toxic chemicals and hazardous substances and other pollutants. It calls for reduced use of ozone-depleting substances and encourages a phase out of their use by 2010. It also promotes cost effective, environmentally sound, landscaping practices.

Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency, requires reduced use of petroleum through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. It requires the use of environmentally preferable motor vehicle products. It also requires all management contracts involving motor vehicle fleet operations to include terms requiring contractor compliance with the goals and requirements of the Executive Order. This was implemented through a contract clause at DEAR 970.5223-5.

Executive Order 13221, Energy Efficient Standby Power Devices, requires Federal agencies, when acquiring products that contain a standby power function, to purchase products that use no more than one watt in their standby power consuming mode. If such products are not available, agencies are to purchase products with the lowest standby power wattage.

Effective Date

This Guide chapter replaces DOE Acquisition Letter 2002-05 and is effective upon issuance.

Purpose

The primary purpose of this chapter is to ensure that DOE Acquisition personnel are aware of the many enviromnental considerations affecting the acquisition process located in statutes, regulations and Executive Orders. Another purpose is to add coverage of the U.S. Department of Agriculture (USDA) Biobased Product Procurement Preference Program which is being implemented as part of the Affirmative Procurement Program through FAR Case 2004-032. Finally, this chapter will continue the use of the Green Acquisition Advocates at DOE contracting activities. The Green Acquisition Advocates have served as procurement expert and team members for Greening the Government initiatives within each DOE Contracting Activity. They work with Recycling Coordinators, Energy Coordinators or other environmental specialists to ensure that the procurement organization is an informed and suppotiive team member. This chapter includes appropriate roles and responsibilities for the Green Acquisition Advocates and the DOE procurement community as they patiner with other DOE personnel to implement Govermnent-wide Greening the Government initiatives. DOE management contractors are encouraged to appoint Advocates for the sites they manage. A list of Federal and contractor advocates is enclosed as Attachment 7.

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What is Current Acquisition Policy Relative to Greening the Government Requirements?

Executive Order 13101, Greening the Government Through Waste Prevention, Recycling and Federal Acquisition

This Executive Order replaces Executive Order 12873, Federal Acquisition, Recycling and Waste Prevention. The requirements of the earlier Order and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, are presently described in Subpart 23.4, Use of Recovered Materials, of the Federal Acquisition Regulation (FAR). The FAR amendment implementing Executive Order 13101, effective in August 2000, increased from 20% to 30% the required recovered material content of printing and writing paper, added the EPA Internet address for the list of designated products, revised the content certification requirement at FAR 52.223-9, extended the coverage to support service contractors providing services within a Federal facility, and updated the clause at FAR 52.223-10. The Depatiment of Energy Acquisition Regulation (DEAR) implements the FAR coverage and makes the DOE management contractors a part of the DOE Affirmative Procurement Program.

The Environmental Protection Agency maintains a list of products available with recycled content which Federal agencies are required to purchase. See the EPA Internet information resource http://www.epa.gov/cpg for the list and other useful information. This program has been instrumental in promoting the development of new products with recycled content, such as printing and writing paper with recycled content and carpeting with recycled content. Federal agencies must procure recycled paper with a post consumer recovered content of not less than 30%. Federal contractors are encouraged to print and copy double-sided using such paper pursuant to a clause at FAR 52.204-4. The FAR provides both a solicitation provision and contract clause to be used when contracting for products with recovered materials. The solicitation provision at FAR 52.223-4, Recovered Materials Certification, must be used to obtain the offeror's certification that it will supply materials with the minimum recovered material content. The contract clause at FAR 52.223-9, Estimate of Percentage of Recovered Material Content for EPA Designated Products, should be used to obtain the contractor's certification upon contract completion. The preceding requirements are applicable to Federal acquisitions only. DOE contractors operating Government facilities participate in the DOE Affirmative Procurement Program pursuant to DEAR 970.2304 and rep01i their purchases pursuant to the clause at DEAR 970.5223-2. The Department has a longstanding commitment to 100% compliance in the acquisition of EPA designated products.

The Affirmative Procurement Program has annual reporting requirements. The Pollution Prevention Team has developed an electronic reporting system for this purpose. Information about DOE's Affirmative Procurement Program and its reporting system may be found at https://www.eh.doe.gov/p2/ap/Reporting.htm. All purchases, including micro-purchases, must be reported. The Green Acquisition Advocate and the Recycling Coordinator should coordinate as appropriate to ensure that any work process changes at their site are implemented in a manner which will continue to supp01i this special reporting requirement. The Affirmative Procurement Program is the only enviro1111ental initiative to have a procurement reporting requirement.

In Fiscal Year 2002, the Federal Procurement Data System began to collect Affirmative Procurement Program data. Attachment 4 includes instructions for entering this data.

FAR 23.705 requires all contracts for operation of a Gover1111ent facility to contain the clause at

52.223-10 entitled "Waste Reduction Program." Contracts for operation of a DOE facility must also contain the clause at 970.5223-2 which provides for the contractor's participation in the DOE Affirmative Procurement Program.

Prime support service contracts awarded for performance at a Government-owned site should contain the clause at FAR 52.223-10. They should also contain the clause at DEAR 970.5223-2 if the purpose of the contract includes the procurement of any of the items designated in the EPA Comprehensive Procurement Guidelines. In such circumstances, the on site support service contractor will participate in DOE's Affirmative Procurement Program and report such purchases. If none of these products will be procured under the contract, the clause at FAR 52.223-10 may be used alone.

When acquiring items designated in the EPA Comprehensive Procurement Guidelines, that is, products with recycled content, the solicitation should specify the minimum recovered materials content contained in EPA's Recovered Materials Advisory Notice for the product. FAR 23.404 (b) provides that products that meet or exceed the EPA guidelines are to be procured unless it is impossible to acquire the item (i) competitively within a reasonable time frame, (ii) meeting appropriate performance standards, or (iii) at a reasonable price. If proposals received are unacceptable due to unreasonable price or other factors, a justification to procure the product with only virgin content will be documented and approved by the Green Acquisition Advocate pursuant to FAR 23.405(c). A copy of the justification should be furnished to the Environmental Executive. This may be accomplished by forwarding a copy to the Affirmative Procurement Program Office, EH-4 and maintaining a copy at the site. Written justifications for acquisitions below the micro-purchase ceiling are not required. Other Affirmative Procurement requirements continue below the micro-purchase ceiling.

Section 302 of Executive Order 13101 and Section 9002 of the Faim Security and Rural Investment Act of 2002 (FSRIA)(7 U.S.C. 8102) require the Department of Agriculture (USDA) to develop and implement a biobased product procurement program designed to increase the purchase and use of products with biobased content, consistent with applicable provisions of Federal procurement law. The statute models the program along the lines of the EPA Designated Products Program except that USDA rather than EPA will be designating the products and the products will be designated to promote the use of biobased content products rather than recycled content products. Once products are designated, the Federal agencies will have one year to implement the program and begin buying the products with their designated biobased content. It is so similar to the Affirmative Procurement Prograin that the Federal Acquisition Regulation (FAR) coverage is in FAR 23.4, Affirmative Procurement Program. A Final rule identifying the first 6 products was published March 16, 2006. .. Attachment 6 is a list of the biobased products.

Executive Order 13123, Greening the Government Through Efficient Energy Management

This Executive.Order calls for Federal leadership in energy and water efficiency, the use of renewable energy products, and the fostering of markets for emerging technologies. It calls for each agency to reduce its greenhouse gas emissions by 30% by 2010 relative to such emissions levels in 1990. It establishes energy efficiency improvement goals for each agency. The goals are 30% by 2005 and 35% by 2010 relative to 1985. It calls for expanded use of renewable energy in Federal facilities. It also calls for reduced use of petroleum products through the use of renewable energy sources and alternate fuel sources.

A final rule was published in December 2001 to implement the requirements of this Executive Order. The FAR changes became effective in February 2002. There are two contracting initiatives discussed in this Executive Order and the FAR amendment. The first is energy and water efficient products and the second is Energy Savings Performance Contracts.

FAR 23.203 requires that agencies, when acquiring energy using products, acquire either ENERGY STAR® labeled products or, if ENERGY STAR® labeled products are unavailable, acquire products in the upper 25% of energy efficiency as designated by the Federal Energy Management Program. The ENERGY STAR® Program is a joint program managed by EPA and DOE. The Program works with industry to promote energy conservation. Products meeting cel1ain criteria are allowed to use the ENERGY STAR® trade mark label. Among the best examples of these products are personal computers and monitors. When left unattended, these products "fall asleep," cutting their energy consumption to as little as four watts. Many ENERGY STAR® labeled office printers and copiers also offer fast and reliable duplex (2 sided) printing capabilities. The ENERGY STAR® Home Page, http://energystar.gov/products contains a list of products and manufacturers.

The Federal Energy Management Program is a DOE Program focusing on the Federal government's energy and water consumption. It includes large products such as office building sized heating and cooling equipment and water saving products. The energy and water using products for which efficiency designations are maintained may be reviewed at http://www.eere.energy.gov/femp/procurement . When contracting for the design, construction, and maintenance of Federal facilities, contractors should be made aware of these requirements regarding energy using equipment. Contracting activities should use the FAR, this Guide chapter, and the Internet information sites as their guidance for purchasing energy using products.

The second contracting initiative in this Executive Order involves Energy Savings Performance Contracts. Energy Savings Performance Contracts (ESPCs) allow Federal agencies to improve energy efficiency in their facilities at no direct capital cost. Private sector energy service companies (ESCOs) finance the capital cost and install the retrofits. The ESCOs are paid a fixed price out of the energy savings generated by the energy conservation measure. These contracts are competitively awarded at fixed prices and may have performance periods of up to 25 years. FAR 23.204 provides summary level coverage of ESPCs but guides the reader to the DOE regulations at 10 CFR 436, Subpai1 B, for detailed guidance.

Several Regional Super ESPCs and technology specific ESPCs have been awarded competitively. These multiple award contracts permit the energy service contractor to identify projects. These ordering agreements are available for the use of all DOE contracting activities as well as other Government agencies. The U.S. Army Corps of Engineers, Huntsville, Alabama District, also has awarded ordering agreements which may be used by DOE contracting activities or other Federal agencies. If a DOE contracting activity does not wish to use these ordering agreements, the Federal Energy Management Program has also pre-qualified numerous ESCOs that are eligible to compete for ESPCs. The Home Page for these and other energy efficiency funding alternatives may be found at http://www.eere.energy.gov/femp/ .

The Green Acquisition Advocate should assist facility and procurement personnel in their consideration of possible ESPC opportunities. Contracting activities shall use 10 CFR 436, Subpart B, the FAR, this Guide Chapter and the Internet info1mation site as their guidance. Note: Old copies of 10

CFR 436.30 will contain an out of date reference to an ESPC sunset. The sunset date for use of the ESPC authority has been extended to September 30, 2016.

Executive Order 13148, Greening the Government Through Leadership in Environmental Management

The primary new requirements are for agencies to institute Enviromnental Management Systems and conduct facility enviromnental compliance audits. These are at Sections 401 and 402 of the Order. At DOE, the Environmental Management System will be a subset of the existing Integrated Safety Management System and will be implemented through revisions to the DOE Directives. See DOE P 450.4, Safety Management System Policy, and DOE M 450.4-1B, Integrated Safety Management System Guide.

Sections 501 through 503 of the Executive Order deal with toxic chemical inventories, reduction of those inventories, and reporting of releases. FAR 23 9 requires a solicitation provision and contract clause in competitive contracts over $100,000. The solicitation provision is FAR 52.223-13 Certification of Toxic Chemical Release Reporting. This certification indicates that the offeror has filed its annual toxic chemical release inventory report or that it is exempt from the requirement. A facility may be exempt because it has fewer than 10 employees, it is not classified in North American Industry Classification System sectors 31 - 33, because it manufactures, processes, or otherwise uses less than the threshold quantities, or because it is located outside the United States. The required clause is FAR 52.223-14 Toxic Chemical Release Reporting which requires submission of the annual report, if applicable, throughout the contract tem1.

Section 504 of the Executive Order requires Federal agencies to comply with the Emergency Planning and Community Right to Know Act and the Pollution Prevention Act. These laws were enacted to help local communities protect public health, safety, and the environment from chemical hazards. They are meant to inform the public, Government officials, and industty about the chemical management practices for specified toxic chemicals at industrial and Federal facilities. As a practical matter, recognize that DEAR 970.5204-2, Laws, Regulations and DOE Directives, incorporates DOE Order 450.1, into DOE management contracts. The order is much broader and includes compliance with Emergency Planning and Community Right To Know Act requirements.

FAR 23 .1005 requires evely contract which involves performance at a Federal facility to contain the clause at FAR 52.223-5, Pollution Prevention and Community Right to Know. FAR 52.223-5 requires the contractor to provide information necessary to allow the agency to comply with the Emergency Planning and Community Right to Know Act and the Pollution Prevention Act including emergency notices, material safety data sheets, hazardous chemical inventory forms, toxic chemical release inventory reports and pollution prevention goals of the agency. As a practical matter, however, recognize that the FAR clause is overridden by DEAR 970.5204-2, Laws, Regulations, and DOE Directives, which incorporates DOE Order 450.1, into DOE management contracts. It is much broader than the FAR clause and includes compliance with the Emergency Planning and Community Right To Know Act requirements.

Section 505 of the Executive Order deals with ozone-depleting substances. Ozone-depleting substances are identified by EPA in 40 CFR 82. They include chlorofluorocarbons, halons, carbon tetrachloride, methyl chloroform, and hydrochlorofluorocarbons. Their use is being reduced and they

are being phased out as Industry is developing alternative products. Some products, such as halon used in aircraft fire suppression, do not yet have alternative products for the application. Section 505(c) precludes auy disposal of excess ozone-depleting substances without prior coordination with the Department of Defense which may have a mission critical requirement for the material. If so, the materials must be transfelTed to the Depaiiment of Defense at their expense. This requirement is described in greater detail in the EH guidance document entitled *A Plan and Guidance to Implement EO 13148 Requirements to Achieve Ozone-Depleting Substance Reductions* (available at http://www.eh.doe.gov/oepa/guidance/ozone/odseoguide.pdf). FAR 23.803 provides that agencies are to implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and to give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the enviromuent by lessening the depletion of ozone in the upper atmosphere. FAR futiher provides that, in preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall ensure that acquisitions:

> (I) Comply with the requirements of Title VI of the Clean Air Act, Executive Order 12843 (superceded by E.O. 13148), and 40 CFR 82.84(a)(2), (3), (4), and (5); and
> (2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(l), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4.

FAR 23.804 requires the use of the following clauses in appropriate circumstances. FAR 52.223-11 Ozone-Depleting Substance is to be used in contracts for the acquisition of ozone-depleting substances or for supplies which may contain or be manufactured with ozone-depleting substances. The clause requires manufacturers to label equipment containing ozone-depleting substances. FAR 52.223-12 Refrigeration Equipment and Air Conditioners is to be used in contracts for maintenance, repair or disposal of equipment or appliances containing ODSs such as refrigerators, chillers, air conditioners, or motor vehicles. This alerts service providers to the Clean Air Act prohibition on the release of ODSs into the atmosphere.

Executive Order 13149, Greening The Government Through Federal Fleet and Transportation Efficiency

This Execiitive Order replaces Executive Order 13031, Federal Alternative Fueled Vehicle Leadership. This Executive Order is intended to reduce Federal vehicular petroleum consumption through increased fuel efficiency in conventional vehicles and by increased use of alternate fuel vehicles and alternate fuels. No FAR amendment is planned for this Executive Order as its provisions are already included under the Affirmative Procurement Program coverage.

Part 2 of this Executive Order establishes a 20% goal for reducing annual vehicular petroleum usage by the end of FY2005 compared to FY1999. It also requires the development of compliance strategies for attaining the goal. Most significantly, it calls for the continued acquisition of alternative fuel vehicles as required by the Energy Policy Act of 1992, and the use of alternative fuels in those vehicles a majority of the time that the vehicles are in operation. Additionally, agencies are required by this Executive Order to increase the fuel efficiency of new light-duty vehicle acquisitions by 3 miles per gallon by FY2005.

Section 403 of this Executive Order prohibits the acquisition of virgin petroleum motor vehicle lubricating oils and requires the acquisition of environmentally preferable motor vehicle products. Environmentally preferable motor vehicle products are defined as those motor vehicle products designated by the Environmental Protection Agency in the Comprehensive Procurement Guidelines pursuant to 40 CFR 247. At this time, those products are re-refined oil, retread tires (generally truck size), and recycled engine coolants. These products are part of the Affirmative Procurement Program described at FAR 23.4. Exceptions are allowed if recovered content products are not available:

1. Competitively within a reasonable time frame;
2. Meeting appropriate performance standards; or,
3. At a reasonable price.

Section 505 of this Executive Order provides that all Govermnent-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each management contract. Information regarding this Executive Order is available at http://www.ott.doe.gov/epac1/federal_fleets.html

Executive Order 13221, Energy Efficient Standby Power Devices

This Executive Order concerns Federal acquisition of commercial, off-the-shelf, products that have standby power devices. The Executive Order requires that Federal agencies acquire models of such products which consume no more than one watt of power while in their standby power consuming mode. If such products are unavailable, agencies are to purchase products with the lowest standby power wattage, while in their standby power consuming mode. Agencies are to adhere to these requirements when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result. Information is available at http://www.eere.energy.gov/femp/procuremen1/eep_standby_power.cfm

Who Is Responsible For Implementing the Executive Orders?

Section 301.(d) of Executive Order 13101 requires the Head of each major procuring agency to designate an Agency Environmental Executive. The Agency Environmental Executive has the following duties:

- o coordinating all environmental programs relating to waste prevention, recycling, and, acquisition;

- o translating the Federal Strategic Plan for Executive Order 1310 I into a specific implementation plan for the Depmiment; and,

- o evaluating the Department's programs and acquisitions to ensure compliance with the Order.

In addition to the above duties, the DOE Environmental Executive monitors and repmis to the Federal Environmental Executive and the Director of the Office of Federal Procurement Policy regarding DOE's progress in the purchase of EPA designated items with recovered content.

The Office of Enviromnental Policy and Guidance, EH-4, has lead responsibility for management of the Affirmative Procurement Program. The Federal Energy Management Program, EE-2L, has lead responsibility for energy efficiency and Energy Savings Performance Contracts. The Office of Enviromnental Policy and Assistance, EH-41, has lead responsibility for coordinating the implementation of the Enviromnental Leadership Executive Order. The Office of Freedom Car and Vehicle Technology, EE-2G, has lead responsibility for the Fuel Efficiency Executive Order. While these Offices have lead responsibility, the procurement community must play a substantive role in assisting program elements to successfully accomplish these programs. To ensure that this occurs, this Guide provides roles and responsibilities for the procurement community.

What Must the Head of the Contracting Activity Do?

The Head of each Contracting Activity should appoint a Green Acquisition Advocate who will:

- o serve as the procurement expert on Greening the Government initiatives;

- o educate the procurement staff regarding all Greening the Government initiatives; and,

- o promote environmentally preferable and energy efficient products to the procurement staff and customers.

A list of additional responsibilities which may be performed by the Green Acquisition Advocates is provided at Attachment 1.

What must the Contracting Officer Do?

When reviewing and drafting solicitations and contracts, the Contracting Officer should ensure that the appropriate provisions and clauses are contained in their solicitations and contracts.

Contracting Officers should work with requirements personnel, contracting personnel and contractor personnel to be certain that all are aware of their responsibilities in this area. A Greening the Government Contracting Checklist is provided at Attachment 2.

Ensure that data entry personnel responsible for entering data into the Federal Procurement Data System are trained regarding products and services with recovered content (blocks 26 and 27). Ensure that data is entered colTectly and consistent with the instructions provided by Attachment 4.

Proper Use of Solicitation Provisions and Contract Clauses

There are a large number of environmental provisions and clauses in the FAR and DEAR. Here are their usage instructions.

FAR 52.223-1 and 2, Reserved.

FAR 52.223-3, Hazardous Material Identification and Material Safety Data.

This clause goes in all solicitations and contracts if the contract will require the delivery of hazardous materials. Here are some characteristics of hazardous materials:

- Chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizes, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes;
- Chemicals which are combustible liquids, compressed gases, explosives, :flammable liquids, :flammable solids, organic peroxides, oxidizers, pyrophorics, unstable (reactive) or water-reactive;
- Chemicals which in the course of normal handling, use, or storage operations may produce or release dusts, gases, fumes, vapors, mists or smoke which have any of the above characteristics.

The clause requires the contractor to provide notice of any hazardous material before its shipment and to provide material safety data sheets with the material. Use the clause with its Alternate 1 which adds an additional paragraph (i).

Learn more at
http://www.gsa.gov/Portal/gsa/ep/contentView.do?programid= 10196&channe!Id= -13603&ooid=10733&contentld=13918&pageTypeid=8199&contentType= GSA_BASIC&programPage=%2Fep%2Fprogram%2F gsaBasic.jsp&P= FL2

FAR 52.223-4, Recovered Material Certificate.

This solicitation provision should be used in solicitations that are for, or specify the use of EPA designated products containing recovered material content. This requires the offeror to certify that it will deliver a product with the required recycled content.

FAR 52.223-5, Pollution Prevention and Right to Know Information.

a) Include this clause in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

b) Use it with its Alternate I if the contract provides for contractor
1) operation or maintenance of a Federal facility at which the Federal agency has implemented or plans to implement an Environmental Management System (EMS) or
2) Activities and operations that are i) to be performed at a Government operated facility that has implemented or plans to implement an EMS; and ii) That the Agency has determined are covered by the EMS.

c) Use the clause with Alternate II if 1) the contract provides for contractor operation on a Federal facility and 2) the agency has determined that the contractor activities should be within the FCA or an EMS audit.

You will see the acronym FCA used in FAR 23.1005. It stands for Facility Compliance Audits. The term was used in E.O. 13148. Any agency not setting up an established regulatory environmental compliance audit program was required to develop and implement a program to conduct facility environmental compliance audits. DOE has established its regulatory environmental compliance program through DOE O 450.1 and will not be performing FCAs but will instead conduct EMSs.

It is a best practice to include the FAR 52.223-5 clause in any DOE management and operating contract. As a practical matter, however, recognize that it is ovenidden by DEAR 970.5204-2, Laws, Regulations, and DOE Directives, which incorporates DOE Order 450.1, into DOE management contracts. It is much broader than the FAR clause and includes compliance with Emergency Planning and Community Right to Know Act requirements.

FAR 52.223-6, Drug Free Workplace.

Include this clause in all solicitations and contracts except contracts a) below the simplified acquisition threshold, b) for acquisition of commercial items, c) performed outside the U.S., d) by law enforcement agencies if deemed inappropriate, ore) where application would be inconsistent with international obligations or the laws and regulations of a foreign country.

FAR 52.223-7, Notice of Radioactive materials.

Include this in solicitations and contracts for supplies which are, or which contain, a) radioactive materials requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or, b) radioactive material not requiring specific licensing under regulations in which the specific activity is greater than 0.002 microcuries per gram or the activity per gram equals or exceeds 0.01 microcuries.

FAR 52.223-8, Reserved.

FAR 52.223-9, Estimate of Percent of Recovered Material Content for EPA-Designated Products.

Insert this in solicitations and contracts, exceeding $100,000, that contained the solicitation provision at 52.223-4. This requires a report at the time of contract completion concerning the actual percent of recovered material content. There is an alternate I that can be used if technical personnel advise that estimates can be verified. As a practical matter, the recovered material content cannot be verified after manufacture.

FAR 52.223-10, Waste Reduction Program.

Insert this clause in all solicitations and contracts for contractor operation of Government-owned or Government-leased facilities and all solicitations and contracts for support services at Federal facilities. It requires the contractor, to have a waste reduction program in compliance with the requirements of Section 701 of Executive Order 13101 and Section 6002 of the Resource Conservation and Recovery Act. This clause is similar to DEAR 970.5223-2 except that clause is tailored to DOE's management contract environment and has a reporting requirement.

FAR 52.223-11, Ozone-Depleting Substances.

Insert this in all solicitations and contracts for ozone-depleting substances or supplies or equipment which may contain ozone depleting substances. The most significant of these are halon used in certain fire suppressing equipment and Freon used in refrigeration equipment. The clause requires labeling the equipment if it contains ozone-depleting substances.

FAR 52.223-12, Refrigeration Equipment and Air Conditioners.

Insert this in all solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment containing ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers. The clause prohibits venting ozone-depleting substances into the atmosphere and requires that they be recaptured before equipment disposal.

FAR 52.223-13, Certification of Toxic Chemical Release Reporting.

Insert this provision in all solicitations for competitive contracts exceeding $100,000 unless determined, in accordance with 23.905(b), that it is not practicable to do so. The offeror certifies that it will file reports required by the Emergency Planning and Community Right to Know Act or that it is exempt.

FAR 52.224-14, Toxic Chemical Release Reporting.

When the solicitation contains the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting, the resulting contract shall contain the clause at FAR 52.223-14 if the contract is to exceed $100,000. The contractor agrees that, unless it is exempt, it will file specified reports required by various environmental statutes and regulations.

DEAR 952.223-71, Integration of Environment, Safety and Health into Work Planning and Execution.

As prescribed in DEAR 923.7002, insert this clause in all contracts and subcontracts for, and to be made applicable to, work to be performed at a Government-owned facility where the Department has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of public health and safety.

DEAR 952.223-72, Radiation Protection and Nuclear Criticality.

As prescribed in DEAR 923.7002, inselt this clause in contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to asselt its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon the Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act).

DEAR 952.223-75, Preservation oflndividual Occupational Radiation Exposure Records.

This clause is to be used in contracts containing the clause at 952.223-71 or 952.223-72.

DEAR 952.223-76, Conditional Payment of Fee or Profit - Safeguarding Restricted Data and Other classified Information and Protection of Worker Safety and Health.

Include this clause in all contracts that contain both the Security clause, 952.204-2, and the Nuclear Hazards Indemnity Agreement clause, 952.250-70.

DEAR 952.223-77, Conditional Payment of Fee or Profit-Protection of Worker Safety and Health.

Include this clause in contracts that do not contain the Security clause, 952.204-2, but do require Nuclear Hazards Indemnity Agreement clause, 952.250-70.

DEAR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution.

Include this clause in management contracts at a facility where DOE will exercise its statutory authority to enforce occupational Safety and health standards for contractor and subcontractor employees at the facility.

DEAR 970.5223-2, Affirmative Procurement Program.

Include this clause in contracts for the management of DOE facilities including national laboratories.

DEAR 970.5223-3, Agreement Regarding Workplace Substance Abuse Programs at DOE Facilities.

Include this provision in solicitations that contemplate contractor management of a DOE facility.

DEAR 970.5223-4, Workplace Substance Abuse Programs At DOE Sites.

Include this clause in all contracts for management of a DOE site.

DEAR 970.5223-5, DOE Motor Vehicle Fleet Fuel Efficiency.

Include this clause in all contracts that include motor vehicle fleet management.

What Tools Are Available to Help Us?

There are numerous information tools available on the Internet to assist you. There is a listing of these at Attachment 3.

The Office of Procurement and Assistance Management maintains an *Acquisition and the Environment* Home Page at http://professionals.pr.doe.gov .

Attachment 1

SAMPLE GREEN ACQUISITION ADVOCATE ACTIVITIES

Ensure that personnel at the contracting activity are aware of products designated in the EPA Comprehensive Procurement Guidelines for procurement with recycled content, as well as the ENERGY STAR® and Federal Energy Management Program products. Ensure that personnel at the contracting activity are aware of the Environmental Leadership and Fuel Efficiency Executive Orders and the required solicitation provisions and contract clauses. EPA designated products are listed at www.doe.epa/cpg while USDA items are listed at http://www.biobased.oce.usda.gov/public/index.cfm

Ensure that Purchase Card Program training includes awareness of and support for the Affirmative Procurement Program and the ENERGY STAR® and Federal Energy Management Program initiatives. Promote use of the Online Affirmative Procurement Training for Purchase Card Users module available at the *Acquisition and the Environment* Home Page.

Support program initiatives to promote employee support of the environmental and energy efficiency initiatives through informational displays and promotional activities.

Support program initiatives to include Affirmative Procurement Program, ENERGY STAR®, and Federal Energy Management Program, Environmental Leadership, and Alternative Fuels accomplishments in local Home Pages, Intranet sites, newsletters, et cetera.

Support initiatives to promote participation in OFPP or other agency sponsored pilot acquisitions of environmentally preferable, including energy efficient, products.

Promote a team approach among the component members of the local acquisition community including procurement, property, environment, program, supply, facilities, construction, etc.

Promote consideration of a broad range of environmental factors in developing plans, drawings, work statements, specifications, or other product descriptions for use at the facility. Include such factors as elimination of virgin material requirements, use of biobased products, use of recovered materials, reuse of products, life cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination) and ultimate disposal.

Coordinate with the Recycling Coordinator to ensure that local procedures provide for purchase cardholders to report their Affirmative Procurement Program transactions pursuant to that Program's reporting requirements.

Review justifications to acquire other than an EPA designated item because it is impossible to acquire the item

1. Competitively within a reasonable time frame; or,
2. Meeting appropriate performance standards; or,
3. At a reasonable price

GREENING THE GOVERNMENT CONTRACTING CHECKLIST

Ensure that all acquisitions of items designated in the EPA Comprehensive Procurement Guidelines have the EPA recommended content level as provided in EPA's Recovered Materials Advisory Notices (RMANs) for the items.

In conjunction with requirements personnel, consider aggregating purchases of EPA designated, environmentally preferable, or energy efficient items to the extent that such action will promote economy or efficiency.

Ensure that contracts for operation of a Federal facility, and support service contracts to be performed at a Federal facility, include the clause at FAR 52.223-10, Waste Reduction Program, as required by FAR 23-705.

Ensure that management and operating contracts include the environmental preference clause of DEAR 970.5223-2 and that management contractor personnel are aware of the program and their responsibilities under the Affirmative Procurement Program.

Ensure that the clause at FAR 52.223-11, Ozone-Depleting Substances is inserted in solicitations and contracts for ozone-depleting substances or supplies that may contain ozone-depleting substances as required by FAR 23.804(a).

Ensure that the clause at FAR 52.223-12, Refrigeration Equipment and Air Conditioners, is inserted in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers as required by FAR 23.804(b).

Ensure that competitive solicitations exceeding $100,000, except those for commercial items, contain the solicitation provision at FAR 52.223-13 Certification of Toxic Chemical Release Reporting as required by FAR 23.906(a). Ensure that competitive contracts exceeding $100,000 contain the clause at FAR 52.223-14, Toxic Chemical Release Reporting, if the solicitation contained the preceding solicitation provision and the contractor did not certify that its facilities were exempt from reporting. See the instruction at FAR 23.906(b)

Ensure that all management and operating contracts contain the clause at 52.223-5, Pollution Prevention and Right to Know Information, as required by FAR 23.1005.

Ensure that management and operating contracts that include motor vehicle fleet management responsibilities include either a special provision ensuring that the contractor will comply with the goals and requirements of Executive Order 13149 or the clause at DEAR 970.5223-5.

Ensure that Federal Procurement Data System contract coding, regarding the procurement of EPA designated products, or services including EPA designated products, (blocks 26 and 27), is entered correctly and consistent with the instructions provided by Attachment 4.

When developing acquisition plans, ensure that Greening the Government requirements are addressed. Include such factors as elimination of virgin material requirements, use of biobased products, use of recovered materials, reuse of products, life cycle cost, recyclability, use of environmentally preferable products, water savings, waste prevention (including toxicity reduction or elimination) and ultimate disposal. Consider whether ENERGY STAR® products or products designated in the upper 25% of energy efficiency by the Federal Energy Management Program are available.

Review procurement requests to ensure that, when acquiring items designated in the EPA Comprehensive Procurement Guidelines, recovered content requirements are specified or that a written justification is provided as required by FAR 23.404(b)(3).

A copy of the justification should be furnished to the DOE Environmental Executive. This may be accomplished by forwarding a copy to the Affitmative Procurement Program Office, EH-4. A copy should be maintained at the site.

When procuring paper products, comply with Section 505 of the Executive Order which mandates a minimum recycled content of 30% (this may be reduced to 20% only if the 30% content product is not reasonably available, does not meet reasonable performance requirements, or is unreasonably priced).

When procuring lubricants, coolants or tires, purchase re-refined, bio-based, reclaimed or retread products.

When issuing contracts for vehicular or heavy equipment maintenance, specify that re-refined or bio-based lubricants, reclaimed coolants, and retread tires will be used whenever practical.

When procuring electricity, consider the purchase of electricity from clean energy sources including 1) renewable energy sources; 2) less greenhouse intensive, non petroleum energy sources such as natural gas; and 3) clean, more efficient fossil energy technologies.

INTERNET INFORMATION RESOURCES

DOE Internet Resources

http://professionals.pr.doe.gov is the Office of Procurement and Assistance Management information site which includes hyperlinks to all of the sites listed here. Click on "Procurement" then "Regulations and Guidance" and then *"Acquisition and the Environment."*

http://www.eh.doe.gov/p2/epp is the EH page dealing with Executive Order 13101. The page contains an extensive listing of DOE and contractor personnel with recycling duties and experience which can serve as an information network tool.

http://energystar.gov is the ENERGY STAR® information site.

http://www.eere.energy.gov/femp/ is the Federal Energy Management Program information site.

http://www.eere.energy.gov/femp/program/equip_procurement.cfm contains FEMP product energy information and standby power device info1mation

http://www.eere.energy.gov/femp/financing/index.cfm contains extensive Energy Savings Performance Contract information

http://www.eere.energy.gov/vehiclesandfuels/index.shtml contains information on alternate fuel vehicles and alternate fuels

EPA Internet Resources

http://www.epa.gov/cpg is EPA's Comprehensive Procurement Guidelines information site. It describes EPA's designated products, their specifications, their sources of supply and other useful information.

http://www.epa.gov/opptintr/epp is an EPA training site for Environmentally Preferable Purchasing

http://www.epa.gov/epahome/lawregs.htm contains most environmental laws and regulations

USDA Internet Resource

http://www.biobased.oce.usda.gov/public/index.cfm

Other Information Resources

http://www.ofee.gov is the Home Page of the Office of the Federal Environmental Executive. This page has copies of all the Greening Executive Orders.

http://www.hnd.usace.army.mil is the Huntsville, AL Office of the Army Corps of Engineers information site. They also award ordering agreements for Energy Savings Performance Contracts.

ATTACHMENT 4

Coding Procurements Involving Affirmative Procurement Program Items

Beginning in Fiscal Year 2002, the Federal Procurement Data System began collecting information regarding the acquisition of Affirmative Procurement Program Items, also known as products with recovered material content, or EPA-designated items. The FPDS-NG still collects this information. USDA-designated items are being added to the Affirmative Procurement Program but there is no FPDS-NG reporting requirement for those products.

Question. What are Affirmative Procurement Program items?

Answer. They are products with recycled content which Federal agencies and Contractors operating Government- owned facilities are required to purchase with the requisite recycled content. They are designated in the Comprehensive Procurement Guidelines, 40 CFR 247, by the Environmental Protection Agency. The Product Categories are:

Constrnction Products
Landscaping Products
Nonpaper Office Products
Paper Products
Parks and Recreation Products
Transportation Products
Vehicular Products
Miscellaneous Products

You may review the list and more detailed information about the products, including recommended recycled content, at the Internet address shown below. A listing of the products is also included in this attachment. The following instructions relate to the EPA designated questions.

ITEM USE OF EPA DESIGNATED PRODUCTS

The Resource Conservation and Recovery Act (RCRA), Section 6002, and Executive Order 13101 require the purchase of Environmental Protection Agency (EPA) designated products with a required minimum material content as described in an agency's Affirmative Procurement Program (APP). This list of EPA-designated products is available at http://www.epa.gov/cpg. This requirement applies to all contracts that require EPA-designated products. When purchasing a product or products on this list without the required minimum recovered material content, a written justification based on exception codes B, C, or D below is required by FAR 23 .405(c). If more than one exception applies or more than one justification was completed, report the predominant exception code or the code for the highest cost EPA-designated product for which a justification was completed. Select one of the following:

CODE DESCRIPTION

A EPA-designated product or products were purchased and all contained the required minimum recovered material content.

B EPA-designated product or products were purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) competitively within a reasonable time pursuant to FAR 23.405(c)(l).

C EPA-designated product or products were purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s)_ at a reasonable price pursuant to FAR 23.405(c)(2).

D EPA-designated product or products were purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) to reasonable performance standards in the specifications pursuant to FAR 23.405(c)(3).

E No EPA-designated products were required.

ITEM27 USE OF RECOVERED MATERIALS CLAUSES

A Use this code if the contract contains any of these provisions or clauses, FAR 52.223-4, Recovered Material Certification, FAR 52.223-9, Estimate of Recovered Material Content for EPA-Designated Products, or FAR 52.223-10, Waste Reduction Program.

B Use this code if the contract contains none of the provisions or clauses at A above.

The Detailed List ofEPA Designated Products - Consult the EPA Home Page for recovered material content

Construction Products
- Building Insulation Products
- Carpet
- Carpet Cushion
- Cement and Concrete containing:
  - -Fly Ash
  - - Ground Granulated Blast Furnace Slag
- Consolidated/Reprocessed Latex Paint
- Floor Tiles
- Flowable Fill
- Laminated Paperboard
- Patio Blocks
- Railroad Grade Crossing Surfaces
- Shower and Restroom Dividers/Partitions
- Structural Fiberboard

Landscaping Products
- Garden and soaker hoses
- Hydraulic Mulch
- Landscaping timbers and posts (plastic lumber)
- Lawn and garden edging
- Yard Trimmings and/cir Food Waste Compost

Non-Paper Office Products
- Binders
  - Office Recycling Containers
  - Office Waste Receptacles
- Plastic Clip Portfolios
  - Plastic Clipboards
  - Plastic Desktop Accessories
  - Plastic Envelopes
- Plastic File Folders
  - Plastic Presentation Folders
  - Plastic Trash Bags
- Printer Ribbons
- Solid Plastic Binders
- Toner Cartridges

Paper and Paper Products
- Bristols
- Coated Printing Papers
- Commercial/Industrial Sanitary Tissue Products
- Miscellaneous Paper Products (Tray Liners)
- Newsprint
- Paperboard and Packaging Products
- Uncoated Printing and Writing Papers

Park and Recreation Products
- Park Benches and Picnic Tables Containing Recovered Aluminum, Steel, Concrete or Plastic
- Plastic Fencing
- Playground Equipment Containing Recovered Plastic, Steel, or Aluminum
- Playground Surfaces
- Running Track

Transportation Products
- Channelizers
- Delineators
- Flexible Delineators
- Parking Stops
- Traffic Barriers
- Traffic Cones

Vehicular Products
- Re-refined Lubricating Oil
- Reclaimed Engine Coolant
- Retread Tires

Miscellaneous Products
- Awards and Plaques
- Industrial Drums
- Mats
- Pallets
- Signage
- Sorbents
- Strapping and Stretch Wrap

Attachment 6

LIST OF USDA-DESIGNATED PRODUCTS

These Products were designated in a final rule published in the March 16, 2006 Federal Register, 71 FR 13686

Mobile Equipment Hydraulic Fluids

Roof Coatings

Water Tanlc Coatings*

Diesel Fuel Additives

Penetrating Lubricants

Bedding, Bed Linens, and Towels*

*These products will not require preference until USDA locates 2 or more suppliers and USDA publishes a Federal Register notice advising the Federal agencies of the date by which preference is required.

Attachment 7

ENERGY STAR Qualified and FEMP Designated Products

Lighting:

Compact Fluorescent Lamps
Residential Light Fixtures
Fluorescent Tube Lamps
Fluorescent Ballasts
Fluorescent Luminaires
DownJight Luminaires
Industrial Luminaires
Exit Signs
Ceiling Fans
Traffic Lights

Commercial & Industrial Equipment:

Unitary (Packaged) Air Conditioners
Air-Cooled Electric Chillers
Water-Cooled Electric Chillers
Air-Source Heat Pumps
Ground-Source Heat Pumps
Commercial Boilers
Electric Motors
Distribution Transformers

Food Service Equipment:

Solid Door Refrigerators and Freezers
Gas Griddles
Fiyers
Hot Food Holding Cabinets
Steam Cookers
Beverage Vending Machines
Water Coolers
Ice Machines
Pre-Rinse Spray Valves

Office Equipment:

Computers
Monitors
Laptops
Printers
Fax Machines
Copiers
Scanners
Multifunction Devices
Mailing Machines
External Power Adapters

Home Electronics:

Televisions (TV)
Video Cassette Recorders (VCR)
Combination Units (TV+ VCR)
Digital Video Display (DVD) Products
Cordless Telephones
Answering Machines
Combination Telephone/Answering Machine
Home Audio

Appliances:

Refrigerators
Freezers
Dishwashers
Clothes Washers
Room Air Conditioners
Dehumidifiers
Room Air Cleaners

Residential Equipment:

Central Air Conditioners
Air-Source Heat Pumps
Ground-Source Heat Pumps
Gas Furnaces
Residential Boilers
Electric Water Heaters
Gas Water Heaters
Ventilation Fans
Programmable Thermostats

Plumbing:

Faucets
Showerheads
Urinals

Construction Products:

Residential Windows, Doors and Skylights
Roof Products

Attachment 8

Green Acquisition Advocates

Albuquerque

Ann Howe
U.S. Department of Energy
NNSA Service Center
Pennsylvania & H Street
Kirtland Air Force Base
Albuquerque, NM 87116
Phone: 505-845-5200
Internet Address: ahowe@doeal.gov

Chicago Operations

Patricia Schuneman
patricia.schuneman@ch.doe.gov
Chicago Operations Office
9800 South Cass Avenue
Argonne, IL 60439
Phone: 630-252-2956
Fax: 630-252-5045

Golden Field Office

Daryl Berg
Daryl.Berg@go.doe.gov
U.S. Depaiiment of Energy
Golden Field Office
1617 Cole Boulevard
Golden, CO 80401
(303) 275-4920 Voice
4748 fax

Office of Procurement and Assistance Policy

Richard Langston, MA-51,
richard.langston@hq.doe.gov
U.S. Department of Energy, Headquarters
Office of Procurement and Assistance Policy

1000 Independence Avenue SW
Washington, D.C. 20585
(202) 287-1339 [fax 1345]

Office of Headquarters Procurement Services

Michael Raizen, MA-644,
michael.raizen@pr.doe.gov
U.S. Department of Energy
Office of Headquarters Procurement Services
1000 Independence Avenue, S.W.
Washington, DC 20585
(202) 287-1512 [fax 1451]

Idaho Operations Office

David Clark
clarkda@id.doe.gov
U.S. Depaiiment of Energy
Idaho Operations Office MS 4202
850 Energy Drive
Idaho Falls, ID 83401-1563
Phone: 208-526-6591 Fax: 208-526-5548

Los Alamos National Laboratory

Sonya Salzman,
ssalzman@lanl.gov
Los Alamos National Laboratory
MS J552
P.O. Box 1663
Los Alamos, NM 87545
(505) 664-0106

National Nuclear Security Administration
Law, Stephen (Steve)
steve.law@nnsa.doe.gov
Phone: 202-586-4321
Fax: 202-586-7535
Route Symbol: NA-20
1000 Independence Avenue SW
WASHINGTON DC 20585

National Energy Technology Laboratory

John Augustine,
john.augustine@NETL.DOE.GOV
U.S. Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
P.O. Box 880
Morgantown, WV 26507-0880
(412) 386-4524

National Renewable Energy Laboratory

Laura Hughes
laura_hughes@mcl.gov
1617 Cole Blvd.
Golden, CO 80401-3393
303 384-7347 (V)
303 384-7345 (F)

Oak Riclge Operations

Price, Bobby W.,
PriceB@oro.doe.gov
U.S. Department of Energy
Oak Ridge Operations Office
200 Administration Road
Oak Ridge, TN 37831
Phone: (865) 576-5103
Fax: (865) 576-7298
Pager: (865) 222-1568

Dotson, Richard A. (Richard)
Phone: 865-576-8031
Fax: 865-576-7298
Route Symbol: SC-OR
Building: FEDBLDG
Location: OAK RIDGE TN
Organization: INFORMATION RESOURCES MANAGEMENT DI
Title: INFORMATION TECHNOLOGY SPECIALIST (POLICY & PLANNING)
Internet Address: DotsonRA@oro.doe.gov

Jellllings, Carol S.
Phone:
Fax: (none given)

Route Symbol: SC-OR
Building:
Location: OAK RIDGE TN
Organization: ACQUISITION SERVICES BRANCH
Title: PURCHASING AGENT
Internet Address: jenningscs@oro.doe.gov

NNSA Livermore Site Office

Karen King,
karin.king@oak.doe.gov
U.S. Department of Energy
Live1more Site Office
PO Box 808 L-574
Livermore, CA 94551
(925) 422-0756

Ohio Field Office

Tamara Ludwig,
tamara.ludwig@ohio.doe.gov
U.S. Department of Energy
Ohio Field Office
175 Tri County Parkway
Springdale, OH 45246
Phone: 513 246-0059
Fax: 513 246-0225

Pacific Northwest National Laboratory

Sandra Cannon, PNL,
sandra.cannon@pnl.gov
803 Valencia
Walla Walla, WA 99362
Phone: (509) 529-1535 Fax: (509) 375-6926

Pantex - BWXT

Boyd Deaver
BDeaver@Pantex.com
P.O. Box 30020
Bldg. T9059
Amarillo, TX 79120
(806) 477-6644

Pittsburgh Naval Reactors Office

Anthony J. Denapoli,
denapoli@bettis.gov
U.S. Department of Energy
Pittsburgh Naval Reactors Office
814 Pittsburgh McKeesport Blvd.
West Mifflin, PA 15122-0109
Phone: 412-476-7274

Richland Operations

Jenise Connerly,
Jenise_C_Connerly@rl.gov
U.S. Depmiment of Energy
Richland Operations Office
825 Jadwin Avenue
P.O. Box 550
Richland, WA 99352
Phone: (509) 376-8362
FAX (509) 372-2762

Sandia National Laboratory

Kristen Klossner
Kakloss@sandia.gov
Sandia National Laboratory
MS 1050 Bldg T-71 Rm 5
P.O. Box 5800
Albuquerque, NM 87185-1035
(505) 844-9204 FAX 9977

Alternate Dezbah Tso
datso@sandia.gov
505 284-3983

Savannah River Operations

David W. Hepner,
david.hepner@srs.gov
U.S. Department of Energy
Savannah River Operations Office
Road 1
Aiken, SC 29801
Phone: 803-795-9354

Fax: 803-725-0448

Savannah River Plant (WSRP)

Sarita Berry
Sarita.Berry@srs.gov
W-SR
Bldg. 705-3C
Room 119
Aiken, S.C. 29808
(803) 557-8124

Southwestern Power Administration

Gary Bridges,
gbridges@swpa.gov
U.S. Department of Energy
Southwestern Power Administration
1 West 3rd Street
Williams Center Tower 1, Suite 1600
Tulsa, OK 74103
Phone: 918-595-6671
Fax: 918-595-6656

Stanford Linear Accelerator Center

Pamela D. Wright-Brunache,
pdwb@SLAC.Stanford.EDU
Stanford Linear Accelerator Center
2575 Sand Hill Rd.
Menlo Park, CA 94025
Phone 650 926-2440
Fax 650 926-2000

Strategic Petroleum Reserve Project Office

Joyce Francois,
joyce.francois@spr.doe.gov
Strategic Petroleum Reserve Project Office
900 Commerce Road East
New Orleans, LA 70123
Phone: (504)734-4760
FAX: (504)734-4947

Fax: 803-725-0448

Savannah River Plant (WSRP)

Sarita Berry
Sarita.Berry@srs.gov
W-SR
Bldg. 705-3C
Room 119
Aiken, S.C. 29808
(803) 557-8124

Southwestern Power Administration

Gary Bridges,
gbridges@swpa.gov
U.S. Department of Energy
Southwestern Power Administration
1 West 3rd Street
Williams Center Tower 1, Suite 1600
Tulsa, OK 74103
Phone: 918-595-6671
Fax: 918-595-6656

Stanford Linear Accelerator Center

Pamela D. Wright-Bnmache,
pdwb@SLAC.Stanford.EDU
Stanford Linear Accelerator Center
2575 Sand Hill Rd.
Menlo Park, CA 94025
Phone 650 926-2440
Fax 650 926-2000

Strategic Petroleum Reserve Project Office

Joyce Francois,
joyce.francois@spr.doe.gov
Strategic Petroleum Reserve Project Office
900 Commerce Road East
New Orleans, LA 70123
Phone: (504)734-4760
FAX: (504)734-4947

Thomas Jefferson National Accelerator Facility

Dennis Dobbins,
dobbins@jlab.org
Thomas Jefferson National Accelerator Facility
12000 Jefferson Avenue
Newp01i News, VA 23606
(757) 269-5139 voice (757) 269-5944 fax

Western Area Power Administration

Frank Armstrong,
armstmg@wapa.gov
Western Area Power Administration
Corporate Services Office - A1500
P.O. Box 281213
Lakewood, Colorado 80228-8213
(720) 962-7163 voice
(720) 962-7161 fax

Waste Isolation Pilot Plant

Zvonar, Cynthia A.
Carlsbad Area Office
4021 National Parks Highway
Carlsbad, N.M. 88221
Phone: 505-234-7495
Fax: 505-234-7061
Assistant Manager For Operations
Internet Address: cynthia.zvonar@wipp.ws

Murphy, Philip N.
Carlsbad Area Office
4021 National Parks Highway
Carlsbad, N.M. 88221
Phone:(505-234-7465)
Fax:(505-234-7019)
E-mail :(philip.murphy@wipp.ws)

Yucca Mountain Site Characterization Office

Kathleen Clemensen
Kathleen_Clemensen@ymp.gov
U.S. Department of Energy
Yucca Mountain Project Characterization Office

MIS 523
1551 Hillshire Drive, Suite A
Las Vegas, NV 89134
(702) 794-5530

Subject: Greening the Government Requirements in the FAR and the DEAR

References	Title
Executive Order 13101	Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition
Executive Order 13123	Greening the Government Through Efficient Energy Management
Executive Order 13148	Greening the Government Through Leadership in Environmental Management
Executive Order 13149	Greening the Government Through Federal Fleet and Transpmtation Efficiency
Executive Order 13221	Energy Efficient Standby Power Devices
FAR23.2	Energy Conservation
FAR23.4	Use of Recovered Materials and Biobased Products
FAR23.7	Contracting for Environmentally Preferable and Energy Efficient Products and Services
FAR23.8	Ozone-Depleting Substances
FAR23.9	Contracting Compliance with Toxic Chemical Release Repo1ting
FAR23.10	Federal Compliance with Right to Know Act and Pollution Prevention Requirements
FAR 52.223-3	Hazardous Material Identification and Material Safety Data
FAR 52.223-4	Recovered Material Certification
FAR 52.223-5	Pollution Prevention and Right to Know Info1mation
FAR 52.223-9	Estimate of Percentage of Recovered Material Content for EPA Designated Products
FAR 52.223-10	Waste Reduction Program
FAR 52.223-11	Ozone-Depleting Substances
FAR 52.223-12	Refrigeration Equipment and Air Conditioners
FAR 52.223-13	Ce1tification of Toxic Chemical Release Reporting
FAR 52.223-14	Toxic Chemical Release Reporting
DEAR 923.4	Use of Recovered Materials
DEAR923.5	Workplace Substance Abuse Programs
DEAR923.7	Contracting for Environmentally Preferable and Energy -Efficient Products and Services

DEAR923.70	Environmental, Conservation, and Occupational Safety Programs
DEAR 952.223-71	Integration of Environment, Safety, and Health into Work Planning and Execution
DEAR 952.223-72	Radiation Protection and Nuclear Criticality
DEAR 952.223-75	Preservation of Individual Occupational Radiation Exposure Records
DEAR 952.223-76	Conditional Payment of Pee or Profit - Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health
DEAR 952.223-77	Conditional Payment of Pee or Profit-Protection of Worker Safety and Health
DEAR 970.2303	Hazardous Materials Identification and Material Safety
DEAR 970.2304	Use of Recovered/Recycled Materials
DEAR 970.2305.	Workplace Substance Abuse Programs - Management and Operating Contracts
DEAR 970.2307	Contracting for Environmentally Preferable and Energy Efficient Products and Services
DEAR 970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution
DEAR 970.5223-2	Affirmative Procurement Program
DEAR 970.5223-3	Agreement Regarding Workplace Substance Abuse Programs at DOE Facilities
DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites
DEAR 970.5223-5	DOE Motor Vehicle Fleet Fuel Efficiency
DEAR 970.5223-2	Acquisition and Use of Environmentally Preferable Products and Services

POLICY FLASH 2006-21

DATE: March 22, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Implementation of DOE Order 580.1, Department of Energy Personal Property Management

SUMMARY: Acquisition Letter 2006-06 has been issued to provide guidance for the implementation of DOE Order 580.1, Department of Energy Property Management Program. It provides detailed procedures regarding the Department's implementation of the Order. The Order is available at www.directives.doe.gov.

The Flash and the Acquisition Letter may be viewed at http://professionals.pr.doe.gov.

Questions may be referred to Jerry Hanley (202) 287-1563 or Jerry.Hanley@hg.doe.gov.

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Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachment

Department of Energy

No. AL-2006-06
Date 03/22/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA.

Subject: **Publication of DOE Order 580.1, Department of Energy Personal Property Management Program**

References:

DEAR Subpart 970.45
DEAR 970.5245-1
41 CFR 109
DOE Order 580.1
DOE Personal Property Letter 970-2
Government Property
Property
DOE Property Management Regulation (PMR)
DOE Personal Property Management Program
Physical Inventories

When is this Acquisition Letter (AL) Effective?

This AL is effective immediately upon issuance.

When does this AL Expire?

The AL remains in effect until superseded or canceled.

Who are the Points of Contacts?

Jerry G. Hanley, Director, Personal Property Management Division (MA-632), (202) 287-1563 or Jerry.Hanley@hg.doe.gov., or for NNSA, Mr. Ronald Dugger, Supply Management Officer, NA-63, (202) 586-5144, or Ronald.Dugger@nnsa.cloe.gov.

What is the Purpose of this AL?

This AL implements the new DOE Order 580.1, Department of Energy Personal Property Management Program, to deviate from conflicting sections of the DOE Property Management Regulation (PMR), and to rescind Personal Property Letter 970-2 upon inclusion of the Contractor Requirements Document (CRD) in the contract.

What is the Background?

DEAR 970.5245-1, Property, paragraph (i) requires the contractor to comply with, among other things, the DOE-Property Management Regulation (PMR) at 41 CFR Part 109 and DOE

directives, including DOE Order 580.1. The Department issued DOE Order 580.1 on December 7, 2005. This Order replaces all but three Subparts of the existing DOE-PMR. Those remaining, unchanged Subparts are (1) Management of High Risk Property (41 CFR Subpart 109-1.53); (2) Motor Vehicle Management (41 CFR Subpart109-38); and (3) Energy Related Laboratory Equipment (ERLE) Grant Program (41 CFR Subpart109-50.1). DOE Order 580.1 also replaces Personal Property Letter 970-2, which is hereby cancelled. A complementary rulemaking process will delete the replaced sections of the DOE-PMR and revise and renumber the three remaining Subparts. A class deviation to the conflicting sections of 41 CFR Part 109 was issued by DOE and NNSA until future rulemaking deletes these sections of the DOE-PMR.

DOE Order 580.1 and its Guide are accessible on the Directives homepage at www.directives.doe.gov and on the property management web page at http://professionals.pr.doe.gov, and on the NNSA Portal at https://thesource.nnsa.doe.gov.

What is the Guidance?

Each Organizational Property Management Officer (OPMO) must:

(1) Coordinate with his/her cognizant Contracting Officer to ensure that the Contractor Requirements Document (CRD) from DOE Order 580.1 is incorporated into each affected contract by May 31, 2006, or as soon as possible thereafter, per the Contract's Laws, Regulations, and DOE Directives clause (DEAR 970.5204-2).

(2) Compare the CRD with the contractor's written property management system and request changes to ensure compliance with the CRD.

(3) Work closely with his/her respective contractor property manager to provide guidance or training as necessary.

(4) Submit written confirmation that the Contractor Requirements Document has been incorporated into affected contracts to the Director, Personal Prope1ty Management Division (MA-632) and the NNSA Procurement Executive (NA-63) once incorporated.

The Contracting Officer must:

(1) Add the CRD to the Contract per the Directives Clause (DEAR 970.5204-2)

(2) Notify the contractor in writing to comply only with the following provisions of the DOE-PMR:

(a) Management of High Risk Property (41 CFR Subpart 109-1.53);
(b) Motor Vehicle Management (41 CFR Subpart 109-38); and
(c) Energy Related Laboratory Equipment (ERLE) Grant Program (41 CFR Subpart 109-50.1).

(3) Notify the contractor that Personal Property Letter 970-2 is rescinded.

FINDINGS AND DETERMINATION
CLASS DEVIATION TO THE
DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATION

I. Findings

A. On December 7, 2005, The Department of Energy (DOE) published its Property Order (DOE Order 580.1, DOE Property Management Program) as part of a deregulation initiative to replace obsolete parts to the DOE Property Management Regulation (DOE-PMR) codified at 41 CFR 109. The Propelty Order also replaces Personal Propetty Letters that were incorporated into the Order.

B. The Order replaces obsolete and proscriptive provisions of the DOE-PMR with current, streamlined property management policies and procedures that are performanced-based and consistent with the Federal Management Regulation. The Order contains the Departmental requirements regarding standards, practices, and perfom1ance expectations for the management of personal property. The Guide supplements the Order by providing guidance and information to assist DOE organizations and contractors in implementing the requirements associated with the Department's personal propelty management program. The two directives provide for an updated and efficient means to communicate requirements and guidance to DOE organizations and contractors. The Order contains a Contractor Requirements Document for inclusion into the Management and Operating (M&O) contracts that makes similar changes.

C. Under Directives Management Document (Action No. 448-ME-02), the DOE Property Order and Guide were coordinated with stakeholders, including representatives from GC, SC, EM, and EE. Concurrences were received from each element. General Council requested that a class deviation be issued to affect (1) the deletion of the obsolete 41 CFR 109 provisions and (2) the issuance of DOE Order 580.1 to replace the deleted provisions described above.

D. The class deviation affects 41 CFR 109, Department of Energy Property Management Regulation, and consists ofreplacing all Parts of the Regulation with DOE Order 580.1 except those Patts governing Motor Vehicles, High Risk Property, and the Energy Related Laboratory Equipment Grant Program.

E. The class deviation will require the contractor to comply only with the DOE-PMR provisions that govern the three areas identified above. All other provisions of the DOE-PMR would be replaced with the requirements contained in the Contractor Requirements Document of DOE Order 580.1.

F. A subsequent Rulemaking will (1) remove all Parts ofDOE-PMR that are replaced by DOE Order 580.1 and (2) renumber and revise the remaining Parts.

G. It is intended that this deviation will remain in effect until such time as the DOE-PMR is amended to reflect the deletion of obsolete Parts.

JI. Detennination

A. Based upon the above findings, I hereby detennine that it is reasonable and prudent to approve a class deviation to the DOE-PMR, except those three provisions that will remain in the Regulation, that is authorized for use in all current M&O contracts and those that will be competed or extended prior to the completion of the rulemaking that will amend the Regulation. DOE Order 580.1 will replace all Parts to the Department's Property Management Regulation except High Risk Property, Motor Vehicles, and the Energy Related Laboratory Equipment Grant Program.

B. Therefore, I hereby grant a deviation, on a class basis, to the requirements of 41 CFR I09 except provisions that govern High Risk Property, Motor Vehicles, and the Energy Related Laboratory Equipment Grant Program.

Edward Simpson, Director
Office of Procurement and
Assistance Management

3/8/06
Date

Robert C. Braden
Senior Procurement Executive
National Nuclear Security Administration

3/20/06
Date

41 CFR 109, Property Management

POLICY FLASH 2006-22

POLICY FLASH 2006m22

DATE: April 3, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Guide Chapters 5.2, Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1 and 6.1, Competition Requirements

SUMMARY: This Flash forwards new Guide Chapter 5.2 that provides guidance on publicizing sole source actions when using FAR 6.302-1 as the authority. A revised Chapter 6.1 is also forwarded. The revisions include updating office names under the Authority section and adding direction to the contracting officer to ensure that market research and the results of the sources sought synopsis are included in a justification prior to approval. The sample JOFOC has also been substantially revised.

The Flash and the Guide Chapter may be viewed at http://professionals.pr.doc.gov.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or Jacqucline.Kniskcrn{t11hq.cloc.fillV.

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Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1

[Reference: FAR 5 and DEAR 905]

Overview

This section discusses publicizing sole source actions as pait of the approval of a Justification for Other than Full and Open Competition (JOFOC) using the authority of FAR 6.302-1.

Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. One exception pennits contracting without full and open competition when the required supplies or services are available from only one responsible source (FAR 6.302-1). This exception is supported by a written JOFOC and the publication of the notice required by FAR 5.201.

FAR 5.201 requires the publication of a notice of a proposed contract action for acquisition of supplies and services, other than those covered by the list of exceptions in FAR 5.202 and the special situations in FAR 5.205, exceeding $25,000.

Notice

When required by FAR 5.201, Contracting Officers will publicize a notice in FedBizOpps stating it is DOE's intent to award a contract or modification to an existing contract on a sole source basis. The notice should include:

- a statement identifying the exception to CICA;
- the information required by FAR 5.207;
- a complete and accurate description of the supplies or services to be furnished under the stated contract that would permit interested parties to submit a meaningful capability statement for consideration by DOE to determine whether to conduct a competitive acquisition;
- Numbered Note 22 (www.l11o.gov/Numbcrcd Notes.html) or a similar statement that informs interested parties to identify their interest and capability to respond to the requirement and that the infornmtion received will normally be considered solely for the purpose of determining whether to conduct a competitive procedure; and

- a statement providing for responses to be submitted within 45 days (thirty days if award is made under an existing basic ordering agreement).

This notice should be published prior to the preparation of the JOFOC. The responses to the notice and DOE reviews of the responses are to be included in the JOFOC. If no responses are received, this should be noted in the JOFOC. The notice should be in addition to other forms of market research conducted for the requirement. The notice must be current and publicized for the requirement at hand, not for previous or other requirements.

Competition Requirements

[Reference: FAR 6 and DEAR 906]

Overview

This section discusses competition requirements and provides a model Justification for Other than Full and Open Competition (JOFOC).

Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. Documentationjustifying the use of any of these exceptions is required. The exception, with suppo1ting documentation, must be certified and approved at certain levels that vary according to the dollar value of the acquisition. The information that must be included in each justification is identified in FAR Pait 6.

Authority

For purposes of competition requirements, the Procurement Executive is the designee of the Secretary of Energy. For most DOE contracting activities, the Procurement Executive is the Director, Office of Procurement and Assistance Management. For National Nuclear Security Administration (NNSA) contracting activities, it is the Director, Office of Acquisition and Supply Management.

In addition to the authorities in FAR Pait 6, DOE has two other authorities that provide for other than full and open competition. They are:

- The Federal Property and Administrative Services Act (40 U.S.C. 474(13)), which provides that nothing in this Act shall impair or affect any authority or programs authorized under the Atomic Energy Act of 1954, as amended.
- The Atomic Energy Act of 1954, as amended, which provides that the President may exempt any specific action of DOE in a pa1ticular matter carried out under the authority of this Act from the provisions of law relating to contracts whenever it is determined that such action is essential in the interest of common defense and security.

Competition Advocates

Pursuant to FAR 6.501, the Secretary of Energy has delegated the authority for appointment of agency and contracting activity competition advocates to the Procurement Executives, DOE and NNSA. The Procurement Executives have delegated to their HCAs the authority to appoint contracting activity competition advocates.

Justification

Contracting officers certify that the JOFOC is complete and accurate and also require the acquisition initiator to furnish and certify that the supporting data (e.g., verification of the government's minimum needs and schedule requirements, efforts to find additional sources, rationale for limiting sources, or other information that forms the basis for other than full and open competition) is complete, current; and accurate.

A complete JOFOC must include the results of market research and, if applicable, the sources sought synopsis (see Chapter 5.2) as part of the main body of the justification and not as an addendum. An attachment may be used to provide detailed reviews of responses to the synopsis and companies reviewed during market research, but the results of market research and a summary of responses received must be included in the main body of the JOFOC.

The contracting activity legal counsel office concurs in a JOFOC with an estimated amount of more than $1 million or such lower threshold as the contracting activity legal counsel office may establish.

Each contracting activity should issue local implementing procedures that define the appropriate processing of JOFOCs at their locale. These procedures should specifically address the responsibilities of the program manager and contracting activity legal counsel.

The use of the attached model JOFOC, in coordination with FAR 6.303-2, assures a consistent approach for including the kind of information identified in the FAR.

Use of the Urgency Exception

The urgency exception contained in FAR 6 is not acceptable if there is evidence of poor planning and if the action cannot pass the test of a valid noncompetitive action. The General Accounting Office and other reviewing organizations have held that the lack of planning or the delaying of a requirement to use the urgency exception is viewed as an attempt to circumvent CICA requirements.

All requirements citing urgency as the exception should receive careful scrutiny to assure that the reason for the urgency is valid.

Work Direction

Under no circumstances shall Department of Energy personnel direct work to a particular source through, or accept work for, any of the Department's contractors or their subcontractors for the purpose

of avoiding the requirements of the Competition in Contracting Act, or as a means of satisfying a requirement that should be contracted for by the Department.

Work assignments to any contractor in which the Department requires performance by a specific subcontractor(s) must be supported by a Federal justification for other than full and open competition as if the work were being contracted directly by the Department. The justification shall include a determination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities and that the contractor has technical capability to perform the work assigned.

DOE employees shall not initiate an interagency agreement under the Economy Act to another Federal agency to circumvent Federal or DOE regulations, or in the belief that an outside agency will permit a lesser standard of adherence to Federal and Departmental procurement regulations or policies than that expected of DOE contracting officers.

Best Practices

When unsolicited proposals are considered, the unique or innovative method, approach, or idea contained in the proposal must be descdbed in the JOFOC. Any unique, innovative or propdetary features that might be compromised if_publicly disclosed in FedBizOpps are also identified in the JOFOC.

For a JOFOC advocating limited competition, the circumstances surrounding the limitation, including how the number of firms in the competition was determined, must be described.

Negotiations for a sole source contract should not begin before the JOFOC has been approved.

Sample Justification

A sample is attached.

Justification for Other than Full and Open Competition
Contracting Activity Processing the Requirement
Name of Organization Originating the Requirement
Identification Number (purchase request/solicitation number)

1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for Other than Full and Open Competition".

2. The nature and/or description of the action being approved, i.e. sole source, limited competition, establishment of a new source, etc.

3. A description of the supplies or services required to meet the agency's needs.

4. The statutory authority permitting other than full and open competition.

5. A statement demonstrating the unique qualifications of the proposed contractor or the nature of the action requiring the use of the authority.

6. A description of efforts to ensure that offers were solicited from as many potential sources as is practicable. Include whether or not a FedBizOps announcement was made and what response, if any, ,vas received, and include the exception under FAR 5.202 when not synopsizing, Describe whether any additional or similar requirements are anticipated in the future. (This may not be included as an addendum, but must be in the body of the JOFOC.)

7, Cite the anticipated dollar value of the proposed acquisition including options if applicable and a determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable.

8. A description of the market research conducted and the results or a statement of the reason market research was not conducted. Do not simply refer to the sources sought synopsis.

9. Any other facts suppo1ting the use of other than full and open competition, such as:

a. Explanation of why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available.

b. When FAR Subpa1t 6.302-2 is cited for follow on acquisition as described in FAR 6.302-1 (a)(2)(ii), an estimate of cost to the Government that would be duplicated and how the estimate was derived.

c. When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

10. A listing of the sources, if any, that expressed a written interest in the acquisition.

11. A statement of actions the agency may take to remove or overcome any barriers to competition if subsequent acquisitions are anticipated.

Certification

The information contained in this Justification for Other than Full and Open Competition is certified accurate and complete to the best of my knowledge and belief.

Acquisition Initiator _____ _____ Contracting Officer _____ _____
Signature Date Signature Date

Reviews and Approvals

(See FAR 6.2, 6.3 and 6.5 and DEAR 906.202, 906.304 and 906.305 for review and approval requirements under specific circumstances)

Program Senior Official
(or designee) _____ _____
Signature Date

Contracting Activity
Legal Counsel
(if> $1 million) _____ _____
Signature Date

Contracting Activity
Competition Advocate _____ _____
(if> $500,000) Signature Date

Agency
Competition Advocate _____ _____
(if> $10 million) Signature Date

Senior Procurement
Executive _____ _____
(if>$10 million) Signature Date

Secretary of Energy _____ _____
(if>$50 million) Signature Date

POLICY FLASH
2006 ,23

Policy Flash 2006-23

DATE: April 5, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Final Rule - Elimination of the Make-or-Buy Plan Requirement for Management and Operating Contracts**

SUMMARY: The March 31, 2006 *Federal* Register contained a final rule eliminating the Department of Energy Acquisition Regulation requirement for Make-or-Buy Plans for management and operating contracts, The Electronic DEAR has been updated,

A summary of changes is attached,

This Flash and summary of changes may be viewed at)lttp://prnlessionals.pr.do ov.

Questions may be referred to Richard Langston (202) 287-1339 or Richard.Langslon«i)hq.do .

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachment

SUMMARY OF CHANGES IN MAKE-OR-BUY ELIMINATION

A study of the Make-or-Buy process concluded that it was costly to administer and did not produce the expected benefits.

1. Section 901.105 is amended to remove the reference to the Make-or-Buy paperwork clearance under the Paperwork Reduction Act.

2. Section 970.1504-4-1, Make-or-Buy Plans, is removed. It included 970.1504-4-2, Policy, and 970.1504-3, Requirements.

3. Section 970.1504-5(b) is removed. It was the instruction for use of the Make-or-Buy Plan clause.

4. Section 970.5203-1, Management Controls, is amended to include outsourcing of functions as a consideration of efficient and effective operations.

5. Section 970.5204-2, Laws, Regulations and DOE Directives, is amended to provide a requirement for contractors to consider outsourcing as a mechanism to increase improvement in the management of their contracts.

6. Section 970.5215-2, Make-or-Buy Plan, is removed and reserved.

7. Section 970.5244-1, Contractor Purchasing System, is amended to remove and reserve paragraph (n).

POLICY FLASH
2006-24

POLICY FLASH 2006 24

DATE: April 10, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Updated Acquisition Guide Chapter 38.1, *Strategic Acquisition Transaction Guide:* A Guide for Using Federal Supply Schedules; Multiple Award Contracts; and Government-wide Agency Contracts

SUMMARY: This Policy Flash forwards a revised Chapter 38.1 of the DOE Acquisition Guide, which has been revised to address more detailed pricing issues that may arise under fixed price labor hour or time and material (T&M) orders under Federal Supply Schedules and similar ordering contracts. The revision is on page 16, titled Additional T&M Pricing Considerations. The attachment has been revised to remove extraneous material.

This Policy Flash and Guide chapter may be viewed at ht!p://prolessional.pr.cloc.gov .

Questions concerning this policy flash should be directed to Helen Oxberger at 202-287-1332 or _Iclcn. Oxbcrg,r!all1q.doe.gl1v.

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Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

POLICY FLASH
2006-25

POLICY FLASH 2.006~25

DATE: April 28, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Award of Small Business Contracts to Alaska Native Corporations (ANC)

SUMMARY: Recently, the use of "Alaska Native Corporations (ANCs) in Government contracting has been reviewed by the Government Accountability Office (GAO) as well as highlighted in media reports..

FAR 19.805-l(b)(2) permits sole source S(a) awards to concerns owned by an Indian tribe or an Alaska Native Corporation. A recent news article, based on a draft Government Accountability Office (GAO) report, asserts that the government has provided lax oversight in these contracts and that there is the potential for abuses. Although the use of ANC's in Departmental contracts is minimal, Contracting Officers are reminded to use care in their award and administration.

ANC awards do not have specifically established contracting goals and therefore DOE's goal achievement is not evaluated. The types of small business programs that do possess established goals include Small Disadvantaged Businesses (SDBs), Women-owned Small Business (WOSB), small business concerns owned and controlled by service-disabled veterans, and HUBZone small business concerns.

Contracting Officers should attempt to utilize these types of small businesses, which are goaled, before automatically proceeding with a sole source 8(a) award to an ANC. This will better assist the Department in it's continuing effort to meet its Small Business objectives.

The Flash may be viewed at http://professionals.pr.doe.gov

Questions regarding this policy flash may be directed to Stephen Zvolensky (202) 287•1307 or Stephen.Zvolensky@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

POLICY FLASH 2006-26

DATE: April 25, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: DOE Notice-CONTRACTOR EMPLOYEE PENSION AND MEDICAL BENEFIT POLICY

SUMMARY: On _____, 2006, The Department issued this subject Notice, which is attached to this Flash on the Professionals Homepage.

The purpose of this Flash is to provide background and explain the purposes of the Notice.

BACKGROUND.

DOE and its predecessor agencies have maintained the on-site facilities management contracts that are now known as management and operating (M&O) contracts, since World War II. The AEC located its facilities far from population centers. The highly complex , dangerous, and classified nature of the work was best served by a stable workforce. Even today, when a new M&O contractor succeeds another, the workforce remains essentially in tact with only the top management changing.

In order to assure a stable workforce in geographically remote locations, the AEC and its successor agencies have been stewards of the employee retirement and

post-retirement medical benefits. The costs to the Department of Energy associated with these has grown to a point that those benefits are now substantial. Each year those costs continue to grow and form an ever increasing portion of DOE's budget. Recent experiences of General Motors and other large companies indicate the potential burden that these costs can impose, if action to control them is not taken. Recognition of these concerns led Congress to replace the Civil Service Retirement System (CSRS) with Federal Employee Retirement System (FERS) several years ago.

DOE's senior management has studied this circumstance and has concluded that changes are necessary to prevent further growth in the Department's obligations. Notice ___ has been issued to establish the principles that will determine the allowability of the M&Os' retirement and post-retirement medical plans.

EFFECT OF NOTICE.

Currently all the retirement systems of DOE's M&O contractors are "defined benefit plans," promising a defined retirement benefit to the retiree based upon the employee's contributions. CSRS is a defined benefit plan. The Notice requires that the retirement systems for which DOE maintains stewardship to convert to a defined contribution plan, a plan in which the employee receives what his or her contributions have earned over the course of employment. FERS is a defined contribution plan, offering matching and tax benefits. FERS was modeled after 401(k) plans, common in industry.

Sound business principles dictate that the Department balances the need for the contractor community to maintain the highest quality workforce while pursuing the same reasonable cost saving measures adopted by the private sector. The DOE Notice establishes the mechanism to ensure that contractor sponsored and administered plans under which costs are incurred are consistent with market conditions and actions taken by prndent business persons in the commercial sector in response to the changing economic, investment, and employment environment. In this regard, the Notice provides guidance on mitigating cost volatility and liability growth in Contractor Sponsored Pension and Medical Benefit Plans, including, but not limited to, the following:

- The Department shall continue to reimburse the costs for pension and medical benefits for Incumbent DB Plan Participants and Enrollees that meet the requirements of a total benefit package evaluated under DOE Order 350.1, *Contractor Human Resource Management Programs,* and contractual requirements.

- **Effedive 60 days after incorporation(?)** of the CRD into a Contract, the Department will not reimburse incremental pension costs associated with the participation of New Employees and Enrollees in excess of the costs of

a New Employee and Emollee to participate in a market-based pension and medical benefit plan, respectively.

The Notice also provides direction for the treatment and disposition of contractor post-retirement medical benefits under affected government contracts at those DOE owned sites and facilities which are scheduled for closure.

PROCEDURE FOR IMPLEMENTATION.

The Notice contains a Contractor Requirements Document (CRD) implementing the policy communicated in the Notice. Pursuant to 970.5204-2, the Laws, Regulations, and DOE Directives clause of affected contracts the contracting officer shall notify the affected contractors of the changes contained in the Notice. The contracting officer shall allow the contractor the opportunity to assess the effect of the contractor's compliance on contractor cost, funding, technical perfo1mance, and schedule in accordance with the provisions of the contract.

The Flash may be viewed at http://professionals.pr.doe.gov

Questions regarding this Flash should be directed to Stephanie Weakley at 202-287-1554 or Stephanie.Weakley@hq.cloe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

POLICY fLASH 2006-27

DATE: May2,2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Guide Chapter 6.1, Competition Requirements**

SUMMARY: This Flash forwards a revised Chapter 6.1. Chapter 6.1 Is revised to show the colTect signature authorities on the draft JOFOC.

Questions concerning this policy flash should be directed to Jackie Kniskem at 202-287-1342 or Jacgueline.kniskern@hg.doe.gov.

4/ / £ 3b
Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

Attachment

Competition Requirements

[Reference: FAR 6 and DEAR 906}

Overview

This section discusses competition requirements and provides a model Justification for Other than Full and Open Competition (JOFOC).

Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. Documentation justifying the use of any of these exceptions is required. The exception, with supporting documentation, must be ce1tified and approved at certain levels that vary according to the dollar value of the acquisition. The information that must be included in each justification is identified in FAR Part 6.

Authority

For purposes of competition requirements, the Procurement Executive is the designee of the Secretary of Energy. For most DOE contracting activities, the Procurement Executive is the Director, Office of Procurement and Assistance Management. For National Nuclear Security Administration (NNSA) contracting activities, it is the Director, Office of Acquisition and Supply Management.

In addition to the authorities in FAR Part 6, DOE has two other authorities that provide for other than full and open competition. They are:

- The Federal Property and Administrative Services Act (40 U.S.C. 474(13)), which provides that nothing in this Act shall impair or affect any authority or programs authorized under the Atomic Energy Act of 1954, as amended.
- The Atomic Energy Act of 1954, as amended, which provides that the President may exempt any specific action of DOE in a pmticular matter carried out under the authority of this Act from the provisions of law relating to contracts whenever it is determined that such action is essential in the interest of common defense and security.

Competition Advocates

Pursuant to FAR 6.501, the Secretary of Energy has delegated the authority for appointment of agency and contracting activity competition advocates to the Procurement Executives, DOE and NNSA. The Procurement Executives have delegated to their HCAs the authority to appoint contracting activity competition advocates.

Justification

Contracting officers certify that the JOFOC is complete and accurate and also require the acquisition initiator to furnish and certify that the suppotting data (e.g., verification of the government's minimum needs and schedule requirements, effotts to find additional sources, rationale for limiting sources, or other infotmation that forms the basis for other than full and open competition) is complete, current, and accurate.

A complete JOFOC must include the results of market research and, if applicable, the sources sought synopsis (see Chapter 5.2) as patt of the main body of the justification and not as an addendum. An attachment may be used to provide detailed reviews of responses to the synopsis and companies reviewed during market research, but the results of market research and a summary of responses received must be included in the main body of the JOFOC.

The contracting activity legal counsel office concurs in a JOFOC with an estimated amount of more than $1 million or such lower threshold as the contracting activity legal counsel office may establish.

Each contracting activity should issue local implementing procedures that define the appropriate processing of JOFOCs at their locale. These procedures should specifically address the responsibilities of the program manager and contracting activity legal counsel.

The use of the attached model JOFOC, in coordination with FAR 6.303-2, assures a consistent approach for including the kind of information identified in the FAR.

Use of the Urgency Exception

The urgency exception contained in FAR 6 is not acceptable if there is evidence of poor planning and if the action cannot pass the test of a valid noncompetitive action. The General Accounting Office and other reviewing organizations have held that the lack of planning or the delaying of a requirement to use the urgency exception is viewed as an attempt to circumvent CICA requirements.

All requirements citing urgency as the exception should receive careful scrutiny to assure that the reason for the urgency is valid.

Work Direction

Under no circumstances shall Department of Energy personnel direct work to a particular source through, or accept work for, any of the Department's contractors or their subcontractors for the purpose

of avoiding the requirements of the Competition in Contracting Act, or as a means of satisfying a requirement that should be contracted for by the Department.

Work assignments to any contractor in which the Department requires performance by a specific subcontractor(s) must be suppmted by a Federal justification for other than full and open competition as if the work were being contracted directly by the Depaitment. The justification shall include a detem1ination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities and that the contractor has technical capability to perform the work assigned.

DOE employees shall not initiate an interagency agreement under the Economy Act to another Federal agency to circumvent Federal or DOE regulations, or in the belief that an outside agency will permit a lesser standard of adherence to Federal and Departmental procurement regulations or policies than that expected of DOE contracting officers.

Best Practices

When unsolicited proposals are considered, the unique or innovative method, approach, or idea contained in the proposal must be described in the JOFOC. Any unique, innovative or proprietary features that might be compromised if publicly disclosed in FedBizOpps are also identified in the JOFOC.

For a JOFOC advocating limited competition, the circumstances surrounding the limitation, including how the number of firms in the competition was determined, must be described.

Negotiations for a sole source contract should not begin before the JOFOC has been approved.

Sample Justification

A sample is attached.

Justification for Other than Full and Open Competition
Contracting Activity Processing the Requirement
Name of Organization Originating the Requirement
Identification Number (purchase request/solicitation number)

1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for Other than Full and Open Competition".

2. The nature and/or description of the action being approved, i.e. sole source, limited competition, establishment of a new source, etc.

3. A description of the supplies or services required to meet the agency's needs.

4. The statutory authority permitting other than full and open competition.

5. A statement demonstrating the unique qualifications of the proposed contractor or the nature of the action requiring the use of the authority.

6. A description of efforts to ensure that offers were solicited from as many potential sources as is practicable. Include whether or not a FedBizOps announcement was made and what response, if any, was received, and include the exception under FAR 5.202 when not synopsizing. Describe whether any additional or similar requirements are anticipated in the future. (This may not be included as an addendum, but must be in the body of the JOFOC.)

7. Cite the anticipated dollar value of the proposed acquisition including options if applicable and a determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable.

8. A description of the market research conducted and the results or a statement of the reason market research was not conducted. Do not simply refer to the sources sought synopsis.

9. Any other facts supporting the use of other than full and open competition, such as:

a. Explanation of why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available.

b. When FAR Subpart 6.302-2 is cited for follow on acquisition as described in FAR 6.302-l(a)(2)(ii), an estimate of cost to the Government that would be duplicated and how the estimate was derived.

c. When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

10. A listing of the sources, if any, that expressed a written interest in the acquisition.

11. A statement of actions the agency may take to remove or overcome any barriers to competition if subsequent acquisitions are anticipated.

Certification

The information contained in this Justification for Other than Full and Open Competition is certified accurate and complete to the best of my knowledge and belief.

Acquisition Initiator _____ _____ Contracting Officer _____ _____
Signature Date Signature Date

Reviews and Approvals

(See FAR 6,2, 6.3 and 6,5 and DEAR 906,202, 906.304 and 906.305 for review and approval requirements under specific circumstances)

Program Senior Official
(or designee) _____ _____
Signature Date

Contracting Activity
Legal Counsel
(if> $1 million) _____ _____
Signature Date

Contracting Activity
Competition Advocate _____ _____
(if> $500,000) Signature Date

Head of Contract
Activity _____ _____
Signature Date

Senior Procurement
Executive _____ _____
Signature Date

POLICY FLASH
2006-28

POLiiCY FLASH 2006m28

DATE: May 15,2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular (FAC) 2005-09 and Office of Federal Procurement Policy (OFPP) Information Memorandum

SUMMARY: This Policy Flash forwards two (2) items for your information.

(1) FAC 2005-09 was issued on April 19, 2006 (71 FR20294) into the Federal Acquisition Regulation. A summary of items covered is attached.

(2) An OFPP memorandum to all Chief Acquisition Officers and Senior Procurement Executives, dated April 17, 2006, entitled "Publication of Brand Name Justifications," is attached, requiring that notice to the public include a justification, should it be necessary to limit a solicitation to a brand name specification. Please note that OFPP's concern is not the use of a brand name "or equal" purchase description, as allowed by FAR 11.104, but rather the use of a brand name specific to one vendor, as discussed at FAR 11.105.

Questions may be referred to Richard Langston (202) 287-1339 or email Richard.Langston(l1),hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachments

Item	Subject	FAR case	FAR Analyst
I.	Federal Technical Data Solution (FedTeDS)	2004-007	Zaffos.
II.	Definition of Information Technology	2004-030	Davis.
III.	0MB Circular A-76	2004-021	Zaffos.
IV.	Combating Trafficking in Persons	2005-012	Clark.
V.	Confirmation ofHUBZone Certification	2005-009	Cundiff.
VI.	Expiration of the Price Evaluation Adjustment	2005-002	Cundiff.
VII.	Removal of Sanctions Against Certain European Union Member States (Interim).	2005-045	Clark.
VIII.	Free Trade Agreements Morocco (Interim)	2006-001	Clark.
IX.	Fast Payment Procedures	2004-031	Olson.
X.	Technical Amendment		

Item 1--Federal Technical Data Solution (FedTeDS) (FAR Case 2004-007)

This final rule amends the FAR to require contracting officers to make solicitation-related information that requires limited availability or distribution available to offerors electronically via the Federal Technical Data Solution (FedTeDS), unless certain exceptions apply. FedTeDS provides secure, user identification and password protected access to solicitation-related data that should not be made available to the public on the Government-wide Point of Entry (GPE) Web site.

Item 11--Definition oflnformation Technology (FAR Case 2004-030)

This final rule adopts without change the interim rule which amended FAR 2.IOI(b) by revising the definition for "information technology" to reflect changes to the definition resulting from the enactment of Public Law 108-199, Consolidated Appropriations Act, 2004. Section 535(b) of Division F of Public Law 108-199 permanently revises the term "information technology," which is defined at 40 U.S.C. 11101, to add "analysis" and "evaluation" and to clarify the term "ancillary equipment."

Item 111--0MB Circular A-76 (FAR Case 2004-021)

This final rule amends FAR Subpart 7.3 to provide language that is consistent with 0MB Circular A-76 (Revised), Performance of Commercial Activities, dated May 29, 2003, In addition, it provides two new provisions that inform potential offerors of the procedures the Government will follow for streamlined and standard competitions, as they are defined in the Circular.

Item IV--Combating Trafficking in Persons (FAR Case 2005-012)

This interim rule amends FAR Parts 12, 22 and 52 to implement the Trafficking Victims Frotection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005. The statute (22 U.S.C. 7104(g)) requires that the contract contain a clause allowing the agency to terminate the contract without penalty if the contractor or

subcontractor engage in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. The interim rule applies to contractors awarded service contracts (other than commercial service contracts under Part 12). Such contractors must develop policies to combat trafficking in persons and notify the contracting officer immediately of any information it received from any source that alleges a contract employee has engaged in conduct that violates this policy, and any actions taken against the employee pursuant to the clause.

Item V--Confirmation of HUBZone Certification (FAR Case 2005-009)

The interim rule published at 70 FR 43581, July 27, 2005 is converted to a final rule without change. The interim rule amended FAR 19.703 and the clause at 52.219-9 to clarify that prime contractors must confirm that a subcontractor representing itself as a Historically Underutilized Business Zone (HUBZone) small business concern is certified, consistent with the requirements of 15 U.S.C. 632 et seq., as amended. This change is expected to increase subcontracting opportunities for certified HUBZone small business concerns and ensure accurate reporting of subcontract awards to HUBZone small business concerns under Government contracts.

Item VI--Expiration of the Price Evaluation Adjustment (FAR Case 2005-002)

This final rule adopts, without change, an interim rule that amended the FAR to cancel the authority for civilian agencies, other than NASA and the U.S. Coast Guard, to apply the price evaluation adjustment to certain small disadvantaged business concerns in competitive acquisitions. The change was required because the statutory authority for the adjustments had expired. As a result, certain small disadvantaged business concerns will no longer benefit from the adjustments. DoD, NASA, and the U.S. Coast Guard are authorized to continue applying the price evaluation adjustment.

Item VII--Removal of Sanctions Against Certain European Union Member States (FAR Case 2005-045)

This interim rule removes the sanctions in FAR Part 25 against Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom on acquisitions not covered by the World Trade Organization Government Procurement Agreement (WTO GPA). These sanctions did not apply to small business set-asides, to acquisitions below the simplified acquisition threshold using simplified acquisition procedures, or to acquisitions by the Department of Defense. Contracting officers may now consider offers of end products, services, and construction that were previously prohibited by the sanctions.

Item VIII--Free Trade Agreements - Morocco (FAR Case 2006-001)

This interim rule allows contracting officers to purchase the products of Morocco without application of the Buy American Act if the acquisition is subject to the Morocco Free Trade Agreement. The U.S. Trade Representative negotiated a Free Trade Agreement with Morocco, which went into effect January 1, 2006. This agreement joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Morocco Free Trade Agreement is $193,000 for supplies and services, $7,407,000 for construction.

Item IX--Fast Payment Procedures (FAR Case 2004-031)

This amendment pennits, but does not require, fast payment when invoices and/or outer shipping containers are not marked "Fast Pay", provided the contract includes the "Fast Py ment Proe dure" clause. If the Fast Payment clause is in the contract, such unmarked invoices will no longer be rj ected. Instead, they will be paid using either fast payment or normal payment procedures. In ad\lition, the revision deletes the requirement for marking invoices "No Receiving Report Pe pa ed."

Item X--Technical Amendment

An editorial change is made at FAR 19.I00S(a) in Item 3 of the NAICS Description by removing from the end of NAICS code entry "541310" the word "or".

POLICY FLASH 2006-29

DATE: May 5,2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Strategic Sourcing at the Department of Energy (DOE)**

SUMMARY: The Policy Flash provides information on the background and status and gives guidance related to the use of the Department-wide strategic award instruments.

With the issuance of the May 20, 2005, memorandum from the Office of Management and Budget, federal agencies were directed to establish formal strategic sourcing programs. The Chief Acquisition Officer, Chief Financial Officer, and Chiefinfonnation Officer are responsible for the overall development and implementation of agency strategic sourcing programs with the Chief Acquisition Officer designated as the lead for this initiative.

The DOE and NNSA Senior Procurement Executives have created a strategic sourcing capability to identify federal strategic soul'cing opportunities and to coordinate strategic thinking. A number of Department-wide strategic sourcing opportunities have been identified, particularly in the areas of information technology and logistics, and awards have been made for a variety of products and services. The strategic sourcing award instrument listings and other information regarding DOE/other federal strategic sourcing initiatives is found at the Complex-wide Strategic Sourcing Opportunities web site which is listed under Procurement on the Professionals page. This site has also been completely revamped for ease of use.

In order to achieve the savings and benefits that strategic sourcing provides, procurement officials must be knowledgeable about the products and services that are available through the program. Individuals should check the above web site before taking action to initiate separate requirements. Products and services that may be required and can be accommodated through instruments listed on the web site are much easier to obtain and at pre-established prices designed to benefit our customers. Field contracting personnel should pass this Flash to

Management and Operating/Facility Management Contractors so the opportunities available to them become widely known.

Questions concerning this flash should be directed to Mr. John Bashista at (202) 287-1500 or email: iohn.bashista@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

POLICY FLASH 2006-30

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POLICY FLASH 2006-30

DATE: May 12, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Guide Chapter 5.2, Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1

SUMMARY: This Flash forwards a revised Chapter 5.2. Chapter 5.2 is revised to clarify the inclusion of Numbered Note 22 in the notice and the response time for receipt of bids or proposals submitted to the notice.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or Jacqueline.kniskern@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy

Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1

[Reference: FAR 5 and DEAR 905]

Overview

This section discusses publicizing sole source actions as pait of the approval of a Justification for Other than Full and Open Competition (JOFOC) using the authority of FAR 6.302-1.

Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. One exception permits contracting without full and open competition when the required supplies or services are available from only one responsible source (FAR 6.302-1). This exception is supported by a written JOFOC and the publication of the notice required by FAR 5.201.

FAR 5.201 requires the publication of a notice of a proposed contract action for acquisition of supplies and services, other than those covered by the list of exceptions in FAR 5.202 and the special situations in FAR 5.205, exceeding $25,000.

Notice

When required by FAR 5.201, Contracting Officers will publicize a notice in FedBizOpps stating it is DOE's intent to award a contract or modification to an existing contract on a sole source basis. The notice should include::

- a statement identifying the sole source authority permitted under FAR 6.302;
- the information required by FAR 5.207(a);
- a complete and accurate description of the supplies or services as required by FAR 5.207(c);
- Numbered Note 22 (www.ibo.gov/Numbered Noles.html) as required by FAR 5.207(e); and
- a specific statement in accordance wth FAR 5.203(c) providing a response time for receipt of bids or proposals for the acquisition of commercial items, if the response time will be less than the 45 days stated in Numbered Note 22.

This notice should be published prior to the preparation of the JOFOC. The responses to the notice and DOE reviews of the responses are to be included in the JOFOC. If no responses are received, this should be noted in the JOFOC. The notice should be in addition to other forms of market research conducted for the requirement. The notice must be current and publicized for the requirement at hand, not for previous or other requirements.

POLICY FLASH 2006-31

POLICY FLASH 2006-31

DATE: May 15, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Technology Investment Agreements (TIAs)

SUMMARY: This Policy Flash distributes two (2) items for your information.

(1) A final rule that establishes policies and procedures for the award and administration of TIAs and;

(2) Financial Assistance Letter No. 2006-03 – Implementation Guidance for Awarding Technology Investment Agreements.

On May 9, 2006, DOE published a final rule in the Federal Register (attached), which establishes a new part (10 CFR part 603) in the assistance regulations. This part establishes TIAs as a new type of assistance instrument, provides guidance and procedures for their use, and describes how to craft the award instrument.

Also, this policy flash distributes PL 2006-03 (attached), which supplements the guidance in 10 CFR 603.

Questions concerning this policy flash should be directed to Trudy Wood at (202) 287-1336 or Jackie Kniskern at (202) 287-1342.

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

Attachments

Department of Energy
Financial Assistance Regulation

No. 2006-03
Date 05/10/06

FINANCIAL ASSISTANCE LETTER

Financial Assistance Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Implementation Guidance for Awarding Technology Investment Agreements

References:		
	10 CFR Part 603	Technology Investment Agreements
	Pub. L. 109-58	Energy Policy Act of 2005, Section 1007 – Other Transaction Authority
	10 U.S.C. § 2371	Research projects: transactions other than contracts and grants
	DOE O 361.1	Acquisition Career Development Program
	DOE O 541.1B	Appointment of Contracting Officers and Contracting Officer Representatives
	DOE O 540.1A	Departmental Business Instrument Numbering System

When is this Financial Assistance Letter (FAL) effective?

This FAL is effective on July 10, 2006, the same day the Technology Investment Agreement rule is effective.

When does this FAL expire?

This FAL remains in effect until it is canceled.

Who is the Point of Contact?

Contact Trudy Wood of the Office of Procurement and Assistance Policy by telephone at (202) 287-1336 or by email at trudy.wood@hq.doe.gov.

s the purpose of this FAL?

AL supplements the guidance in 10 CFR part 603 - Technology Investment Agreements). It provides guidance relating to contracting officer warrant requirements, a format for the >andum for Record justifying the use of a TIA, the approval process, templates for TIAs, ,ividual Procurement Action Report (DAR) requirements.

,t is the background?

ion 1007 of the Energy Policy Act of 2005 gives the Secretary of Energy authority to enter into sactions (other than the existing statutorily defined instruments - contracts, cooperative agreements, grants) subject to the same terms and conditions as those given to the Secretary of Defense under U.S.C. § 2371. The purposes of this authority are to reduce barriers that prevent some for-profit ns from participating in DOE's research, development, and demonstration (RD&D) programs and ade the technology base available to meet DOE mission requirements. On November 15, 2005, OE implemented this new authority by publishing an interim final rule in the *Federal Register* (70 FR 250), which established uniform policies and procedures for a new type of award, called a t chnology investment agreement."

A TIA is a special type of assistance instrument used to increase the involvement of commercial firms in the Department's RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions. A TIA may be either expenditure based or fixed support.

On May 9, 2006, DOE published a final rule (71 FR 27158) that considered the comments received in response to the interim final rule. The final rule, like the interim final rule, establishes TIAs as a new type of assistance instrument, provides guidance and procedures for their use, and describes how to r the award instrument. The guidance included in this FAL supplements the guidance in the final rule.

Guidance Included in this Financial Assistance Letter

Who may award a TIA?

How does the contracting officer document that the use of a TIA is appropriate?

What is the approval process for the award of a TIA?

Are there templates for crafting a TIA, and where are they located?

What are the IPA Requirements for each type of TIA?

How does the contracting officer specify what the periodic audits should cover?

Attachments

1. Standard format for Memorandum for Record, Justification for Use of a Technology Investment Agreement
2. Coverage of Independent Audits of For-profit Firms

Who may award a TIA?

In accordance with 10 CFR 603.120, a contracting officer may award a TIA only if the contracting officer's warrant authorizes the award and administration of a TIA. 10 CFR 603 provides a contracting officer considerable latitude to negotiate provisions that vary from traditional, Government-unique requirements. Therefore, a contracting officer must possess a greater level of experience, business acumen, and judgment is required for the award of standard assistance instruments. Since TIA contracting officers will be required to operate in a relatively unstructured business environment, the qualification standards for awarding a TIA are:

- Level III contracting certification, as defined in DOE O 361.1, Acquisition Career Development Program;
- Financial Assistance certification as defined in DOE O 361.1; and
- Completion of DOE TIA training.

DOE O 361.1, Attachment 3 - Financial Assistance Career Development Program Module, is being revised to include TIA qualification standards. In the meantime, contracting officers may be delegated authority to award a TIA if they meet the requirements in DOE O 541.1B, "Appointment of Contracting Officers and Contracting Officer Representatives," and the three qualification standards listed in this paragraph.

does the contracting officer document that the use of a TIA is appropriate?

603.200 through 603.220 provide guidance on the appropriate use of a TIA and require that contracting officers, in conjunction with DOE program officials, consider the questions delineated in 10 CFR 603.1225. The contracting officer must document the answer to each of these questions and include the answers in the award file (see 10 CFR 603.1020)) using the Memorandum for Record format provided as an attachment to this FAL.

What is the approval process for the award of a TIA?

Prior to Negotiation

Prior to initiating negotiations for a TIA, the Procurement Director at the awarding office should consult with DOE/NNSA Senior Procurement Executive and the officer having authority to approve the award to ensure that they support the objectives that could lead to the award of a TIA. In addition, the contracting officer must confer with the program official and assigned intellectual property counsel to develop an overall negotiation strategy for intellectual property (see 10 CFR 603.840)).

B. Senior Procurement Executive Concurrence

A TIA award package must be submitted to the DOE/NNSA Senior Procurement Executive through the Office of Contract Management (MA-62)) for DOE awards and through the NNSA Board of Awards, NA-63, Office of Procurement and Supply Management for NNSA awards at least 30 days before concurrence of the Senior Procurement Executive is required. The Senior Procurement Executive must concur with the award package before the packages is sent to the DOE/NNSA official having authority to approve the award.

C. Approval Process

In accordance with 10 CFR 603.115, an officer of the Department who has been appointed by the President by and with the advice and consent of the Senate and who has been delegated the authority from the Secretary must approve the award of a TIA. (e.g., Assistant Secretary or Deputy Administrator)).

The following documents, at a minimum, must be included in the package submitted to the approving official:

- Brief description of program, the process that led to the award of the TIA, and the specific commercial benefits that should result from the project (10 CFR 603.1020(a) and (b));
- Memorandum for Record justifying the use of a TIA. (10 CFR 603.1020(c));
- Determination of Noncompetitive Financial Assistance, if the award is to be made on a noncompetitive basis;
- Negotiation Memorandum, including how the recipient's cost sharing was valued (10 CFR 603.1020)(d)) and (e));

- Negotiated Agreement (TIA));
- For a consortium that is not formally incorporated, the consortium's collaboration agreement or a summary of the collaboration agreement.
- Senior Procurement Executive's concurrence.

Are there templates for crafting a TIA and where are they located?

The Office of Procurement and Assistance Policy is issuing templates for the following types of TIA

Consortium Template (Expenditure Based))
Company Template (Expenditure Based))
Consortium Template (Fixed Support))
Company Template (Fixed Support))

The templates are on the TIA webpage at: http://professionals.pr.doe.gov/ma5/MA-5.nsf/Financial Assistance/Technology Investment Agreements?OpenDocument. The templates have been developed to assist contracting officers in identifying provisions that should be included in a TIA (See 10 CFR 603.1010)). Contracting officers may negotiate provisions that vary from those in the templates as long as the provisions comply with the requirements in 10 CFR part 603. In accordance with 10 CFR 603.840, a contracting officer must confer with the program official and the assigned intellectual property counsel to develop an appropriate strategy for IP. The IP counsel must approve any IP provision that is different from the standard DOE provisions for cooperative agreements.

The Office of Procurement and Assistance Policy plans to update the templates from time-to-time to incorporate lessons learned. Therefore, if a contracting officer is contemplating the award of a TIA, he/she should check the website for the most recent templates.

What are the IPAR requirements for each type of TIA?

A. Changes to the IPAR Handbook. The IPAR Handbook is being revised to add the following assistance award instruments:

Code	Definition
FTI	Technology Investment Agreement -- Cooperative Agreement A legal instrument that is a type of cooperative agreement with more flexible provisions tailored for commercial firms, but with the intellectual property provisions in full compliance with the DOE intellectual property statutes.
FTO	Technology Investment Agreement-Other Transaction A legal instrument that is an assistance transaction other than a cooperative agreement or a grant, because its intellectual property provisions vary from the Bayh-Dole statute and 42 USC 2182 and 5908, which require the Government to retain certain intellectual property rights and require differing treatment between large businesses and nonprofit organization or small businesses.

What are the reporting requirements for TIA awards?

Contracting officer must select the appropriate award code for each type of TIA. The contracting officer must also provide some additional information if the award is a "Technology Investment Agreement – Other Transaction" (OT).

ECT of 2005 requires the Secretary to submit to Congress a report on the Department's use of sactions (other than contracts, grants, or cooperative agreements), not later than 90 days after the l of each fiscal year. The statute requires that the report contain specific information. Therefore, if awardis a "Technology Investment Agreement – Other Transaction," the contracting officer must mplete the following additional text fields in the Procurement and Assistance Data System (PADS):

- Technical objectives, including the technology area in which the project was conducted
- Dollars returned to Government Account. (This field will default to $0 since EPACT 2005 prohibits requiring repayment of the Federal share of a cost-shared activity as a condition of making an award.)
- Extent to which the other transaction has contributed to a broadening of the technology and industrial base available for meeting the Department of Energy's needs.
- Extent to which the other transaction has fostered within the technology and industrial base new relationships and practices that support the energy or national security of the United States.

The last two bullets are similar to the questions in 10 CFR 603.225 that the contracting officer must consider and document on the attachment to the Memorandum for Record (See paragraph II of this FAL). Contracting officers may use the responses in the Memorandum for Record to complete the PADS text fields, as appropriate.

How does the contracting officer specify what the periodic audits should cover?

n expenditure-based TIA provides for audits of a for-profit participant by an independent public ccountant (IPA), the contracting officer must specify what the periodic audits are to cover (See 10 CFR 3.660). Attachment 2, "Coverage of Independent Audits of For-profit Firms," to this FAL provides audit dance that contracting officer may use for this purpose. This guidance is also available on the Applicant Recipient Page at http://grants.pr.doe.gov.

Standard Format

ORANDUM FOR RECORD
ication for Use of a Technology Investment Agreement

he nature of the project (10 CFR 603.205)

a. *Is the principal purpose of the project the support and stimulation of research, development or demonstration (assistance) or the acquiring of goods and services (acquisition)?*

b. *Does the proposed project duplicate other R D & D being conducted under existing DOE programs?*

The type of recipient (10 CFR 603.210)

List name(s) of recipient (s)/consortium. Include statement regarding types of organizations performing under the effort the focus here is the requirement of performance by a for-profit organization.

The recipient's commitment and cost sharing (10 CFR 603.215)

Provide evidence of recipient's commitment to and self-interest in the success of the project. Generally, evidence is in the form of cost-sharing (to the maximum extent practicable); however, if cost-sharing is impracticable, provide other evidence of self-interest.

Degree of involvement of the Government program official (10 CFR 603.220)

State that greater involvement is required of the program manager and provide examples of the involvement, e.g., voting member/or project management decisions, reviews and approves program plans.

Benefit(s) in using a TIA (i.e., standard grant or cooperative agreement is not feasible or appropriate) 10 CFR 603.205(c) and 603.225. See attached questions and responses.
[Provide responses to the question on the attached page.]

For the above stated reasons, the use of a TIA is appropriate and justified.

_____
Contracting Officer Date

Concur::

_____
Project Officer Date

ATTACHMENT TO
MEMORANDUM FOR RECORD

R 603.225 provides a set of questions that contracting officers, in conjunction with program officials, consider and report. The following is a summary of the questions (See 10 CFR 603.225 for full set of questions):

Will the use of a TIA permit the involvement in the RD&D of any commercial firms or business units of firms that would not otherwise participate in the project?

Will the use of a TIA allow the creation of new relationships among participants at the prime or subtier levels, among business units of the same firm, or between non-Federal participants and the Federal Government that will foster better technology?

3. Will the use of a TIA allow firms or business units of firms that traditionally accept Government awards to use new business practices in the execution of the RD&D project that will foster better technology, new technology more quickly or less expensively, or facilitate partnering with commercial firms?

4. Are there any other benefits to the use of a TIA that could help the Department of Energy better meet its objectives in carrying out the project?

COVERAGE OF INDEPENDENT AUDITS OF FOR-PROFIT FIRMS

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Can the audit be integrated with the regular audit of a firm's financial statements?

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What is the source of the requirement for the audit?

What should the IPA do if he or she finds that the Defense Contract Audit Agency is performing audits of the firm?

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What standards or cost principles determine the costs that are allowable as charges to the award?

What compliance requirements for the allowability of costs should the audit address?

B. Cost Sharing

What is the objective of this portion of the audit?

What are the compliance requirements for cost sharing?

C. Financial Reporting

What are the objectives of this portion of the audit?

are the compliance requirements for financial reporting?

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Is a review of a firm's property management system usually required?

What are the objectives of the review?

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. Program Income

Is an audit of program income usually required?

What is program income?

What is the objective of this portion of the audit?

What are the applicable standards for program income?

PART 1. GENERAL INFORMATION

What is the purpose of this document?

This document provides guidance for an independent public accountant (IPA) who is asked by a for-profit firm to conduct an audit of its systems, due to the firm's having received a technology investment agreement (TIA) from the Department of Energy (DOE).

Why does the Federal Government need an audit?

Federal officials are accountable to the public for the resources provided to carry out Government programs. Financial auditing contributes to accountability by providing an independent assessment to assure that recipients are handling Government funds properly.

Can the audit be integrated with the regular audit of a firm's financial statements?

Yes. The intent is to cause the minimum possible disruption to the firm's activities, so the IPA is encouraged to do the needed transaction sampling for DOE awards as part of the regularly scheduled audit of the firm's financial statements. In some cases, it may be even more efficient and economical to separately audit the individual DOE awards, and the firm may elect to have the IPA do so.

What are the objectives of the audit?

The auditor is to determine and report on whether:

- The firm has an internal control structure that provides reasonable assurance that it is managing DOE awards in compliance with the award terms and conditions, including applicable Federal laws and regulations.

- Based on a sampling of DOE award expenditures, the firm has complied with award terms and conditions, including applicable Federal laws and regulations, that may have a direct and material effect on DOE awards.

What is the source of the requirement for the audit?

The source of the requirement stated in the award document stems from sections 603.640 through 603.660 of 10 CFR part 603.

What should the IPA do if he or she finds that the Defense Contract Audit Agency is performing audits of the firm?

The IPA should consult with officials of the firm to ensure that:

- DOE contracting officer was aware of the DCAA audit presence at the time they made awards; and

- The DOE agreement authorizes the IPA to perform the audit, rather than requiring that the DCAA do so. If the IPA is authorized to perform the audit, he or she must consider the nature, timing, and extent of his or her own auditing procedures, to avoid unnecessary duplication of the DCAA effort.

2. AUDIT OBJECTIVES AND COMPLIANCE REQUIREMENTS

A. ALLOWABLE COSTS

is the objective of this portion of the audit?

The objective is to determine, by testing a sample of transactions, whether the firm complied with the requirements concerning allowability of costs charged to DOE awards.

t standards or cost principles determine the costs that are owable as charges to the award?

Each technology investment agreement should specify the standards or cost principles that the for-profit firm is to use to determine the costs that it is allowed to charge to that award. While the TIA may specify use of the for-profit cost principles in the Federal Acquisition Regulation (FAR, at 48 CFR part 31), it could specify an alternative standard. The minimum standard in the latter case is that Federal funds and the firm's cost sharing contributions will be used only for costs that a reasonable and prudent person would incur in carrying out the RD&D project contemplated by the agreement.

hat compliance requirements for allowability of costs should the audit ddress?

For a firm that is subject to the cost principles in the FAR, the IPA should determine and report on whether costs charged to DOE awards are in compliance with those cost principles and indirect cost rates are applied in accordance with approved rate agreements.

For a firm that is subject to alternative standards that may be used for a TIA, the IPA should determine and report on whether costs charged to the DOE awards are:

- Necessary and reasonable for the performance of the RD&D projects supported by the awards, or for related administration. Generally, elements of cost that appropriately are charged are those identified with RD&D and development activities under the Generally Accepted Accounting Principles (see Statement of Financial Accounting Standards Number 2, "Accounting for RD&D and Development Costs," October 1974).

- Allocable to the RD&D projects (i.e., costs are charged to DOE projects in a manner that is in accordance with the benefits the projects received).

- Given consistent treatment with costs allocated to the firm's other RD&D and development activities (e.g., activities supported by the firm itself or by non-Federal sponsors).

- In conformance with any limitations in the award documents or regulations that they cite (e.g., any restrictions on types or amounts of costs, or requirements for prior approval of DOE contracting officer).

- Supported by appropriate documentation in the firm's records. The documentation may be in electronic form.

B. COST SHARING

hat is the objective of this portion of the audit?

The objective is to determine, by testing a sample of cost sharing contributions, whether the firm made the contributions that the agreements required.

hat are the compliance requirements for cost sharing?

The provisions of the award documents will specify requirements for the firm's cost sharing, which may be contributions of a specified amount or a percentage of total project costs. The cost sharing may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions).

The values of the firm's contributions are determined in accordance with sections 603.530 through 603.555 of 10 CFR part 603.
What standards or cost principles determine the costs that are allowable as charges to the award?

C. FINANCIAL REPORTING

hat are the objectives of this portion of the audit?

The primary objective is to determine whether the firm's financial reports for DOE awards:

- Fairly and completely represent the expenditures and status of resources for projects supported by those awards; and
- Are supported by applicable accounting records and the accounting basis used (e.g., cash or accrual).

What are the compliance requirements for financial reporting?

The agreements will specify the frequency and content of business/financial reports. They may specify the use of standard financial forms or periodic reports that include information on both programmatic and business status.

Each financial report (and the business portion of any report that also has programmatic information) will contain at least summarized details on the status of resources (Federal funds and any non-Federal cost sharing that the agreements require), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from these schedules; and discuss actions that will be taken to address the deviations.

D. EQUIPMENT AND REAL PROPERTY MANAGEMENT

Is a review of a firm's property management system usually required?

No, the IPA needs to review the property management system only if:

- There is Federally owned property associated with the award; or
- The firm charged the full purchase price of any equipment or real property as project costs (i.e., to Federal funds or the firm's funds that are counted toward required cost sharing); and
- The award under which the property was purchased provides for a continuing Federal interest in the property.

Note that the IPA generally will not need to review the property management system because most DOE awards will not have Federally owned property associated with them and will allow the firm to charge to the project only depreciation or use charges for real

property or equipment..

tare the objectives of the review?

The objectives are to determine whether the firm:

- Obtained the necessary prior approval for the equipment or real property purchase from the contracting officer.
- Keeps proper records for equipment and adequately safeguards and maintains equipment.
- Handles disposition or encumbrance of equipment or real property acquired under DOE awards in accordance with the applicable requirements.

hat are the compliance requirements for Federally owned property and or equipment or real property purchased under DOE awards?

To protect the Federal interest in property, the DOE Assistance Regulations include standards for the firm's property management, use, and disposition, as shown in this table:

If the property is . . .	Then the property management standards for the for-profit firm are in . . .
Real property or equipment purchased under a TIA,,	Section 603.685 of 10 CFR part 603.
Federally owned property;.	Section 603.690 of 10 CFR part 603.

Note that a for-profit firm may include the full acquisition cost of real property or equipment as a charge to the project only with the prior approval of the contracting officer. The title to the real property or equipment vests conditionally in the for-profit firm upon acquisition, and there is a continuing Federal interest in the property unless a contracting office has statutory authority to do otherwise and elects to use that authority for a particular award. The Federal Government recovers its interest in the property through the disposition process at the project's end.

E. PROGRAM INCOME

program income be award audited?

Yes, but most awards will not involve any program income.

t.i's program income?

Program income is gross income earned by the recipient that is generated by a supported activity or earned as a result of the award. For example, if the purpose of an award is to support the firm's delivery of services and the firm collects fees for doing so, those fees are program income. As another example, if samples of materials or biological specimens are generated as a result of a supported RD&D effort, and the firm sells samples to other RD&D organizations, the proceeds of those sales would be program income. If authorized by the terms and conditions of the award costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

fuat is the objective of this portion of the audit?

The objective is to determine whether program income is correctly recorded and used in accordance with the award terms and applicable standards.

What are the applicable standards for progrm income?

The standards for program income are in section 603.835 of 10 CFR part 603.

"SEE WEB SITE"

Federal Register

Tuesday,
May 9, 2006

Part III

Department of Energy

10 CFR Parts 600 and 603
Assistance Regulations; Final Rule

POLICY FLASH 2006-32

POLICY FLASH 2006-32

DATE: May 24, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Revision to AL 2005-08 and DOE form 4220.2 and Award of Contracts to Alaska Native Corporations (ANC)**

This flash transmits (1) revisions to Acquisition Letter (AL)-2005-08, Small Business Programs, and (2) the revised DOE form 4220.2, Small Business.

Changes have been made to AL-2005-08, revising the coverage for the Advanced Planning Acquisition Team (APAT) and breaking out coverage for the over $3 million review by OSDBU. The purpose of the APAT is to review acquisition strategies of new procurements in the developmental stage for the purpose of identifying the practicable extent to which small business prime contracting participation is feasible. The APAT review is separate and distinct from, and occurs prior to, the required OSDBU review of proposed acquisitions estimated to be over $3 million and not recommended for small business set aside.

The DOE form 4220.2 has been updated and shall be used for Small Business reviews exceeding the Simplified Acquisition Threshold. It is a PDF fillable form. The May 16, 2006 version of the form will be available in one week at http://www.directives.doe.gov/dfs/forms/4220-2.pdf.

Also, on April 26, 2006, the Government Accountability Office (GAO) issued report GAO-06-399, ***"Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight".*** The report can be found online at]J1[p://www.g;J9.gov/new.items/d0G399.pdf, The AL has been modified to incorporate guidance concerning ANC's coming out of this report.

This Policy Flash 2006-32 will be available online within a day, at the following website: http://professionals.opr.doe.gov

Questions regarding this flash may be directed to Stephen Zvolensky at (202) 287-1307 or Stephen.Zvolensky@hq.doe.gov .

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Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy
Office of Procurement and Assistance Management

This revision to Acquisition Letter (AL) 2005-08, Small Business Programs, expands the coverage and procedure for obtaining reviews by the Advanced Planning Acquisition Team (APAT) and the required Office of Small and Disadvantaged Business Utilization (OSDBU) review of all proposed acquisitions over $3 million and provides guidance pertaining to the award of contracts to Alaska Native Corporations.

1. Add the following under Part I, Prime Contracting, paragraph A "SMALL BUSINESS CONTRACTING PROCESSES," Awards To 8(a) Firms:

Alaska Native Corporations (ANCs) were created to settle land claims with Alaska Natives and foster economic development. In 1986, Congress passed legislation allowing ANCs to participate in the Small Business Administration's (SBA) 8(a) program and extended special procurement advantages to 8(a) ANC firms. FAR 19.805(b) permits sole source 8(a) awards to concerns owned by ANCs.

DOE Contracting Officers are reminded to use care in the award and administration of ANC contracts, such as notifying SBA of contract modifications and monitoring the percentage of work that is subcontracted. Contracting Officers must ensure that such contracts are properly coordinated with DOE's Small Business Program Managers, the Office of Small Disadvantaged Business Utilization, and the SBA, as appropriate.

2. Replace the following under Part I, Prime Contracting, paragraph D, "SMALL BUSINESS ACQUISITION PLANNING," on page 8 of the AL:

Advanced Planning Acquisition Team.

The Department of Energy (DOE) has established an Advanced Planning Acquisition Team (APAT), comprised of the Office of Small and Disadvantaged Business Utilization (OSDBU), the Office of Procurement and Assistance Management (OPAM), the National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management, the Small Business Administration Procurement Center Representative (SBA-PCR), and DOE Headquarters or field offices. The purpose of the APAT is to review acquisition strategies of new procurements in the developmental stage. APAT review of proposed acquisitions will serve the purpose of identifying the practicable extent to which small business participation is feasible at the prime contracting level. APAT review will be conducted prior to the development and execution of a formal acquisition plan. The APAT's focus will be DOE's Facility Management Contracts (FMCs) and other large contracts of special interest to DOE.

The APAT will make recommendations

- for total small business set-aside of a contract,
- that identify portions of large statements of work that can be broken-out and reserved exclusively for small business prime contract participation,
- requiring the inclusion of the Departmental subcontracting goals in the RFP,

- on how offerors' past performance in achieving subcontracting goals can be made as an evaluation factor in the draft RFP,

- regarding work from existing contracts that can be reserved for small business subcontracting opportunities prior to FMC option exercises[1].

The APAT is strictly advisory in nature. The APAT will meet the first Wednesday of each month;; however, ad hoc meetings may be convened as necessary.

The APAT review is separate and distinct from, and occurs prior to, the required OSDBU review of proposed acquisitions estimated to be over $3 million and not recommended for small business set aside. The APAT will identify planned procurements early enough in the acquisition cycle to permit timely reviews. Program Managers may also prepare presentations requesting APAT reviews, if necessary. The APAT will provide its views and recommendations on a proposed acquisition strategy,, which in turn must be considered by the Program Manager when developing the final Acquisition Plan. APAT recommendations will also be considered, as necessary,, by the OSDBU when conducting its review of RFPs over $3 million not set-aside for SB participation. While there is no particular format for submitting information to the APAT, the preferred approach is that the Associate OSDBU Director be notified by email or memorandum from the program manager that s/he wishes to discuss a proposed acquisition. That written notification should be brief and concise. The Program Manager will present the proposed procurement Acquisition Strategy to the APAT for discussion.

An APAT may also be convened to discuss proposed procurement legislation, regulations, prime and subcontract goaling processes, reporting and communication barriers, market survey improvements;, and other small business issues.

3. Insert the following new paragraph under D, "SMALL BUSINESS ACQUISITION PLANNING;;" following the paragraph titled "Advanced Planning Acquisition Team:"

Review of Proposed Acquisitions Over $3 Million not Set-aside for Small Business Concerns:

The OSDBU and the SBA-PR shall review all proposed acquisitions estimated to be over $3 million in value and not recommended for set aside to small business. This review covers all new acquisition requirements,, including contracts,, exercise of FMC options, and issuing orders against Federal Supply Schedules (FSS)) and GWACS. While FSS acquisitions using the procedures prescribed in FAR 8.4 are not subject to the policies and procedures of FAR Part 19 (including small business set-aside requirements prescribed in subpart 19.5), it is DOE policf that Contracting Officer's place FSS orders with small businesses to the maximum extent[2]

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[1] The APAT will review option exercises of facility management contracts (FMCs) in order to (!) evaluate if subC-Ontracting goals in the existing subC-Ontracting plan are current and reflect the Deparbnental subcontracting goals, and (2) make recommendations of work that can be reserved for small business subC-Ontracting opportunities.

[2] To the maximum extent practiruble,, FSS order competitions should be targeted to small business finns. Contracting Officers should work with requestors to identify three or more small businesses that hold relevan t FSS contracts.

practicable in accordance with FAR 8.405-5(b). Accordingly, if the Contracting Officer determines that it is not feasible to target an FSS acquisition for small business participation, and the value of the FSS acquisition is expected to exceed $3 million, the Contracting Officer shall document the basis for this determination for review by OSDBU and the SBA PCR in accordance with this section.

The Contracting Officer shall submit the following supporting documentation for OSDBU review:

(1) DOE F 4220.2, SMALL BUSINESS REVIEW completed through Block No. 13,

(2) Procurement Request (PR),

(3) Draft Request for Proposals (RFP),

(4) Acquisition Plan, and

(5) Narratives from the Contracting Officer, Small Business Program Manager, Procurement Director, and the Small Business Administration's Procurement Center Representative (SBA PCR)) or SBA District Small Business Specialist acquisition, as required by the instructions to DOE F 4220.2.

The preferred method of transmission of procurement packages to OSDBU is by e-mail, to small.business@hg.doe.gov.

The OSDBU shall complete its review within ten (10) business days after receipt of a complete acquisition package. Their review will include either a written analysis and decision that supports the draft RFP or recommendations to improve the participation of small business concerns. If unforeseen circumstances preclude meeting this timeframe, the OSDBU will negotiate a new review completion date with the Contracting Officer.

US Department of Energy

o 4220.2 (May 16, 2006) supersedes all former editions.

SMALL BUSINESS REVIEW

1. PR No.

2. Procurement Title/Brief Description

3. Business Information
NAICS Code _____
Size Standard _____
Estimated Contract Value
$ _____

4. Program Element Code And Title

5. Procuring Activity Code And Title

7a. PR Initiator (Name, Code, & Phone)

6a. Acquisition History (Business Type)
Large Business ☐ Non-8(a) SOB
Small Business ☐ WOSB
8(a) ☐ HUBZone ☐ SDVOSB

6b. Acquisition History (Solicitation Type)
☐ Full And Open Competition
☐ Set-Aside ☐ Federal Supply Schedules (FSS)
☐ Sole Source ☐ Other

7b. Contract Specialist (Name, Code, & Phone)

8. Small Business Participation Was Considered In The Preparation Of This Procurement, And The Following Is Recommended:
☐ Small Business Set-Aside _____ %; $ _____
☐ 8(a) Program Set-Aside _____ %; $ _____
☐ HUBZone Set-Aside _____ %; $ _____
☐ SDVOSB Set-Aside _____ %; $ _____

9. If Sole Source, Designate Preference Activity (Attach J.O. F.O.C. Per Instructions),
☐ Large Business
☐ Small Business
☐ Other

10. If Set-Aside Is Not Feasible Place An "X" In The Appropriate Box (es), And Attach Supporting Narrative.
(a) ☐ No Reasonable Expectation of Receiving Offers From Two Or More: ☐ Small Businesses ☐ 8(a) Concerns ☐ HUBZones ☐ SDVOSBs
(b) ☐ Facility Management Contract (e.g. M&O)
(c) ☐ Directed By Statute (Provide Citation No. And Attach Supporting Narrative) Citation No.: _____
(d) ☐ FSS Acquisition
(e) ☐ Other

11. Contracting Officer's Recommendation
(Attach Supporting Narrative Per Instructions)) _____

Name: _____ Signature: _____ Date _____
Phone: _____ e-mail _____

12. Small Business Program Manager's Review
☐ Concurrence
☐ Nonconcurrence (Attach Recommendation And Supporting Narrative)

Name: _____ Signature _____ Date _____
Phone: _____ e-mail _____

13. SBA-PCR or SBA District SB Specialist Review (Procurements Valued Greater Than The Simplified Acquisition Threshold)
☐ Concurrence
☐ Nonconcurrence (Attach Recommendation And Supporting Narrative) ☐ Provided Recommended Sources

Name: _____ Signature: _____ Date _____
Phone: _____ e-mail _____

14. OSDBU Review (Procurements Valued Greater Than $3.0 Million)
☐ Concurrence
☐ Nonconcurrence (Attach Recommendation And Supporting Narrative) ☐ Provided Rcommended Sources

Name: _____ Signature _____ Date _____
Phone: _____ e-mail _____

al Instructions:: Completion of DOE F 4220.2 (May 16, 2006) is required for procurements with estimated exceeding the simplified acquisition threshold (see FAR 2.101).

: No. 1 Provide the Procurement Request (PR) Authorization number.

, No. 2 Describe items/services to be acquired.

kNo. 3 Enter the North American Industry Classification System (NAICS) code; the small business size standard in terms of annual receipts, employee number, etc.; and the estimated contract value including options. Refer to 13 CFR 121.402 and http://www.sba.gov/size/sizetable2002.html and http://www.bls.gov/bls/naics.htm.

k No. 4 Enter the lead program element responsible for the requirement.

dk No. 5 Enter the name of the contracting office that will award the contract/order.

dkNo. 6 If requirement was previously procured, enter in Block No. 6a, the type of business that was awarded the contract/order and enter in Block No. 6b, how the business was solicited.

,ck No. 7 Enter the name, organizational code, and phone number of the PR Originator in Block No. 7a. Enter the name, organizational code, and phone number of the Contract Specialist in Block No. 7b.

ockNo. 8 If Small Business participation was considered, enter the percent of the work and corresponding estimated dollar value including options. Refer to FAR 6.203(a), 19.801-1, 19.501(f) through (d), 19.502-2, 19.502-3, 19.1305, and 19.1405. Note: The 8(a) Program also includes awards to Alaskan Native Corporations (ANCs) and Native American tribally-owned SB concerns (ref. FAR 26.101,, and 13 CFR 124.506) and the Small Business Administration (SBA)'s Mentor-Protege Program (ref. 13 CFR 124.520, and 13 CFR 124.513). SBA Joint Ventures with SB concerns are sanctioned pursuant to limitations of 13 CFR 121.103 and should be applied to proper preference activity.

3lockNo. 9 If the solicitation method was recommended as sole source, attach the *Justification For Other Than Full And Open Competition* signed by the Program Manager and Contracting Officer (reference FAR 6.303-1, FAR 19.1306, and 19.1406).

Block No.10 Pursuant to FAR 19.202-1, Small Businesses shall be afforded equitable opportunities to compete for all contracts they can perform consistent with the Government's interest. If Small Business set-aside is not feasible, place an "X" in the appropriate box(es) and attach a narrative supporting your selection(s). Refer to FAR 8.4 and 8.405-5(b) for placing task orders under Federal Supply Schedules (FSS).

Block No. 11 If the Contracting Officer does not recommend that the procurement be reserved for small business concerns, then the Contracting Officer must "document why a small business set-aside is inappropriate..." (See FAR 19.501(c)).

Block No. 12 The DOE Small Business Program Manager (SBPM) shall complete this block to ensure that the information in Block No. 3 is correct and to indicate concurrence or nonconcurrence with the Contracting Officer's recommendation. A narrative is required if SBPM does not concur.

Block No. 13 The SBA's Procurement Center Representative (PCR) or SBA's District Office Small Business Specialist shall complete this block for all procurements valued greater than the simplified acquisition threshold. Pursuant to FAR 19.402, the SBA may assign PCRs to contracting activities to carry out SBA's policies and programs. If an SBA PCR or SBA District Small Business Specialist is not available in your area, contact the Office of Small and Disadvantaged Business Utilization (OSDBU) which will refer the matter to SBA (ref. FAR 19.401 (b)).

Block No. 14 Completion of this block is required for procurements valued greater than $3.0 million and have not been reserved exclusively for Small Business participation. Procurement packages for OSDBU review must include supporting procurement documentation consisting of the PR, DOE F 4220.2 (May 16, 2006)) executed through Block No. 13, draft RFP, acquisition plan, and narratives from the Contracting Officer, Small Business Program Manager, Procurement Director, and the SBA PCR or SBA District Small Business Specialist.

Speciall Instrnctions::

(!)) One copy of a fully executed DOE F 4220.2 (May 16, 2006) must be included with the contract file.

(2)) Submit one copy of a fully executed DOE F 4220.2 (May 16, 2006) (of procurements reviewed by the OSDBU)) to the OSDBU.

POI,ICY F'LASH 2006-33

POLICY FLASH 2006-33

DATE: May 18,2006

TO: Po curement Directors

FROM: Office of Po curement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Revision to AL 2005-08 and DOE form 4220.2

This flash tr n smits (1) revisions to Acqusition Letter AL-2005-08, Small Business Po r ams and (2) the revised DOE form 4220.2, Small Business Review.

Changes have been made to AL-2005-08,, revising the coverage for the Adv n ced Planning Acquisition Team (P AT) and breaking out coverage for the over $3 million review by OSDBU. The purpose of the APAT is to review acquisition str t egies of new procurements in the developmental stage for the purpose of identifying the practicable extent to which small business prime contracting participation is feasible. The AP T review is separate and distinct from,, and oc urs prior to, the required OSDBU review of proposed acquisitions estimated to be over $3 million and not recommended. for small business set aside.

The DOE form 4220.2 has been updated and shall be used for Small Business reviews exceeding the Simplified Acquisition Threshold. It is a PDF' fillable form. The May 16, 2006 version of the form will be available in one week at lJ!tp://www.directives.doe.gov/clls/forms/4220-;2,pdf.

This Policy Flash 2006-33 will **be available online within a day, at the following website:** http://professionals.opr.doe.gov

Questions regarding this flash may be directed to Stephen Zvolensky at (202) 287-1307 or Stephen.zvolensky@hg.doe.gov .

Michael P. Fischetti, Acting Director
Office o f Procurement and Assistance Policy
Office o f Procurement and Assistance Management

Attachment

This revision to Acquisition Letter (AL) 2005-08, Small Business Programs, expands the coverage and procedure for obtaining reviews by the Advanced Planning Acquisition Team (APAT) and the required Office of Small and Disadvantaged Business Utilization (OSDBU) review of all proposed acquisitions over $3 million and provides guidance pertaining to the award of contracts to Alaska Native Corporations.

1. Add the following under Part I, Prime Contracting, paragraph A "SMALL BUSINESS CONTRACTING PROCESSES," Awards To 8(a) Firms:

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DOE Contracting Officers are reminded to use care in the award and administration of ANC contracts, such as notifying SBA of contract modifications and monitoring the percentage of work that is subcontracted. Contracting Officers must ensure that such contracts are properly coordinated with DOE's Small Business Program Managers, the Office of Small Disadvantaged Business Utilization;, and the SBA, as appropriate.

2. Replace the following under Part I, Prime Contracting, paragraph D, "SMALL BUSINESS ACQUISITION PLANNING," on page 8 of the AL:

Advanced Planning Acquisition Team.

The Department of Energy (DOE)) has established an Advanced Planning Acquisition Team (APAT)), comprised of the Office of Small and Disadvantaged Business Utilization (OSDBU), the Office of Procurement and Assistance Management (OPAM), the National Nuclear Security Administration (NNSA)) Office of Acquisition and Supply Management, the Small Business Administration Procurement Center Representative (SBA-PCR), and DOE Headquarters or field offices. The purpose of the APAT is to review acquisition strategies of new procurements in the developmentall stage. APAT review of proposed acquisitions will serve the purpose of identifying the practicable extent to which small business participation is feasible at the prime contracting level. APAT review will be conducted prior to the development and execution of a formall acquisition plan. The APAT's focus will be DOE's Facility Management Contracts (FMCs)) and other large contracts of special interest to DOE.

The APAT will make recommendations:

- for totall small business set-aside of a contract,
- that identify portions oflarge statements of work that can be broken-out and reserved exclusively for small business prime contract participation,
- requiring the inclusion ofthe Departmental subcontracting goals in the RFP,

- on how offerors' past performance in achieving subcontracting goals can be made as an evaluation factor in the draft RFP,

- regarding work from existing contracts that can be reserved for small business subcontracting opportunities prior to FMC option exercises[1].

The APAT is strictly advisory in nature. The APAT will meet the first Wednesday of each month; however, ad hoc meetings may be convened as necessary.

The APAT review is separate and distinct from, and occurs prior to, the required OSDBU review of proposed acquisitions estimated to be over $3 million and not recommended for small business set aside. The APAT will identify planned procurements early enough in the acquisition cycle to permit timely reviews. Program Managers may also prepare presentations requesting APAT reviews, if necessary. The APAT will provide its views and recommendations on a proposed acquisition strategy, which in turn must be considered by the Program Manager when developing the final Acquisition Plan. APAT recommendations will also be considered, as necessary, by the OSDBU when conducting its review of RFP's over $3 million not set-aside for SB participation. While there is no particular format for submitting information to the APAT, the preferred approach is that the Associate OSDBU Director be notified by email or memorandum from the program manager that s/he wishes to discuss a proposed acquisition. That written notification should be brief and concise. The Program Manager will present the proposed procurement Acquisition Strategy to the APAT for discussion.

An APAT may also be convened to discuss proposed procurement legislation, regulations, prime and subcontract goaling processes, reporting and communication barriers, market survey improvements, and other small business issues.

3. Insert the following new paragraph under D, "SMALL BUSINESS ACQUISITION PLANNING," following the paragraph titled "Advanced Planning Acquisition Team:"

<u>Review of Proposed Acquisitions Over $3 Million not Set-aside for Small Business Concerns.</u>

The OSDBU and the SBA-PCR shall review all proposed acquisitions estimated to be over $3 million in value and not recommended for set aside to small business. This review covers all new acquisition requirements, including contracts, exercise of FMC options, and issuing orders against Federal Supply Schedules (FSS) and GWACS. While FSS acquisitions using the procedures prescribed in FAR 8.4 are not subject to the policies and procedures of FAR Part 19 (including small business set-aside requirements prescribed in subpart 19.5), it is DOE policy[2] that Contracting Officer's place PSS orders with small businesses to the maximum extent

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[1] The APAT will review option exercises of facility management contracts (FMCs) in order to (1) evaluate if subcontracting goals in the existing subcontracting plan are current and reflect the Departmental subcontracting goals, and (2) make recommendations of work that can be reserved for small business subcontracting opportunities.

[2] To the maximum extent practicable, FSS order competitions should be targeted to small business firms. Contracting Officers should work with requestors to identify three or more small businesses that hold relevant FSS contracts.

practicable in accordance with FAR 8.405-S(b). Accordingly, if the Contracting Officer detennines that it is not feasible to target an FSS acquisition for small business participation, and the value ofthe FSS acquisition is expected to exceed $3 million, the Contracting Officer shall document the basis for this determination for review by OSDBU and the SBA-PCR in accordance with this section.

The Contracting Officer shall submit the following supporting documentation for OSDBU review:

(1) DOE F 4220.2, SMALL BUSINESS REVIEW completed through Block No. 13,

(2) Procurement Request (PR),

(3) Draft Request for Proposals (RFP),

(4) Acquisition Plan, and

(5) Narratives from the Contracting Officer, Small Business Program Manager, Procurement Director, and the Small Business Administration's Procurement Center Representative (SBA PCR) or SBA District Small Business Specialist acquisition, as required by the instructions to DOE F 4220.2.

The preferred method of transmission of procurement packages to OSDBU is by e-mail, to small.business@hq.doe.gov.

The OSDBU shall complete its review within ten (10) business days after receipt of a complete acquisition package. Their review will include either a written analysis and decision that supports the draft RFP or recommendations to improve the participation of small business concerns. If unforeseen circumstances preclude meeting this timeframe, the OSDBU will negotiate a new review completion date with the Contracting Officer.

U.S. Deoartment of Ener!!V

DOE F 4220.2 (May 16, 2006) supersedes a/former editions.

SMALL BUSINESS REVIEW

1. PRNo.

2. Procurement Title/BriefDescription

3. Business Infonnation
NAICSCode _____
Size Standard _____
Estimated Contract Value
$ _____

4, Program Element Code And Title

S, Procuring Activity Code And Title

7 a. PR Initiator (Name, Code, & Phone)

6 a. Acquisition History (Business Type)
D Large Business D Non-8(a) SDB
D Small Business ☐ WOSB
D 8(a) D HUBZone O SDVOSB

6 b. Acquisition History (Solicitation Type)
D Full And Op<n Competition
☐ Set-Aside 0 Federal Supply Schedut;,. (FSS)
D Sole Source D Other

7 b, Contract Specialist (Name, Code, & Phone)

8. Small Business Participation Was Considered In The Preparation Of This Procurement, And The Following Is Recommended:
D Small Business Set-Aside _____%; $ _____
D 8(a) Program Set-Aside _____%; $ _____
D HUBZone Set-Aside _____%; $ _____
☐ SDVOSB Set-Aside _____%; $ _____

9, IfSole Source, Designate Preference Activity (Attach J.O.F.O.C. Per Instructions).
D Large Business
D Small Business
D Other

10, IfSet-Aside Is Not Feasible Place An "X" In The Appropriate Box (es), And Attach'Supporting Narrative.
(a) D No Reasonable Expectation o fReceiving Offers From Two Or More: D Small Businesses D 8(a) Concerns D HUBZones 0 SDVOSBs
(b) D Facility Management Contract (e.g. M&O)
(c) D Directed By Statute (Provide Citation No. And Attach Supporting Narrative) Citation No.: _____
(d) 0 FSS Acquisition
;le) 0 Other _____

11, Contracting Officer's Recommendation
{Attach Supporting Narrative Per Instructions) _____
Name _____ Signature _____ Date _____
Phone _____ e-mail _____

12. Small Business Program Manager's Review
D Concurrence
D Nonconcurrence (Attach Recommendation And Supporting Narrative)
Name _____ Signature _____ Date _____
Phone _____ e-mail _____

13. SBA-PCR or SBA District SB Specialist Review (Procurements Valued Greater Than The Simplified Acquisition Threshold)
D Concurrence
D Nonconcurrence (Attach Recommendation And Supporting Narrative) D Provided Recommended Sources
Name _____ Signature _____ Date _____
Phone _____ e-mail _____

14. OSDBU Review (Procurements Valued Greater Than $3.0 Million)
D Concurrence
D Nonconcurrence (Attach Recommendation And Supporting Narrative) D Provided Recommended Sources
Name _____ Signature _____ Date _____
Phone _____ e-mail _____

al Instructions:: Completion of DOE F 4220.2 (May 16, 2006) is required for procurements with estimated exceeding the simplified acquisition threshold (see FAR 2.101).

No. 1 Provide the Procurement Request (PR) Authorization number.

No. 2 Describe items / services to be acquired.

No. 3 Enter the North American Industry Classification System (NAICS) code; the small business size standard in terms of annual receipts, employee number, etc.; and the estimated contract value including options. Refer to 13 CFR 121.402 and http://www.sba.gov/size/sizetable2002.html and http://www.bls.gov/bls/naics.htm.

No. 4 Enter the lead program element responsible for the requirement.

No. 5 Enter the name of the contracting office that will award the contract/order.

No. 6 If requirement was previously procured, enter in Block No. 6a, the type of business that was awarded the contract/order and enter in Block No. 6b, how the business was solicited.

No. 7 Enter the name, organizational code, and phone number of the PR Originator in Block No. 7a. Enter the name, organizational code, and phone number of the Contract Specialist in Block No. 7b.

No. 8 If Small Business participation was considered, enter the percent of the work and corresponding estimated dollar value including options. Refer to FAR 6.203(a), 19.808-1, 19.501(a) through (d), 19.502-2, 19.502-3, 19.1305, and 19.1405. Note: The 8(a) Program also includes awards to Alaskan Native Corporations (ANCs)) and Native American tribally-owned SB concerns (ref. FAR 26.101, and 13 CFR 124.506)) and the Small Business Administration (SBA)'s Mentor-Protege Program (ref. 13 CFR 124.520, and 13 CFR 124.513)). SBA Joint Ventures with SB concerns are sanctioned pursuant to limitations of 13 CFR 121.103 and should be applied to proper preference activity.

No. 9 If the solicitation method was recommended as sole source, attach the *Justification For Other Than Full And Open Competition* signed by the Program Manager and Contracting Officer (reference FAR 6.303-1, FAR 19.1306, and 19.1406).

Block No. 10 Pursuant to FAR 19.202-1, Small Businesses shall be afforded equitable opportunities to compete for all contracts they can perform consistent with the Government's interest. If Small Business set-aside is not feasible, place an "X" in the appropriate box(es) and attach a narrative supporting your selection(s)). Refer to FAR 8.4 and 8.405-5(b) for placing task orders under Federal Supply Schedules (FSS)).

Block No. 11 If the Contracting Officer does not recommend that the procurement be reserved for small business concerns, then the Contracting Officer must "document why a small business set-aside is inappropriate..." (See FAR 19.501(e)).

Block No. 12 The DOE Small Business Program Manager (SBPM)) shall complete this block to ensure that the information in Block No. 3 is correct and to indicate concurrence or nonconcurrence with the Contracting Officer's recommendation. A narrative is required if SBPM does not concur.

Block No. 13 The SBA's Procurement Center Representative (PCR)) or SBA's District Office Small Business Specialist shall complete this block for all procurements valued greater than the simplified acquisition threshold. Pursuant to FAR 19.402, the SBA may assign PCRs to contracting activities to carry out SBA's policies and programs. If an SBA PCR or SBA District Small Business Specialist is not available in your area, contact the Office of Small and Disadvantaged Business Utilization (OSDBU)) which will refer the matter to SBA (ref. FAR 19.401 (b)).

Block No. 14 Completion of this block is required for procurements valued greater than $3.0 million and have not been reserved exclusively for Small Business participation. Procurement packages for OSDBU review must include supporting procurement documentation consisting of the PR, DOE F 4220.2 (May 16, 2006)) executed through Block No. 13, draft RFP, acquisition plan, and narratives from the Contracting Officer, Small Business Program Manager, Procurement Director, and the SBA PCR or SBA District Small Business Specialist.

Special Instructions::

1) One copy of a fully executed DOE F 4220.2 (May 16, 2006)) must be included with the contract file.
2) Submit one copy of a fully executed DOE F 4220.2 (May 16, 2006) (of procurements reviewed by the OSDBU)) to the OSDBU.

POLICY FLASH 2006-34

POLICY FLASH 2006-34

DATE: May 25, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Office of Federal Procurement Policy (OFPP) Determination of Executive Compensation Benchmark Amount for Costs Allowable Under Government Contracts during Contractor's Fiscal Year (FY) 2006

SUMMARY: This flash provides notice of OFPP's determination of the executive compensation benchmark amount applicable to Government contracts during contractor's FY 2006. (OFPP's memorandum was published in the Federal Register on May 3, 2006.)

OFPP has determined the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. The amount is $546,689. The cap is for contractor's FY 2006 and subsequent years, unless and until revised by OFPP.

Department of Energy Acquisition Regulation (DEAR) 970.3102-05-6 (p)(1), "Compensation for personal services," states that costs incurred for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable.

Questions concerning this policy flash should be directed to Helen Oxberger at 202-287-1332 or helen.oxberger@hq.doe.gov.

Michael P. Fischetti, Acting Director
Office of Procurement and Assistance Policy

POLICY FLASH 2006-35

POLICY FLASH 2006-35

DATE: **June 14, 2006**

TO: **Procurement Directors**

FROM: **Office of Procurement and Assistance Policy, MA-61**
Office of Procurement and Assistance Management

SUBJECT: DOE Small Business Conference, Continuing Learning Points (CLP), June 27-30, 2006, in Seattle, Washington

SUMMARY: This Flash is to inform you that based on the agenda, GS-I 102 employees will be eligible for up to seven (7) Continuing Leaming Points (CLPs) for attending the conference breakout sessions for the upcoming DOE Small Business Conference in Seattle, WA, June 27-30, 2006.

This Flash may be viewed at http://profossionals.pr.doc.ru2_y.

Questions concerning this policy flash should be directed to Stephen Zvolensky at 202-287-1307 or Stcphcn.Zvolensky(itlhq.doc.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

POLICY FLASH

Never been signed and posted

This became Signed/Posted PF 2006-38

POLICY FLASH 200(

DATE: June 15, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Office of Inspector General (OIG) Audit Program (See AL-2005-10 & Acquisition Guide Chapter 970.4)**

SUMMARY: This Flash is to inform you that the Office of Inspector General (OIG) has provided the Office of Procurement and Assistance Management (OPAM) with the attached Audit Program.

The Office of Inspector General (OIG) has provided the Office of Procurement and Assistance Management (OPAM) with the attached Audit Program that should be used by management and operating contractors and those other facilities management contractors subject to the OIG's Cooperative Audit Strategy. See AL 2005-10 and Acquisition Guide Chapter 970.4. The OIG has designed this audit program for use in the determination of the allowability of incurred costs in support of the annual submission of the Statement of Costs Incurred and Claimed (SCIC) beginning FY2005. The OIG has provided this Audit Program directly to the contractors' internal auditors for use in determining cost allowability beginning with 2005 costs.

OIG informs us that this audit program represents a revision to the audit program in the OIG Audit Manual's Chapter 19 (formerly Chapter 18), Exhibit C and that the OIG will include it on its website in the next revision of the audit manual. This Audit Program provides a logical sequence pursuant to which the contractor's Internal Auditors Function perform risk assessments to determine the methodology for allowability of cost audits. The internal auditors should audit the contract costs at least once a year unless the Contracting Officer (CO) specifically

approves otherwise. The contractor's Internal Auditor Function may modify the Audit Program based on the assessment of risk associated with kinds or sources of costs but must submit significant departures from this Audit Program to the CO for approval.

This Flash may be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash should be directed to Robert Webb at 202-287-1338 or Robert.Webb@hg.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

POLICY FLASH 2006-37

POLICY FLASH 2006-37

DATE: July 21, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: The DOE Guide to Financial Assistance and Financial Assistance Letter 2006-04

SUMMARY: This Flash forwards an updated and revised Guide to Financial Assistance, dated July 2006 and Financial Assistance Letter (FAL) 2006-04, which provides a list of all FALs remaining in effect.

This Flash may be viewed at hllp://profossionals.pr.doc.gov ,

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or Jacqucline.Kniskern((1)hq.doc.go ,.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachments

Department of Energy
Financial Assistance Regulation

No. 2006-04
Date 07/21/06

FINANCIAL ASSISTANCE LETTER

Financial Assistance Letters (FAL s) that remain in effect are identified below. All other previously issued FALs have been superseded by a formal rulemaking, incorporated into other guidance, and/or canceled.

****

Financial Assistance Letters Remaining in Effect

Number	Date	Subject
2006-03	05/10/2006	Implementation Guidance for Awarding Technology Investment Agreements

Financial Assistance Letters Discontinued

Number	Date	Subject	Disposition
2004-03	02/12/2004	Intellectual Property	Moved to the Guide to Financial Assistance
2004-06	11/02/2004	Award Terms	Moved to the Guide to Financial Assistance
2005-03	06/27/2005	Eligibility Determination Required by Section 2306 of the Energy Policy Act	Moved to the Guide to Financial Assistance
2006-01	12/02/2005	Section 988 of the Energy Policy Act 2005, Cost Sharing	Moved to the Guide to Financial Assistance
2006-02	12/02/2005	Section 989 of the Energy Policy Act 2005, Competition and Merit Review Requirements	Moved to the Guide to Financial Assistance

DEPARTMENT OF ENERGY

GUIDE TO FINANCIAL ASSISTANCE

A GUIDE TO THE AWARD AND ADMINISTRATION OF FINANCIAL ASSISTANCE

OFFICE OF PROCUREMENT AND ASSISTANCE POLICY
OFFICE OF PROCUREMENT AND ASSISTANCE MANAGEMENT
Revised - JULY 2006

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CHAPTER 1 – BASIC INFORMATION

1. DOE as a Financial Assistance Issuing Organization

1.1.1 Legislative Authority

The Federal Grant and Cooperative Agreement Act (FGCA) of 1977 (31 U.S.C. 6301-08) establishes criteria for determining whether a transaction is financial assistance. A financial assistance instrument is used when the principal purpose of the transaction is the transfer of money or property to accomplish a public purpose of support or stimulation as authorized by Federal statute. The Act also establishes the basis for determining whether to use a grant or a cooperative agreement.

Other statutes, such as the Energy Policy Acts of 1992 and 2005 (EPAct), also provide authority for DOE to enter into financial assistance agreements. Generally, these statutes will identify the purpose of the program, the type of financial assistance to be provided, eligible activities to be funded, eligible recipients, how funds will be distributed, and any special administrative requirements pertinent to the program such as cost sharing.

1.1.2 Program Rules

Statutes governing a number of DOE programs stipulate that the Secretary is authorized or required to issue regulations to carry out the purposes of the statutes and to provide for their orderly administration. These regulations are usually developed by the organization responsible for the implementation and administration of the program statute, with the assistance of the Office of General Counsel and the review and comment of appropriate DOE offices. Programmatic regulations provide more detailed guidance about how a particular program operates. Examples of program rules within DOE are the State Energy Conservation Program at 10 CFR Part 420, the Weatherization Program at 10 CFR Part 440, and the Office of Science Financial Assistance Program at 10 CFR Part 605.

Not all program offices issue program rules, i.e., regulations. For example, Fossil Energy in operating the Clean Coal Program issued internal guidance, only since the authorizing statute did not require implementing regulations and provided sufficient detail regarding program requirements.

1.1.3 Financial Assistance Rules

DOE has regulations which provide the administrative requirements and operational rules for carrying out financial assistance award and administration. The DOE Financial Assistance Rules, 10 CFR Part 600, implement the FGCA and establish uniform policies and procedures for the award and administration of DOE financial assistance. Incorporated into the regulations are the Government-wide administrative requirements that apply to financial assistance agreements. These requirements stem from certain Office of Management and Budget (OMB) Circulars. To the extent the coverage of these OMB Circulars applies to

1.2.2 Head of Contracting Activity.

The head of the contracting activity is responsible for:

- overseeing the financial assistance function within that activity and ensuring that agency policies and procedures are implemented;

- establishing review and approval levels for financial assistance actions;

- reviewing requests for deviation; and

- appointing Contracting Officers.

1.2.3 Contracting Officer.

The following activities are the responsibility of the Contracting Officer or a designated representative. Contracting Officers should consult and coordinate with appropriate officials such as program staff, legal counsel, servicing finance officers and the Inspector General, in carrying out these activities. Within the limits of delegated authority, a duly appointed Contracting Officer may:

-Execute, administer and amend financial assistance instruments;

-Determine the appropriate type of financial assistance instrument;

-Develop and post funding opportunity announcements;

-Receive and review recipients' requests to either incur costs or undertake activities which require DOE prior approval, consulting with program staff as necessary;

-Administer financial assistance award instruments in such a way as to safeguard the funds and the interests of the Federal Government, ensure that all significant actions are fully documented, and assist program organizations in ensuring the most effective use of program funds for financially assisted activities;

-Serve as focal point for dissemination and interpretation of financial assistance policies and procedures;;

-Perform budget review and cost analysis (if needed), and related reviews, such as adequacy of an applicant's accounting system, prior to award of financial assistance instruments;;

-Negotiate, as necessary, the financial and business arrangements of financial assistance instruments;, including cost share and program income;

-Ensure that recipients comply with all terms and conditions of the award;

-Review and approve or disapprove requests for payment, if cost reimbursable;

-Review financial reports;

4 Financial Assistance Career Development Program

The Financial Assistance Career Development Program has been established at DOE in conjunction with the Acquisition Career Development Program. Information on the program can be found in DOE O 361.1A, "Acquisition Career Development Program".

5 Other Transaction Authority

Section 1007 of the Energy Policy Act of 2005 gives the Secretary of Energy authority to enter into transactions (other than already existing statutorily defined instruments - contracts, cooperative agreements, and grants), subject to the same terms and conditions as those given to the Secretary of Defense under 10 U.S.C. §2371. The purposes of this authority are to reduce barriers that prevent some for-profit firms from participating in DOE's research, development, and demonstration (RD&D) programs and broaden the technology base available to meet DOE mission requirements. A Technology Investment Agreement (TIA) is a special type of assistance instrument used to increase the involvement of commercial firms in the Department's RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions.

On May 9, 2006, DOE published a final rule that establishes TIAs, guidance and procedures for their use, and describes how to craft the award instrument. Contracting Officers should follow the guidance in the final rule, as supplemented by FAL 2006-03, when considering the award of a TIA.

Government. The primary beneficiary under a grant or cooperative agreement is the general public, as opposed to the United States Government. However, there may be situations where the Department expects to derive some use or benefit from the project activities. If the project will produce a benefit or use to DOE/NNSA that is only indirect or incidental in nature, a grant or cooperative agreement may be used.

(3) Decision Process. To ensure that the appropriate instrument is selected, the Contracting Officer should ask the following questions:

(a) Is the primary purpose of the award to acquire goods or services that will directly benefit or be used by the Department to further a specific DOE/NNSA mission or requirement? If the answer to this question is "yes," then the award instrument should be a contract. If the answer is "no," then the Contracting Officer should use a grant or cooperative agreement.

(b) Is the work to be performed by the recipient primarily for its own purposes in the furtherance of the public good, and DOE/NNSA is merely supporting this effort with financial or other assistance? If the answer to this question is "yes," then the award instrument should be a grant or cooperative agreement. If the answer is "no," then the award instrument should be a contract.

(c) Statutory Language Affect on Instrument Selection. A statute authorizing or providing appropriations for a program or activity occasionally may specify the use of a particular award instrument, notwithstanding the fact that, under the guidance provided in the FGCA, the purpose of the award would necessitate the use of a different type of instrument. In these situations, the Contracting Officer must attempt to harmonize the language of the two statutes. Unless the authorization or appropriation act provides that a particular award instrument will be used notwithstanding the provisions of the FGCA, the principles articulated in that statute and this guide generally should be applied to determine the appropriate award instrument. When confronted with conflicting statutory language, the Contracting Officer should consult with legal counsel to determine the appropriate course of action.

(d) Examples of Ambiguous Circumstances.

(1) Conferences. The appropriate instrument for funding conferences should be determined based on the statutory criteria (i.e., the principal purpose of the conference, including the intended primary beneficiary). For example, a conference whose primary purpose is to exchange and disseminate information to the public should be funded using a grant. While the awarding office may benefit from information exchanged at the conference, the principal intent of the award is to stimulate dissemination of knowledge to benefit the public. If, however, a conference is being conducted to benefit a Federal agency, funding should be provided under a contract. For example, a conference to provide specialized training to grantees that would otherwise be provided by Federal agency personnel should be funded by a contract. In this example, although the recipients of the training benefit from the conference, the principal purpose of the award

of exercising greater control over a recipient or the project than would be the case under a grant. The proposed Federal involvement must provide programmatic benefits that the recipient would not otherwise have available to it in carrying out the project. The general policy is:

(1) Substantial involvement is not anticipated if the recipient is expected to manage the project without agency collaboration, participation, or intervention, as long as it is run in accordance with the terms of the assistance instrument.

(2) Substantial involvement is anticipated if the project would not be possible without Federal collaboration or participation in the management of the project.

(e) No Substantial Involvement. Substantial involvement does not include the exercise of normal Federal stewardship responsibilities such as:

(1) Approving recipient plans prior to award.

(2) Providing technical assistance prior to the start of the activity and the recipient understands this prior to award, if requested by the recipient.

(3) Providing technical assistance to correct deficiencies in project or financial performance when reports or monitoring indicates some sort of problem.

(4) Performing site visits.

(5) Reviewing financial, performance, and audit reports.

(6) Performing technical reviews to determine whether to continue funding the next budget period.

(7) Reviewing performance to ensure that the objectives, terms, and conditions of the award are accomplished.

(8) Providing general administrative requirements, such as prior approvals required by the financial assistance regulations and/or O M B Circulars.

(9) Reviewing performance after completion.

(f) Substantial Involvement. Federal involvement would exist and depending on the circumstances could be substantial, if such involvement includes, for example:

(1) Review and approval of one stage before work can begin on a subsequent stage. Such review and approval is in addition to the exercise of the normal Federal stewardship responsibility to determine whether to continue funding the next budget period, which does not constitute substantial involvement. (See 2.1.2(e) for examples of no substantial involvement.)

Officers must use merit-based, competitive procedures to award grants and cooperative agreements to the maximum extent feasible. Merit review is discussed below at paragraph 2.42.

(b) The Contracting Officer may restrict eligibility to a type or types of applicant(s) if authorized by statute, program rule, or if appropriate to the activity to be funded. A decision to restrict eligibility shall be supported by the determination required by 10 CFR 600.6(b).

(c) The Contracting Officer may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the selection criteria in 10 CFR 600.6.

(d) The responsible program official, in consultation with the Contracting Officer and local legal counsel, should prepare a Determination of Noncompetitive Financial Assistance (DNFA) explaining the basis for the proposed noncompetitive award. The determination should include the following information:

- The name of the sponsoring program office;
- The programmatic statutory authority for the award;
- The name of the awarding office;
- The type of award proposed (e.g., grant or cooperative agreement);
- The name of the proposed recipient;
- A description of the nature of the financial assistance to be provided (e.g., research, conference grant, etc.);
- The amount and availability of DOE funds required;
- Any cost-participation/sharing required or proposed;
- To the extent relevant, a discussion of the programmatic evaluation conducted and the results of that evaluation, including the overall merit and relevance to the DOE mission, the anticipated objectives and probability of success in meeting them, the quality of the proposed recipient's personnel and facilities, and the appropriateness and adequacy of the proposed budget;
- A brief description of the public purpose of support or stimulation to be served by the proposed award, and, in non-technical terms, identification of any particular significance or specialized character of the proposed activity to be funded;
- A statement of whether the application was solicited or not solicited and the nature of any significant preapplication contact between the applicant and DOE; and
- A statement of which of the criteria in 10 CFR 600.6 (Eligibility) are being relied upon to justify the action and an explanation in general, non-technical terms, of why each criterion identified applies.

ii. Technology development grants: Generally, these awards would require an annual or semi-annual Progress Report, a final Scientific/Technical Report, and Special Status Reports on an as needed basis.

iii. Large cooperative agreements: Generally, these awards would require quarterly Progress Reports, a final Scientific/Technical Report, and Special Status Reports on an as needed basis.

(b) Scientific/Technical Reporting: Scientific/technical reports and products provide the results of scientific and technical studies, investigations that relate to research, development, demonstration, and other specialized areas such as environmental and health protection and waste management. These reports/products must be accompanied by the appropriate DOE Form 241, "Announcement of Department of Energy Scientific and Technical Information".

i. Generally, the DOE Project Officer should request only a final Scientific/Technical Report.

ii. While the DOE Project Officer may require a Scientific/Technical Report at the end of a phase, he/she should not require annual reports. Progress Reports provide sufficient information to monitor progress.

(c) Special Status Reports: Special Status Reports provide notice of problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or have a significantly unfavorable impact on the project.

(2) Non-R&D Awards: A Non-R&D award should generally require only periodic Progress Reports and Special Status Reports. A final Progress Report is usually sufficient to determine whether the objectives of a non-R&D project have been accomplished.

(b) The DOE Contracting Officer is responsible for

(1) Incorporating an appropriate Federal Assistance Reporting Checklist (DOE F 4200.2) and instructions in the award. This includes:

(a) Ensuring that the DOE Project Officer selected the minimum management and scientific/technical reports necessary to monitor progress and report results.

(b) Specifying the financial reporting requirements.

(c) Specifying closeout reporting requirements.

(2) Assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance, is financially unstable, has

ontracting Officers should be aware of specific program requirements and work with program fficials to ensure that funding opportunity announcements (FOAs) are consistent with these equirements and the above principles. The FOA should include merit review criteria that assess ae recipient's abilities to manage projects consistent with the level of risk involved in the roject. For large research and development projects, the FOA template includes a "Project vfanagement Plan." requirement that should be included in the FOA.

Speciall terms and conditions may be required for awards with project performance risks. These could include structuring budget periods around go/no-go decisions, special reporting requirements or payment schedules.

22 Announcement of Funding Oppot tunity

22.1 Synopsizing the Oppmiunity

The Contracting Officer is responsible for ensuring that all discretionary grant and cooperative agreement funding oppmiunity announcements and modifications to the anuouncements are posted to the Grants.gov FIND Internet site via the Industry Interactive Procurement System (UPS)) at the same time that the announcement is posted on IIPS. The Contracting Officer must:

- Develop the Funding Opportunity Announcement in accordance with paragraph 2.2.2 below.
- Ensure that the program office has a valid Catalog of Domestic Assistance (CFDA) number for the anuouncement.
- Go to "Create FA Oppoliunity" and complete the "Financial Assistance Form" (i.e., synopsis information)). This form includes all the required data elements for posting a synopsis on Grants.gov FIND site.
- Ensure that "Yes" is checked for the field "Auto-Post Anuouncement to Grants.gov FIND Site?".
- Upload the anuouncement file to the "File Upload" section and click on "Submit Form."

Only those opportunities that will result in the receipt of applications should send a synopsis to Grants.gov. Contracting Officers may use FedBizOpps, the Federal Register, the special am10uncement feature of UPS, or any other means to issue requests for information or similar actions.

2.2.2 Funding Opportunity Anuouncement

(a)) Preparation

Pre-applications are a useful tool for obtaining information, providing feedback and reducing the number of poor or non-responsive applications. The program announcement should indicate whether or not pre-applications are required. If pre-applications are required, the program announcement must state that it is a mandatory requirement and describe the content of the pre-application, page limitation, and how the pre-application will be evaluated and used.

2.3.2 Applications

An application is the written or electronic request for financial assistance. An application is required for all financial assistance projects or programs. In general, the application should include:

(1) A face sheet containing basic identifying information. The face sheet shall be the Standard Form (SF) 424 or other Government-wide application form;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's implementation plan;

(3) A budget with supporting justification; and

(4) Any required pre-award assurances.

Instructions on the format and required forms for an application package must be included in the program announcement. The program announcement must also include instructions on where and how to submit the application.

2.3.3 Unsolicited Applications

An Unsolicited Application is an application for support of an idea, method, or approach, submitted by individuals, businesses, and organizations solely on the applicant's initiative, rather than in response to a Govermnent program announcement. Financial assistance awards resulting from unsolicited applications are considered noncompetitive actions.

DOE encomages the submission of unsolicited applications that will contribute to its mission objectives. The Department considers proposals in all areas of energy and energy-related research and development with emphasis on long-term, high-risk, high-payoff technologies. An unsolicited application may be accepted by DOE if it:

- Demonstrates a unique and innovative concept, or demonstrates a unique capability of the applicant;;
- Offers a concept or services not otherwise available to the Govern en ; and,
- Does not resemble the substance of a recently completed, cuITent or pending competitive announcement..

applications, and (2) the policy is implemented for all discretionary financial assistance activities under their cognizance whether conducted in headquarters or at a field activity.

DOE has published the "Department of Energy Merit Review Guide for Financial Assistance and Unsolicited Proposals". This Guide can be found at http://www1.pr.doe.gov/meritrev.wpd.

2.4.3 Program Policy Factors

Program Policy Factors may be used during the selection process to provide for consideration of factors that are not indicators of the application's merit. The purpose of considering these factors is to maximize the effectiveness of available Government funding and to best achieve DOE program objectives. These factors should be as objective and clearly stated as possible. For example, program policy factors may reflect the desirability of selecting projects based on geographic distribution, diverse approaches, or complementary efforts. Such factors should be specified in the program announcement or program rule to notify applicants that factors essentially beyond their control will affect the selection process. A written justification of the application of the program policy factors should be prepared by the selection official or designated reviewer.

2.4.4 Selection

The Selection Official reviews the Merit Review Summary Statements and Ranking Sheet, applies the program policy factors, and prepares a statement to document the selection of applications to receive funding. The selection statement should address the following items:

(1) Title and number of program announcements
(2) The Summary Statements for the Merit Review
(3) The Merit Review Ranking Sheet
(4) Justification on the application of program policy factors
(5) Identification of selected applications and proposed funding
(6) Other information as applicable

2.5 Award Considerations

2.5.1 Budget Review

(a) The budget review is performed after the Selection Official selects those applications to be considered for negotiation of an award. While budget reviews are the responsibility of the Contracting Officer (CO), he/she should rely heavily on the technical and cost input provided by the program/project office.

In conducting budget reviews, the CO may obtain pre-award audits or consult cost and/or technical specialists. Audits are not necessary or customary to complete the

g. Is the applicant in a partnership or consortium? If yes, have the relationships among each member been described and are all included in the budget?

(2) Personnel

a. Have individuals or positions been identified?

b. Are time commitments for individuals and/or positions stated? Are they reasonable?

c. Are the time commitments less than 100%?

d. Do the levels of personnel (experience/skill/education, etc.) correspond to the project description? Will the personnel be able to successfully perform the project?

e. Is the compensation consistent with that paid similarly skilled employees internal and external the applicant organization?

(3) Travel

a. Are the proposed trips identified and a purpose indicated?

b. Are the proposed trips reasonable in number for the purpose(s) stated?

c. Are the number of people traveling on each trip reasonable?

c. Are less expensive methods such as video conferencing, webcasts or conference calls available?

d. Are the travel costs consistent with the applicant's established travel policy?

(Remember applicants do not have to conform to federal per diem rates and are not eligible for federal rates on airfare or at hotels.)

e. If business or first class airfares are included, have they been sufficiently justified to determine reasonableness?

(4) Equipment

a. Is the unit cost for each item to be purchased clearly indicated?

b. Is the need for the equipment adequately justified?

c. Are the cost estimates for equipment purchases reasonable?

(5) Contracts

a. Have the goods or services to be acquired been described?

b. Do the costs appear reasonable?

4. Serious deficiencies in program or business management systems (e.g., substantial failure to comply with the financial management standards or procurement standards in 10 CFR 600)).

5. A history of unsatisfactory performance, material violations of award terms and conditions, or large cost disallowances on previous awards from the same or other Federal programs.

Contracting Officers should consider incorporating special award conditions of a programmatic and/or administrative nature if an organization exhibits one of these risk factors. The potentially adverse impact of a particular special condition(s) on an awardee's ability to carry ont the program must be considered and be balanced with the need to protect the Government's interests. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected. Special award condition(s) may include, but are not limited to, one or more of the following, as appropriate for the specific award or awardee::

(1) Use of a reimbursement payment method rather than advance funding.

(2) More frequent financiall or progress reporting than otherwise required.

(3) Technicall assistance from DOE or access to additional resources from DOE.

2.5.5 Payment Methods

Payment may be made by either advance or reimbursement. The determination of the payment method is dependent upon the results of the financial management assessment. Advance payment may be made only if the minimum standards in 10 CFR 600.122 are met for non-profits, universities and hospitals. Advance payment to for-profit organizations may be used only in exceptionall circumstances as prescribed in 10 CFR 600.312(b)(2) and as approved by the Contracting Officer.

Advance payment, via the Treasury Department's Automated Standard Application for Payment (ASAP)) system, is the preferred method of payment for grants and cooperative agreements with non-profits, universities and hospitals. The Contracting Officer may determine that payment by reimbursement is appropriate if special conditions are applicable to the award.

2.5.6 Cost Sharing

A Department-wide cost sharing requirements is established by Section 988 of the Energy Policy Act (EPAct)) of 2005 for most research, development, demonstration, and commercial application activities initiated after the date of enactment of EPAct 05 (August 8, 2005). Some programs authorized in other sections of EPAct 05 may have specific cost sharing requirements.. The Secretary has been granted the authority to reduce or eliminate cost sharing requirements for applied research and development as necessary and appropriate.

(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, grant, or other agreement should include appropriate provisions on cost allowability.

3. 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.

4. 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 determines that a research or development activity is of a basic or fundamental nature, than the activity is excluded from the cost sharing requirement.

Research or Development Activities of an Applied Nature - The Secretary 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 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.

2.5.7 Competition and Merit Review

(a) Section 989 of EPAct 05 requires competitive awards to 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.

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/FOAs 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.

(b) Additional Considerations

1. Conflict of Interest

DOE Program Officials and Contracting Officers need to consider conflicts of interest when determining if Labs are eligible to compete in accordance with Section 989. Conflicts of interest may exist due to previous efforts performed by the Labs or assistance provided in program direction and other mission related activities.

A request for Labs to identify potential conflicts should be included in the FOA. The award file should include a written determination that no conflicts exist or conflicts have been satisfactorily mitigated prior to award to a Lab.

2. Pre-Award Costs

DOE Labs are not authorized to incur or be reimbursed for pre-award costs. Labs should not incur costs, other than Bid and Proposal costs, prior to receipt of a work authorization under DOE O 412.1A, Work Authorization System.

3. Bid and Proposall Costs

Bid and proposall costs should be handled in accordance with DEAR 970.3102-05-18 and the Labs' standard accounting procedures.

4. Merit Review Criteria

Merit review criteria must be crafted to ensure that the information requested for review does not provide an unfair advantage to the Labs due to their unique relationship with DOE. For example, facilities and equipment may provide an advantage to the Labs because of this unique relationship. Care must be taken to make the merit review criteria as fair and objective as possible. If necessary, state in the FOA how any advantages would be mitigated during the evaluation and selection phases.

Merit review criteria should not include consideration of cost or cost share if Labs are eligible under an FOA. Cost and/or cost share should only be considered in the selection decision.

The DOE-wide announcement template on the Industry Interactive Procurement System (IIPS) provides a link to the GC web site where the IP provisions are maintained. Thus, awarding offices are not required to include the various patent and data rights provisions in announcements of funding opportunities. Applicants are able to access the IP requirements by clicking the link in the announcement.

The Contracting Officer must:

a. Ensure that appropriate patent and data provisions are included in an award.

b. Consult with Patent Counsel if the applicable standard set of IP provisions is not appropriate or if there are unique mission requirements.

c. Negotiate, in consultation with Patent Counsel and the DOE/NNSA Project Director, special patent and data clauses if necessary to satisfy the mission requirements of a particular program.

d. Ensure that the Final Invention and Patent Report, if required, is identified on the Federal Assistance Reporting Checklist in the award and is submitted to DOE.

2.5.10 Fixed Obligation Awards

As provided in 10 CFR 600.29, Fixed Obligation Awards, DOE Contracting Officers may make grants and cooperative agreement awards on a fixed obligation basis for projects that do not require Federal monitoring or reviewing of actual costs incurred. Fixed Obligation awards may not exceed $100,000 nor be more than one year in length.

The proposed recipient should submit a budget and sufficient documentation to allow the Contracting Officer to determine that the amount requested is fair and reasonable for the project description and the deliverable(s) identified. A written analysis should be made on the allowability, allocability and reasonableness of the budget. The award document should indicate only the total dollar value approved. No budget should be included in the agreement, however any special restrictions due to budget concerns should be documented in the agreement.

Fixed obligation awards may not include mandatory cost share. Any other cost sharing, such as program income, should be evaluated as part of the budget review, but need not be identified in the maximum obligations clause. If applicable, direction should be provided to add program income to the funds committed to the project, and to use program income to further eligible project objectives.

The budget period and project period identified on the Notice of Financial Assistance Award, DOE F 4600.1, must indicate the same time period and be no more than 12 months.

Extensions to fixed obligations awards require a deviation to 10 CFR 600.29. The award document must not authorize extensions in accordance with 10CFR 600.26(d).

olicy Act (NEPA)) and other ES&H requirements. It is also incumbent upon the applicant to lentify in its application any potential adverse impacts which may result from project activities. Vhem appropriate, applications should be reviewed for compliance with NEPA procedural equirements at 10 CFR 1021..

2.6 Notifications

2.6.1 Congressional Notification

Notification of award is made via the Advanced Award Notification System and DOE F 4220.10). The instructions to DOE F 4220.10 provide the dollar thresholds for notification but in general, any award to a nonprofit, educational institution or state, local or tribal government of $50,000 or more, or an award of $500,000 or more for any other entity, needs to be reported..

2.6.2 Notification to Successful and Unsuccessful Applicants

Contracting Officers should ensure that notification is made to all applicants on the selection or non-selection of their applications.. Unsuccessful applicants should be notified in writing that their applications were not selected for award and provided with a brief explanation as to why.. After consultation with the Contracting Officer, the notification to the unsuccessful applicants should be prepared and signed by the Selection Official, with a copy to the Contracting Officer for the official record. Successful applicants should be notified as soon as possible to commence negotiation leading to the execution of the Notice of Financial Assistance Award..

2.7 FAADS

The Bureau of the Census operates the Federal Assistance Award Data System (FAADS), which is the central source of data on domestic assistance programs of the Federal government. These domestic assistance programs are detailed in the Catalog of Federal Domestic Assistance (CFDA)). The Department reports its financial assistance data to FAADS through the Procurement and Assistance Data System (PADS). All awards should be reported to PADS within five working days of execution by completion of an Individual Procurement Action Rep01i.. The IPAR and the IPAR handbook are available at http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/FinancialAssistance/Financial+Assistance+Forms?OpenDocument.

Additional information on reporting is available at Federal Assistance Award Data System.

lequests for pre-award costs for periods exceeding 90 calendar days must be approved in ldvanced by the Contracting Officer. The decision to approve pre-award costs exceeding 90 fays should consider items such as: (1) time between selection and award, if competitive; (2) time between receipt of application and award, if non-competitive; (3) value to the overall success of the project; (4) severability of funded project to recipient's overall activities; (S) effect on total budget; and (6) statutory authorization and appropriations for the programmatic area.

The effective date is the date specified in the grant notice. If no effective date is specified, then the beginning date of the project period for the grant is the effective date. Pre-award costs for renewal awards should specify an effective date; generally the date of award, not the budget/prj ect period starts.

3.3 Budget and Project Periods

(a) Project periods for both grants and cooperative agreements should generally be no longer than five (S) years in length, unless the Head of Contracting Activity approves otherwise. A determination and findings that the longer project period is necessary for the success of the project should be included in the file.

Recipients, other than SBIR and fixed obligation award recipients, may authorize a one-time extension of the expiration date of the agreement of up to 12 months if additional time beyond the established project and final budget period is required to assure adequate completion of the original project scope within the funds already made available. This one-time extension may not be exercised merely for the purpose of using unexpended funds. Recipients are not authorized to extend an award that contains a zero balance. The recipient shall notify DOE in writing of the extension, providing supporting reasons for the extension and the revised expiration date, at least ten days prior to the expiration date specified in the agreement. The award instrument should be modified to indicate the new project period end date. A one-time extension does not require HCA approval, even if the total project period is extended past five years.

(b) The budget period is the interval of time, specified in the award, into which a prj ect is divided for budgetary purposes. Typically, budget periods are established on an annual basis. In some cases, shorter or longer budget periods may be established for compelling programmatic or administrative reasons, such as to allow for prj ect phases not evenly divisible with 12-month increments or to provide program personnel with logical decision points to evaluate whether the project should proceed. Project periods less than 12 months should have co-extensive budget and project periods.

CHAPTER 4 - ADMINISTRATION

4.1 Monitoring Project Performance

4.1.1 Recipient Responsibilities

A recipient has full responsibility for the conduct of the project or activity supported and for the results achieved. The recipient should monitor the performance of the project to assure adherence to performance goals, time schedules or other requirements as appropriate to the project or the terms of the agreement. The recipient is responsible for monitoring the activities of and pass through requirements to any sub-recipients.

4.1.2 Federal (DOE) Responsibilities

It is DOE policy to limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve program objectives and ensure conformance with requirements of the grant or cooperative agreement. DOE's role is that of a partner where the Government provides the financial assistance and the recipient carries out the project activities.

Monitoring is a process whereby the programmatic progress and financial and business management aspects of a financial assistance award are reviewed by assessing information gathered from program and financial reports, site visits, teleconferences, and other means. DOE requires financial assistance recipients to have adequate management systems to ensure that project objectives are met and funds are properly spent. To the extent possible, financial assistance award monitors rely on the management systems of the financial assistance recipients to meet project objectives, comply with award terms and conditions, and account for funds.

4.1.3 Lobbying

Contracting officers should monitor recipient performance to ensure inappropriate activities are not conducted and no lobbying costs are incurred. Performance may be monitored through the review of performance, technical and financial reports. Site visits are recommended for high risk recipients, e.g. recipients who (1) are non-profit organizations, (2) have lobbying affiliates, (3) have ongoing projects with DOE to promote specific energy technologies and (4) rely on DOE to provide the major source of income.

A special audit or review of the recipients records may be requested to make cost determinations if the summary level information provided is insufficient to determine whether costs have been expended for inappropriate actions. Special audits are performed at the request of the Contracting Officer and are in addition to the recipient's requirement to arrange for an annual single audit or annual indirect cost audit.

3 Continuation Awards

'ontinuation award means a non-competitive award for a succeeding or subsequent budget ,eriod after the initial budget period of an approved project period. Funding for continuation twards is contingent on DOE approval of a continuation application. The content of the ;ontinuation application should be included in the agreement's terms and conditions.

Continuation funding is contingent on (1) availability of funds; (2) satisfactory progress towards meeting the objectives of the approved application; (3) submittal of required rep01ts; and (4) compliance with the terms and conditions of the award. The Contracting Officer and Project Officer review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. A continuation application shall not be required to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

4.4 Renewall Awards

Renewal awards "add" one or more budget periods and extend the project period. Discretionary renewal awards may be made on the basis of a solicitation; or on a noncompetitive basis when reviewed for merit and justified in accordance with 10 CFR 600.6(c), Eligibility. Renewal applications should be submitted no later than six months prior to the scheduled expiration of the project period unless a program rule or other document establishes a different application deadline. Before DOE may make a renewal award or a formula award, the recipient must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

4.5 Audit Requirements for States, Local Governments and Non-Profit Organizations

4 5.1. General

All States, Local Governments and Non-Profit Organizations that expend over $500,000 in Federall funds in any year are required to have a single audit conducted in accordance with 0MB Circular A-133. This requirement flows down to subrecipients that meet the dollar threshold!. An independent auditor shall perform the audit in accordance with the Government Auditing Standards and must:: 1) audit and provide opinions on the fair presentation of the financiall statements and the schedule of expenditures of Federal awards; 2)) gain an understanding of internal control over Federal programs and 3) audit and provide an opinion on compliance with requirements for major programs.

Any entity that does not meet the threshold for expenditures is not required by 0MB Circular A-133) to have a single audit performed!. However, if a Contracting Officer determines speciall circumstances make a review or audit necessary, such a requirement should be included in the terms and conditions of the award as a special condition.

(a)) Audit Objective:. The single audit provides an independent, cost-effective tool for obtaining information on the recipient's financial management practices and

Recipients are responsible for retaining an independent auditor; providing the auditor with all necessary information for the audit; and submitting the audit to the Clearinghouse.

Recipients are responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the recipient shall prepare a summary schedule of prior audit findings. The recipient shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include findings reported in the prior audit's summary schedule of prior audit findings except findings listed as corrected. Subpart C, Section .315 of OMB Circular A-133 provides specifics on the summary schedule and the correction action plan.

Recipients are also responsible for monitoring sub-recipients that are required to submit an audit based on the expenditure of Federal funds under their project.

(b) Auditor Responsibilities. The auditor is responsible for performing the audit in accordance with generally accepted government auditing standards, i.e., "The Yellow Book"; assessing whether the auditee has complied with laws, regulations and agreement provisions that have a direct effect on the Federal programs where funds have been expended; testing the internal controls and financial management systems; and follow-up on prior audit findings and assess the reasonableness of the corrective plans and actions.

The auditor is responsible for preparing a report which includes an opinion on whether the financial statements are presented fairly; statements on internal controls; a statement on compliance which includes an opinion as to whether the auditee complied with the laws, regulations and agreement provisions; and a schedule of findings.

Audit findings are required to include: (1) a deficiency in internal controls; (2) a material noncompliance with the laws, regulations or agreement provisions; (3) detected fraud; (4) misrepresentation of the status of a prior finding; (5) questioned costs which exceed $10,000 for non-major programs; and (6) questioned costs which exceed $10,000 for each type of compliance requirement for major programs.

The auditor is required to assist the recipient in the preparation of the data collection form, SF-SAC, by completing specific components and sections.

(c) Responsibilities of Pass-Through Entities. A pass-through entity is responsible for monitoring its subrecipient(s) and ensuring that those that expend Federal funds meet the requirements of OMB Circular A-133.

4.5.3 Agency Responsibilities

Federal agencies are responsible for ensuring that audits are completed and reports received in a timely manner and in accordance with the requirements of this part; for providing technical advice and counsel to auditees and auditors as requested; for issuing a management

Contracting Officers should check the database for previous audit reports, questioned costs, corrective action plans and their resolution, and document the file with the findings from the review. Copies of the supporting audits may be obtained from the Clearinghouse if not previously received by the Contracting Officer.

Potential recipients with prior audit findings and corrective action plans should be considered for special conditions, payment by reimbursement or other controls to ensure that the fonding is properly used.

(b) During the Project Period. The Clearinghouse should be checked when reviewing the continuation award package just as in the pre-award phase. Recipients that were held to special conditions or controls that have shown improvement in their audits should have those conditions or controls lessened or removed. New conditions or controls should be placed on recipients that have had negative audit findings since the start of the project or that have not submitted the audit(s).

(c) Post-Award and Close-out. Audits should be reviewed during the close-out process to ascertain if any negative audit findings will affect the agreement. An agreement should not be retired if the audit findings would impact the budget or other terms and conditions.

4.6 Reporting

(a) Generally, the DOE Project Officer is responsible for monitoring Progress Reports and Special Status Repo11s and the Contracting Officer is responsible for monitoring the receipt of other rep01is.

(1) The Contracting Officer should ensure that these roles are clearly understood and that the DOE Project Officer understands his/her responsibilities for monitoring the receipt of reports and the required follow-up actions.

(2) Contracting Officers and DOE Project Ofi cers should keep each other informed if reports are not received.

(3) Each Contracting Activity must establish procedures that ensure reports are received and that Scientific/fechnical Reports are sent to OSTI. Contracting Activities are encouraged to send reminders to appropriate recipient officials a few weeks before a reporting period ends. This will prevent rep01iing delinquencies due to mere oversight on the part of the recipient and so reduce the need for follow-up action.

(b) Contracting Officers should take the following actions for overdue reports:

1. Immediate follow-up action:: When a repo1i has not been received by the terms of the award, the Contracting Officer should contact the recipient by telephone or electronic mail to advise of the delinquency.

(c) Making a site visit to determine whether the recipient is violating other terms of the award or perfonning an audit of the award.

(d) Awarding no discretionary funds while the report is overdue for all or some of the other eligible projects or activities conducted by the recipient.

(e) Consulting with the legal counsel to consider legal action for recovery of funds and other legal remedies that may be available.

(c) When a report is overdue, the only acceptable reasons for waiving the reporting requirement or setting a new due date shall be that: 1) the report cannot be furnished in a timely manner for reasons legitimately beyond the control of the recipient; or 2) the purposes for which the report is to be used will be accomplished through other means. The recipient should be informed or reminded of this policy in the first letter sent when a report becomes overdue or in the notice of payment withholding.

47 Indirect Rates

(a) Except as otherwise provided, all project grants and cooperative agreements awarded by the Department shall include funds for the amount of indirect costs applicable to the grants, based on the most current rate(s) available at the time of the award.

1. Indirect cost reimbursement on grants awarded under programs with statutory prohibitions or limitations against the reimbursement of indirect costs shall be made in accordance with the restrictions.

2. The total amount awarded (direct plus indirect) shall constitute a ceiling on the amount payable to the grantee for a grant. The award of a grant shall not obligate the Government to make any supplemental or other award for additional indirect costs or for any other purpose.

3. Funds should be included for indirect costs associated with any additional direct costs awarded for the expansion or extension of a project. Additional direct costs awarded for other reasons may be accompanied by associated indirect costs at the granting agency's option.

(b) During the project period, reimbursement of indirect costs, while generally based on the current approved rate, is not dependent on the rate used to negotiate the total project cost. Reimbursement is however limited by the budgeted dollar amount for indirect costs. If during the project period, indirect costs are less than the budgeted amount, recipients may use the difference to pay additional direct costs. Recipients are expected to manage their indirect costs, DOE will not amend an award solely to provide additional funds for changes in indirect cost rates.

(c) At the completion of the agreement, the closeout process will include audits of indirect rates and incurred costs. If the DOE share of the incurred costs is less than the amount reimbursed

CHAPTER 5 - ENFORCEMENT AND TERMINATION

5.1 Suspension and Termination

(a) In accordance with 10 CFR 600.25 (Suspension and Termination), DOE may suspend or terminate an award for cause. Before suspending or terminating an award, DOE provides the recipient a separate written notice sent by means that provide proof of delivery (e.g., certified mail, return receipt requested) prior to the effective date of the suspension or termination. The notice should be sent at least ten days prior to the effective date, and would include, as appropriate the following information and instructions:

The factual and legal bases for the suspension or termination;

The effective date or dates of the DOE action;

A description of the activities affected by the action (e.g., entire award or selected activities);

Instructions concerning which costs will be allowable during the period of suspension, or instructions concerning allowable termination costs, and instructions concerning costs for any subawards or contracts;

Instructions concerning required final reports and other closeout actions for the terminated award;

A statement of the recipient's right to appeal a termination for cause; and

The signature of the DOE Contracting Officer and dated signed.

(b) Suspension. Unless DOE and the recipient agree otherwise, no period of suspension should exceed 90 days. DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the recipient takes satisfactory corrective action before then or gives DOE satisfactory evidence that conective action will be taken. If the suspension has not been canceled by the expiration date of the period of suspension, the recipient may resume the suspended activities or project, unless, prior to the expiration date, DOE notifies the recipient in writing that the period of suspension will be extended or that the award will be terminated!.

As of the effective date of suspension, DOE will withhold further payments and should allow new obligations to be incurred by the recipient during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

If the suspension is canceled or expires and the award is not terminated, DOE will reimburse the recipient for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of perfo rmance.

(c) Termination. In addition to any situation where a termination for cause is appropriate, the recipient may initiate a termination of an award (or portion thereof). The recipient must notify

The Contracting officer may initiate any of these remedies concun-ently with the written notice or with less than a 30 day period for correction: (1) whenever there is evidence that the award was obtained by fraud; (2) the recipient ceases to exist or becomes legally incapable of performing its responsibilities under the award; (3) or if there is serious mismanagement or misuse of award funds necessitating immediate action.

APPENDIX 1 - GLOSSARY

Application. A written request for financial assistance.

Amendment. An amendment is the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award. Amendments are used to approve changes to the budget or in project activities, increase funding, and extend budget or project periods. A financial assistance amendment is similar to a bilateral modification in an acquisition contract.

Approved Budget. A budget and any revision that has been formally approved by DOE for canying out the proposed project or activity.

Assistance. Money, property, services, or anything of value transfened to a recipient to accomplish a public purpose of suppo1t or stimulation authorized by Federal statute.

Budget Period. An interval of time, specified in the award, into which a project is divided for budgeting and funding purposes. A budget period is generally a 12-month period beginning on the effective date of the award. The budget period may be other than 12 months to accommodate project phases or other requirements in the agreement. A continuation award is required to initiate subsequent budget periods. The budget for all periods may be approved at award. If a budget for an out-year period was not approved at award, it should be approved as part of the continuation award.

Cognizant Agency. The Federal department or agency responsible for negotiating indirect cost rates, conducting audits, and ensuring correction of system deficiencies of a paiticular recipient organization.

Continuation Award. An award for a budget period after the initial budget period for a multi-year project. The continuation award authorizes the expenditure of funds for the project to be performed during that for that period of time. A continuation award does not require competition. A continuation award is subject to the availability of appropriated funds.

Contract. A written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

Contracting Officer. An official of DOE authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

Cooperative Agreement. A financial assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is to accomplish a public purpose of supp01t or stimulation authorized by Federal statute, and substantial involvement between DOE and the recipient during the pe1fo1mance of the contemplated activity is anticipated.

Discretionary Award. An award under authority of a Federal statute that permits DOE to exercise judgment in selecting the recipient and the project to be supported, and in determining the amount of the award.

Project. The set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities.)

Project Period. The total amount of time for which the Depmiment promises to fund an agreement and authorizes the recipient to conduct the approved work of the project described in the application. Project periods of more than 18 months are usually divided into 12-month budget periods. When the Department awards a multi-year award, it obligates funds for only the first budget period.

Recipient. The organization, individual, or other entity which receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Renewal Award. An award which adds one or more additional budget periods to an existing project. Discretionary renewal awards may be made either on the basis of a funding opportunity announcement or on a noncompetitive basis when justified (see 10 CFR 600.6). Renewal applications should be submitted no later than six months prior to the schedule expiration of the project period unless a program rule or other document establishes a different application deadline. Before DOE may make a renewal award for a formula grant, the recipient must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

Solicitation. A document which requests the submission of applications for financial assistance and which describes program objectives, recipient and project eligibility requirements, desired performance activity, evaluation criteria, award terms and conditions, and other relevant information about the financial assistance opportunity.

Subawanl. An award of financial assistance by a recipient to an eligible subrecipient when specifically authorized by statute or program rule. The term does not include a contract under a financial assistance award.

Subrecipient. An organization, individual, or other entity that receives a subaward.

Terms and Conditions. The rights and obligations of the awarding party and the recipient or subrecipient set folih in statute, program rule, or otherwise set folih or incorporated by reference in the award or subaward document.

Total Project Costs The sum of all Federal and non-Federal contributions and the basis for determining cost share percentages.

Unsolicited Application/Proposal. A written request for DOE support of a project which is submitted without a solicitation made by DOE.

POLICY FLASH 2006-38

POLICY FLASH 2006-38

DATE: July 13, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Office of Inspector General Audit Program

SUMMARY: This Flash is to call your attention to the fact that the Office of Inspector General (OIG) has provided contractors' Internal Auditors the attached Audit Program for use in determining cost allowability beginning with 2005 costs.

The OIG has designed the Audit Program for use in the determination of the allowability of incurred costs in support of the annual submission of the Statement of Costs Incurred and Claimed (SCIC) by management and operating contractors and those other facilities management contractors subject to the OIG's Cooperative Audit Strategy. See AL 2005-10 and Acquisition Guide Chapter 97.04.

The OIG informs us that this Audit Program represents a revision to the audit program in the OIG Audit Manual's Chapter 19 (formerly Chapter 18), Exhibit C, and that the OIG will include this Audit Program on its website in the next revision to the audit manual. This Audit Program provides a logical sequence against which the contractor's Internal Audit Function may perform risk assessments to determine the methodology for performing allowability of cost audits. The Internal Auditors should audit contract costs at least once a year unless the Contracting Officer (CO) specifically approves otherwise. The OIG intends that a contractor's Internal Auditor Function may modify the Audit Program based on the assessment of risks associated with types of costs but must submit any significant departure from this Audit Program to the CO for approval.

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions concerning this Policy Flash should be directed to Robert Webb at 202-287-1338 or Robert.Webb@hg.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

SAMPLE AUDIT PROGRAM FOR ALLOWABLE COSTS REVIEWS

PURPOSE AND OBJECTIVE

PURPOSE AND OBJECTIVE

The purpose of the cost allowability audit is to determine whether costs charged to Department of Energy (DOE)) contracts are allowable, allocable, and reasonable per contract terms; Federal Acquisition Regulations (FAR) or 0MB Circulars, as applicable, and DOE Acquisition Regulations (DEAR); and Cost Accounting Standards as implemented by the contract terms. Specific guidance covering the three criteria for allowability and example audit steps for select cost areas are included in Appendix A.

This program is intended for use by contractor internal audit activities. The audit steps are general guidance and should be expanded or eliminated as necessary to fit the contractor's audit environment and risk assessment. The program is intended to provide a logical sequence to the audit fieldwork and to reflect a mutual understanding between the auditor and supervisor as to the scope required to meet auditing standards and the audit's objectives for allowable costs reviews. It is expected that those portions of the audit that are covered in other audits will be referenced and incorporated in this review.

II. AUDIT SCOPE

A. This audit will be accomplished by:

1. Obtaining the criteria for determining the allowability of costs.
2. Assessing internal controls designed to ensure that only allowable costs are claimed under the contract.
3. Testing transactions to determine ifnnallowable costs were claimed.

III. AUDIT STEPS

A. Preliminary Steps

1. Follow locall audit protocol for audit engagement notification.

2. Evaluate operations to determine whether major changes have occurred in:

   a. Direct/Indirect charging procedures and practices.
   b. Management culture.
   c. Organizational structure by comparing current organization charts and chalts from the prior year.
   d. Business volume, employee count,, the ratio and number of direct and indirect employees.
   e. Current internal control practices with regard to unallowable costs and the flow of transactions.

f. CAS Disclosure Statements, if applicable.
g. Direct and indirect labor accounts compared to prior year's budget for evidence of undisclosed changes in labor charging practices.

3. Perform the following Statement of Costs Incurred and Claimed (SCIC) analysis:

a. Reconcile the amounts in the SCIC to the general ledger (GL), subsidiary ledger, or trial balance. Obtain explanations for significant differences. Costs claimed in excess of amounts recorded in the financial systems would be questioned as unsupported.
b. Verify the mathematical accuracy of the SCIC.

4. Analyze operating statement accounts by:

a. Comparing the current GL or trial balance account balances (and if applicable, within pools and bases) to prior years to identify any changes in accounting practices or unexplained disproportionate changes in relative dollar value and obtain explanations from management.
b. Identifying unallowable costs for current and prior year.
c. Comparing the ratio of unallowable costs to total costs of related cost elements or groupings (travel, consultants, etc.) for the current and prior year, and obtaining explanations for significant changes.

5. Identify potential vulnerable areas from evaluating the following:

a. Prior year audit files.
b. Board or senior management meeting minutes for major decisions that affect the organization and operations for the year(s) being audited.
c. Company website, employee publications, press releases, and such for potential audit issues.

6. Review areas covered under other audits by:

a. Identifying audit issues from DOE site offices, OIG, external auditors, DCAA, or internal auditors through discussions and reviews of audit reports that may affect the audited costs.
b. Identifying the floor checks or other labor audits covering the fiscal year (FY) and performed during the FY.
c. Identifying on-going and completed assist labor and subcontract audits pertaining to the FY being audited. Note any findings for follow-up. If needed, coordinate with the subcontract audit authority or contracting officer and request assist audits for labor, subcontract costs, and home office and other intermediate allocations.
d. Identifying other assignments such as operations/performance, information technology (IT), financial controls, and systems surveys which affect the scope of this audit.

e. Determining whether to rely on the work of others such as IG, DCAA, or external auditors and documenting:

- A copy of the report and/or written confirmation of the work performed.
- The period and costs covered.
- A summary of the result(s) of the audit(s).
- A statement of the degree of reliance placed on the work of others (a statement of the audit scope covered by this reliance).

7. Evaluate contract provisions:

a. Look for indirect rate ceilings or cost categories that may not be billed directly on the contract(s). Note for comparison to any unexplained changes in charging patterns identified during the preliminary steps.

b. Obtain and review the DOE contract and appendices and prepare a listing of (i) expressly unallowable costs, (ii) costs with contractual limitations, which if exceeded, would be unallowable, (iii) costs requiring DOE approval.

8. Conclude on the review of preliminary steps to determine the issues (activities/actions) that have had or may have had an impact of cost allowability.

B. Internal Controls

Internal controls over major disbursement categories should be reviewed periodically, as applicable, to ascertain whether the system of controls established provides (i) reasonable assurance of efficiency and effectiveness of the disbursement process; (ii) for reliable financial reporting; and (iii) that transactions and costs incurred and recorded comply with applicable laws and regulations. Internal controls coverage may be provided by separate audit(s) scheduled and conducted as part of the annual internal audit plan.

The typical major disbursement categories are:

- Payroll
- Accounts Payable (Purchasing)
- Non-Purchase Order Areas (Procurement Cards, Check Requests, Special, Petty Cash, Other Process Specific)
- Travel

1. Review the results from the Internal Controls review(s) over major disbursement areas and determine the risk associated with claiming unallowable costs on the SCIC. Evaluate changes in internal controls over unallowable costs since the last audit. Assess whether an internal controls review over unallowable costs is needed to be done as part of this cost allowability audit or whether it is sufficient to perform limited or concurrent transaction testing to support the auditor's assessment and understanding of the internal controls over unallowable costs.

2. Obtain an understanding of the applicable internal controls over cost allowability in effect during the FY(s) being reviewed and document the policies, procedures, and systems for identifying costs as unallowable:

   - Document account names, numbers, and descriptions, type of costs charged, and whether the account(s) are used to accumulate unallowable cost.
   - Determine what funding is used to pay for these identified unallowable costs.
   - Document the transaction flow for unallowable costs to determine if the contractor pays directly for the cost or if it is first paid through DOE's letter of credit.

3. Determine which business systems, as defined by the DEAR, are required and have been reviewed and accepted by DOE. Determine the reasons for disapprovals of the systems.

4. Document the conclusions reached on internal controls over unallowable costs and identify any internal control deficiencies that would impact cost allowability. Material internal controls weaknesses over unallowable costs should be reported.

C. Risk Assessment Determination

Based on steps performed at III.A and III.B (preliminary and internal controls), assess risk associated with specific general ledger accounts, group of accounts, or departments. Some areas are considered to have significant inherent risks and should be included annually.

If risk of an unallowable cost is assessed at maximum (the internal controls are non-existent or ineffective to prevent the contractor from claiming unallowable costs), the auditor needs to perform extensive testing of transactions in order to reach a conclusion on the allowability of cost.

Select expense accounts for transaction testing and the sampling methodology to be used. It is expected that a recognized statistical sampling methodology be used to sufficiently reach a conclusion on the allowability of costs and permit the projection of unallowable costs. Valid statistical results can best be achieved when applied to a homogeneous universe. For certain cost categories, a judgmental sampling methodology may be used. In those circumstances, the rational for using judgmental sampling should be clearly documented in the auditor's workpapers.

Document the sampling technique, including confidence and precision level (if statistical), to be used on each account or group of accounts to obtain efficient use of resources.

D. Transaction Testing

Total costs incurred should be identified, analytically reviewed by transaction type or account/resource category and may be grouped into the following major disbursement categories:

- Payroll
- Accounts Payable (Purchasing)
- Non-Purchase Order Areas (Procurement Cards, Check Requests, Special Disbursements, Petty Cash, Other Process Specific)
- Travel

The major disbursement categories may be further segregated into specific categories as identified in Appendix A. The nature, amount, and extent of the transaction testing as well as the sampling methodology used should be based on the results of the planning, internal control, and risk assessments sections of the program (III.A through III.C). In addition to testing of identified high-risk area, some transaction testing should be performed annually in major disbursement categories where the auditor has determined that the risk of claiming unallowable costs is low. The additional testing should be done to validate the assessment that risk is low and controls are functioning as intended. The nature, amount, and extent of additional transaction testing should be adjusted accordingly.

Appendix A provides guidance on attributes that should be evaluated when performing transaction testing. The Appendix A attributes listing is not intended to be all-inclusive and should be modified to fit the contractor's audit environment and risk assessment. Annual transaction testing should include tests of contractual provisions and limitations for unallowable cost being incurred and claimed.

E. Audit Completion

1. Follow local audit protocol for audit engagement completion.

APPENDIX A

GUIDANCE FOR ALLOWABLE COSTS TRANSACTION TESTING

ppendix A is divided into two sections. Section I provides general guidance for the determination of the lowability of costs and is applicable to any cost selected for review. Section II describes transaction sting for 14 common cost areas in the disbursement processes and **should be modified to fit the ontractor's audit environment and risk assessment.**

GENERAL GUIDANCE WHEN REVIEWING FOR ALLOWABILITY OF COSTS

The following 5 sections provide general guidance for reviewing any cost selected for determining cost allowability.

A. General

1. Was the cost for an actual item received or service rendered?

   a. Review supporting documentation to conclude that the cost represents an item received or effort provided.
   b. Review properly completed and approved vendor invoices, canceled checks, or other documentation to determine if the cost is supported.
   c. For equipment, confirm that the item exist and review receiving report and equipment inventory record.
   d. For material, review receiving report, bill of material, logs, quality assurance report, or stockroom records.
   e. If sufficient documentation cannot be obtained to support a cost, interview personnel to the extent necessary to conclude that the cost was allowable.
   f. If the auditor cannot be satisfied that the cost was incurred, the cost is considered to be unsupported and therefore unallowable.

2. Is the cost properly classified by expense category?

   a. Determine if costs are identified and recorded in the appropriate expense category.
   b. Identify if a portion of the expense should be separately categorized.

3. Are the dollar amounts accurate?

   a. Recompute extensions, allocations, and formulas to determine if the amount of the cost is accurate.
   b. Determine if the vendor invoice rates agree with prices established in the purchase order.

4. Can the cost be traced to subsidiary and general ledgers?

   a. Verify that the cost was properly recorded in the general ledger and any supporting subsidiary ledgers.
   b. Verify that the cost was charged to the fiscal year in which it was incurred.

5. Is the cost's treatment consistent with other similar transactions?

   a. Evaluate whether the cost was treated consistent with similar costs.
   b. Evaluate if the cost was recorded against the same expense code and expense category (direct/indirect) as like costs.

6. Is the cost an accrual?

   a. Determine if accruals are based on supported estimates.
   b. Determine whether estimates appear to be significantly overstated or understated to compensate for a year-end funding excess or shortfall.
   c. Determine if any improper accruals impacted the allowability of costs claimed.

B. Applicability to the Contract

1. Does the cost have special terms and requirements per the contract?

   a. Refer list identified at III.A.7.
   b. Determine if the cost represents a cost that the contract defines as unallowable.
   c. Determine if the cost complies with applicable contract ceilings and limitations.
   d. Determine if prior CO approval was obtained or prior CO approval is required for this cost.
   e. Determine whether the cost violates CO rulings, interpretations, or guidance.

2. Is the item or service related to the contract effort (allocable)?

   a. Evaluate whether the item received or service rendered generally appears to be related to the contract effort. Be alert to costs that should have been charged to the other activities outside the scope of the contract.
   b. Evaluate whether the item received or the service rendered was related to the account to which it was charged.
   c. Determine whether the cost duplicates the types of costs covered by a management allowance or fee arrangement.

C. FAR 31 – Cost Allowability (OMB Circular)

1. The following costs are expressly unallowable per FAR 31, however, the auditor must check with the FAR for additional information:

- General Advertising/Public Relations
- Alcoholic beverages
- Bad debts
- Contingency reserves
- Contributions and donations
- Dividends or other profit distributions
- Excess depreciation
- Entertainment
- Fines, penalties, and mischarging costs
- First-class/business class air travel
- Goodwill amortization
- Insurance for catastrophic losses
- Interest and related taxes for refinancing
- Certain legal expenses
- Lobbying costs
- Losses on other contracts
- Organization expenses and related taxes for reorganizing
- Certain relocation and
- Certain taxes for federal income and excess profits

D. Cost Accounting Standards (CAS) Allocability

1. Does the accounting treatment comply with applicable CAS?
2. Ascertain whether the cost complies with the applicable CAS requirements.

E. Reasonableness

1. Is the cost reasonable per FAR 31.201-3, *Determining Reasonableness*?

   a. Ascertain whether the cost exceeds that which would be incurred by a prudent person in the conduct of competitive business or as ordinary and necessary for the conduct of business or the contract performance.
   b. Determine if the cost followed generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations.
   c. Determine whether the costs comply with contract clauses and contractor's established policies and procedures.

II. GUIDANCE FOR DETERMINING THE ALLOWABILITY OF COSTS IN SPECIFIC COST AREAS

The following 14 common cost areas are included in disbursement processes where unallowable costs may be claimed. The listing is not intended to be all-inclusive and should be modified to fit the contractor's audit environment and risk assessment. Attributes for each cost area is provided

below for use when performing transaction testing of these areas. If it is determined that there is a high risk of incurring an unallowable cost in any of these areas, costs should be grouped into a homogeneous population for the appropriate sampling methodology and transaction testing.

A. Travel Costs
B. Relocation Cost
C. Dues, Memberships, Conferences, and Subscriptions
D. Public Relations and Advertising Costs
E. Payroll and Related Costs
F. Employee Welfare and Morale Expenses
G. Professional and Consultant Service Costs
H. Subcontract Costs
I. Purchased Labor
J. Lobbying Costs
K. Costs Related to Legal and Other Proceedings
L. Procurement Card Purchase
M. Accounts Payable Purchases
N. Costs Transfers

The guidance below is applicable and unique to the type of expenses under review:

A. Travel Costs

1. Review travel policies and procedures.
2. Determine if travel costs were computed according to the reimbursement rates and are properly authorized and incurred in accordance with the travel policies and procedures.
3. Determine whether proper documentation exists per FAR 31.205-46(a)(7). Receipts and information should include date and place such as city, town, and/or county, purpose of the trip, and name of person on trip and that person's title or relationship to the contractor.
4. Determine whether costs for lodging, meals, and incidental expenses are consistently followed and are allowable per rates established by government travel regulations.
5. Ensure that airfare costs are limited to the lowest customary standard, coach, or equivalent airfare offered during normal business hours. Exceptions are allowed for special circumstances and are set forth in FAR 31.205-46(d).
6. Contractors may receive cash rebates or free tickets directly from airlines under a prefer vendor arrangement (not individual frequent flyer miles.) Such rebates and refunds should be 'returned' to the government in the same manner in which the original costs were incurred, where practical and be consistent with the contractor's policies for treating refunds and credits.
7. If air travel is via private aircraft, determine whether they comply with FAR 31.205-46(d). Generally, travel via private aircraft in excess of the standard commercial airfare is unallowable unless an advance agreement has been executed.
8. Ensure that proper documentation is maintained for all travel via private aircraft per FAR 31.205-46(e)(2).

9. Review travel outside the Continental United States or any travel of more than 21 consecutive days for documentation of proper authorization.

B. Relocation Costs

1. Review costs for compliance with standards in FAR:

   a. FAR 31.205-35 defines relocation costs as costs incident to the permanent change of duty assignment for a period of 12 months or more of an existing employee or upon recruitment of a new employee.
   b. FAR 31.205-46 defines rules for travel related to relocation for the employee and the employee's family to the new duty station and for house hunting trips.
   c. FAR 31.205-46 allowable maximum government travel regulation per diem rates for lodging, meals and incidental expenses apply to contractor employees while traveling for house hunting trips and travel to the new duty station. These criteria do not apply to temporary quarters allowances because the employee is not considered to be on official business travel while in temporary quarters.
   d. Certain duty assignments, principally overseas locations, are accompanied by "location allowances." The location allowances represent compensation in addition to normal wages and salaries per FAR 31.205-6. Any travel costs to an overseas location should be considered travel costs in accordance with FAR 31.205-46.

2. Compare the cost to the list in FAR 31.205-35(a) and (c) for specifically allowable relocation costs.
3. Evaluate the contractor's policies and procedures and the employment agreements to determine reasonableness and compliance with FAR requirements.
4. Determine whether relocation costs are reasonable and allocable, and meet the four criteria listed in FAR 31.205-35(b).
5. Verify that a refund or credit was provided to the government if the 12-month requirement of a permanent change of duty assignment agreement for reasons within the employee's control requires was not met per FAR 31.205-35(d) except as waived by FAR 31.205-35(f)(4).

C. Dues, Memberships, Conferences, and Subscriptions

1. Review costs for compliance with standards in FAR:

   a. FAR 31.205-43 generally allows dues, memberships, conferences, and subscriptions whose primary purpose is the dissemination of trade, business, technical, or professional information or the stimulation of production or improved productivity.
   b. FAR 31.205-43 makes the following type of professional and technical activity costs expressly allowable:

- Organizing, setting up, and sponsoring the technical and professional meetings, symposia, seminars, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs.
- Attending the meetings by contractor employees, including travel costs per FAR 31.205-46.
- Attending the meetings by individuals who are not contractor employees, provided the costs are reimbursed to them by their own employer and their attendance is essential to achieve the purpose of the meetings.

2. Ensure that costs of memberships in civic and community and lobbying organizations are unallowable.
3. Determine whether the minimum fee for membership in any university's industrial liaison program is reasonable and supported by evidence of bona fide services available or rendered. Under these programs, contractors are usually entitled to the use of university facilities, consultations with faculty members, copies of research reports, attendance at symposiums, and possibly other benefits.
4. Review the primary mission of the organization receiving the payments or benefits of membership fees, association dues, or the costs of donated time or materials from the contractor. Organizations generally fall into the following categories based on their mission:

   - Bona Fide Trade or Professional Organizations – Organizations formed for the basic purpose of providing technical services to member contractors.
   - Trade or Nonprofit Organizations Partially Engaged in Lobbying or Charitable Activities – The costs of membership are partially unallowable to the extent such payments are for the portion that is for lobbying or charitable activities.
   - Organizations Dedicated to Lobbying or Charitable Activities – Costs for memberships in these organizations are unallowable per FAR 31.205-8 and FAR 31.205-22.

5. Ensure that contributions related to dues and subscription accounts are excluded from claimed costs. Professional organizations often include a suggested voluntary contribution as part of the membership dues. The amount in excess of the value established is an expressly unallowable contribution under FAR 31.205-8.
6. Determination of allowability requires knowledge concerning the purpose and nature of activity at the meeting or conference. Review expenses to determine whether the contractor maintain adequate records supplying such information on properly prepared travel vouchers or expense records supported by copies of paid invoices, receipts, charge slips.
7. Review costs to determine whether costs are for guest expenses for meals or other incidentals applicable to Federal employees. These costs should normally be questioned as unnecessary, and hence unreasonable costs, except under limited circumstances, since they are prohibited from accepting gratuities by Executive Order 11222 of 1965, Title 5 CFR 2635, and various departmental implementing directives.
8. Determine whether expenses associated with a particular meeting or conference represent allowable business expense under FAR 31.205-43(c) or unallowable social

activity under FAR 31.205-14, *Entertainment Costs*, and should be made on a case-by-case basis, based on all pertinent facts. FAR 31.205-43(c)(3) disallows costs associated with the spouse of an attendee because the spouse's attendance is not essential to achieve the purpose of the meeting.

9. For individuals on official travel, assure the meal expense is not included in both the claimed travel costs and subsistence costs included as part of organizing the meeting.
10. For individuals not on official travel, assure that any meal expense is an integral part of the meeting as described in FAR 31.205-43(c), necessary for the continuation of official business during the meal period, and not a social function.

D. Public Relations and Advertising Costs

1. Review costs for compliance with standards in FAR:

   a. FAR 31.205-1(a) defines public relations as all functions and activities dedicated to: (i) maintaining, protecting, and enhancing the image of a concern or its products; or (ii) maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations include activities associated with areas such as advertising and customer relations.
   b. FAR 31.205-1(b) defines advertising as the use of media to promote the sale of products or services and to accomplish the activities referred to in FAR 31.205-1(d).
   c. FAR 31.205-1(d), (e), and (f) address the allowability of public relations and advertising costs. All advertising costs other than those specified in FAR 31.205-1(d) are unallowable.
   d. FAR 31.205-34 limits allowable advertising costs for recruitment.
   e. FAR 31.205-1(e)(3) makes costs for participation in community service activities such as blood bank drives, charity drives, savings bond drives, and disaster assistance allowable provided that the activity does not materially affect their other regular duties and responsibilities.
   f. FAR 31.204(c) prevents contractors from successfully claiming unallowable public relations costs under more favorable and broader cost principle coverage such as unallowable costs of ceremonies per FAR 31.205-1(f)(4) claimed as employee morale and welfare under FAR 31.205-13.

2. Determine whether costs are allowable public relations costs such as cost incurred for (i) responding to inquiries on company policies and activities; (ii) communicating with the public, press, stockholders, creditors, and customers; and (iii) conducting general liaison with news media and government public relations officers.
3. Costs of plant tours and open houses are allowable; however, ensure that promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities are not claimed.

4. Ensure that costs not specifically identified as public relations cost such as materials and services found in the following cost categories are reviewed as public relations costs per FAR 31.205-1:

   - Advertising Costs
   - Compensation for Personal Services
   - Contributions and Donations
   - Employee Morale, Health, Welfare and Food Service and Dormitory Costs and Credits
   - Entertainment Costs
   - Labor Relations Costs
   - Other Business Expenses
   - Professional and Consultant Service Costs-Legal, Accounting, Engineering and Other
   - Selling Costs
   - Trade, Business, Technical and Professional Activity Costs

5. When reviewing the different categories of costs, the auditors should consider major factors related to the costs such as the nature of the service rendered, the function performed, the propriety of the base of allocation, and the basic consideration of reasonableness.

6. Determine whether costs fall into one of the categories of public relations costs claimed by a contractor for the preparation and printing of such items as plant newspapers and magazines, recruitment pamphlets, technical brochures, and contractor and product capability promotional items. Audits of claimed publications costs should be based on an appropriate examination of the contractor's policies and procedures. There are five broad categories into which most publications may be grouped:

   - Employee Welfare and Industrial Relations – The most common publications of this type are regularly issued newspapers or magazines.
   - Professional and Technical Articles – These publications are disseminated to a professional or technical type audience and generally take the form of dissertations on technical subjects that are related to the contractor's products or activities.
   - Selling, Marketing, and Advertising – In those instances where the material provides little or no technical assistance to the recipient and is distributed to all customers and potential customers, the cost should be treated as advertising (FAR 31.205-1) or selling costs (FAR 31.205-38).
   - Contractor and Product Capability – Promotional items differ from normal selling, marketing, and advertising publications in that they stress the superior capabilities of the contractor's facilities and/or personnel in research and/or development of new products.
   - Public Relations – This category includes pictures, decals, and promotional material that emphasize the contractor's accomplishments in producing equipment or providing services.

7. Determine whether total public relations expenditures are reasonable, especially when there have been significant increases relative to prior years.

E. Payroll and Related Costs

1. Determine whether executive compensation costs are claimed in accordance with ranges established by contract terms or FAR 31.205-6 and Office of Federal Procurement Policy (OFPP).
2. Review employee receiving pay over maximum salary range of the employee's grade range.
3. Review time sheets, payroll, personnel, and/or other records to determine if an employee was a real employee who worked on the contract effort.
4. Determine if overtime and associated premium hours have been approved, if required by the contract terms.
5. Determine if payroll costs were computed as reported on the timesheet and the pay rates identified in the personnel records.

F. Employee Welfare and Morale Expense

1. Determine if recreation program and exercise/wellness facility are available to all employees.
2. Determine if the Employee Recognition/Service Awards cost complies with the contract and the contractor's established policies and procedures.
3. Determine whether expenses and income generated by employee welfare and morale activities comply with FAR 31.205-13. If employee morale expenses fall into the category of entertainment then they are unallowable per FAR 31.205-14.
4. Determine whether the cost of operating the cafeteria results in a break even scenario. A loss may be allowable, provided the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the service on a breakeven basis would require charging inordinately high prices, or prices higher than those charged by commercial establishments.

G. Professional and Consultant Service Costs

1. Obtain vendor listing and 1099-Misc. forms and review for possible consultants not included on the listing.
2. Analyze consultants' agreements, work products, and related records for sensitive consultants such as i) lobbyists; ii) sales/marketing; iii) management services (excluding CPA firms); iv) legal; v) technical/engineering; and vi) accounting, CPA firms, actuary, and insurance.
3. Determine whether the activity engaged in by the consultant is strictly unallowable in accordance with the contract and applicable FAR and DEAR provisions.
4. If the review of agreements and work products fails to establish a logical link to activity that benefits either the business as a whole or government contracts or programs in particular, then the cost and related consultant expenses should be questioned.

5. If the nature of the consulting service appears to be allowable and allocable, work products should be reviewed for the reasonableness of the total costs charged.
6. Trace selected consultant costs through the purchasing system to determine that procedures have been followed.

H. Subcontract Costs

1. Determine that payment is being made provisionally to ensure that the amount paid can be adjusted for the results of a future audit and request or perform the audit.
2. Determine if subcontract charges were based on the subcontract's billing provisions.

I. Purchased Labor

1. Review the contractor's policy, with emphasis on the criteria used in determining whether personnel should be obtained from outside sources instead of direct hiring.
2. Analyze the purchased labor during the current or most recently completed fiscal year, whichever provides sufficient information, to:

   - Determine the number of purchased labor personnel and the duration of their engagement.
   - Compare the number of employees on the contractor's payroll (in each classification of purchased labor involved) with the number of equivalent personnel obtained from outside sources.
   - Compare the cost per staff-year with the contractor's comparable personnel.
   - Determine whether the contractor's practices are equitable with respect to the use of purchased labor compared to the contract mix.

3. Determine whether the use of purchased labor results in additional costs that are reasonable, necessary, and allocable to contracts.
4. Verify that fringe benefits and other employee related costs are not allocated to purchased labor costs. Such costs are generally paid by the entity providing personnel performing the effort.
5. Verify that indirect costs are allocated to purchased labor in a reasonable proportion to the causal or beneficial relationship of the pooled costs to cost objectives. Purchased labor must share in an allocation of indirect expenses such as supervision and occupancy costs, where there is a causal or beneficial relationship, and the allocation method must be consistent with the contractor's disclosed accounting practices.

J. Lobbying Costs

1. Identify whether contractor has a Washington DC area office and the purpose of the office. Review costs to determine allowability.
2. Determine whether the cost was incurred to influence elections, public votes on issues, political parties, and legislation per FAR 31.205-22. Cost incurred to induce or tend to induce, either directly or indirectly, executive branch employees to give

consideration or to act regarding a government contract on any basis other than the merits of the matter is unallowable.

K. Costs Related to Legal and Other Proceedings

1. Use the following guidance on the regulatory history for FAR 31.205-47 to consider applying the cost principle to specific cases:

   - The government should not pay for wrongdoing, the defense of wrongdoing, or the results or consequences of wrongdoing by contractors.
   - The government should not encourage litigation by contractors.
   - Government contractors should not be put in a better position than contractors in the commercial area.
   - The government should not discourage contractors from enforcing the government's rights and protecting the government's interests.

2. Determine whether costs are allowable legal costs per the following categories:

   - Reasonable costs associated with routine proceedings, not specifically addressed in the FAR cost principle.
   - In-house legal staff handles routine inquiries from government agencies such as DCAA.
   - Contract terms.
   - CO directed.

3. Determine whether costs are subject to ceilings defined by FAR 31.205-37(f).
4. Determine whether legal costs under review are unallowable based on the outcome of the proceedings:

   - In a criminal proceeding, a conviction.
   - In a civil or administrative proceeding (including a qui tam proceeding) involving an allegation of fraud or similar misconduct, a finding of liability.
   - In a civil or administrative proceeding not involving an allegation of fraud or similar misconduct, an assessment of a monetary penalty.
   - In a proceeding held by an appropriate official of an executive agency for debarment or suspension of the contractor; rescission or voiding of a contract; or termination of a contract for default because of violation of or noncompliance with a law or regulation, a final decision unfavorable to the contractor.
   - In any proceeding shown above which led to a settlement by consent or compromise.

5. Determine whether legal costs are unallowable regardless of the outcome include:

   - Defense or prosecution of claims or appeals against the Federal government (FAR 31.205-47(f)(1)).
   - Organization, reorganization, mergers, or acquisitions, or resistance to merger or acquisition (FAR 31.205-47(f)(2) and FAR 31.205-27).

- Defense of antitrust suits (FAR 31.205-47(f)(3)).
- Defense or prosecution of lawsuits or appeals between contractors arising from such agreements as teaming arrangement, dual sourcing, co-production, or similar programs (FAR 31.205-47(f)(5)).
- Defense against stockholder suits that are related to contractor wrongdoing such as intentional harm to other persons, and instances where there has been a reckless disregard for the harmful consequences of an action.
- Patent infringement proceedings if not required by the contract (FAR 31.205-30, FAR 31.205-47(f)(6)).
- Defense against contractor misconduct addressed in another proceeding whose outcome determined the costs to be unallowable.
- Bid protest costs and costs of defending against protests are expressly unallowable under FAR 31.205-47(f)(8) for contracts awarded on or after October 7, 1996 unless per written directions from the CO.

6. Review legal proceeding costs to ensure that the contractor properly segregated costs for each proceeding regardless of the outcome that is anticipated.
7. If the outcome of a proceeding described in FAR 31.205-47(b) determines costs to be allowable, review total costs for reasonableness.

L. Procurement Card Purchase

1. Select a sample from the Procurement Card universe, excluding those accounts of costs already selected for specific review.
2. Review costs for proper documentation and allowability per FAR.
3. Pay close attention to items of personal nature and scrutinize these costs.
4. Ensure that purchases are made in accordance with the policies and procedures over purchase card transactions.

M. AP Purchases

1. Select a sample from the AP universe, excluding those accounts of costs already selected for specific review.
2. Review costs for proper documentation and allowability per FAR.
3. Refer to specific areas in Sections A to K related to types of costs in the sample for additional guidance to items required for the review.

N. Transferred Cost

1. Select a sample from the account(s) for cost transfers in and out (inter/intra organizational transfers).
2. Obtain an understanding of the transfer process.
3. Review costs for proper documentation and allowability per FAR.
4. Ensure that transferred costs are allowable and do not duplicate the types of costs that are covered by any contractual management allowance or fee arrangements.
5. Incorporate results of Home Office reviews from other audit.

POLICY FLASH 2006-39

POLICY FLASH 2006-39

DATE: July 13, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Letters Remaining In Effect**

SUMMARY: Acquisition Letter 2006-08 has been issued. It lists Acquisition Letters currently in effect. It also lists Acquisition Letters that have been discontinued and the reasons for doing so.

This Flash may be viewed at http://professionals.pr.doe.gov

Questions may be directed to Michael Righi at (202) 287-1337 or michael.righi@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy
Acquisition Regulation

No: AL-2006-08
Date 07/12/2006

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Acquisition Letters (AL) that remain in effect are identified below. All other previously issued ALs have been superseded by a formal rule-making, incorporated into other guidance, and/or canceled.

* * * * * * * * * * * * * * * *

ACQUISITION LETTERS REMAINING IN EFFECT

NUMBER	DATE	SUBJECT
93-4	04/07/93	Displaced Workers Benefits Program
94-19	12/09/94	Basic Labor Policies Fringe Benefits
95-06	06/28/95	Personal Property Letter System
95-14	11/17/95	Subcontracts under the New Independent States - Industrial Partnering Program
96-09	09/16/96	Full and Open Competition - Management and Operating Contracts
99-06	08/27/99	DOE Authorized Subcontract for Use by DOE Management and Operating Contractors with New Independent States' Scientific Institutes through the International Science and Technology Center
2000-05	05/17/00	DOE Authorized Subcontract for Use by DOE Management and Operating (M&O) Contractors with New Independent States' Scientific Institutes through the Science and Technology Center in Ukraine
2000-08	08/18/00	Site Utilization and Management Planning
2000-09	11/11/00	Source Selection Authority
2000-12	12/15/00	2000 Executive Compensation
2002-04	07/09/02	Processing Requests for Indemnification or Other Extraordinary Contractual Relief Under Pub. L 85-804

NUMBER	DATE	SUBJECT
2002-06	08/14/02	Domestic and Foreign Procurement Preference Rules
2002-08	12/02/02	Project Labor Agreements
2005-04	11/02/04	Class Deviation to Reflect Changes to the Cooperative Audit Strategy
2005-05Rev	04/26/05	Interagency Contracting
2005-06	03/11/05	Small Business Procurement Goals
2005-07	06/03/05	DOE Order 361.1A, Acquisition Career Development Program, Chapter I, Contracting and Purchasing Career Development Program Module Revised DOE Core Curriculum
2005-08	06/10/05	Small Business Program
2005-08Rev	05/24/06	Small Business Program
2005-10	07/07/05	Implementation of HSPD-12 and FIPS Pub 201
2005-11	07/15/05	Home Office Expenses for Management and Operating Contracts
2005-12	08/02/05	Meal Costs in Management and Operating Contracts
2005-13	09/30/05	Performance-based Service Acquisition
2005-14	09/30/05	Competition Requirements for Management and Operating Contracts Under Section 995 of the Energy Policy Act
2005-15	10/05/05	Implementation of the Price-Anderson Amendment Act of 2005
2005-16	10/04/05	Implementation of HSPD-12
2006-01	10/27/05	Electronic Subcontracting Reporting System (eSRS)
2006-02	12/02/05	Section 988 of the Energy Policy Act (EPAct), Cost Sharing
2006-03	12/02/05	Section 989 of the Energy Policy Act (EPAct), Competition and Merit Review
2006-04	12/14/05	Acquiring Information Technology – Requirement to Comply with Internet Protocol Version 6 (IPv6)
2006-05	01/26/06	Implementation of Fiscal Year 2006 Legislative Provisions
2006-06	03/22/06	Implementation of Department of Energy Order 580.1, Department of Energy Personal Property Management (including Policy Flash 2006-21)
2006-07	07/22/06	Acquisition Letters Remaining In Effect

ACQUISITION LETTERS DISCONTINUED

NUMBER	DATE	SUBJECT/REASON FOR DISCONTINUING
98-11	09/18/98	Waiver of Synopsis Requirements (Covered in FAR)
2000-10R	08/16/01	FAR Class Deviation Addressing Service Contract Act Requirements for Subcontracts for Certain Commercial Services (Covered in FAR)
2001-04	08/22/01	Guidance on Electronic and Information Technology (EIT) Accessibility- Section 508 of Pub. L. 105-220, As Amended (Included in Acquisition Guide Chapter 39.2)
2002-05	07/10/02	Greening the Government Requirements in Contracting (Included in Acquisition Guide Chapter 23)
2003-04	08/25/03	Value Engineering (Included in Acquisition Guide Chapter 48)
2004-03	05/05/04	Small Business Programs (Superceded by AL 2005-08)
2005-01	05/25/05	Acquisition Letters Remaining in Effect (Outdated)
2005-02	03/09/05	Implementation of Fiscal Year (FY) 2005 Legislative Provisions (replaced by AL-2006-05)
2005-03	10/08/04	Independent Peer Review Program for Contractors' Purchasing Systems (Included in Acquisition Guide Chapters 1.2 and 70.7)

POLICY FLASH 2006-40

POLICY FLASH 2006-40

DATE: July 14, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circulars 2005-10 and 11**

SUMMARY: This Flash summaries recent changes to the FAR and its impact to the Department. Synopses of both are attached for your information. Copies of both the *Federal Register* notices and change sheets for loose leaf copies may be found at http://www.arnet.gov/far/index.html .

Federal Acquisition Circular 2005-10 was published June 28, 2006 at page 36922 of the *Federal Register.*

Federal Acquisition Circular 2005-11 was published July 3, 2006 at page 38238 of the *Federal Register.*

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions may be addressed to Richard Langston at 202-287-1339 or Richard.Langston@hq.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Federal Acquisition Regulation
Federal Acquisition Circular 2005-10

Item I--Central Contractor Registration--Taxpayer Identification Number (TIN) Validation (FAR Case 2005-007)

The rule adds a process for government validation of a Central Contractor Registration (CCR) registrant's taxpayer identification number (TIN) with the Internal Revenue Service (IRS), improving the quality of data in the CCR and the federal procurement system and removes outdated language.

Item II--Procedures Related to Procurement Center Representatives (FAR Case 2006-003)

This final rule amends the Federal Acquisition Regulation (FAR) to provide internal procedures to cover situations when the FAR requires interaction with a procurement center representative and one has not been assigned to the procuring activity or contract administration office. It primarily impacts contracting officers and procurement center representatives.

Item III--Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004-035)

This new policy results from a statute changing 10 U.S.C. 2306a., which applies only to contracts or task or delivery orders funded by DoD, NASA, and the Coast Guard. The final rule amends the interim rule issued in FAC 2005-004 and implements an amendment to 10 U.S.C. 2306a, requiring that the exception to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act of Fiscal Year 2005, applies to offers submitted, and to modifications of contracts or subcontracts made on or after June 1, 2005. The new policy also applies to contracts awarded or task or delivery orders placed by DOE, if on behalf of DoD, NASA, or the Coast Guard.

Item IV--Implementation of Wage Determinations OnLine (WDOL) (FAR Case 2005-033) (Interim)

This interim rule implements the Department of Labor (DOL) Wage Determinations OnLine (WDOL) internet website as the source for Federal contracting agencies to obtain wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act (DBA). The rule amends the FAR to direct Federal contracting agencies to obtain DBA and SCA wage determinations from the WDOL website. See Policy Flash 2006-07, dated November 23, 2005.

The Contracting Officer (CO) will be able to check the WDOL website (http://www.wdol.gov) to find the applicable wage determination for a contract action subject to the SCA or DBA. If the WDOL database does not contain the applicable wage determination for a SCA contract action, the CO must use the e98 process to request a wage determination from DOL. The e98 means a DOL approved electronic application, (available at

http://www.wdol.gov), whereby a contacting officer submits pertinent information to the DOL and requests a wage determination directly from the Wage and Hour Division. With regard to DBA requirements, if the WDOL [[Page 36923]] database does not contain the applicable wage determination for a DBA contract action, the CO must request a wage determination by submitting SF-308 to DOL.

The WDOL and e98 processes replace the paper Standard Forms 98 and 98a. In addition, Standard Forms 99, 98, and 98a are deleted from FAR Part 53. This interim rule also incorporates new geographical jurisdictions for DOL's Wage and Hour Regional Offices and eliminates FAR references to the Government Printing Office (GPO) publication of general wage determinations.

Item V--Free Trade Agreements--El Salvador, Honduras, and Nicaragua (FAR Case 2006-006) (Interim)

This interim rule allows contracting officers to purchase the goods and services of El Salvador, Honduras, and Nicaragua without application of the Buy American Act, if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated the "Dominican Republic--Central America-United States Free Trade Agreement" with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. However, the agreements will not all take effect at the same time. This agreement with El Salvador, Honduras, and Nicaragua joins the North American Free Trade Agreement (NAFTA) and the Australia, Chile, Morocco, and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability is $64,786 for supplies and services (the same as other Free Trade Agreements to date except Morocco and Canada) and $7,407,000 for construction (the same as all other Free Trade Agreements to date except NAFTA).

Item VI--Buy-Back of Assets (FAR Case 2004-014)

This final rule amends the FAR contract cost principle for depreciation costs. The final rule adds language which addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback arrangement.

Item VII--Technical Amendments

Editorial changes are made at FAR 8.714, 33.102, and 52.225-11 in order to update references.

Federal Acquisition Regulation
Federal Acquisition Circular 2006-11

Item I--Earned Value Management System (EVMS) (FAR Case 2004-019)

This final rule amends the FAR to implement Earned Value Management System (EVMS) policy in accordance with OMB Circular A-11, Part 7 and the supplement to Part 7, the Capital Planning Guide. The FAR will require the use of an EVM System that complies with the guidelines of ANSI/EIA Standard - 748 in major acquisitions for development, and in other acquisitions in accordance with agency procedures. An agency shall conduct an Integrated Baseline Review (IBR) when EVMS is required. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that is compliant with the ANSI/EIA standards, provided they submit an EVMS implementation plan with their proposal. DOE O 413.3 will further implement the requirements of this new FAR coverage as if relates to DOE projects.

Item II--Emergency Acquisitions (FAR Case 2005-038)

This interim rule revises FAR Part 18 to provide a single reference to acquisition flexibilities that may be used during emergency situations, which is expected to improve the Government's ability to expedite acquisition of supplies and services. The FAR Part 18 makes no change to existing contracting policy. The Office of Procurement and Assistance Policy will soon issue a companion Acquisition Guide Chapter on this subject.

POLICY FLASH 2006-41

DATE: July 14, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Guide Chapter 48, "Value Engineering", and Cancellation of Acquisition Letter 2003-04, "Value Engineering"**

SUMMARY: This Flash forwards a new Acquisition Guide Chapter 48, "Value Engineering," and cancels Acquisition Letter 2003-04, "Value Engineering." Guidance previously in the Acquisition Letter now appears in the Guide, covering the application of value engineering (VE) to contracts for the performance of work at current or former management and operating contract sites and facilities where beneficial and the prescribed FAR clause requirements are appropriate.

This Guide Chapter does not apply to National Nuclear Security Administration (NNSA) activities unless otherwise directed by NNSA officials.

The guidance discusses the challenges of applying value engineering effectively in management and operating and similar contracts, provides deviations to the affected FAR Value Engineering clauses, specifies when the deviations may be appropriate, and requires removal of the DEAR clause on Cost Reduction, 48 CFR 970.5215-4, when using value engineering clauses.

This Flash may be viewed at http://professionals.pr.doe.gov

Contact Michael Righi at either (202) 287-1337 or Michael.Right@hq.doe.gov if you have any questions.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

ue Engineering In M&O Contracts
ference: FAR Part 48]

Guiding Principle

The structure of the Department's major contracts includes general conditions that mitigate against achieving equitable cost sharing under standard FAR value engineering initiatives. Consequently, it is prudent to select carefully the situations to which FAR value engineering concepts should be applied.

What is the Purpose and Applicability of this Guide Chapter?

he purpose of this Guide Chapter is to provide Contracting Officers guidance on the application of value ngineering (VE) to management and operating contracts and other contracts for the performance of work at urrent or former management and operating contract sites and facilities that would require or benefit from VE, where the requirements of the prescribed FAR clauses are inappropriate (hereinafter referred to as "major ontracts").

What is the Background?

Section 4306 of the Clinger-Cohen Act of 1996, P.L. 104-106, amended the Office of Federal Procurement Policy Act, 4 USC 401 et. seq., by adding a new section 36, entitled "Value Engineering." Section 36 requires each executive agency to establish and maintain cost effective VE procedures and processes. Office of Management and Budget (OMB) Circular A-131 states that agencies shall use VE as a management tool, where appropriate, to ensure realistic budgets, identify and remove nonessential capital and operating costs, and improve and maintain optimum quality of program and acquisition functions. OMB Circular A-131 also requires agencies to report annually on the status of their VE Programs.

In DOE, the Office of Engineering and Construction Management, within the Office of Management, Budget and Evaluation, is responsible for VE policy. The Under Secretary for Energy, Science, and Environment and the Administrator, National Nuclear Security Administration are responsible for VE implementation. DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets, commits DOE to use value engineering to derive the lowest life-cycle cost of a capital asset. The Order states that value engineering yields the greatest cost savings when applied to the planning and design phases of a project. It also states value engineering should be used during the construction phase of a project. Additionally, DOE O 430.1A, Life-Cycle Asset Management, establishes the requirement to perform VE in the maintenance and infrastructure arenas.

Guidance Included in this Chapter

I. What is Value Engineering? 3

II. How does Value Engineering apply to major contracts? 3

II. What is the relationship between Value Engineering and Award Fee/Incentive Structures 6

IV. What Guidance is provided by this Chapter? 7

ttachments

- Redline/strikeout versions of Deviations for FAR 52.248-1 and FAR 52.248-3
- Determination to Authorize the Use of the Clauses in the Guide in Place of the Prescribed FAR Clauses.

What is Value Engineering?

Section 36 of the Office of Federal Procurement Policy Act further defines value engineering as "the analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply to improve performance, reliability, quality, safety, and life-cycle costs." In FAR 48.101(a), value engineering is defined as the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Government methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

There are two VE approaches described in FAR Part 48, the "incentive" (also known as voluntary) and the "mandatory program."

- ✓ In the incentive approach, the contractor participates voluntarily and uses its resources to develop and submit value engineering change proposals. If the Government accepts a value engineering change proposal, the contractor shares in savings and receives payment for its allowable proposal costs.

- ✓ In the mandatory program approach, the Government requires and pays for a specific VE effort. The contractor must perform VE of the scope and level of effort required by the contract. The contractor shares in savings, but at a lower percentage than under the incentive approach.

FAR Part 48 also prescribes three clauses, 52.248-1, 52.248-2, and 52.248-3. These clauses apply to contracts in general, architect-engineer contracts, and construction contracts, respectively. Procedures are slightly different and sharing of savings are more restricted for architect-engineer contracts and construction contracts. FAR 52.248-1 has three Alternates. Alternate I applies if the contracting officer chooses the mandatory program approach. Alternate II applies if the contracting officer chooses both the incentive approach and the mandatory program approach. Alternate III applies if collateral savings are not to be included.

II. How does Value Engineering apply to Major Contracts?

A. DOE major contracts are different than those envisioned by the authors of FAR Part 48.

The structure of the Department's major contracts includes general conditions that mitigate against achieving equitable cost sharing. They are:

- ➢ a lack of firm cost estimates;

- ➢ requirements covered by award fee that already require the contractor to identify and institute practices to improve performance;

- requirements covered by a contract clause, such as the "Performance Improvement and Collaboration clause," DEAR 970.5203-2;
- accounting systems that do not separately track the benefits and costs of VE efforts;
- costs of unsuccessful VE proposals are direct costs (under the cost accounting standards) to the contract, while in the existing FAR Value Engineering policy these costs are indirect costs; and
- some contracts are a composite of dissimilar work and contract types.

B. Cost savings can be achieved through various mechanisms.

We expect our major contractors to help us save money in three ways, two of which are value engineering, as FAR defines the term. The three ways are:

- We agree to fairly consider the contractor's suggestions to replace specifications, standards, etc. that are stipulated for the contractor to follow. This is the FAR incentive approach. This concept does not apply where the contractor has participated in determining the specifications, standards, etc., of the contract.
- We direct the contractor to perform value engineering. This is the FAR mandatory program approach.
- We require the contractor to identify and institute practices that will improve performance. This is not value engineering under the FAR definition. It does not allow the contractor a share of the cost savings that result. Examples are the "Performance Improvement and Collaboration" clause or the subjective evaluation of the contractor's performance efforts under award fee.

C. The FAR incentive approach may apply to portions of a major contract.

The general conditions present in a major contract mean the incentive approach, as prescribed in FAR Part 48, will only apply to those portions of a major contract where the particular conditions described below exist, and even then only in a modified form (also described below):

The particular conditions that must exist for the incentive approach to apply are:

- DOE dictated the specification, design, process, etc., that the contractor must follow.
- the contractor's cost reduction effort is not covered under award fee (or any other incentive).
- the contracting officer has confidence in the cost estimate for the work at issue; that is, confidence in the cost estimate is similar to that which would be achieved under normal FAR

pricing conditions. While obtaining cost and pricing data and performing cost analysis are not required, the contracting officer must have adequate rationale for concluding the cost estimate is reliable enough to merit sharing savings based on the contractor performing at less than the estimate.

- the proposal, if accepted, must require a change to the contract and result in overall savings to DOE after implementation.

When all of the particular conditions listed above exist, a modified incentive approach is applicable.

Modified incentive approach means:

- costs of unsuccessful proposals are not allowable unless approved in advance by the contracting officer.
- a lower percentage of savings is provided to the contractor than permitted by FAR (typically no more than 20 percent), based on the contracting officer's confidence in the cost estimate.
- the HCA must approve the VE proposal.
- savings are not recognized until the affected work is completed satisfactorily and the contracting officer confirms the contractor has successfully accounted for the costs and benefits of the VE effort.

D. <u>The FAR mandatory program approach may apply to portions of a major contract.</u>

Because the Government decides when to require VE effort in the mandatory program approach, the contractor's allowable, allocable and reasonable proposal costs are reimbursed. The Government would, however, only share savings where the particular conditions described above for the incentive approach exist, and, even then, only at a lower percentage than the FAR permits.

When all of the particular conditions described above exist, a modified mandatory program approach is applicable. Modified mandatory program approach means:

- a lower percentage of savings is provided to the contractor than permitted by FAR (typically no more than 10 percent), based on the contracting officer's confidence in the cost estimate. In some cases the percentage should be zero.
- the HCA must approve the VE proposal.
- savings are not recognized until the affected work is completed satisfactorily and the contracting officer confirms the contractor has successfully accounted for the costs and benefits of the VE effort.

Both the mandatory and incentive approaches can be used in the same major contract.

In certain circumstances, one or more value engineering approaches may apply to different portions of a major contract. You can "mix and match" the value engineering approach and the affected contract effort. The deviations to FAR clauses authorized by the attached class deviation are attached in redline/strike-out format. Examples of different approaches are:

- under one major contract, for example, the FAR "Value Engineering–Architect-Engineer" clause may apply to a Architect-Engineering effort, a modified FAR "Value Engineering" clause may apply to the acquisition of a large capital asset, and a modified FAR "Value Engineering Alternate I" clause may apply to a significant and costly project.

- under another major contract no FAR value engineering approach may be appropriate because the reliability of the cost estimates does not merit cost sharing.

- under another major contract the modified mandatory program approach may be appropriate for a specific project, and the contractor's share of savings should be only 5 percent.

- under another major contract DOE may direct the contractor to subcontract for a value engineering analysis of a costly and complex project; this situation is not a FAR value engineering approach and does not merit cost sharing.

F. VE provisions flow-down to subcontracts.

The attached deviations to the clauses at FAR 52.248-1 and 52.248-3 retain the FAR standard clauses' requirement of flow down to subcontracts. Major contractors should extend VE provisions to their subcontractors, where appropriate, by granting them a percentage of whatever share of savings the major contractors receive from DOE. The deviations to paragraph (a) of the FAR standard clauses will be reflected in subcontracts, so major contractors will be required to approve subcontractors' requests to perform value engineering analyses in advance. Agreements between the major contractors and their subcontractors do not affect the contractual relationship between major contractors and DOE; DOE's share of savings, for example, is not affected by the major contractor's agreement to provide a portion of its share of savings to a subcontractor.

III. What Is the Relationship Between Value Engineering and Award Fee/Incentive Structures?

FAR 48.102 (e) states that value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b). FAR 48.105 states the benefits of an accepted value engineering change proposal should not be rewarded both as value engineering shares and as incentives under performance, design-to-cost, or similar incentives of the contract. It

further states that only those benefits of an accepted value engineering change proposal not rewardable under other incentives are rewarded under a value engineering clause.

Many of DOE's major contracts (particularly management and operating contracts) use award fee structures to provide incentives to the contractor to meet or exceed performance and other requirements. In using the award fee approach, it may not be possible to establish specific cost reduction/constraint incentives. However, DOE still expects its major contractors to perform under the contract in a cost-efficient manner. Accordingly, where the award fee approach is used, the contract should provide an incentive to contractors to achieve cost efficiencies. As appropriate, the award fee provisions are to contain language that has the same effect as the following:

Expectation: The contractor is expected to ensure that the work performed under the contract is performed in a cost efficient manner. To this end, the contractor shall have a cost efficiency process in place. Part of this process shall include the review and evaluation of all work being performed under the contract on a continuing basis to ensure that it is being performed in the most cost efficient manner possible. Where it is found that the work is not being performed in the most cost efficient manner, the contractor shall effect the necessary changes to ensure that it will be performed in the most cost efficient manner without adversely impacting the quality and timeliness of the work.

Measure: At the conclusion of each Award Fee evaluation period, the contractor will be evaluated regarding the extent to which it was able to effect cost efficiencies in the performance of the work during the period. The contractor must demonstrate where cost efficiencies were achieved which directly resulted in its ability to perform more work within the funds provided. If no cost efficiencies are achieved during the evaluation period, the contractor must demonstrate that such failure is due to the time period required (longer than the evaluation period) in order to realize any cost efficiency or that there are no meaningful cost efficiencies to be found.

The Performance Evaluation Management Plan (or similar document) should provide that award fee may be earned or taken away (depending on the contract's fee construction) based on the level of performance achieved. Expected performance levels and associated fee amounts are to be tailored to the specific contract requirements.

IV. What Guidance is Provided by this Chapter?

When the particular conditions that must exist for one of the value engineering approaches to apply are present, Contracting Officers should consider inserting and applying to appropriate portions of existing major contracts one or more of the following clauses (after first removing the clause at 48 CFR 970.5215-4 , Cost reduction, if present): (1) FAR 52.248-1 (DEVIATION) (attached in redline/strike-out format); (2) FAR 52.248-3 (DEVIATION) (attached in redline/strike-out format); and (3) FAR 52.248-2. Contracting officers should not include the clause at 48 CFR 970.5215-4, Cost reduction, when using the VE clauses in this Chapter. It will be removed from DEAR in a upcoming rulemaking.

Attachment #1

Authorized Deviations To FAR 52.248-1 and FAR 52.248-3

FAR 52.248-1 Value Engineering (Feb 2000) (DEVIATION)

) *General.* ~~The Contractor is encouraged to develop, prepare, and submit value engineering change oposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from cepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.~~

) The Contractor may request the Contracting Officer's approval to perform value engineering analyses for iose portions of the contract where:

(i) DOE dictated the specification, design, process, or work method.

(ii) DOE is not making award fee (or any other incentive) available for cost reduction efforts.

(iii) the cost estimate is extremely reliable.

(iv) the Contractor can separately track the costs of any proposed savings.

(2) After obtaining the Contracting Officer's approval to incur value engineering development and implementation costs, the Contractor is encouraged to submit value engineering change proposals (VECP's) and shall share in any net acquisition savings realized from accepted VECP's in accordance with the incentive sharing rates in paragraph (f) below. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

(b) *Definitions.*

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition

st changes.

'ontracting office" includes any contracting office that the acquisition is transferred to, such as another anch of the agency or another agency's office that is performing a joint acquisition action.

'ontractor's development and implementation costs," as used in this clause, means those costs the Contractor ıcurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those)sts the Contractor incurs to make the contractual changes required by Government acceptance of a VECP. the VECP is rejected these costs are unallowable, unless the Contacting Officer has approved them in dvance.

Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the 'ontracting Officer considers necessary for projected learning or changes in quantity during the sharing)eriod. It is calculated at the time the VECP is accepted and applies either--

(1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or

(2) To the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each

CP.

nit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor ee the VECP applies.

alue engineering change proposal (VECP)" means a proposal that--

) Requires a change to this, the instant contract, to implement; and

) Results in reducing the overall projected cost to the agency without impairing essential functions or aracteristics; *provided*, that it does not involve a change--

) In deliverable end item quantities only;

i) In research and development (R&D) end items or R&D test quantities that is due solely to results of revious testing under this contract; or

iii) To the contract type only.

c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described n paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states ıerwise. If this contract is administered by other than the contracting office, the Contractor shall submit a py of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

) *Government action.* (1) The Contracting Officer will notify the Contractor of the status of the VECP ithin 45 calendar days after the contracting office receives it. If additional time is required, the Contracting fficer will notify the Contractor within the 45-day period and provide the reason for the delay and the ‹pected date of the decision. The Government will process VECP's expeditiously; however, it will not be able for any delay in acting upon a VECP.

2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the easons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is ıccepted by the Government. The Contracting Officer may require that the Contractor provide written ıotification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing rates.* ~~If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below.~~ If a VECP is accepted, the Contractor shall share in net acquisition savings up to the percentages shown in the table below. The Contracting Officer will determine the exact percentage as early as the date of approving the Contractor's request to perform value engineering analyses and incur value engineering development and implementation costs, but no later than the date of accepting the VECP. In making this determination, the Contracting Officer will decrease the Contractor's share as the reliability of the cost estimate decreases. For the "Incentive" sharing arrangement for cost-reimbursement contracts, the Contractor's share will typically be no greater than 20 percent. For the "Program Requirement" sharing arrangement for cost-reimbursement contracts, the Contractor's share will typically be no greater than 10 percent and may be zero. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government. The percentage paid the Contractor depends upon--

(1) This contract's type (fixed-price, incentive, or cost-reimbursement);

(2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule);~~ and~~

(3) The reliability of the cost estimate; and

~~(3)~~(4)The source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS (Figures in Percent)				
CONTRACT TYPE	SHARING ARRANGEMENT			
	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Contract and Future Contract Rate
xed-price (includes fixed-ice-award-fee; excludes other ced-price incentive contracts)	*50	*50	*25	25
icentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes ost-plus-award-fee; excludes ther cost-type incentive ntracts)	***25	***25	15	15

*The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP

**Same sharing arrangement as the contract's profit or fee adjustment formula.

***The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP

(g) *Calculating net acquisition savings.* (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

In no case are savings realized until the Contracting Officer confirms that the Contractor has both completed the affected work satisfactorily and accounted for the costs and benefits successfully.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid

to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

(i) *Concurrent and future contract savings.* (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by--

(i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and

(ii) Multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by--

(i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;

(ii) Subtracting any Government costs or negative instant contract savings not yet offset; and

(iii) Multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.

(5) *Alternate no-cost settlement method.* When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* ~~If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset.~~ If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 0 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. Typically, for cost-reimbursement contracts, the rate will not exceed 10 percent and may be zero. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts*. The Contractor shall include an appropriate value engineering clause in any subcontract of $100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (Apr 1984). If the contracting officer selects a mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General*. The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's).

In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the program requirement sharing rates in paragraph (f) below. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

Alternate II (Feb 2000). If the contracting officer selects both a value engineering incentive and mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General*. For those contract line items designated in the Schedule as subject to the value engineering program requirement, the Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2)

submit to the Contracting Officer any resulting VECP's. In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from VECP's accepted under the program, in accordance with the program requirement sharing rates in paragraph (f) below. ~~For remaining areas of the contract, the Contractor is encouraged to develop, prepare, and submit VECP's voluntarily; for VECP's accepted under these remaining areas, the incentive sharing rates apply.~~For the remaining areas of the contract, the Contractor may request the Contracting Officer's approval to perform value engineering analyses for those portions of the contract where: DOE dictated the specification, design, process, or work method; DOE is not making award fee available for cost reduction efforts; the cost estimate is extremely reliable; and the Contractor can separately track the costs of any proposed savings. After obtaining the Contracting Officer's approval to incur value engineering development and implementation costs, the Contractor is encouraged to submit value engineering change proposals (VECP's) and shall share in any net acquisition savings realized from accepted VECP's in accordance with the incentive sharing rates in paragraph (f) below. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

Alternate III (Apr 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a contract calling for a value engineering incentive, delete paragraph (j) from the basic clause and redesignate the remaining paragraphs accordingly.

FAR 52.248-3 Value Engineering--Construction (Feb 2000) (DEVIATION)

(a) *General.* ~~The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.~~

(1) The Contractor may request the Contracting Officer's approval to perform value engineering analyses for those portions of the contract where:

(i) DOE dictated the specification, design, process, or work method.

(ii) DOE is not making award fee (or any other incentive) available for cost reduction efforts.

(iii) the cost estimate is extremely reliable.

(iv) the Contractor can separately track the costs of any proposed savings.

(2) After obtaining the Contracting Officer's approval to incur value engineering development and implementation costs, the Contractor is encouraged to submit value engineering change proposals (VECP's) and shall share in any net acquisition savings realized from accepted VECP's in accordance with the incentive sharing rates in paragraph (f) below. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

(b) *Definitions.* "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP. If the VECP is rejected these costs are unallowable, unless the Contacting Officer has approved them in advance.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that --

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided*, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.* (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process

VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing*--(1) *Rates.* In no case are savings realized until the Contracting Officer confirms that the Contractor has both completed the affected work satisfactorily and accounted for the costs and benefits successfully. The Contracting Officer will determine the Contractor's exact percentage share of savings as early as the date of approving the Contractor's request to perform value engineering analyses and incur value engineering development and implementation costs, but no later than the date of accepting the VECP. In making this determination, the Contracting Officer will decrease the Contractor's share as the reliability of the cost estimate decreases. The decision on which percentage applies is a unilateral decision made solely at the discretion of the Government. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by at least--~~The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by--~~

(i) 45 percent for fixed-price contracts; or

(ii) 75 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) *Collateral savings.* ~~If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset.~~ If a VECP is accepted, the Contracting Officer will increase the instant contract amount by up to 20 percent of

any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. Typically, for cost-reimbursement contracts, the rate will not exceed 10 percent and may be zero. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or $100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) *Subcontracts*. The Contractor shall include an appropriate value engineering clause in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering-- Construction clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (Apr 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a construction contract, delete paragraph (g) from the basic clause and redesignate the remaining paragraphs accordingly.

Attachment #2

DEPARTMENT OF ENERGY

DETERMINATION AND FINDINGS

FEDERAL ACQUISITION REGULATION (FAR) CLASS DEVIATION
REGARDING FAR 52.248-1 and FAR 52.248-3

FINDINGS:

1. There are two Value Engineering (VE) approaches described in FAR Part 48, the "incentive" (also known as voluntary) and the "mandatory program." In the incentive approach, the contractor participates voluntarily and uses its resources to develop and submit value engineering change proposals. If the Government accepts a value engineering change proposal, the contractor shares in savings and receives payment for its allowable proposal costs. In the mandatory program approach, the Government requires and pays for a specific VE effort. The contractor must perform VE of the scope and level of effort required by the contract. The contractor shares in savings, but at a lower percentage than under the incentive approach.

2. The structure of the Department's major contracts (management and operating contracts and other contracts for the performance of work at current or former management and operating contract sites and facilities that would require or benefit from VE, where the requirements of the prescribed FAR clauses are inappropriate) includes general conditions that involve mitigating factors that preclude equitable cost sharing. They are: a lack of firm cost estimates; requirements covered by award fee that already require the contractor to identify and institute practices to improve performance; requirements for performance improvements covered by other contract clauses; accounting systems that do not separately track the benefits and costs of VE efforts; costs of unsuccessful VE proposals are direct costs (under the cost accounting standards) to the contract, while in the existing FAR Value Engineering policy these costs are indirect costs; and some contracts are a composite of dissimilar work and contract types.

3. The general conditions present in a major contract mean the incentive approach as prescribed in FAR Part 48 will only apply to those portions of a major contract where particular conditions exist, and even then only in a modified form.

4. The particular conditions that must exist for the incentive approach to apply are: DOE dictated the specification, design, process, etc., that the contractor must follow; the contractor's cost reduction effort is not covered under award fee (or any other incentive); the contracting

officer has confidence in the cost estimate for the work at issue; and the proposal, if accepted, must require a change to the contract and result in overall savings to DOE after implementation. When all of the particular conditions exist, a modified incentive approach is applicable. Modified incentive approach means: costs of unsuccessful proposals are not allowable unless approved in advance by the contracting officer; lower percentage of savings given to the contractor than permitted by FAR (typically no more than 20 percent), based on the contracting officer's confidence in the cost estimate; the Head of the Contracting Activity must approve the VE proposal; and savings are not recognized until the affected work is completed satisfactorily and the contracting officer confirms the contractor has successfully accounted for the costs and benefits of the VE effort.

5. For the mandatory program approach, the Government would only share savings where the particular conditions described above for the incentive approach exist, and even then only at a lower percentage than the FAR permits. When all of the particular conditions described above exist, a modified mandatory program approach is applicable. Modified mandatory program approach means: lower percentage of savings given to the contractor than permitted by FAR; the Head of the Contracting Activity must approve the VE proposal; and savings are not recognized until the affected work is completed satisfactorily and the contracting officer confirms the contractor has successfully accounted for the costs and benefits of the VE effort.

6. In accordance with FAR 1.404, consultation with the Civilian Agency Acquisition Council Chairman before approving this class deviation to the FAR has been accomplished. The appropriate consultation and approval have been completed under the authority granted to the civilian agencies under Civilian Agency Acquisition Letter 2002-01.

DETERMINATION:

Based upon these findings, I hereby determine that it is necessary to deviate from the clauses at FAR 52.248-1 and FAR 52.248-3 to reflect fairly the structure of DOE's major contracts as it affects equitable cost sharing in value engineering arrangements.

APPROVAL _____ DATE _____

Director, Office of Procurement and
Assistance Management
Department of Energy

POLICY FLASH 2006-42

POLICY FLASH 2006-42

DATE: July 14, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Project Management and Financial Assistance

SUMMARY: This Flash forwards a memorandum by David K. Garman, the Under Secretary of Energy, outlining his expectations for incorporating project management principles into Financial Assistance activities. Contracting Officers issuing funding opportunity announcements (FOAs) or making financial assistance awards should be aware of the requirements of this memorandum and applicable Program Secretarial Office implementation requirements. Subchapter 2.1.6, Program and Project Management, (attached) has been added to the Guide to Financial Assistance to remind Contracting Officers to consider project performance risks and project management in issuing FOAs and making awards.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or Jacqueline.Kniskern@hq.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachments

The Under Secretary of Energy
Washington, DC 20585

June 23, 2006

MEMORANDUM FOR DISTRIBUTION

FROM: DAVID K. GARMAN

SUBJECT: Project Management Expectations for Financial Assistance Activities

The research and development activities conducted through financial assistance awards; specifically grants, cooperative agreements, and Technology Investment Agreements are important elements of our portfolio. In fiscal year 2005 alone, the Department of Energy (DOE) funded $1.7 billion of new financial assistance awards, with a total value of $2.6 billion, when private sector cost share is added.

Given the size and importance of these investments, we commissioned a team of individuals from our respective offices and the Office of Management to develop a framework for the application of the principles of project management to financial assistance awards. The major elements of that framework are presented in Attachment 1, and are consistent with DOE Order 413.3, *Program and Project Management for the Acquisition of Capital Assets.*

I expect that managing our financial assistance practices to this framework will allow us to do the following:

- Demonstrate that our financial assistance award and administration practices are based upon sound project management principles;
- Segregate projects by risk and provide management input to these projects at the appropriate organizational level; and,
- Improve management of those financial assistance projects that, by virtue of their unique attributes, require affirmative review by DOE Executive Management to ensure the achievement of the project's goals.

To implement the framework, each Program Secretarial Office (PSO) is required to assess its financial assistance award and administration practices against the Project Management Principles described in Attachment 1 and report those practices to me by August 18, 2006. I anticipate that current management practices will generally conform with these principles. However, in the event that a PSO cannot demonstrate that its practices are consistent with these principles, the PSO will document to this office what actions it is taking to fulfill this requirement. In addition, all fiscal year 2006 and 2007 Funding Opportunity

Announcements that result in initial awards in 2007, and all other initial 2007 awards will be coordinated with DOE senior management in accordance with the thresholds outlined in Attachment 1.

Secretary Bodman has repeatedly challenged DOE management to improve DOE's management systems and capabilities to better serve DOE's mission needs. I believe that adopting these principles will help ensure sound project management and management awareness in this key portion of our research and development portfolio.

Attachment

DISTRIBUTION:
James A. Rispoli, Assistant Secretary for Environmental Management
Alexander A. Karsner, Assistant Secretary for Energy Efficiency and Renewable Energy
Jeffrey D. Jarrett, Assistant Secretary for Fossil Energy
Dennis R. Spurgeon, Director, Office of Nuclear Energy, Science and Technology
Edward F. Sproat, III, Director, Office of Civilian Radioactive Waste Management
Kevin M. Kolevar, Director, Office of Electricity Delivery and Energy Reliability
Michael W. Owen, Director, Office of Legacy Management

cc: Ingrid Kolb, MA-1
Robert McMullan, MA-50
Edward Simpson, MA-60
John Alleva, SC
Jeff Baker, Golden Field Office
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Joe Giove, Fossil Energy
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Los Alamos National Laboratory
National Energy Technology Laboratory
National Renewable Energy Laboratory
Oak Ridge National Laboratory
Office of River Protection
Pacific Northwest National Laboratory
Portsmouth Paducah Project Office
Richland Operations Office
Rocky Flats
Sandia National Laboratories
Savannah River Operations Office
Yucca Mountain Site Operations Office

Attachment 1

Project Management Framework for Financial Assistance Awards in the Office of the Under Secretary

The following framework is to be used by Program Secretarial Officers (PSOs) to plan and administer all initial financial assistance awards beginning in fiscal year 2007.

Project Management Principles

Project management principles, which are consistent with DOE O 413.3, are as follows:

- Mission need must be defined and approved by the appropriate management official;
- A range of alternatives to meet the mission need must be considered, developed, and evaluated;
- Project objectives must be defined up front and be used to judge project success;
- Project performance risks (technical, financial, and otherwise) must be identified and mitigated in an implementation strategy;
- Projects must be managed by qualified individuals;
- Scope, schedule, and budget must be established for each project and serve as the basis for project management; and,
- Projects must be managed and reported against the established scope, schedule, and budget.

These project management principles apply to all financial assistance awards (grants, cooperative agreements, and Technology Investment Agreements), regardless of their size or complexity.

Thresholds for Managing Financial Assistance Projects

Financial assistance projects will be segregated by the following financial thresholds. These thresholds determine the organizational level at which projects will be managed and reviewed. The following thresholds represent the DOE share only and are meant as general review levels. Funding Opportunity Announcements and Awards that have high visibility, high risk or other unique attributes may be subject to senior management review without regard to these thresholds.

Financial Assistance Thresholds for DOE Management Review (DOE Share)				
	Field	PSO	Under Secretary	Deputy Secretary
Funding Opportunity Announcements (aggregate value of expected awards)		<$100 million	$100-$400 million	>$400 million
Individual Awards	<$50 million	$50-$100 million	$100-$400 million	>$400 million

- Financial Assistance Individual Awards Less than $50 Million
  Responsibility for the management of these awards rests with the field organization or as otherwise assigned by the PSO. No review is required above the level of the Field Element Manager. The field organization is responsible for all project reporting and administration.

- Financial Assistance Solicitations Less than $100M or Individual Awards Between $50 Million and $100 Million
  Responsibility for the management of these actions and awards rests with the field organization, or as otherwise assigned by the PSO. The PSO must be notified no later than 30 days prior to issuance of the announcement or award. Subsequent to PSO review, the field organization is responsible for all project administration and reporting to the PSO.

- Financial Assistance Solicitations Between $100 Million and $400 Million or Individual Awards Between $100 Million and $400 Million
  Responsibility for the management of these actions and awards rests with the field organization, or as otherwise assigned by the PSO and Under Secretary. The PSO is required to notify the Under Secretary no later than 30 days prior to issuance/award, and if requested, coordinate a Senior Management review of the Funding Opportunity Announcement/financial assistance award. Templates for senior management notification and for these reviews are attached. Subsequent to Under Secretary review, the field organization is responsible for all project administration and reporting to the Under Secretary and PSO.

- Financial Assistance Solicitations Greater than $400 Million or Individual Awards Greater than $400 Million
  Responsibility for the management of these actions and awards rests with the field organization, or as otherwise assigned by the PSO, Under Secretary, or Deputy

Secretary. The PSO is required to notify the Under Secretary, who notifies the Deputy Secretary, no later than 30 days prior to issuance/award, and if requested, coordinate a Senior Management review of the Funding Opportunity Announcement/financial assistance award. Templates for senior management notification and for these reviews are attached. Subsequent to the Deputy Secretary's review, the field organization is responsible for all project administration and reporting to the Deputy Secretary, Under Secretary, and PSO.

Finally, the PSO is required to notify the Under Secretary of any intent to discontinue a previously awarded financial assistance instrument with a DOE share of greater than ten million dollars.

SENIOR MANAGEMENT BRIEFING
FUNDING OPPORTUNITY ANNOUNCEMENT/FINANCIAL ASSISTANCE AWARD

PURPOSE:

The senior management briefing is held to ensure that U.S. Department of Energy (DOE) management is fully informed and offered an opportunity to review and comment on all funding opportunity announcements (FOAs) and financial assistance awards greater than $100 million (DOE funds), prior to signature. No later than 30 days prior to the release of an FOA or signature of a financial assistance award greater than $100 million, senior management will be offered a briefing.

SENIOR MANAGEMENT BRIEFING PARTICIPANTS:

Senior management briefings are chaired by the program office responsible for finalizing the financial assistance award. The following participants, or their designee, must be invited:

Deputy Secretary (FOA >$400 million [DOE share])
Under Secretary (FOA >$100 million ≤ $400 million [DOE share])
Program Secretarial Officer
General Counsel
Procurement
Budget
Congressional and Intergovernmental Affairs

BRIEFING OBJECTIVE:

The briefing must address the following:

- How the proposed project meets the mission needs of the program and the Department;
- How the proposed project is the best alternative for achieving the program objectives;
- How the project will be managed, i.e., responsible individuals, resources required, scope, schedule, decision points, etc.;
- Management and communication sensitivities (Administration, Congressional, State and local, industry, stakeholders, etc.); and
- Specific authorizing legislation or statutory requirements.

BRIEFING CONTENT:

The briefing should include the following information:

I. **Statement of Mission Need and Alternatives Assessment (required for FOAs only)**

II. **Linkage to Strategic Management Multi-Year Plans and Budget Requests**

III. **General Information**
- Sponsoring Program Office
- Funding Opportunity Announcement from which the project was selected
- Award recipient and the basis for the selection

IV. **Management Structure and Processes**
- Description of the prime recipient and all major sub-recipients
- Description of the recipient's management processes including any special tailoring of standard processes for this project
- Project review methods and schedule
- Reporting and documentation
- Key Personnel (recipient and DOE), e.g., project, procurement, financial, legal, property, etc.

V. **Detailed Project Description**
- Project Scope--statement of project objectives and work breakdown structure
- Project Schedule--including major milestones and decision points
- Funding
  - Total projected Federal funding and participant cost share
  - Cost plan and funding requirements (Federal and participant) by year
- Property--if project includes construction of a capital asset, describe the recipients project management procedures as they relate to DOE Order 413.3

VI. **Pre-Award Considerations**
- Legal issues
- Intellectual property
- Protected EPACT information
- Advanced patent waiver request
- NEPA approach/requirements
- National Laboratory and federally funded research and development centers' participation
- EPACT cost share requirements
- Congressional notification
- Other

VII. **Management and Communication Sensitivities**

BRIEFING REQUEST FOR MAJOR FINANCIAL ASSISTANCE ACTIONS (FUNDING OPPORTUNITY ANNOUNCEMENT/AWARD)

PURPOSE: The Under Secretary must be notified no later than 30 days prior to release of all Funding Opportunity Announcements (FOAs) greater than $100 million (U.S. Department of Energy [DOE] share) or signature of Financial Assistance (FA) awards greater than $100 million DOE share). The Under Secretary will be provided the opportunity to receive a briefing and review all major FOAs prior to their release or FA awards prior to their signature.

The Deputy Secretary will be provided the opportunity to review all FOA and awards greater than $400 million.

TYPE OF ACTION:

- ☐ Funding Opportunity Announcement Release
- ☐ Major Financial Assistance Award (grant or cooperative agreement, or technology investment agreement)

BACKGROUND INFORMATION:

ESE PROGRAM: ☐ EE ☐ EM ☐ FE ☐ LM ☐ NE ☐ OE ☐ RW

ISSUING/AWARDING HQ or FIELD OFFICE: _____

Title and Description of Work Scope:

Sensitivities:

Estimated Dollar Value (including options):

DOE: $
Cost Share: $
Total: $

ESTIMATED DATE FOR FOA RELEASE: _____ ☐ N/A

ESTIMATED DATE FOR AWARD: _____ ☐ N/A

SUBMITTED BY: _____

UNDER SECRETARY ACTION:

- ☐ Briefing Required — Initials/Date: _____
- ☐ No Briefing Required — Initials/Date: _____

2.1.6 Project Management

As part of DOE's stewardship responsibilities for its financial assistance awards, Contracting Officers and program officials must consider program and project management. While DOE O 413.3, *Program and Project Management for Acquisition of Capital Assets*, does not apply to financial assistance, the basic principles outlined in the order can be applied. These principles include:

- Mission need defined;
- Alternatives to meeting the mission need considered, developed, and evaluated;
- Project objectives defined up front and used to judge project success;
- Project performance risks (technical, financial, and otherwise) identified and mitigated in the implementation strategy;
- Projects managed by qualified individuals;
- Scope, schedule, and budget established for each project; and
- Projects managed and reported against established scope, schedule, and budget.

Contracting Officers should be aware of specific program requirements and work with program officials to ensure that funding opportunity announcements (FOAs) are consistent with these requirements and the above principles. The FOA should include merit review criteria that assess the recipient's abilities to manage projects consistent with the level of risk involved in the project. For large research and development projects, the FOA template includes a "Project Management Plan." requirement that should be included in the FOA.

Special terms and conditions may be required for awards with project performance risks. These could include structuring budget periods around go/no-go decisions, special reporting requirements or payment schedules.

POLICY FLASH 2006-43

POLICY FLASH 2006-43

DATE: July 24, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Acquisition Letter 2006-09 on Energy Efficiency

Federal Acquisition Regulation Case 2006-008 is in process to amend the Federal Acquisition Regulation to implement Section 104 of the Energy Policy Act of 2005 through the use of an energy efficiency clause in solicitations and contracts for energy consuming products. The clause requires energy consuming products to be ENERGYSTAR® or FEMP designated if they are available, meet functional requirements and be life cycle cost effective. This Acquisition Letter implements use of the clause within the Department in advance of the change to the FAR.

This Flash may be viewed at http://professionals.pr.doc.gov .

Questions may be addressed to Richard Langston at 202-287-1339 or Richard.Langston@hq.doc.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy

No. AL-2006-09
Date 07/24/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA.

Subject: Energy Efficiency of Energy Consuming Products — Implementation of Section 104 of the Energy Policy Act of 2005

References:

Energy Policy Act of 2005, Section 104
Executive Order 13123, Greening the Government through Energy Efficient Management, Section 403
DOE Acquisition Guide Chapter 23, Greening the Government – Environmental Considerations in Contracting
FAR Subpart 23.2, Energy and Water Efficiency and Renewable Energy

When is this Acquisition Letter (AL) Effective?

This AL is effective immediately upon issuance.

When does this AL Expire?

The AL remains in effect until superseded by anticipated FAR coverage or it is canceled.

Who are the Points of Contact?

Richard Langston, Office of Procurement and Assistance Policy, MA-61, (202) 287-1339 or Richard.Langston@hq.doe.gov or for NNSA, Mr. Stephen Law, Office of Acquisition and Supply Management Office, NA-63, (202) 586-4321 or Stephen.Law@nnsa.doe.gov .

What is the Purpose of this AL?

This AL implements the requirements of Section 104 of the Energy Policy Act of 2005 within the Department of Energy while a pending FAR Case is processed to add the same coverage to the FAR.

What is the Background?

The ENERGYSTAR® trademark may be used on energy consuming products that offer superior energy efficiency. The Federal Energy Management Program (FEMP) also offers "FEMP

designation" for certain categories of energy consuming products that are in the upper 25% of energy efficiency for their class of products. The FAR currently requires Federal agencies to acquire energy consuming products that are ENERGYSTAR® qualified or designated by FEMP. The only exception being the product is not life cycle cost effective or does not meet functional performance requirements.

The FAR requirements in Part 23 have not been well understood and are sometimes overlooked, as there is no clause to implement these provisions. The Energy Policy Act of 2005 provides that Federal agencies incorporate energy efficiency criteria into their guide specifications, project specifications, and construction, renovation, and services contracts. This requirement is in the FAR based on earlier Executive Order 13123 language. However, it lacks an implementing provision. In response, the Department of Energy proposed a FAR Business Case 2006-008 to add a new contract clause to the FAR to be included in solicitations and contracts alerting Federal and industrial personnel of these requirements.

Are there exceptions to this rule?

Exceptions to this policy should be rare because such products are generally life cycle cost effective when used as intended. The office requiring the product may pursue a written determination from the Secretary of Energy for an exception if:

A. an ENERGYSTAR® or FEMP designated product is not cost effective over the life of the product, taking energy savings into account, using the measurement criteria at 10 CFR 436; or
B. no ENERGYSTAR® or FEMP designated product is reasonably available that meets the functional requirements of DOE.

What is the Guidance?

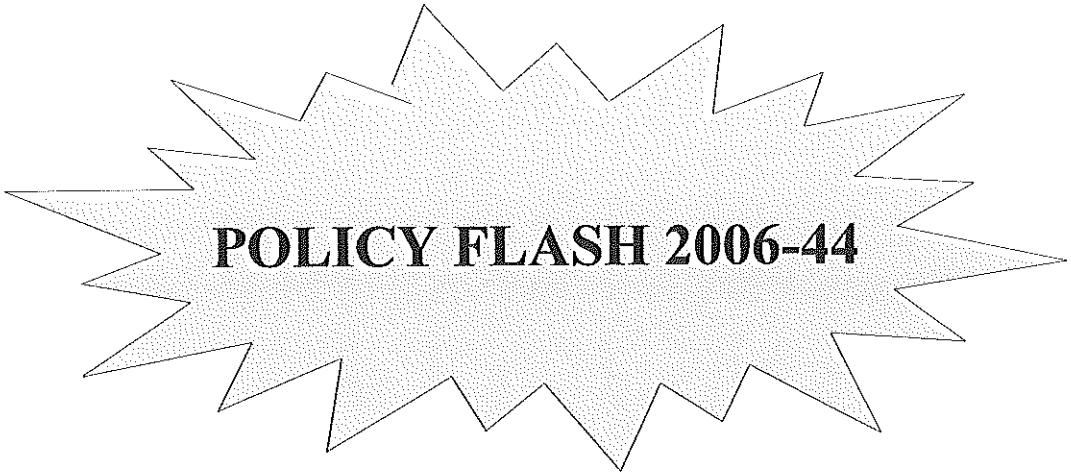
When acquiring energy consuming products, or specifying the use of listed energy consuming products, insert the following clause in solicitations and contracts (applicable to supply or service contracts, including construction and architect-engineer service contracts):

ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (JULY 2006)

When the contract requires the specification or delivery of energy consuming products for use in a Federal facility, the contractor will specify or deliver ENERGYSTAR® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for ENERGYSTAR® at http://www.energystar.gov/products and FEMP at http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm .

What about management and operating (M&O) contracts?

DOE O 430.2A implements the earlier requirements of Executive Orders 13123 and 13134 through its Contractor Requirements Document, applicable to M&O contracts through the Laws, Regulations and DOE Directives clause of the Department of Energy Acquisition Regulation, 10 CFR 970.5204-2. Contracting officers should include the above Energy Efficiency in Energy Consuming Products contract clause in M&O contracts that offer the opportunity for incorporating energy efficiency criteria into their guide or project specifications and construction, renovation, and services subcontracts.



POLICY FLASH 2006-44

DATE: August 23, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Letter 2006-07 on the Acquisition Career Development Program**

Office of Federal Procurement Policy (OFPP) Letter 05-01 broadened the definition of the acquisition workforce and OFPP Policy Letter 06-02 established the Federal Acquisition Certification in Contracting. This Acquisition Letter implements those policy letters with the Department, establishes targeted continuous learning tracks to address specific skill gaps and also establishes new requirements for Contracting Officer Representatives.

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions may be addressed to Cynthia Yee at 202-287-1666 or Cynthia.Yee@hq.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy
Acquisition Regulation

No. AL-2006-07
Date 08/23/06

ACQUISITION LETTER

This Acquisition Letter is issued by the Procurement Executives of DOE and NNSA.

Subject: DOE Order 361.1A, Acquisition Career Development Program

References:

DOE O 361.1A, *Acquisition Career Development (ACD) Program*
Office of Federal Procurement Policy (OFPP) Policy Letter 05-01,
Developing and Managing the Acquisition Workforce
OFPP Policy Letter 06-01
OFPP Memoranda, *The Federal Acquisition Certification in Contracting Program*, dated January 20, 2006,

When is this Acquisition Letter (AL) Effective?

This AL is effective immediately

When does this AL Expire?

This AL remains in effect until superseded or canceled. AL 2005-07 dated 06/03/05 is hereby cancelled.

Who is the Point of Contact?

Contact Cynthia Yee, Director, ACD Program, Office of Procurement and Assistance Management, at (202) 287-1666 or by email at Cynthia.Yee@hq.doe.gov .

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

This AL revises the requirements for certification under the ACD Program to conform to the letter and intent of OFPP Policy Letters 05-01 and 06-01 and adds structured continuous learning tracks to maintain certification.

DOE Order 361.1A, Chapter I, Chapter VII, and Chapter VIII, will be modified accordingly.

What is the Background?

OFPP has developed a government-wide curriculum for Federal Acquisition Certification in Contracting (FAC-C). While the curriculum is similar to the Department of Defense model provided under earlier AL, 2005-07, the new Federal certification program requires experience and education as a condition for certification, and adds electives at Levels I, II and III for GS-1102s and GS-1105s. Although Federal certification is not mandatory, DOE certification is. Therefore, members of the DOE Acquisition Workforce will be required to meet the Federal certification program requirements as implemented by this AL. These requirements will ensure that DOE's workforce is competitive with other Federal agencies and facilitate OFPP's goal of an acquisition workforce with a common body of knowledge across all civilian agencies.

As a result of the need to ensure that individuals with delegated responsibilities are properly trained, a new certification program for Contracting Officer Representatives (COR)s is established to ensure that those responsibility for acting on behalf of Contracting Officers have adequate training contract oversight.

Due to training skill gaps that were documented during an intra-Department review, new continuous learning tracks have been established to provide a mechanism to ensure skill gaps are closed within DOE and to also target specific topical areas. This is intended to provide a structured approach, while also offering some degree of flexibility in execution.

What is the Guidance?

- Formal education and experience, in addition to acquisition specific training, is required for certification in contracting
- New training courses are now required to achieve certification, in addition to existing CON courses
  - o Level I – Performance-Based Contracting
  - o Level II – Earned Value Management; and Financial Management
  - o Level III – Project Management; and Property Management
- Formal education and experience, in addition to training, is required for certification in purchasing
- New training courses added for certification, in addition to existing or predecessor CON courses:
  - o Level I – CON 110, 111, 112 and 120; CON 237, Simplified Acquisition Procedures; and DOE/C Web-Training
  - o Level II – CON 204, Intermediate Contract Pricing; and 1 elective
  - o Level III – Earned Value Management
- October 1 is established as a uniform anniversary date by which time all 80 hours of continuous learning must be achieved
- Continuous Learning Tracks established within the GA1102 career field.
- Curriculum stabilized
  - o if certified, remain so regardless of new requirements, which must be taken as continuous learning.
  - o if curriculum changes after individual begins training, will be bound by curriculum

in effect when they begin

- New requirements for non-1102 or 1105 personnel with CO warrant established
- New requirements for certification as COR, with corresponding training
- New guidelines for continuous learning and business-related coursework provided.

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Course Descriptions:

Strategic Supply Management
Cost & Performance Management
Price Productivity Improvement
Business to Business Marketing
Transportation and Logistics Management
Foundations of Leadership
Leadership Development Program
Leadership at the Peak
Project Management Essentials
Project Management Systems and Practices in DOE
Project Controls
Project Risk Management
Overhead Management of Contracts
Advanced Contract Pricing
Activity-Based Costing

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CONTRACTING OFFICER REPRESENTATIVE CERTIFICATION REQUEST

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GUIDANCE ON MEETING CONTINUOUS LEARNING POINTS REQUIREMENTS OF CHAPTER VIII
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GUIDANCE ON MEETING THE BUSINESS COURSE REQUIREMENTS FOR THE CONTRACT SPECIALIST (GS-1102) QUALIFICATION STANDARD OF CHAPTER VIII

Revisions to the ACD Program, Chapter I A DOE O 361.1

1. The core career path curriculum for GS-1102s and GS-1105s are amended as follows:

CORE CAREER PATH CURRICULUM

Career Level	Certification Requirements	
	GS-1102	
Level I	**GS05-07**	**Training Provider**
Education:	Baccalaureate Degree **OR** At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management	
Experience:	1 year of contracting experience	
Training:	CON 100 Shaping Smart Business Arrangements	**DAU/DAU-certified provider**
	CON 110 Mission Support Planning	**DAU/DAU-certified provider**
	CON 111 Mission Strategy Execution	**DAU/DAU-certified provider**
	CON 112 Mission Performance Assessment	**DAU/DAU-certified provider**
	CON 120 Mission Focused Contracting	**DAU/DAU-certified provider**
	Performance-Based Contracting Minimum of 16 hours	**MCI**: Performance-Based Service Contracting **Colleague Consulting**: Performance Based Service Acquisition **PMCDP**: Performance-Based Contracting
Level II	**GS09-12**	
Education:	Baccalaureate Degree **OR** At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management	
Experience:	2 years of contracting experience	

Training:	CON 202 Intermediate Contracting	**DAU/DAU- certified provider**
	CON 204 Intermediate Contract Pricing	**DAU/DAU-certified provider**
	CON 210 Government Contract Law	**DAU/DAU-certified provider**
	Earned Value Management Minimum of 20 hours	**PMCDP**: Earned Value Management Systems and Project Reporting **DAU**: Earned Value Management (on-line)
	Financial Management Minimum of 12 hours	**USDA**: Introduction to Financial Management **DAU**: BCF 103 Fundamentals of Business Financial Management (on-line) **Energy OnLine**: Financial Management Series: - Fundamental Accounting Concepts - Understanding Financial Statements - Budgeting Essentials - Cash Analysis and Management - Analyzing Financial Statements - AND Inventory Costing and Depreciation (2 credit hours each; all 6 courses must be taken)
Level III	**GS13-15**	
Education:	Baccalaureate Degree **AND** At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management	
Experience:	4 years of contracting experience	

Training:	CON 353 Advanced Business Solutions for Mission Support	**DAU/DAU-certified provider**
	Project Management Minimum of 24 hours	**ESI**: Managing Projects, or Project Management for Contracting Professionals **PMCDP**: Project Management Essentials **MCI**: Project Management Principles **USDA**: Project Management **Energy OnLine**: - Project Management: The Fundamentals - Project Management Essentials: Planning a Project - Project Management Essentials: Project Scheduling and Budgeting - Project Management Essentials: Controlling and Closing a Project - Project Management: Time Management - Project Management: Estimating Costs - AND Project Management: Risk Management (All 7 courses must be taken)
	Property Management Minimum of 16 hours	**DAU**: IND 100; **USDA**: Property Management for Custodial Officers

Career Level	**Certification Requirements** **GS-1105**	
Level I	**GS05**	**Required Provider**
Education:	(Desired) 16 semester hours of undergraduate work with emphasis in business	
Experience:	1 year of experience in purchasing	
Training:	CON 100 Shaping Smart Business Arrangements	**DAU/DAU-certified provider**
	CON 110 Mission Support Planning	**DAU/DAU-certified provider**
	CON 111 Mission Strategy Execution	**DAU/DAU-certified provider**
	CON 112 Mission Performance Assessment	**DAU/DAU-certified provider**
	CON 120 Mission Focused	**DAU/DAU-certified provider**

	Contracting	
	CON 237 Simplified Acquisition Procedures (on-line)	**DAU/DAU-certified provider**
	DOE/C Web-Training	**DOE**
Level II	**GS06-08**	
Education:	(Desired) 32 semester hours of undergraduate work with emphasis in business	
Experience:	2 years experience in purchasing	
Training:	CON 202 Intermediate Contract	**DAU/DAU-certified provider**
	CON 204 Intermediate Contract Pricing	**DAU/DAU-certified provider**
	1 Elective	
Level III	**GS09 & Above**	
Education:	(Desired) 64 semester hours of undergraduate work with emphasis in business	
Experience:	3 years of experience in purchasing	
Training:	CON 210 Government Contract Law	**DAU/DAU-certified provider**
	Earned Value Management	**DAU or PMCDP**

ESI - ESI International
CC - Colleague Consulting
PMCDP - Project Management Career Development Program, managed by the DOE Office of Engineering and Construction Management
MCI - Management Concepts Inc.
USDA - Graduate School, USDA
AFIT - Air Force Institute of Technology

The **core** certification classes beginning with a "CON" prefix, i.e., CON 100 Shaping Smart Business Arrangements, must be taken from DAU or a DAU-certified provider.

The requirements for certification are cumulative. An individual must meet the requirements for each previous certification level to be certified at the next level. For example, in order to be certified to level II, an individual must have a Baccalaureate Degree or 24 semester hours in business or business related subjects; complete all the level I and II training classes, and have a total of 3 years of contracting experience.

Courses taken prior to this Acquisition Letter may be counted towards the requirements.

2. a. Policy Letter 06-01 requires that acquisition professionals earn 80 hours of skills currency training every 2 years, using October 1 as the anniversary date. Accordingly, the ACD Program will use October 1 as the date by which individuals must earn 80 hours of continuous learning. During the transition period, if an employee is in mid-cycle, they will have until October 1 of that year to obtain the 80 hours of continuous learning. For example, if an individual was certified in January 2005, they will have until October 1, 2007 to obtain the 80 hours.

b. New continuous learning provisions are provided below.

CONTINUOUS LEARNING (CL)/CONTINUING EDUCATION (CE)

a. GS-1102s

To remain current in contracting knowledge, skills, and techniques, GS-1102s and 1105s will obtain 80 hours of CL/CE 2 years following their initial certification or recertification. If an individual is certified in January 2005, they must obtain 80 hours of CL by October 1, 2007. Failure to do so will result in revocation of the contracting officer's warrant and may result in reassignment to a position not requiring a contracting officer's warrant. For those not holding a contracting officer's warrant, failure to obtain CL/CE hours may result in reassignment to a position not involving contract administration/management. If the Senior Procurement Executive (SPE) chooses to revoke the warrant for failure to meet the CL requirement, the SPE shall direct the Head of the Contracting Activity (HCA) to do so. The HCA shall notify the warrant holder in writing when the revocation is effective, providing enough time to ensure that no unauthorized obligations are made, and direction as to how the employee can correct the situation. The warrant holder must acknowledge this notification in writing. **GS-1102s certified to Level III must pursue one of the below CL/CE tracks as part of their 80 hours of CL/CE.**

Continuous Learning Tracks

Level IV – Non-Mandatory	**Suggested Providers**
Strategic Supply Management	Lehigh University (on-line)
Cost and Performance Management	Lehigh University (on-line)
Price Productivity Improvement	Lehigh University (on-line)

Expert Level Tracks

Supply Chain Management	
Business to Business Marketing	Lehigh University (on-line)
Transportation and Logistics Management	Lehigh University (on-line)
Leadership Development	
Foundations of Leadership	Center for Creative Leadership Eckerd College
Leadership Development Program	Center for Creative Leadership Eckerd College
Leadership at the Peak	Center for Creative Leadership Eckerd College
Rotational Assignment with Industry	Not Applicable

Project Management:	
Project Management Essentials	DOE Project Management Career Development Program (PMCDP)
Project Management Systems and Practices in DOE	DOE PMCDP
Project Controls	DOE
Project Risk Management	DOE PMCDP; ESI: Risk Management USDA: How to Assess and Manage Project Risk
Cost/Price Analysis:	
Overhead Management of Contracts	DAU CON 232
Advanced Contract Pricing	DAU CON 235
Activity-Based Costing	USDA: Activity-Based Costing

The courses identified for the Level IV and Expert Level Continuous Learning tracks should be construed as subject areas, rather than as specific courses provided by specific providers. The providers indicated are suggestions and are provided for convenience. Other courses offered by local trainers or universities in the subject matter may be used. Course descriptions are provided at Attachment A to determine if other courses are comparable.

Courses taken prior to this Acquisition Letter in these subject areas may count towards the requirements but NOT towards the 80 hours CL/CE if taken prior to the most recent recertification.

At least 40 hours of the requirement for 80 hours of CL/CE every two years must be in one of the above targeted areas. The remaining 40 hours may be obtained through other training activities, such as teaching, self-directed study, mentoring; professional activities, such as attending/speaking/presenting at professional seminars/symposia/conferences, webinars, and brown-bag lunches, publishing, and attending workshops; or education activities, such as formal training, and formal academic programs. GS-1102s certified to Level I or Level II should focus their CL/CE on completing courses to achieve certification at the next level.

b. GS-1105s:

GS-1105s are encouraged to take courses and pursue experiential opportunities leading to certification in contracting to meet their CL/CE requirements.

3. New certification and curriculum stability provisions are established as follows:

CERTIFICATION AND CURRICULUM STABILITY

a. Existing Certifications

Existing certifications and individuals with a DOD certification who transfer to DOE, will retain that existing certification regardless of new requirements made effective by this Acquisition Letter, unless

statutory requirements change. In that event, individuals must complete the new requirement within 36 months of enactment. Failure to complete the new statutory requirements or to justify a waiver will result in loss of certification. GS-1102s are encouraged to fulfill new education or training requirements, whether or not statutorily required, to fulfill their CL/CE requirements prior to taking the tracks established in this AL. Additionally, while individuals certified at a particular level will retain that certification, failure to take the courses identified in this AL as required for certification may make them ineligible for a Federal Certification in Contracting (FAC-C) until they are completed. Certifications from other agencies will be evaluated on a case-by-case basis to determine DOE ACD equivalency, to DOE's ACD requirements.

b. Curriculum Revisions

Individuals under a training program for a particular career level whose curriculum requirements are subsequently changed, are unaffected by the change. For example, if an individual begins the curriculum for a Level III certification under DOE O 361.1 as it existed before the effective date of this AL, they may continue with that curriculum. Similarly, if an individual begins the curriculum for a Level II certification under DOE O 361.1 as it existed before the effective date of the AL, they may continue with that curriculum for Level II only. However, that individual must meet the new curriculum established for Level III certification at the time they begin the training program for the Level III certificate.

4. Individuals currently certified by DOE shall request a FAC-C by using Attachment B,C, or D as appropriate, and provide appropriate information and documentation in accordance with the below process.

APPLICATION PROCESS

An individual meeting the FAC-C requirements shall request certification through their immediate supervisor, produce certificates, transcripts, and records that provide evidence that he or she satisfies the requirements for the program. The supervisor should assess the skills and competencies of the applicant and develop a plan for enhancing or adding to the employee's competencies, if appropriate. GS-1102s requesting certification shall use the Request for Federal Acquisition Certification in Contracting (FAC-C); GS-1105s shall use the Request for Acquisition Certification in Purchasing found at Attachment E, F or G as appropriate.

The certification will be issued by the Procurement Executive, representing the achievement of government-wide standards. The Procurement Executive will maintain certification applications at the agency for audit purposes.

Revisions to the ACD Program, CHAPTER VII of DOE O 361.1 A

5. New training requirements for Contracting Officers and Contracting Officer Representatives (CORs) are established as follows:

CONTRACTING OFFICER/CONTRACTING OFFICER REPRESENTATIVE CURRICULUM

Function	Experience	Minimum Training	Continuous Learning
GS-1102s with a warrant for Procurement contracts, inter-Agency agreements and sales contracts	GS-1102 with at least 5 years of progressively complex and responsible experience in negotiation/sealed bidding and performing business administration of procurement. Extensive experience in the GS-1102 or GS-1105 job series, or directly comparable military experience as a contracting officer is highly desirable	Certified to Level II under the Contracting Program	80 hours every two years as discussed in Chapter I, section 5; Training in Source Selection Procedures; training in Incentive Contracting
Warrant for Grants and cooperative agreements	GS-102 with at least 3 years of progressively complex and responsible experience in negotiating and performing business administration of grants and/or cooperative agreements	Certified to Level II under the Contracting Program AND certified under the Financial Assistance Career Development Program	80 hours every two years as discussed in Chapter I, section 5
Warrant for Loans and loan agreements	GS-1102 with at least 1 year of progressively complex and responsible experience in negotiating and	Certified to Level II under both the Contracting Program AND the Financial Assistance Career Development Program.	80 hours every two years as discussed in Chapter I, section 5

	performing business administration of price supports, guaranteed market agreements, loans, and loan guarantees. Banking experience is highly desirable.		
Non-1102 or GS-1105 personnel with authority to make individual transactions up to $2,500 using Government Purchase Card	As established by the field element manager	At least 8 hours covering credit card purchases, such as – (1) self-instruction using training materials from the Government purchase card program, (2) a 1-day training course on the Government purchase card program, or (3) other appropriate training as established by the field element manager	16 hours every 2 years, as prescribed by HCA
Non-1102 or 1105 personnel using Government purchase card and DOE/C-Web for purchases of up to $25,000 (applies to open market purchases and Federal Supply Scheduled purchases)	A minimum of 6 months Government purchase card and DOE/C-Web buying for micropurchase experience.	Simplified Acquisition Procedures (SAP) training course, such as – (1) CON 237, or (2) DAU certified SAP course, or (3) DOE Sponsored SAP course; and DOE/C-Web operational training class conducted by the Office of Procurement and Assistance Management	16 hours every 2 years, as prescribed by HCA
Non-1102 or 1105s personnel with authority to make simplified acquisitions and	At least 1 year of Government purchase card and DOE/C-Web buying experience for	Certified Level I under the Purchasing Program	80 hours every 2 years, as prescribed by DOE O 361.1 requirements for Level I certification

place orders against Federal Supply Schedules for $25,000 to $100,000 using the Government purchase card, DOE/C-Web, purchase orders, or delivery orders	purchases up to $25,000		in Purchasing
Non-1102 personnel	Warrants Prohibited, but with exception as opposed if by the Procurement Exe cutive least 5 years of progressively complex and responsible experience in negotiation/sealed bidding and performing business administration of procurement. Extensive experience in the GS-1102 or G-1105 job series or directly comparable military experience as a contracting officer is highly desirable	Certified to Level III under the Contracting Program	80 hours every 2 years in acquisition-related fields.
Non-1102 personnel with administrative warrant only, for any of the above functional areas	Same as experience in relevant functional areas except all years are reduced by 50 percent	Certified Level I under the Contracting Program, CON 210, Government Contract Law, and Earned Value Management	80 hours every 2 years, consisting of CON 202 and CON 204
Resident engineer	At least 1 year of appropriate Government experience as a contracting officer representative,	Certified Level I under the Project Management Career Development Program (PMCD), and at least 40 hours	60 hours every 2 years as set forth in the PMCDP

	project manager or other equivalent experience	covering Government Construction Contracting	
Real property	At least 6 years of creditable experience in the Federal real estate field at least 1 year of which is at the journeymen level (GS-11 or above) in four distinct areas of specialty: acquisition by other than lease, leasing except for leases executed under the delegation of lease acquisition authority from GSA, leasing under delegation from GSA, and land management and disposal	Certified under the DOE Real Estate Certification Program	As required by the DOE Real Estate Certification Program
COR, non-management and operating/non-management and integration (non-M&O/non-M&I)		Certified as a COR	40 hours every 2 years consisting of the FAI Refresher Training Course; Project Management and Property Management
COR, M&O/M&I		Certified as a COR, and completion of 8 hours covering contracting officer representative responsibilities for M&O/M&I contracts	40 hours every 2 years consisting of the FAI Refresher Training Course; Project Management and Property Management
COR, Capital Projects and Operating Projects		Certified as a COR and completion of Earned Value Management Systems and Project Reporting, given by the PMCDP	40 hours every 2 years consisting of the FAI Refresher Training Course; Project Management and Property Management

NPI – Northwest Procurement Institute

6. A new certification program for CORs is established as follows:

CERTIFICATION FOR CORS

The intent of the ACD Program and the various chapters contained in it is to establish performance expectations to increase acquisition personnel efficiency and effectiveness on the job. This applies to all members of the acquisition workforce. Accordingly, before assuming the responsibilities of a COR, perspective CORs must be certified as a COR, in accordance with the core curriculum for COR certification program provided below.

CORE COR CERTIFICATION

Course Subject Area	Minimum Hours	Potential Providers
COR Responsibilities	24 hours	**FAI:** COR Mentor Program (On-Line) **ESI:** The COTR Training Program; **CC:** Contracting Officer (Technical) Representative COR/COTR; **NPI:** COR/COTR Certification Course; **MCI:** Contracting Officers Representative Course; **USDA Grad School:** Comprehensive COTR Workshop
Performance-Based Statements of Work	16 hours	**NPI:** Developing Performance-Based Work Statements **MCI:** Performance-Based Service Contracting **PMCDP:** Performance-Based Contracting **USDA:** Performance-Based Statements of Work **ESI:** Performance-Based Service Contracts

Individuals currently holding a COR delegation authority will retain their authority, but are required to meet the new certification requirements set forth above within 18 months of this AL. Failure to do so will result in revocation of their authority. Courses taken prior to this AL may be counted towards the core training requirements.

7. CORs are to request certification in accordance with the following:

APPLICATION PROCESS

An individual meeting the COR Certification requirements shall request certification through their immediate supervisor. The individual is responsible for producing certificates and records that provide evidence that he or she satisfies the requirements for the program. The supervisor should take this opportunity to assess the skills and competencies of the applicant and develop a plan for enhancing or adding to the employee's competencies, if appropriate. CORs requesting certification shall use the Request for Contracting Officer Representative Certification, Attachment H.

The certification will be issued by the ACM, who is responsible for maintaining certification applications at the agency for audit purposes.

Chapter VII

Revisions to Continuous Learning/Continuing Education Guidance of Chapter VII

8. DOE O 361.1, Chapter VII, Section 6 is revised to read as follows:

6. CONTINUOUS LEARNING/CONTINUING EDUCATION (CL/CE)
To remain current in acquisition knowledge, skills and techniques, all members of the acquisition workforce, as defined in DOE O 361.1, must obtain CL/CE in accordance with the requirement set forth in their respective career field certification program. Alternate training may be used, with the concurrence of the head of the contracting activity, based on similarities in subject matter and course content.

9. DOE O 361.1, Chapter VII, Section 7, is revised to read as follows:

7. CONTRACTING OFFICER WARRANT REQUIREMENTS
All individuals who hold CO warrants, irrespective of job series, are required to obtain CL/CE hours consistent with their career field certification requirements. That is, a non-1102 holding an administrative warrant must be certified to Level I under the Contracting Program and take CON 210, and Earned Value Management. To remain certified, and therefore maintain the warrant, the individual must obtain 80 hours of CL/CE every 2 years. Similarly, to remain certified and therefore maintain their delegation, CORs must obtain 40 hours of CL/CE every 2 years. The specific CL/CE requirements are set forth in the above matrix.

10. Chapter VIII is revised by inserting the guidelines for crediting continuous learning activities and acquisition career development business and business related course work provided as Attachments I and J, respectively.

ATTACHMENT A - Course Descriptions

Strategic Supply Management
A survey course introducing the vital role played by supply management in achieving overall effectiveness for the firm in today's global economy. The course starts by examining the traditional purchasing process and then moves on to an examination of the evolution of purchasing into supply management and finally to the role purchasing plays in improving effectiveness for the entire value chain.

Cost & Performance Management
The student will learn the steps required to effectively develop methods for cost reduction and performance enhancement in the supply chain. The course covers the principles and methodology of Activity Based Costing (ABC) and provides supply chain examples of Activity Based Management (ABM) and its use in developing a performance management system. The next focus of the course will be target costing methods and the use of commodity databases to establish target costs for suppliers. The classroom experience is enhanced through the demonstration of ABC software that has been installed at many supplier locations to help manage costs and provide process based quotes. Finally, the course will demonstrate a web based, collaborative, performance management system using the Balanced Scorecard.

Price Productivity Improvement
A topical workshop aimed at helping students improve their negotiating skills in obtaining better pricing from suppliers by identifying cost reduction opportunities. This is done by developing the following tools: quantity discount analysis, experience curve analysis, learning curve analysis, Stanford B analysis, EOQ analysis, break-even analysis, fixed and variable cost analysis and price productivity analysis. In addition we will also discuss tools that will enable students to conduct supplier financial evaluations and supplier assessments.

Business to Business Marketing
This course focuses on marketing strategies and tactics in firms whose customers are other institutions, not individuals. Topics covered include organizational buying behavior, managing strategic buyer-seller relationships, sales force deployment, communication strategies, and so on. Specific attention is given to the impact of information technology and globalization in the business-to-business context.

Transportation and Logistics Management
The control of physical distribution and inventories; the flow of information, products and cash through integrated supply chains.

Foundations of Leadership
This interactive program creates a foundation for understanding the challenges facing a new manager and for helping the individual improve leadership skills and behaviors at a formative stage in his or her career. Participants learn the essentials of effective leadership, focusing on personal awareness and growth, working relationships, influence skills and conflict resolution. In this enriching three-day program, participants will gain insight into how personality and interaction preferences help or impede the ability to influence others and resolve conflict. They will receive honest evaluations of their leadership styles and behaviors and come away with a tangible and practical development direction.

Leadership Development Program
CCL's flagship leadership development experience, LDP has been in use for 30 years and is ranked as one of the top programs of its kind. Based on the most recent leadership research, this developmental process uses a variety of in-depth self-awareness tools and activities to enhance leadership capabilities. Participants learn strategies for continuous development through extensive assessment, group discussions, self-reflection, small-group activities and personal coaching. LDP alumni typically describe it as the most transformational development experience they have ever had, both personally and professionally.

Leadership at the Peak
This program focuses exclusively on the demands of senior-most leaders, guaranteeing a comfortable, secure environment in which they can evaluate their leadership style and effectiveness and focus on high-level challenges in the company of their peers. It blends self-discovery, self-development and fitness activities and sets it all against a backdrop of current business themes. Held at the Center's Colorado Springs campus, set at the foot of the Rocky Mountains, and also in the mountains near Zurich, Switzerland, this program offers a stimulating setting for reflection and development.

Project Management Essentials
This course is part of the Project Management Career Development Program (PMCDP). It is required for PMCDP Level 1 certification and information technology (IT) project management certification, but it applies to all levels of project director development. This blended learning course is presented in ten 2-hour televideo conference sessions and one 3-day resident seminar over approximately two months. The course addresses project risk management; earned value management systems (EVMS) and project reporting; life cycle cost estimating; leadership and teambuilding; work breakdown structure (WBS) development and project scope baselines; configuration management; and project planning and resource loaded scheduling.

Project Management Systems and Practices in DOE
This course is part of the Project Management Career Development Program (PMCDP). It is required for PMCDP Level 1 certification, but it applies to all levels of project director development. This blended learning course is presented in seven 2-hour televideo conference sessions and one 3-day resident seminar over approximately six weeks. The course focuses primarily on the critical decision process promulgated in DOE Capital Assets directives, and it also addresses the Federal budget process, other regulations affecting DOE project management, and Federal project director roles and responsibilities.

Project Controls
This course provides an overview of the project controls system. Topics covered include work organization, planning and scheduling, estimating, budgeting, schedule monitoring, cost monitoring, progress and performance monitoring, project reporting, forecasting, trending and change control, and project funding. Students will become familiar with the concepts of planning and terms used when planning; understand the importance of scheduling, scheduling terminology, and the scheduling process; understand the function of estimating, types of estimates, and roles and responsibilities of the estimate reviewers; understand the concept of establishing a cost baseline; assess the current status of a project, identify deviations to the plan, and implement corrective actions; understand how to monitor costs so that errors and trends can be spotted; understand how to apply performance measurement techniques in analyzing data; identify typical reports generated by, or supported by, Project Controls; understand the trend and change control process; and define the relationship between work management and funds management.

Project Risk Management
This course is part of the Project Management Career Development Program (PMCDP). It is required for PMCDP Level 2 certification and information technology (IT) project management certification, but it applies to all levels of project director development. The course provides participants with knowledge on assessing and quantifying risk, assigning responsibility and managing risk, using tools to assess and manage risk, developing risk mitigation plans, and integrating risk management into project management.

Overhead Management of Contracts
This course provides an understanding of industry overhead costs and their impact on seller pricing/business strategies under various acquisition environments with differing contract types. Attendees will understand the development and application of overhead rates used in contract formation, administration, and closeout. The course-integrating case provides hands-on application of the overhead-rate process where students determine their own final overhead rates.

Advanced Contract Pricing
From price-based acquisition to the traditional cost-based environment, this course is designed for buyers, price analysts, and contracting officers tasked with obtaining fair and reasonable prices. The course addresses market forces, the market research process, commerciality issues, and cost/price analysis techniques, such as interviewing experts, analogy, decision theory, earned value statistics, parametrics, learning curves, and risk analysis.

Activity-Based Costing
This course provides an understanding of way that costs of resources are tied to the activities that consume them in order to learn how to manage the real cost of those activities. The student is introduced to activity-based costing as described in the Federal Accounting Standards Advisory Board Standard #4. Attendees will learn the complete process for sound activity-based costing and discover its advantages over traditional cost accounting methods. Attendees will also learn how to use this information in the organization, management and decision process.

ATTACHMENT B

FEDERAL ACQUISITION CERTIFICATION – CONTRACTING (GS-1102)
LEVEL I

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS
(Place a check mark in the space to indicate you meet the certification requirements)

1. _____ **Education:** Baccalaureate degree and at least 24 hours among accounting, law, business finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.

2. _____ **Experience**: Minimum of one year contracting experience *(SERIES 1102).*

3. _____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manager

4. **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 100 SHAPING SMART BUSINESS ARRANGEMENTS

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

CON 110 MISSION SUPPORT PLANNING
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

CON 111 MISSION STRATEGY EXECUTION
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

CON 112 MISSION PERFORMANCE ASSESSMENT
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

CON 120 MISSION FOCUSED CONTRACTING
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 101 BASICS OF CONTRACTING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 104 PRINCIPLES OF CONTRACT PRICING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PERFORMANCE-BASED CONTRACTING

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level I.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level I.

Name_____
Signature_____Date_____

ATTACHMENT C

FEDERAL ACQUISITION CERTIFICATION – CONTRACTING (GS-1102)
LEVEL II

PART A - EMPLOYEE INFORMATION
Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS
(Place a check mark in the space to indicate you meet the certification requirements)

1. _____ **Education:** Baccalaureate degree and at least 24 hours among accounting, law, business finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.

2. _____ **Experience**: Minimum of two years contracting experience *(SERIES 1102).*

3. _____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manager

4. **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 202 INTERMEDIATE CONTRACTING
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 204 INTERMEDIATE CONTRACT PRICING
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 210 GOVERNMENT CONTRACT LAW
(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

EARNED VALUE MANAGEMENT

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

FINANCIAL MANAGEMENT

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level II.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level II.

Name_____
Signature_____Date_____

ATTACHMENT D

FEDERAL ACQUISITION CERTIFICATION – CONTRACTING (GS-1102)
LEVEL III

PART A - EMPLOYEE INFORMATION
Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS
(Place a check mark in the space to indicate you meet the certification requirements)

1. _____ **Education**: Baccalaureate degree and at least 24 hours among accounting, law, business finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.

2. _____ **Experience**: Minimum of four years contracting experience *(SERIES 1102).*

3. _____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manager

4. _____ **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 353 ADVANCED BUSINESS SOLUTIONS FOR MISSION SUPPORT

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PROJECT MANAGEMENT

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PROPERTY MANAGEMENT

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level III.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level III.

Name_____
Signature_____Date_____

ATTACHMENT E

ACQUISITION CERTIFICATION – PURCHASING (GS-1105) LEVEL I

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS

(Place a check mark in the space to indicate you meet the certification requirements)

1. _____ **Education**: (Desired) 16 semester hours of undergraduate work with emphasis in business.

2._____ **Experience**: Minimum of one year purchasing experience *(SERIES 1105).*

3._____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manager

4. _____ **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 100 SHAPING SMART BUSINESS ARRANGEMENTS

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 110 MISSION SUPPORT PLANNING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 111 MISSION STRATEGY EXECUTION

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 112 MISSION PERFORMANCE ASSESSMENT

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 120 MISSION FOCUSED CONTRACTING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 101 BASICS OF CONTRACTING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 104 PRINCIPLES OF CONTRACT PRICING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 237 SIMPLIFIED ACQUISITION PROCEDURES (ON-LINE)

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

DOE/C WEB-TRAINING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____

Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level I.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level I.

Name_____
Signature_____Date_____

ATTACHMENT F

ACQUISITION CERTIFICATION – PURCHASING (GS-1105)
LEVEL II

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS
(Place a check mark in the space to indicate you meet the certification requirements)

_____ **Education**: (Desired) 32 semester hours of undergraduate work with emphasis in business.
1.

2. _____ **Experience**: Minimum of two years purchasing experience *(SERIES 1105).*
3. _____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manager
4. _____ **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 202 INTERMEDIATE CONTRACTING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

CON 204 INTERMEDIATE CONTRACT PRICING

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

ONE ELECTIVE

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level II.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level II.

Name_____
Signature_____Date_____

ATTACHMENT G

ACQUISITION CERTIFICATION – PURCHASING (GS-1105) LEVEL III

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle initial)_____

Social Security Number_____
Email Address_____

Phone_____
Agency Name_____

Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS

(Place a check mark in the space to indicate you meet the certification requirements)

1. _____ **Education**: (Desired) 64 semester hours of undergraduate work with emphasis in business
2.
3. _____ **Experience**: Minimum of three years purchasing experience *(SERIES 1105).*
4. _____ **Training requirements**: Send all certificates for applicable courses below to the Acquisition Career Manaq
5. _____ **Method of Completion** (Check appropriate space and complete applicable information). For course equivalencies, see Appendix D of the DAU Catalog (http://www.dau.mil/catalog/default.asp).*

TRAINING

CON 210 GOVERNMENT CONTRACT LAW

(Y/N) Actual course; _____Date completed or Date Fulfillment Approved

or Other

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

EARNED VALUE MANAGEMENT

_____
Course Title and Number of Training Hours
_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification at Level III.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification at Level III.

Name_____
Signature_____Date_____

ATTACHMENT H

CONTRACTING OFFICER REPRESENTATIVE CERTIFICATION REQUEST

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle initial)_____

Email Address_____

Phone_____
Agency Name_____
Agency Address_____

Title, Series, Grade_____

PART B – CERTIFICATION REQUIREMENTS

CONTRACTING OFFICER REPRESENTATIVE RESPONSIBILITIES

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

PERFORMANCE-BASED STATEMENTS OF WORK

_____
Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

COR RESPONSIBILITIES FOR M&O/M&I CONTRACTS, or, EVMS, as appropriate

Course Title and Number of Training Hours

_____; _____
Course Provider Date Complete

PART C – SIGNATURES

Applicant's Signature_____Date_____

Supervisor's Endorsement:
I recommend the above individual for certification as a COR.

Name_____
Signature_____Date_____

Director Approval:
I approve the above individual for certification as a COR.

Name_____
Signature_____Date_____

ATTACHMENT I

GUIDANCE ON MEETING CONTINUOUS LEARNING POINTS REQUIREMENTS OF CHAPTER VIII

These guidelines are generally based on DoD's requirements for achieving continuous learning points (CLPs). Supervisors have flexibility in assigning points and should work with employees to identify appropriate opportunities. Below is guidance on how training, professional activities, education, and experience can be used to meet the CLP requirements. All activities must be job-related.

A. Training

1) *Completing awareness training.* Periodically agencies conduct briefing sessions to acquaint the workforce with new or changed policy. Generally, no testing or assessment of knowledge gained is required.

2) *Completing learning modules and training courses.* These may be formal or informal offerings from a recognized training organization, including in-house training course/sessions, which include some form of testing/assessment for knowledge gained.

3) *Performing Self-Directed Study.* An individual can keep current or enhance his or her capabilities through a self-directed study program agreed to by the supervisor.

4) *Teaching.* Employees are encouraged to share their knowledge and insights with others through teaching of courses or learning modules. Teaching is also a part of the Professional Activities category.

5) *Mentoring.* Helping others to learn and become more productive workers or managers benefits the agency and the individuals involved. Mentoring is also a part of the experience category.

B. Professional Activities

1) *Participating in Organization Management.* Membership alone in a professional organization will not be considered as fulfilling continuous learning requirements, but participation in the organization leadership will. This includes holding elected/appointed positions, committee leadership roles, or running an activity for an organization that you are permitted to join under current ethics law and regulation. The employee and supervisor must first ensure that participating in the management of an organization is allowed by the agency.

2) *Attending/Speaking/Presenting at Professional Seminars/Symposia/Conferences.* Employees can receive points for attending professional seminars or conferences that are job related. However, the supervisor needs to determine that the individual learned something meaningful from the experience. Because significant effort is involved in preparing and delivering presentations, credit should be given for each hour invested in the preparation and presentation.

3) *Publishing*. Writing articles related to acquisition for publication generally meets the criteria for continuous learning. Points will be awarded only in the year published. Compliance with agency publication policy is required.

4) *Participating in Workshops*. Points should be awarded for workshops with planned learning outcomes.

C. Education

1) *Formal training*. Supervisor should use Continuing Education Units (CEUs) as a guide for assigning points for formal training programs that award CEUs. The CEUs can be converted to points at 10 CLP points per CEU.

2) *Formal academic programs*. For formal academic programs offered by educational institutions, each semester hour is equal to one CEU. A three-hour credit course would be worth three CEUs and 30 CLP points, assuming that it is applicable to the acquisition function.

CREDITABLE ACTIVITIES	**POINT CREDIT (see note)**
Academic Courses:	
Quarter Hour	10 per Quarter Hour
Semester Hour	10 per Semester Hour
Continuing Education Unit (CEU)	10 per CEU
Equivalency Exams	Same points as awarded for the course
Training Courses/Modules:	
DAU Courses/Modules	10 per CEU (see DAU catalog) or:
• Awareness Briefing/Training—no testing/assessment associated • Continuous Learning Modules—testing/assessment associated	• .5 point per hour of instruction • 1 point per hour of instruction
Other Functional Training	1 point per hour of instruction
Leadership or Other Training	1 point per hour of instruction
Equivalency Exams	Same points as awarded for the course
Professional Activities:	
Professional Exam/License/Certificate	10-30 points
Teaching/Lecturing	2 points per hour; maximum of 20 points per year
Symposia/Conference Presentations	2 points per hour; maximum of 20 points per year
Workshop Participation	1 point per hour; maximum of 8 points per day and 20 points per year
Symposia/Conference Attendance	.5 point per hour; maximum of 4 points per day and 20 points per year
Publications	10 to 40 points

Note - All activities may earn points only in the year accomplished, awarded or published.

D. Experience

Experience includes on-the-job experiential assignments, and intra/interorganizational rotational career broadening and developmental experiences. While supervisors and employees must use discretion in arriving at a reasonable point value to be awarded for rotational and developmental assignments, a sliding scale is recommended. Suggested points for such assignments are in the table below.

The assumption is that longer assignments are more beneficial than shorter assignments. The supervisor may feel that an individual may deserve more or less than the values shown. In determining the points for a rotational/developmental assignment, the supervisor should consider both the long-term benefit to the agency, and the immediate benefit to the supervisor's organization and the workforce member. For example, a second rotational assignment of the same sort would be less valuable than a different type of rotational assignment.

When experience or other non-assessed activities are to be used to earn CLPs, certain principles should be followed. Supervisors and employees should pre-define, as closely as possible, the tasks to be accomplished, expected outcomes, and the learning opportunities. If it is an assignment, the individual should be mentored during the assignment. Accomplishment of a product, such as a briefing, a project design, a report, or other work product that shows the learning attained, is desirable. Sharing the knowledge and experience gained and the product with others in the organization is encouraged.

CREDITABLE ACTIVITIES	**POINT CREDIT**
Experience:	
On-the-Job Experiential Assignments	Maximum of 20 points per year
Integrated Product Team (IPT)/ Special Project Leader	Maximum of 15 points per year
IPT/Special Project Member	Maximum of 10 points per years
Mentor	Maximum of 5 points per year
Assignment Length (Rotational Assignments or Training with Industry):	**Recommended Points:**
12 Months	80
9 Months	60
6 Months	40
3 Months	15
2 Months	10
1 Month	5

ATTACHMENT J

GUIDANCE ON MEETING THE BUSINESS COURSE REQUIREMENTS FOR THE CONTRACT SPECIALIST (GS-1102) QUALIFICATION STANDARD OF CHAPTER VIII

Below are types of courses that generally satisfy the Qualification Standard requirement for 24-semester hours (or equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

The following is based on guidance provided by the Defense Acquisition University to the defense workforce and lists subject areas identified by the American Council on Education for each of the business disciplines listed above. Although not an exhaustive list, this guidance should be used by civilian agencies to determine if certain courses provide enough business instruction to count toward the 24-semester hour business requirement. ACMs should work with their human resources departments to ensure a consistent interpretation of which types of courses should count toward the requirement.

BUSINESS/MANAGEMENT DISCIPLINE	*AMERICAN COUNCIL ON EDUCATION SUBJECT AREA*
Accounting	Cost Accounting Standards
Business Finance	Business Communications Business and Personnel Business Statistics Cost Analysis Financial Cost Management Financial Planning and Analysis Inventory Management Resource Planning Risk Analysis
Contracts	Acquisition Contracting Acquisition Management Business Communications in Contracting Writing Business Contract Law Contract Administration Contract Law Contract Management Contract Pricing and Negotiation Contracting Management Cost & Price Analysis Government Contracting Government Contract Law Procurement

BUSINESS/MANAGEMENT DISCIPLINE	*AMERICAN COUNCIL ON EDUCATION SUBJECT AREA*
	Procurement and Contracting
	Procurement Management
Economics	Cost and Price Analysis
	Cost Analysis
	Economic Analysis
	Economic Principles and Decision Making
	Economics and Financial Management
	Economics
Industrial Management	Automated Systems in Logistics Management
	Civil Engineering Management
	Environmental Management
	Engineering and Analysis
	Logistics Management
	Logistics and Materiel Management
	Manufacturing Management
	Materiel Acquisition Process & Support Systems
	Property Disposal Management
	Supply Management
	Systems Engineering
	Technology
	Warehousing Operations
Law	Commercial or Business Contracts
	Contract Law
Organization & Management	Business Administration
	Advanced Management (Math)
	Business
	Business Management
	Business and Personnel Management
	Computer Programming
	Computer Programming & Systems Development
	Computer Sciences, Data Processing
	Data Entry and Automated Systems Input
	General Management
	Human Resource Development
	Leadership and Group Decision Process
	Management Science
	Management & Leadership
	Managerial Analysis
	Manpower Management

BUSINESS/MANAGEMENT DISCIPLINE	*AMERICAN COUNCIL ON EDUCATION SUBJECT AREA*
	Materiel Management
	Methods of Adult Education
	Organizational Behavior
	Personnel Administration
	Principles of Management
	Quality and Reliability Assurance
	Research and Development Management
	Strategic Management
	Survey of Program Operations
Purchasing	Basic Purchasing
Quantitative Methods	Business Statistics
	Computer Science
	Decision Risk Analysis
	Operations Research
	Probability Statistics
	Quantitative Analysis
	Statistics

POLICY FLASH 2006-45

POLICY FLASH 2006-45

DATE: August 9, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular 2005-12**

Federal Acquisition Circular 2005-12 was published August 4, 2006 at page 44546 of the *Federal Register*. A synopsis is attached for your information. A copy of the *Federal Register* notice and change sheets for loose leaf copies may be found at http://www.arnet.gov/far/index.html This amendment is intended to aid local economic recovery after a major disaster by allowing a local area set aside for debris clean up and reconstruction limited to the area impacted by the disaster.

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions may be addressed to Richard.Langston@hq.doe.gov or call (202 287-1339.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

ITEM I – Local Community Recovery Act of 2006 Interim) FAR Case 2006-014)

This interim rule adds a local area set-aside to the FAR for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. The contracting officer defines the set-aside area. The rule implements the Local Community Recovery Act of 2006 (Public Law 109-218), which strengthens the government's ability to promote local economic recovery. The local area set-aside does not replace small business set-asides. Both can be used at the same time. The rule imposes subcontracting restrictions when a local area set-aside is used. No competition justification is required for the local area set-aside.

POLICY FLASH 2006-46

POLICY FLASH 2006-46

DATE: August 16, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Contractor Protection of Personally Identifiable Information (PII)**

SUMMARY: This Flash transmits information provided by the Department's Chief Information Office (CIO) regarding the DOE contractor safeguard of government personally identifiable information, whether at or away from a government facility.

Background:

Recent breaches in the security of personal information in the custody of federal government entities have resulted in the promulgation of guidance from the Office of Management and Budget (OMB) and the DOE CIO.

What is the purpose of this initiative?

The purpose of this initiative is to apply protections offered by physical security controls when information is removed or accessed from outside of a DOE agency location. As a result, recent OMB and CIO guidance (listed below) concerning this subject is provided to ensure that all appropriate DOE contractors handling such information are made aware of its requirements. This guidance is part of an aggressive DOE-wide implementation of the Cyber Security Revitalization Plan and is intended to implement the protection mechanisms of PII on all Federal information systems. To ensure consistent DOE-wide execution, OMB has requested that the Inspector General (IG) review the implementation safeguards identified in its M-06-16 memorandum consistent with DOE cyber security compliance monitoring activities. Additionally, the CIO has provided a "working" list of

examples of what is and is not PII for the purpose of implementing cyber security guidance. Please find the following at http://cio.doe.gov/Cybersec/index.html:

1. DOE CIO Memorandum dated July 25, 2006, "Transmittal of Recent OMB Memoranda on Protecting Personally Identifiable Information" with attachments:

   a. OMB Memorandum M-06-16 dated June 23, 2006, "Protection of Sensitive Agency Information"

   b. OMB Memorandum M-06-19 dated July 12, 2006, "Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments"

2. DOE CIO Memorandum dated July 20, 2006, "Transmittal of Department of Energy Chief Information Officer Guidance – Protection of Personally Identifiable Information" with attached DOE CIO Guidance CS-38.

3. DOE Working Examples of Personally Identifiable Information dated August 9, 2006.

How will this affect work processes?

Contracting Officer's should inform and ensure contractors understand that under FAR 52.224-2, Privacy Act, protecting PII on laptops and removable storage media, whether in a government facility or accessed remotely, must be consistent with current DOE policy. Additional guidance may also be forthcoming.

Additional information regarding DOE's PII Cyber Security initiative may be obtained from William Hunteman, OCIO. He can be reached on (202) 586-4775 or e-mail at William.Hunteman@hq.doe.gov.

This Flash may be viewed at http://professionals.pr.doe.gov.

Questions concerning this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Department of Energy
Washington, DC 20585

July 20, 2006

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: THOMAS N. PYKE, JR.
CHIEF INFORMATION OFFICER

SUBJECT: Transmittal of Department of Energy Chief Information Officer Guidance - Protection of Personally Identifiable Information

In keeping with the goals and processes outlined in the Cyber Security Program Revitalization Plan and to implement recent Office of Management and Budget (OMB) guidance, I am approving and issuing the attached Guidance, DOE CIO Guidance CS-38, Protection of Personally Identifiable Information.

This Guidance, which was developed by the Office of the Chief Information Officer (CIO) and reviewed by the Cyber Security Working Group, applies OMB memorandum, M-06-16, *Protection of Sensitive Agency Information*, and the sections of OMB memorandum M-06-19, *Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments*, pertaining to the Protection of Personally Identifiable Information.

As we continue to issue Guidance as part of the aggressive implementation of the Cyber Security Revitalization Plan, I enlist your help to ensure that the criteria in this Guidance are promptly and adequately addressed within your organization. Key parts of this Guidance are to be fully implemented in early August 2006 according to the OMB memorandum M-06-16. Because of this, you and your staff should ensure that this Guidance is passed along quickly throughout your organization.

Please note that OMB memorandum M-06-16 requests that the Inspector General review the implementation of the safeguards identified in that memorandum to ensure they are in place by August 9, 2006. In addition, implementation of this Guidance, Department-wide, will be included in the cyber security compliance monitoring activities carried out by the Office of the CIO, the Office of the Inspector General, and the Office of Security and Safety Performance Assurance.

Please contact Bill Hunteman, Associate CIO for Cyber Security, at 202-586-1090, for additional information.

Thank you for your personal attention to ensuring that the content of this new Guidance is integrated into your organization's cyber security program as soon as possible.

Attachment

Printed with soy ink on recycled paper

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Under Secretary of Energy
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    Director, Office of Electricity Delivery and Energy Reliability
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Senior Intelligence Officer, Office of Intelligence and Counterintelligence

DOE CIO Guidance CS-38

U.S. Department of Energy

Cyber Security Program

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION GUIDANCE

July 20, 2006

1. PURPOSE.

This Department of Energy (DOE) Chief Information Officer (CIO) Guidance applies the Office of Management and Budget (OMB) memorandum, M-06-16, *Protection of Sensitive Agency Information*, and the sections of OMB memorandum M-06-19, *Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information technology Investments*, pertaining to the protection of personally identifiable information (PII).

The DOE CIO will review this Guidance annually and update it as necessary. Senior DOE Management and their operating units may provide feedback at any time for incorporation into the next scheduled update.

Attachment 2 contains the OMB definition of PII that should be used to implement this Guidance.

2. SCOPE.

This Guidance provides additional information for the protection of PII in all information systems operated by the Department and its contactors.

3. CANCELLATIONS.

None.

4. APPLICABILITY.

a. Primary DOE Organizations. This Guidance applies to all DOE Organizations listed in Attachment 1, *Primary Department of Energy Organizations to Which DOE CIO Guidance CS-38 is Applicable.*

Further, the DOE Under Secretaries, the NNSA Administrator, the Energy Information Administration, the Power Marketing Administrations, and DOE Chief Information Officer (CIO) (hereinafter referred to as Senior DOE Management) may specify and implement supplemental requirements to address specific risks, vulnerabilities, or threats within their subordinate organizations and contractors (hereinafter called operating units), and for ensuring that those requirements are incorporated into contracts.

b. Exclusions. Consistent with the responsibilities identified in Executive Order (E.O.) 12344, the Director of the Naval Nuclear Propulsion Program will ensure consistency through the joint Navy and DOE organization of the Naval Nuclear Propulsion Program and will implement and oversee all requirements and practices pertaining to this DOE Guidance for activities under the NNSA Administrator's cognizance.

c. DOE Unclassified Systems. Senior DOE Management PCSPs are to address this Guidance for all systems hosting unclassified information. DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, and DOE M 471.1-1, *Identification and Protection of Unclassified Controlled Nuclear Information Manual*, provide additional information for identifying unclassified information requiring protection.

d. National Security Systems. Senior DOE Management PCSPs are to address this Guidance for all DOE National Security systems. Executive Order 12829 (E.O. 12829), which established the National Industrial Security Program; the requirements of the *National Industrial Security Program Operating Manual (NISPOM);* the Atomic Energy Act of 1954, which established Restricted Data information; DOE CIO Guidance CS-22, *National Security Systems Controls Guidance;* and NIST SP 800-59, *Guidelines for Identifying an Information System as a National Security System*, provides additional guidance for identifying National Security systems.

5. IMPLEMENTATION.

This Guidance is effective upon issuance. Except as noted below, DOE expects that Senior DOE Management shall address the criteria in this document within 30 days of its effective date.

This implementation of this guidance for the protection of PII on all Federal information systems must be completed by August 9, 2006, to be consistent with OMB Memorandum M-06-16, *Protection of Sensitive Agency Information,* dated June 23, 2006.

6. CRITERIA.

a. Program Cyber Security Plan. Senior DOE Management PCSPs are to direct operating units to develop, document, and implement PII policies and procedures consistent with criteria b. through e. immediately below.

b. Use of Encryption

Implement the use of FIPS 140-2 Level 1 or higher encryption to protect all PII on laptops and on removable media, such as CDROMs or thumb drives.

- All laptop computers used by Federal employees and contractors who support Federal systems that contain PII should have an installed capability to encrypt all PII.
- All users of these laptops should be instructed to use this capability to protect all PII.

The following steps are to be followed to implement the criteria in this section:

- Identify all laptops that contain PII.
- Remove PII from all laptops for which its presence is not essential.
- Install encryption software for all laptops that will continue to contain PII or that will contain PII in the future.
- Provide training to the user(s) on the use of the encryption software.
- Provide direction to the user(s) that the encryption software is to be used to protect all PII on the laptop.

It is recommended that the use of encryption protection be applied to laptops and all desktop computer systems as well, so as to provide increased protection against loss of portable devices and cyber attacks.

c. Two Factor Authentication

Use two-factor authentication for all individuals having remote access to PII other than their own.

d. Remote Access

Ensure that a time-out function is in place on all systems supporting remote access that requires re-authentication of remote users if there is a period of 30 minutes or longer of inactivity on their connection to the system.

e. Management of PII on Laptops and Removable Media

Establish and implement procedures throughout the organization so that any files containing PII on laptops or removable media have been deleted, within 90 days, or that use of these files is still required.

Procedures are to include documentation of the regular use of these procedures for each laptop or removable media device that contains PII.

f. Reporting of Incidents Involving PII

Ensure that all suspected or confirmed cyber security and physical security incidents involving PII are reported to the DOE Cyber Incident Advisory Capability (CIAC) within 45 minutes of discovering the incident. CIAC is to report the incident to US-CERT within one hour of discovery of the incident.

When reporting incidents as possibly involving PII, there should be sufficient reason to believe that a security breech has occurred and that PII is likely to have been involved. Otherwise, the incident should be reporting following documented procedures for reporting all cyber security incidents.

Reports to CIAC may be made via email to ciac@ciac.org, by phone to 925-422-8193 or by fax to 925-423-8002.

CIAC will report the incident involving PII to the US-Computer Emergency Readiness Team (US-CERT).

7. RESPONSIBILITIES.

It is expected that Heads of Departmental Elements will be given delegated authority from the Deputy Secretary in the near future relative to determining that data on mobile computers/devices are non-sensitive (Recommendation 1 in OMB M-06-16).

8. REFERENCES.

References are defined in DOE CIO Guidance CS-1, *Management, Operational, and Technical Controls*.

9. DEFINITIONS.

Definitions specific to this Guidance are defined in Attachment 2. Acronyms and terms applicable to all DOE CIO Guidance are defined in DOE CIO Guidance CS-1, *Management, Operational, and Technical Controls Guidance*.

10. CONTACT.

Questions concerning this Guidance should be addressed to the Office of the Chief Information Officer, (202) 586-0166.

ATTACHMENT 1

PRIMARY DEPARTMENT OF ENERGY ORGANIZATIONS TO WHICH DOE CIO GUIDANCE CS-38 IS APPLICABLE

Office of the Secretary
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional and Intergovernmental Affairs
Departmental Representative to the Defense Nuclear Facilities Safety Board
Office of Economic Impact and Diversity
Office of Electricity Delivery and Energy Reliability
Office of Energy Efficiency and Renewable Energy
Energy Information Administration
Office of Environment, Safety and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Human Capital Management
Office of the Inspector General
Office of Intelligence and Counterintelligence
Office of Legacy Management
Office of Management
National Nuclear Security Administration
Office of Nuclear Energy
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Office of Security and Safety Performance Assurance
Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration

ATTACHMENT 2

GLOSSARY

Personally Identifiable Information (PII): Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security numbers, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 23, 2006

M-06-16

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Clay Johnson III
Deputy Director for Management

SUBJECT: Protection of Sensitive Agency Information

In an effort to properly safeguard our information assets while using information technology, it is essential for all departments and agencies to know their baseline of activities.

The National Institute of Standards and Technology (NIST) provided a checklist for protection of remote information. (See attachment) The intent of implementing the checklist is to compensate for the lack of physical security controls when information is removed from, or accessed from outside the agency location. In addition to using the NIST checklist, I am recommending all departments and agencies take the following actions:

1. Encrypt all data on mobile computers/devices which carry agency data unless the data is determined to be non-sensitive, in writing, by your Deputy Secretary or an individual he/she may designate in writing;
2. Allow remote access only with two-factor authentication where one of the factors is provided by a device separate from the computer gaining access;
3. Use a "time-out" function for remote access and mobile devices requiring user re-authentication after 30 minutes inactivity; and
4. Log all computer-readable data extracts from databases holding sensitive information and verify each extract including sensitive data has been erased within 90 days or its use is still required.

Most departments and agencies have these measures already in place. We intend to work with the Inspectors General community to review these items as well as the checklist to ensure we are properly safeguarding the information the American taxpayer has entrusted to us. Please ensure these safeguards have been reviewed and are in place within the next 45 days.

Attachment

Security Checklist

Protection of "Remote" Information

This checklist provides specific actions to be taken by federal agencies for the protection of Personally Identifiable Information (PII) categorized in accordance with FIPS 199 as moderate or high impact that is either:

- Accessed remotely; or
- Physically transported outside of the agency's secured, physical perimeter (this includes information transported on removable media and on portable/mobile devices such as laptop computers and/or personal digital assistants).

The specific intent is to compensate for the protections offered by the physical security controls when information is removed from, or accessed from outside of the agency location. Additionally, this checklist has been developed from existing guidance with the expectation that information security is a mission requirement essential to achieving the operational benefits of information technology without exposing the agency, its assets, or individuals to undue risk.

The security controls and associated control assessment methods/procedures in this checklist were taken from NIST Special Publication 800-53, *Recommended Security Controls for Federal Information Systems* and NIST Special Publication 800-53A, *Guide for Assessing the Security Controls in Federal Information Systems* (Second Public Draft), April 2006.[1] The controls and assessment methods/procedures in the checklist are a subset of what is currently required for moderate and high impact information systems. However, the checklist does include specific guidance on the technology to be used for some controls.

References:

Federal Information Processing Standards Publication (FIPS) 199, *Standards for Security Categorization of Federal Information and Information Systems*, February 2004.

NIST Special Publication 800-53, *Recommended Security Controls for Federal Information Systems*, February 2005.

NIST Special Publication 800-53A, *Guide for Assessing the Security Controls in Federal Information Systems* (Second Public Draft), April 2006.

[1] For purpose of this Security Checklist, the assessment methods and procedures outlined in NIST Special Publication 800-53A (Second Public Draft), dated April 2006, are considered mandatory. Updated control assessment methods and procedures will be effective upon final publication of Special Publication 800-53A.

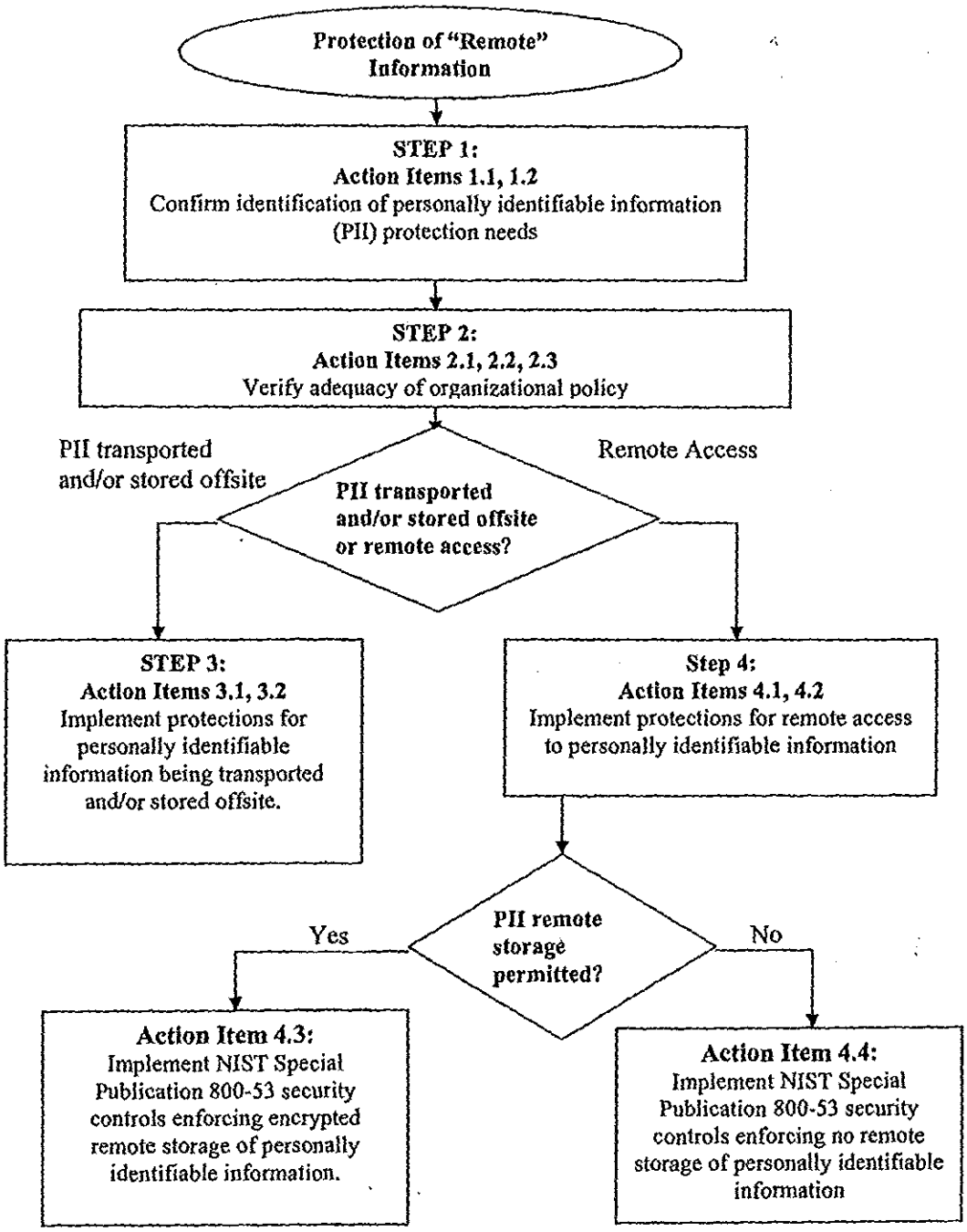


Figure: Process for Protection of "Remote" Information

Security Checklist for Personally Identifiable Information that is to be transported and/or stored offsite, or that is to be accessed remotely	
	Procedure
	STEP 1: Confirm identification of personally identifiable information protection needs.
	Action Item 1.1: Verify information categorization to ensure identification of personally identifiable information requiring protection when accessed remotely or physically removed.
	Action Item 1.2: Verify existing risk assessment.
	STEP 2: Verify adequacy of organizational policy.
	Action Item 2.1: Identify existing organizational policy that addresses the information protection needs associated with personally identifiable information that is accessed remotely or physically removed.
	Action Item 2.2: Verify that the existing organizational policy adequately addresses the information protection needs associated with personally identifiable information that is accessed remotely or physically removed.
	Action Item 2.3: Revise/develop organizational policy as needed, including steps 3 and 4.
	If personally identifiable information is to be transported and/or stored offsite, follow Step 3; for remote access to personally identifiable information, follow Step 4.
	STEP 3: Implement protections for personally identifiable information being transported and/or stored offsite.
	Action Item 3.1: In those instances where personally identifiable information is transported to a remote site, implement NIST Special Publication 800-53 security controls ensuring that information is transported only in encrypted form.
	Action Item 3.2: In those instances where personally identifiable information is being stored at a remote site, implement NIST Special Publication 800-53 security controls ensuring that information is stored only in encrypted form.
	Checklist Complete.
	STEP 4: Implement protections for remote access to personally identifiable information.
	Action Item 4.1: Implement NIST Special Publication 800-53 security controls requiring authenticated, virtual private network (VPN) connection.
	Action Item 4.2: Implement NIST Special Publication 800-53 security controls enforcing allowed downloading of personally identifiable information.
	If remote storage of personally identifiable information is to be permitted follow Action Item 4.3, otherwise follow Action Item 4.4.
	Action Item 4.3: Implement NIST Special Publication 800-53 security controls enforcing encrypted remote storage of personally identifiable information.
	Checklist Complete.
	Action Item 4.4: Implement NIST Special Publication 800-53 security controls enforcing no remote storage of personally identifiable information.
	Checklist Complete.

Security Controls and Assessment Procedures

STEP 1: Confirm identification of personally identifiable information protection needs.

Action Item 1.1: Verify information categorization to ensure identification of personally identifiable information requiring protection when accessed remotely or physically removed.

Guidance: The purpose of this step is to review the FIPS 199 security categorization of organizational information with the focus on remote access and physical removal. The intent is to ensure all personally identifiable information through which a moderate or high impact might result has been explicitly identified. For example, databases where the loss, corruption, or unauthorized access to personally identifiable information contained in the databases could result in a serious adverse effect, with widespread impact on individual privacy being one area of specific concern.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

PL-5 PRIVACY IMPACT ASSESSMENT

SP 800-53A: PL-5.1, PL-5.2 (for high impact add: PL-5.3, PL-5.4)

RA-2 SECURITY CATEGORIZATION

SP 800-53A: RA-2.1, RA-2.2, RA-2.3 (for high impact add: RA-2.4, RA-2.5)

Action Item 1.2: Verify existing risk assessment.

Guidance: The purpose of this step is to apply the results from the previous action item and operational experience to confirm or modify as needed the existing risk assessment associated with remote access and physical removal of personally identifiable information.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

RA-4 RISK ASSESSMENT UPDATE

SP 800-53A: RA-4.1, RA-4.2, RA-4.3 (for high impact add: RA-4.4, RA-4.5)

STEP 2: Verify adequacy of organizational policy.

Action Item 2.1: Identify existing organizational policy that addresses the information protection needs associated with personally identifiable information that is accessed remotely or physically removed.

Guidance: This step is primarily to identify the existing policy related to the security and privacy needs associated with personally identifiable information accessed remotely or physically removed from agency-controlled areas.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

See action item 2.3.

Action Item 2.2: Verify that the existing organizational policy adequately addresses the information protection needs associated with personally identifiable information that is accessed remotely or physically removed.

Guidance: Having determined which existing policy is applicable to the remote access or physical removal of personally identifiable information, the purpose of this action item is to verify the adequacy of that policy. The policy should address the following specific questions:

1. For *Personally Identifiable Information* physically removed:
   a. Does the policy explicitly identify the rules for determining whether physical removal is allowed?
   b. For personally identifiable information that can be removed, does the policy require the information be encrypted and that appropriate procedures, training, and accountability measures are in place to ensure that remote use of this encrypted information does not result in bypassing the protections provided by the encryption?
2. For *Personally Identifiable Information* accessed remotely:
   a. Does the policy explicitly identify the rules for determining whether remote access is allowed?
   b. When remote access is allowed, does the policy require that this access be accomplished via a virtual private network (VPN) connection established using agency-issued authentication certificate(s) or hardware token?
   c. When remote access is allowed, does the policy identify the rules for determining whether download and remote storage of the information is allowed? (For example, the policy could permit remote access to a database, but prohibit downloading and local storage of that database.)

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

See action item 2.3.

Action item 2.3: Revise/develop organizational policy as needed, including steps 3 and 4.

Guidance: Based upon the results from the previous action items, the organizational policy is revised or developed to fully address the questions posed in the previous action items.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

AC-1 ACCESS CONTROL POLICY AND PROCEDURES

SP 800-53A: AC-1.1, AC-1.2, AC-1.3, AC-1.4 (for high impact add: AC-1.5, AC-1.6, AC-1.7)

AT-1 SECURITY AWARENESS AND TRAINING POLICY AND PROCEDURES

SP 800-53A: AT-1.1, AT-1.2, AT-1.3, AT-1.4 (for high impact add: AT-1.5, AT-1.6, AT-1.7)

AU-1 AUDIT AND ACCOUNTABILITY POLICY AND PROCEDURES

SP 800-53A: AU-1.1, AU-1.2, AU-1.3, AU-1.4 (for high impact add: AU-1.5, AU-1.6, AU-1.7)

IA-1 IDENTIFICATION AND AUTHENTICATION POLICY AND PROCEDURES

SP 800-53A: IA-1.1, IA-1.2, IA-1.3, IA-1.4 (for high impact add: IA-1.5, IA-1.6, IA-1.7)

MP-1 MEDIA PROTECTION POLICY AND PROCEDURES

SP 800-53A: MP-1.1, MP-1.2, MP-1.3, MP-1.4 (for high impact add: MP-1.5, MP-1.6, MP-1.7)

SC-1 SYSTEM AND COMMUNICATIONS PROTECTION POLICY AND PROCEDURES

SP 800-53A: SC-1.1, SC-1.2, SC-1.3, SC-1.4 (for high impact add: SC-1.5, SC-1.6, SC-1.7)

If personally identifiable information is to be transported and/or stored offsite, follow Step 3; for remote access to personally identifiable information, follow Step 4.

STEP 3: Implement protections for personally identifiable information being transported and/or stored offsite.

Action Item 3.1: In those instances where personally identifiable information is transported to a remote site, implement NIST Special Publication 800-53 security controls ensuring that information is transported only in encrypted form.

Guidance: The intent is to apply the controls necessary to ensure that personally identifiable information is appropriately encrypted prior to being removed from the area under agency control.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

MP-5 MEDIA TRANSPORT

SP 800-53A: MP-5.1, MP-5.2, MP-5.3 (for high impact add: MP-5.4, MP-5.5)

SC-13 USE OF VALIDATED CRYPTOGRAPHY

SP 800-53A: SC-13.1, SC-13.2 (for high impact add: SC-13.3, SC-13.4)

Action Item 3.2: In those instances where personally identifiable information is being stored at a remote site, implement NIST Special Publication 800-53 security controls ensuring that information is stored only in encrypted form.

Guidance: The intent is to apply the controls necessary to ensure that personally identifiable information remains appropriately encrypted during remote storage. This includes establishing and training users on the rules of behavior and information use that will help prevent unencrypted forms of the information from being stored on remote components of the information system.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

PL-4 RULES OF BEHAVIOR

SP 800-53A: PL-4.1, PL-4.2, PL-4.3, PL-4.4, PL-4.5 (for high impact add: PL-4.6, PL-4.7)

SC-4 INFORMATION REMNANTS

SP 800-53A: SC-4.1, SC-4.2 (for high impact add: SC-4.3, SC-4.4)

SC-13 USE OF VALIDATED CRYPTOGRAPHY

SP 800-53A: SC-13.1, SC-13.2 (for high impact add: SC-13.3, SC-13.4)

STEP 4: Implement protections for remote access to personally identifiable information.

General Guidance: This step is executed when the policy allows remote access to personally identifiable information.

Action Item 4.1: Implement NIST Special Publication 800-53 security controls requiring authenticated, virtual private network (VPN) connection.

Guidance: The intent is to apply those controls necessary to both mandate and achieve connections from remote components of the information system to an internal agency network via a virtual private network (VPN). The VPN is established based upon authentication using agency-controlled certificates or hardware tokens issued directly to each authorized user.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

AC-17 REMOTE ACCESS, with Enhancements (1), (2), and (3)

SP 800-53A: AC-17.1, AC-17.2, AC-17.3, AC-17.4, AC-17.5, AC-17.6, AC-17.7, AC-17.10, AC-17.11, AC-17.13, AC-17.15 (for high impact add: AC-17.8, AC-17.9, AC-17.12, AC-17.14, AC-17.16)

IA-5 AUTHENTICATOR MANAGEMENT

SP 800-53A: IA-5.1, IA-5.2, IA-5.3, IA-5.4, IA-5.5, IA-5.6 (for high impact add: IA-5.7, IA-5.8, IA-5.9)

Action Item 4.2: Implement NIST Special Publication 800-53 security controls enforcing allowed downloading of personally identifiable information.

Guidance: This action item is executed when the policy allows personally identifiable information to be downloaded to a remote location. The intent is to apply controls necessary to enable and enforce only appropriate downloading. Included are controls for accessing only allowed information, for least privilege (of downloaded information) necessary to perform duties, for what information is allowed to be transmitted across a remote connection, and for maintaining accountability for actions taken across the remote interface.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

AC-3 ACCESS ENFORCEMENT, with Enhancement (1)

SP 800-53A: AC-3.1, AC-3.2, AC-3.3, AC-3.4, AC-3.7, AC-3.8 (for high impact add: AC-3.5, AC-3.6, AC-3.9)

AC-4 INFORMATION FLOW ENFORCEMENT

SP 800-53A: AC-4.1, AC-4.2, AC-4.3 (for high impact add: AC-4.4, AC-4.5)

AC-6 LEAST PRIVILEGE

SP 800-53A: AC-6.1, AC-6.2, AC-6.3, AC-6.4 (for high impact add: AC-6.5, AC-6.6)

AC-13 SUPERVISION AND REVIEW — ACCESS CONTROL, with Enhancement (1) for high impact information

SP 800-53A: AC-13.1, AC-13.2, AC-13.3, AC-13.4 (for high impact add: AC-13.5, AC-13.6, AC-13.7, AC-13.8, AC-13.9)

AU-2 AUDITABLE EVENTS

SP 800-53A: AU-2.1, AU-2.2, AU-2.3 (for high impact add: AU-2.4, AU-2.5)

AU-6 AUDIT MONITORING, ANALYSIS, AND REPORTING, with Enhancement (1) for high impact information

SP 800-53A: AU-6.1, AU-6.2, AU-6.3 (for high impact add: AU-6.4, AU-6.5, AU-6.6, AU-6.7)

If remote storage of personally identifiable information is to be permitted follow Action Item 4.3, otherwise follow Action Item 4.4.

Action Item 4.3: Implement NIST Special Publication 800-53 security controls enforcing encrypted remote storage of personally identifiable information.

Guidance: This action item is executed when policy allows personally identifiable information to be downloaded to a remote location. The intent is to apply those controls that both mandate and achieve encrypted storage of the information at the remote location.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

PL-4 RULES OF BEHAVIOR

SP 800-53A: PL-4.1, PL-4.2, PL-4.3, PL-4.4, PL-4.5 (for high impact add: PL-4.6, PL-4.7)

SC-4 INFORMATION REMNANTS

SP 800-53A: SC-4.1, SC-4.2 (for high impact add: SC-4.3, SC-4.4)

SC-13 USE OF VALIDATED CRYPTOGRAPHY

SP 800-53A: SC-13.1, SC-13.2 (for high impact add: SC-13.3, SC-13.4)

Action Item 4.4: Implement NIST Special Publication 800-53 security controls enforcing no remote storage of personally identifiable information.

Guidance: This action item is executed when policy allows personally identifiable information to be remotely accessed only if not stored locally. The intent is to apply

those controls necessary to achieve remote use without local storage. The implementation of these controls will result in only necessary information being transmitted to the remote component of the information system. An example is transaction-based database access that provides no more information to the remote information system component than necessary for the immediate transaction. Another example is allowing downloading of only partial information to mitigate the risk by reducing the potential impact; for example, only extracts/views of a database or only views of statistical information.

Related SP 800-53 controls and associated SP 800-53A assessment procedures:

AC-3 ACCESS ENFORCEMENT, with Enhancement (1)

SP 800-53A: AC-3.1, AC-3.2, AC-3.3, AC-3.4, AC-3.7, AC-3.8 (for high impact add: AC-3.5, AC-3.6, AC-3.9)

AC-4 INFORMATION FLOW ENFORCEMENT

SP 800-53A: AC-4.1, AC-4.2, AC-4.3 (for high impact add: AC-4.4, AC-4.5)

AC-6 LEAST PRIVILEGE

SP 800-53A: AC-6.1, AC-6.2, AC-6.3, AC-6.4 (for high impact add: AC-6.5, AC-6.6)

AC-13 SUPERVISION AND REVIEW — ACCESS CONTROL, with Enhancement (1) for high impact information

SP 800-53A: AC-13.1, AC-13.2, AC-13.3, AC-13.4 (for high impact add: AC-13.5, AC-13.6, AC-13.7, AC-13.8, AC-13.9)

AC-17 REMOTE ACCESS, with Enhancements (1), (2), and (3)

SP 800-53A: AC-17.1, AC-17.2, AC-17.3, AC-17.4, AC-17.5, AC-17.6, AC-17.7, AC-17.10, AC-17.11, AC-17.13, AC-17.15 (for high impact add: AC-17.8, AC-17.9, AC-17.12, AC-17.14, AC-17.16)

AT-2 SECURITY AWARENESS

SP 800-53A: AT-2.1, AT-2.2, AT-2.3 (for high impact add: AT-2.4, AT-2.5)

AU-2 AUDITABLE EVENTS

SP 800-53A: AU-2.1, AU-2.2, AU-2.3 (for high impact add: AU-2.4, AU-2.5)

AU-6 AUDIT MONITORING, ANALYSIS, AND REPORTING, with Enhancement (1) for high impact information

SP 800-53A: AU-6.1, AU-6.2, AU-6.3 (for high impact add: AU-6.4, AU-6.5, AU-6.6, AU-6.7)

PL-4 RULES OF BEHAVIOR

SP 800-53A: PL-4.1, PL-4.2, PL-4.3, PL-4.4, PL-4.5 (for high impact add: PL-4.6, PL-4.7)

SC-4 INFORMATION REMNANTS

SP 800-53A: SC-4.1, SC-4.2 (for high impact add: SC-4.3, SC.4.4)

DOE Working Examples of Personally Identifiable Information (PII)
August 9, 2006

WHAT IS PII:

1. Social Security Numbers in any form are PII
2. Place of Birth associated with an individual
3. Date of birth associated with an individual
4. Mother's maiden name associated with an individual
5. Biometric record associated with an individual
    a. Fingerprint
    b. Iris scan
    c. DNA
6. Medical history information associated with an individual
    a. Medical conditions, including history of disease
    b. Metric information, e.g. weight, height, blood pressure
7. Criminal history associated with an individual
8. Employment history and other employment information associated with an individual
    a. Ratings
    b. Disciplinary actions
    c. Performance elements and standards (or work expectations) are PII when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.
9. Financial information associated with an individual
    a. Credit card numbers
    b. Bank account numbers
10. Security clearance history or related information (Not including actual clearances held)

WHAT ISN'T PII:

1. Phone numbers (Work, Home, Cell)
2. Street addresses (Work and personal)
3. Email addresses (Work and personal)
4. Digital pictures
5. Birthday cards
6. Birthday emails
7. Medical information pertaining to work status (X is out sick today)
8. Medical information included in a health or safety report
9. Employment information that is not PII even when associated with a name
    a. Resumes, unless they include an SSN
    b. Present and past position titles and occupational series
    c. Present and past grades

d. Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials)
e. Present and past duty stations and organization of assignment (includes room and phone numbers, organization designations, work e-mail address, or other identifying information regarding buildings, room numbers, or places of employment)
f. Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness
g. Security clearances held
h. Written biographies (like the ones used in pamphlets of speakers)
i. Academic credentials
    i. Academic credentials, e.g. Ph.D, MS, BS, AA
    ii. Schools attended
    iii. Major or area of study

10. Personal information stored by individuals about themselves on their assigned workstation or laptop (unless it contains an SSN)

POLICY FLASH 2006-47

POLICY FLASH 2006-47

DATE: August 11, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Class Deviation for Certain DEAR Intellectual Property Clauses**

SUMMARY: This Flash transmits Acquisition Letter (AL) 2006-10, Class Deviation for Certain DEAR Intellectual Property Clauses. That AL has attached the subject class deviation determination, signed by the DOE and NNSA Senior Procurement Executives, and the deviated versions of the two affected clauses, 970.5227-3, Technology Transfer Mission.

There are two major effects of the deviation determination, attached to AL 2006-10. The first effect is the alteration of the Rights in Data-Technology Transfer clause at 970.5227-2 to recognize the utility of open source software by providing the conditions under which DOE's M&O contractors may choose to subject software first produced to an open source license. The second effect is the alteration of the clause at 970.5227-3, Technology Transfer Mission, to streamline the M&O contractor's technology transfer interaction with the U.S. Trade Representative.

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions may be addressed to Robert.Webb@hq.doe.gov or call (202) 287-1338.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment – AL 2006-10

Department of Energy
Acquisition Regulation

No. AL-2006-10
Date 08/11/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: **CLASS DEVIATION FOR CERTAIN DEAR INTELLECTUAL PROPERTY CLAUSES**

References: **DEAR 970.2704 Rights in Data**

DEAR 970.2770 Technology Transfer

DEAR 970.5227-2 Rights in Data-Technology Transfer

DEAR 970.5227-3 Technology Transfer Mission

When is this Acquisition Letter (AL) Effective?

This AL is effective upon issuance.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Robert M. Webb of the Office of Procurement and Assistance Policy at (202)287-1338 or Robert.Webb@hq.doe.gov.

Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

This Acquisition Letter provides class deviations to two clauses for use in contracts, generally management and operating contracts, that have technology transfer as part of the mission of the contract. As used in this AL, reference to DOE includes both NNSA and non-NNSA sites.

What is the Background?

The class deviation transmitted by this Acquisition Letter modifies the clauses at 970.5227-2, Rights in Data-Technology Transfer and 970.5227-3, Technology Transfer Mission. The revisions to the Rights in Data clause expressly allow DOE's M&O contractors to establish copyright in contract software, using an Open Source form of license, whether the software originated under the contract or was modified under the contract from other software subject to an Open Source license. The modifications to the Technology Transfer Mission clause provide for an efficient process for the contractor to coordinate prospective licensing with the U.S. Trade Representative. Revised versions of the two clauses are attached to the deviation determination.

What is the Guidance?

Contracting Officers shall incorporate the two modified clauses into solicitations and awards for management and operating contracts. Additionally, Contracting Officers shall attempt to negotiate these clauses in existing M&O contracts at the next annual negotiation.

Attachment:

Class Deviation to Reflect Changes to Certain Intellectual Property Clauses

CLASS DEVIATION TO REFLECT CHANGES TO CERTAIN INTELLECTUAL PROPERTY CLAUSES

FINDINGS

1. Rights in data, including copyright, and technology transfer under certain of Department of Energy's (DOE's) management and operating contracts (M&O) are controlled by two clauses from the Department of Energy Acquisition Regulation (DEAR). Those two clauses are Rights in Data-Technology Transfer clause at 970.5227-2 and the Technology Transfer Mission clause at 970.5227-3.

2. Traditionally, software code has been either protected by copyright or placed in the public domain. DOE has several statutes that require this Department to disseminate the scientific and technical information, including software, first produced under its contracts to the public.

3. The intellectual property clauses included in DOE M&O contracts having technology transfer as a part of their mission have dealt with software accordingly, requiring DOE permission to assert the contractor's copyright in software first produced under its contract. In instances in which DOE grants such permission, contractors are authorized to commercialize or license the software to those who would commercialize and thereby promote the dissemination of the software.

4. Open source software (OSS) licensing is a recent development affecting copyrighted software. A user of the software must accept one of various license forms under which the licensee agrees to post any improvements in or any derivative works resulting from the software for use by others in accordance with the license or to make commercial use of derivative works limited only to the licensee's contribution to the software. This method of licensing has proven to be popular with scientists in DOE's research laboratories, allowing a platform for collegial and interactive research. DOE further recognizes that OSS licensing is consistent with this Department's duty to disseminate the results of its research.

5. The Rights in Data-Technology Transfer clause at 970.5227-2, the clause dealing with copyright under the contract, does not provide conditions under which DOE's M&O contractors may elect to subject software first produced under their contracts to an OSS license.

6. Additionally, the Technology Transfer Mission clause at 970.5227-3 requires consideration by the M&O contractor and the DOE contracting Officer of a prospective foreign partner's home country's treatment of U.S. companies' Intellectual Property and whether U.S. companies have opportunities to do collaborative research in the home country. DOE has exercised its discretion to require M&O contractors to obtain the written information from the U.S. Trade Representative (U.S.T.R.) to assist in such consideration. After many years of experience, DOE has determined that a less cumbersome procedure, relying on information available from U.S.T.R. web sites, can be

utilized for obtaining the relevant information. This less cumbersome procedure is reflected in a new subparagraph (f)(1)(ii)(C).

7. The clauses at Rights in Data-Technology Transfer clause at 970.5227-2 and the Technology Transfer Mission clause at 970.5227-3, respectively, have been altered to provide DOE's M&O contractors which have technology transfer as their mission (1) to allow OSS copyright of software first produced under their contracts and (2) to simplify the process of obtaining information about foreign countries from the U.S.T.R.

8. The Government would incur no additional cost as a result of the Contractor implementing and complying with and DOE would benefit from the proposed deviations.

RECOMMENDATION

Based upon these findings, I hereby determine that the proposed class deviations are beneficial to the accomplishment of DOE's mission and its mission of technology transfer. Contracting officers will be authorized to negotiate this clause into existing M&O contracts at the next appropriate opportunity. The described deviations will be effective through the promulgation of the final rule.

APPROVED _____ DATE 8-1-2006
Edward R. Simpson, Director
Office of Procurement and
Assistance Management

APPROVED _____ DATE 8/1/2006
David O. Boyd, Acting Director
Office of Acquisition and
Supply Chain Management, NNSA

POLICY FLASH 2006-48

POLICY FLASH 2006-48

DATE: August 15, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Revision to Chapter 71.1, Headquarters Review of Contract and Financial Assistance Actions, of the DOE Acquisition Guide**

SUMMARY: This Flash forwards a revised Attachment D to Chapter 71.1. This revision adds review requirements for non-competitive financial assistance.

This Flash may be viewed at http://professionals.pr.doe.gov .

Questions concerning this Policy Flash should be directed to Jackie Kniskern at (202) 287-1342 or Jacqueline.Kniskern@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

ATTACHMENT D — FINANCIAL ASSISTANCE

DOCUMENTS SUBMISSION

Prior to the release of the funding opportunity announcement, the following documents and information shall be submitted:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Copies of any deviations processed or being requested;
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof; and
- The draft funding opportunity announcement including merit review criteria, Program Policy Factors, and the Merit Review Plan.

Prior to the award of the financial assistance action, the following documents and information shall be submitted:

- The draft agreement;
- Supporting documentation such as a copy of the selected proposal, budget review documentation and technical evaluation (if applicable);
- Recommendation to the Source Selection Official and the SSS (if applicable);
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof; and
- Renewal applications/awards. The CO shall notify OCM when the renewal will cause the financial assistance award to exceed the delegation authority of the contracting activity.

Prior to the approval of a Determination of Non-Competitive Financial Assistance (DNFA), except for the public interest criterion in 10 CFR 600.6(c)(8), the following documents and information shall be submitted:

- The draft DNFA;
- Supporting documentation such as a copy of the application, budget review and merit review documentation;
- A copy of the proposed terms and conditions of the agreement, including any special provisions and the statement of substantial involvement; and
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof.

DOCUMENTS REVIEW

The OCM review of the financial assistance package prior to release of the announcement will include:

- Solicitation strategy to include technical, business and financial aspects;
- Regulatory and policy compliance; and
- Verification that the announcement's provisions are appropriate (i.e. non-profit, universities, etc.).

The OCM review of the financial assistance package prior to award of the financial assistance action will include:

- Verification that the announcement's provisions are appropriate (i.e., non-profit, universities, etc.) if not previously reviewed;
- Ensure that the budget review makes sound business sense and was accomplished using all appropriate resources (i.e. government estimate, technical evaluation of costs, etc.); and
- Verification that the selection documentation is consistent with the announcement's selection criteria and programmatic policy factors.

The OCM review of the DNFA package prior to approval will include:

- Verification that the DNFA is thorough and is a sound management decision;
- Verification that the eligibility criteria are appropriate and concurrence and approval are at the appropriate level;
- Ensure that the terms and conditions, including special provisions, deviations and the statement of substantial involvement makes sound business sense and are appropriate for the award; and
- Ensure that the budget review makes sound business sense and was accomplished using all appropriate resources (i.e. government estimate, technical evaluation of costs, etc.).

POLICY FLASH 2006-49

POLICY FLASH 2006-49

DATE: August 16, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Revision to Chapter 71.1, Headquarters Review of Contract and Financial Assistance Actions, of the DOE Acquisition Guide**

SUMMARY: This Flash forwards a revised Attachment D to Chapter 71.1. The revised chapter issued yesterday was the incorrect version.

This Flash may be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or Jacqueline.Kniskern@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

ATTACHMENT D — FINANCIAL ASSISTANCE

DOCUMENTS SUBMISSION

Prior to the release of the funding opportunity announcement, the following documents and information shall be submitted:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Copies of any deviations processed or being requested;
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof; and
- The draft funding opportunity announcement including merit review criteria, Program Policy Factors, and the Merit Review Plan.

Prior to the approval of a Determination of Non-Competitive Financial Assistance (DNFA), except for the public interest criterion in 10 CFR 600.6(c)(8), the following documents and information shall be submitted:

- The DNFA;
- Supporting documentation such as a copy of the application and merit review documentation;

Prior to the award of a competitive or non-competitive financial assistance action, the following documents and information shall be submitted:

- The draft agreement;
- Supporting documentation such as a copy of the selected proposal, budget review documentation and technical evaluation (if applicable);
- Recommendation to the Source Selection Official and the SSS (if applicable);
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof; and
- Renewal applications/awards. The CO shall notify OCM when the renewal will cause the financial assistance award to exceed the delegation authority of the contracting activity.

DOCUMENTS REVIEW

The OCM review of the financial assistance package prior to release of the announcement will include:

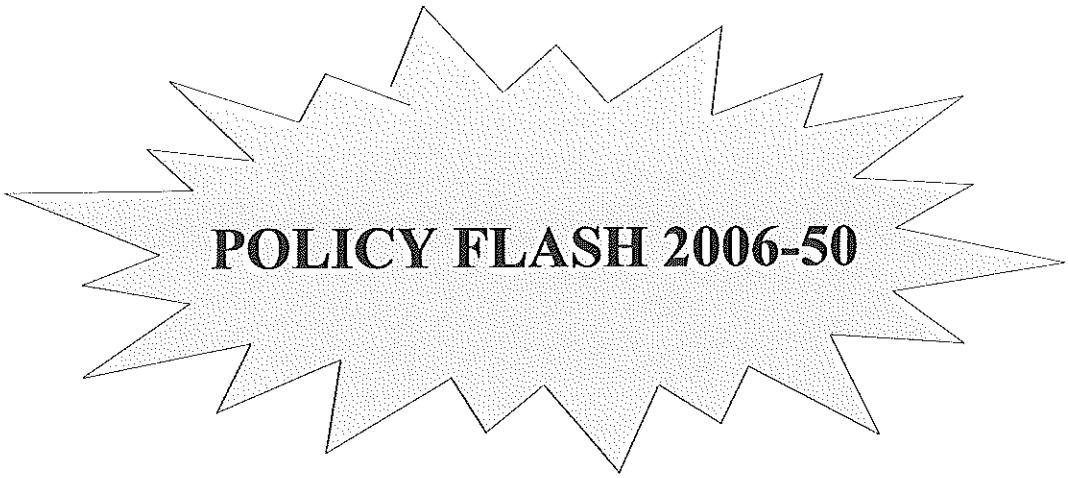
- Solicitation strategy to include technical, business and financial aspects;
- Regulatory and policy compliance; and
- Verification that the announcement's provisions are appropriate (i.e. non-profit, universities, etc.).

The OCM review of the DNFA package prior to approval will include:

- Verification that the DNFA is thorough and is a sound management decision; and
- Verification that the eligibility criteria are appropriate and concurrence and approval are at the appropriate level.

The OCM review of the financial assistance package prior to award of the financial assistance action will include:

- Verification that the announcement's provisions are appropriate (i.e., non-profit, universities, etc.) if not previously reviewed;
- Ensure that the budget review makes sound business sense and was accomplished using all appropriate resources (i.e. government estimate, technical evaluation of costs, etc.); and
- Verification that the selection documentation is consistent with the announcement's selection criteria and programmatic policy factors.



POLICY FLASH 2006-50

DATE: August 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Integrating Acquisition Planning Processes with Added Emphasis on Lifecycle Asset Management**

SUMMARY: Acquisition planning coverage in the Acquisition Guide has been enhanced. A new chapter 7.0 is added entitled, Integrating Acquisition Planning Processes – An Overview. Also, the existing coverage at Chapter 7.1, has been expanded to include property management issues not fully covered in DOE O 580.1.

Chapter 7.0 is intended to ensure integration of major acquisition planning documents and activities, e.g., the Site Utilization Management Plan (SUMP), Contract Management Plan (CMP), Performance Evaluation Management Plan (PEMP), Advanced Planning Acquisition Team (APAT), Property Management, and Source Selection.

Chapter 7.1 has been amended to highlight the importance of DOE O 580.1 (Personal Property Management) and emphasize Organizational Property Management Officers and Property Administrators participation in all phases of acquisition planning. Property personnel should be included on integrated product team meetings, serve on evaluation teams and attend post award conferences to address any personal property management issues.

Incorporating effective lifecycle asset management in the acquisition process can mitigate risk and result in cost savings through sound personal property management practices from the early stages of an acquisition strategy.

This Flash may be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash should be directed to Richard Langston at 202-287-1339 or Richard.Langston@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

POLICY FLASH 2006-51

POLICY FLASH 2006-51

DATE: August 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: FAC 2005-09 (FAR Part 22.17, Combating Trafficking in Persons)

SUMMARY: FAR Part 22.17 prescribes a new clause that was issued under FAC 2005-09 on April 19, 2006 (see Policy Flash 2006-28 dated May 15, 2006). It applies to the acquisition of all services, except those commercial services using FAR Part 12. Under the statute, training for this clause is required for all Department of Defense contracting personnel.

We have located an online awareness training presentation being given to DOD personnel, offered by the Air Force Advanced Distributed Learning System (AETC) that may interest you. It is located at http://www.jkddcjmo.org/portal.html. If you are unable to access this site, a pdf file of the presentation can be sent as well.

This Flash can be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash, or requests for a copy of the presentation should be directed to Helen Oxberger at 202-287-1332 or Helen.Oxberger@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy, OMBE

POLICY FLASH 2006-52

POLICY FLASH 2006-52

DATE: September 5, 2006

TO: Procurement Directors and Heads of Contracting Activity

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Fiscal Year 2007 Subcontract Goals**

SUMMARY: This Policy Flash transmits the attached joint memorandum for distribution by the Department's Director of the Office of Small and Disadvantaged Business Utilization and Office of Procurement and Assistance Management. It requests that DOE prime contractors with contracts over $500,000 ($1M value in construction) submit their small business subcontracting goals in response to a Small Business Administration (SBA) request.

The document to be used in communicating with all DOE required prime contractors is also attached. Note that goals should be submitted no later than September 8, 2006.

This Flash may be viewed at http://professionals.pr.doe.gov.

If you have any questions concerning this policy flash, contact Stephen Zvolensky at (202) 287-1307 or Stephen.Zvolensky@hq.doe.gov.

for Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment: Validation of FY 2007 Subcontracting Goals Memo

Department of Energy
Washington, DC 20585

SEP 05 2006

MEMORANDUM FOR HEAD OF CONTRACTING ACTIVITIES (HCAs)

FROM: THERESA SPEAKE, DIRECTOR
OFFICE OF SMALL AND DISADVANTAGED
BUSINESS UTILIZATION (OSDBU)

EDWARD R. SIMPSON, DIRECTOR
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

SUBJECT: FY 2007 SUBCONTRACT GOALS

The U.S. Small Business Administration (SBA) has requested validation of the Fiscal Year (FY) 2006 subcontracting goals to be used as the FY 2007 subcontract goals. These goals apply to all large DOE prime contracts (other than small businesses) awarded over $500,000 ($1 million in construction).

Consistent with Section 15 (g) of the Small Business Act, you are requested to review the attached list of FY 2006 subcontracting goals submitted and validate them as your FY 2007 subcontracting goals. For your information, the FY 2006 subcontract goals submitted to the SBA are listed below:

Small Business (SB)	41.3 Percent
8(a)/Small Disadvantaged Business (SDB)	6.3 Percent
Women-Owned Small Business (WOSB)	5.8 Percent
HUBZone Small Business	2.2 Percent
Service Disabled Veteran Owned (SDVO)	1.3 Percent

Should you choose to increase your FY 2007 subcontracting goals, please submit the attached document entitled "Model" with your new proposed goals by September 8, 2006. If there are no changes to the FY 2007 subcontracting goals, please provide a response via email to Michelle Alvarado-Scowden in the OSDBU office at michelle.alvarado@hq.doe.gov by September 8, 2006. Should you have any questions regarding this request, please contact your contracting officer or small business program manager.

Attachments: Model

Model

FMC Name:

FMC Address:

DUNS:

SBPM Name, Phone, and e-mail:

Proposed FY 2007 subcontracting base[1] dollars $_____

Proposed FY 2007 large business sub-k dollars[2] $_____

Proposed FY 2007 small business sub-k dollars $_____

Proposed FY 2007 small disadvantaged business dollars[3] $_____

Proposed FY 2007 women owned small business dollars $_____

Proposed FY 2007 HUBZone small business dollars $_____

Proposed FY 2007 service-disabled veteran-owned small business dollars $_____

Proposed FY 2007 veteran-owned small business dollars $_____

Have the proposed FY 2007 subcontracting dollars (goals) been negotiated with your cognizant contracting officer? **Yes or No**

I certify that the information provided herein is accurate:

_____ _____

Corporate Officer (Printed and Signature) Date

[1] The subcontracting base must include only first tier "subcontracts" performed in the U.S. and exclude purchases from a corporation, company, or subdivision that is an affiliate of the prime contractor.

[2] Do not calculate percentages. The spreadsheet model will do this.

[3] 8(a) Pilot dollars must be included with SDB dollars.

POLICY FLASH 2006-53

POLICY FLASH 2006-53

DATE: September 1, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Code of Federal Regulations Correction**

SUMMARY: A technical correction of the Code of Federal Regulations was published August 28, 2006 at page 50863 of the Federal Register.

It corrects the text of the clause at Section 52.208-9, Contractor Use of Mandatory Sources of Supplies or Services, of the Federal Acquisition Regulation. It is correcting the text of the clause which was published in the October 1, 2005 edition of the Code of Federal Regulations. That edition of the Code (and several before it) mistakenly published an earlier version of the clause rather than the corrected version. The corrected version is easily spotted as it is formatted into paragraphs (a) through (c) and is longer and more informative as regards procedures to be followed should you encounter poor performance under a mandatory source contract. You may wish to check that you have the correct text in your contract writing system. A copy is attached.

This Flash can be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash, or requests for a copy of the presentation should be directed to Richard Langston at 202-287-1339 or Richard.Langston@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy, OMBE

Attachment

[Federal Register: August 28, 2006 (Volume 71, Number 166)]
[Rules and Regulations]
[Page 50862]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr28au06-5]

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation; Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, Parts 52 to 99, revised as of October 1, 2005, on pages 32 and 33, section 52.208-9 is corrected to read as follows:

52.208-9 Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.004, insert the following clause:

Contractor Use of Mandatory Sources of Supply or Services (JUL 2004)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific

sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

(1) National Industries for the Blind (NIB), 1901 North Beauregard Street, Suite 200, Alexandria, VA 22311-1705, (703) 998-0770.

(2) NISH, 2235 Cedar Lane, Vienna, VA 22182-5200, (703) 560-6800.

(End of clause)

[61 FR 2631, Jan. 26, 1996, as amended at 61 FR 67430, Dec. 20, 1996; 66 FR 65368, Dec. 18, 2001; 67 FR 56120, Aug. 30, 2002; 69 FR 34230, June 18, 2004]
[FR Doc. 06-55525 Filed 8-25-06; 8:45 am]

BILLING CODE 1505-01-D

POLICY FLASH 2006-54

POLICY FLASH 2006-54

DATE: September 20, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Correction of Code of Federal Regulations Clause**

SUMMARY: A technical correction of the Code of Federal Regulations published August 28, 2006 at page 50863 of the Federal Register contained errors.

The correction of the clause at FAR 52.208-9, published in the Federal Register and distributed by Policy Flash 2006-53 contained erroneous addresses in paragraph (c) and had the wrong date. Corrected copy is attached.

This Flash can be viewed at http://professionals.pr.doe.gov.

Questions concerning this policy flash should be directed to Richard Langston at 202-287-1339 or Richard.Langston@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy

Attachment

52.208-9 Contractor Use of Mandatory Sources of Supply or Services. (JUN 2006)

As prescribed in 8.004, insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (JUN 2006)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

(1) National Industries for the Blind
1310 Braddock Place
Alexandria, VA 22314-1691
(703) 310-0500; and

(2) NISH
8401 Old Courthouse Road
Vienna, VA 22182
(571) 226-4660.

(End of clause)

POLICY FLASH 2006-55

POLICY FLASH 2006-55

DATE: September 27, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Issuance of Acquisition Letter 2006-11 on Site Utilization Management Planning (SUMP)**

SUMMARY: This Acquisition Letter (AL) updates guidance on developing the SUMP, which is a condition of award of any contract for the management and operation, integration, restoration or privatization functions at a DOE site. The new AL clarifies the sequencing of events by including a process map and a specific review and approval structure.

Although not required for a NNSA M&O Site, if a DOE M&O Site provides services for NNSA, a DOE Site SUMP is necessary.

AL 2000-08, Site Utilization and Management Planning, dated August 18, 2000, is cancelled.

This Policy Flash 2006-55 will be available online within a day, at the following website: http://professionals.opr.doe.gov

Questions regarding this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hq.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy
Assistance Regulation

No. AL-2006-11
Date 09/27/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Site Utilization and Management Planning

References:

FAR Part 7	Acquisition Planning
FAR Part 34	Major System Acquisition
Acquisition Guide	Chapter 7.1, Acquisition Planning
Acquisition Guide	Chapter 42.5, Contract Management Planning

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does This AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Denise Wright of the Office of Procurement and Assistance Policy at (202) 287-1340 or by email at Denise.Wright@hq.doe.gov.

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

The purpose of this Acquisition Letter (AL) is to provide information and procedural guidance on the development of the Site Utilization and Management Plan (SUMP) in relation to a Site's alignment to the overall acquisition strategy and linkage with other lifecycle acquisition planning tools, such as the contract management plan, or performance evaluation management plan. Documentation of this information is a condition for awarding any contract for the management and operation, integration, restoration, or privatization of functions at a DOE site. A SUMP is not required for a

NNSA M&O Site. However if a DOE M&O Site provides services for a NNSA DOE Site, a SUMP is required.

What is the Background?

The Department has identified institutional site planning as a prerequisite to acquisition planning and major procurement decisions. Often, DOE sites have program responsibilities to multiple program offices. As a result, each year additional responsibilities may be added while others are deleted. These changes complicate the process of developing an appropriate site specific acquisition strategy. One DOE program's goals may be in direct competition with another for the limited resources available at a particular DOE site.

Institutional planning permits "buy-in" by all affected stakeholders by identifying the affected program offices and describing a management approach for successful completion of the anticipated work at a particular site. The SUMP process is intended to identify alternative acquisition strategies specifically designed to achieve interrelated mission objectives. This AL provides guidance for the development and coordination of the SUMP prior to initiation of the acquisition process.

Guidance Included in this Acquisition Letter

I. Why is it Necessary to Develop a Site Utilization and Management Plan? 4

II. What Impact Does Process Have on Acquisition Planning? .. 4

III. When Must the Information Be Developed? 5

IV. Who Has the Responsibility to Develop the Information? 5

V. How Should the Information Be Documented? 5

VI. What Information is Included in the Site Utilization and Management Plan? 6

VII. How is the Site Utilization and Management Plan Processed and Approved? 7

* *

I. Why is it Necessary to Develop Site Utilization and Management Information?

No major acquisition at a give DOE site can stand on its own. It is merely a part of a larger strategy designed to carry the site from the present to its ultimate goal such as remediation, closure, or continuing to perform the existing mission or a modified mission. No business strategy can be adopted for a specific procurement unless the Head of the Contracting Activity, the contracting officer, the program managers, and all others involved are aware of the part the individual acquisition will play in attaining the site's mission. Many DOE sites have responsibilities to more than one DOE program. Each program may have its own plan for activities at the site; however, those individual activities must be considered in the context of all of the other programs at the site to establish one master strategy for the attainment of the site's mission. In addition, the missions at the site may change yearly, with significant potential effects on planned acquisitions.

It is not in DOE's interest that each program plan to accomplish its mission and account for its budget in isolation, not recognizing the effects on the sites upon which it relies. Major changes in mission or organization of a site may occur. A danger exists that a requirement may be solicited and a contract awarded, but actually be at odds with the site's ultimate goal.

Site utilization and management information brings together in one document the long term (5-10 year) objectives of the DOE site with the business strategy for attaining it. The information is necessary to record the parts the various DOE organization, program, site, and support offices will play and to reconcile the intention of each of those participants.

Site utilization and management information must represent the coordinated perspective of the Department's senior management. It may be developed from existing plans or generated as a new plan. The documentation will provide a single structure, approved by all involved participants, for pursuit of DOE's mission at each site. It should include the DOE Strategic Plan, Site Institution Plan, Budget, Program Plans and Field Office Plans.

A DOE contracting officer may not award any management and operating contract, or other contract subject to this AL, either competitively or noncompetitively, or through the exercise of an option, unless the requirements is derived from, and the acquisition strategy is consistent with, site utilization and management information approved by senior management.

II. What Impact Does this Process Have on Acquisition Planning?

Acquisition planning must be a process of meeting DOE's needs with regard to the site. Each proposed acquisition must be analyzed in light of site utilization

and management requirements. Although a requirement may have previously been acquired using a certain statement of work in a certain manner does not assure that the previous method is still in the Department's best interest. A restructuring of a requirement may be more appropriate.

The SUMP should address the establishment of realistic cost, schedule, and performance goals for each planned acquisition; proceeding with a historical acquisition approach or restructuring the acquisition method to reflect modified requirements at a particular site. It should include a summary level discussion on the integration of program scope, schedule, cost objectives, and the establishment of performance data into a baseline plan for accomplishing program objectives during the execution phase. The type of contract or other strategy may need to be changed to fit the then known needs of the site.

III. When Must the Information be Developed?

Site utilization and management information for an individual DOE site must be completed prior to the development of an acquisition plan. This includes noncompetitive or competition of a contract for management and operation, integration, environmental restoration, and privatization of any significant function at the site. Once adopted, the SUMP should be revised to reflect any changes in the site's mission.

IV. Who has the Responsibility to Develop the Information?

The Cognizant Secretarial Officers (CSOs) are responsible for the development and documentation of site utilization and management planning information. In fulfilling this responsibility, CSOs should work closely with the Lead Program Secretarial Officer (LPSO) for the site, the manager of the operations office, other offices having programs as the site, and support offices.

V. How Should the Information be Documented?

Site planning requirements or activities that already exist within the Department need not be duplicated. This requirement does not demand a specific report or documentation format, however it does require the completion of site planning and the provision of certain information prior to the development of acquisition plans for certain types of DOE requirements. To the extent that such a planning process already exists, it should be leveraged so that the requirements stated herein is satisfied in one document serving two or more functions. Conversely, if the information exists in multiple planning documents, the specific site utilization and management information may be extracted from them.

VI. What Information is Included in the Site Utilization and Management Plan?

The SUMP should address the mission of the site and the activities (current and projected) each program provides in support of that mission in order to track mission related performance objectives for each DOE program supported at the site over the next 5-10 years. Years one and two are discussed with greater specificity than years 3-5. There should also be a clear link between budget and performance.

The Site Utilization and Management Plan should include:

1. A discussion of the site's responsibilities under the DOE Strategic Plan.

2. An identification of the DOE Program Office(s) supported and a detailed description of the activities involved and their intended objectives.

    a. Projection of business line activities, e.g., new and developing missions or significant changes to the current mission, including any reduction or expansion.

    b. Interrelationship among various business line activities, including identification of their relative significance and reconciliation of competing mission objectives and any other open issues.

    c. Any internal or external events that may affect site operations.

    d. Any local area considerations.

    e. Single program site discussion connecting budget, acquisition, and mission related performance data.

3. The current and planned budget necessary to accomplish each of the performance objectives of all site contained programs (to include contingency plans to deal with the effect of reduced appropriations).

4. A discussion of the management approach to be employed to control changes to the work as planned and the assignment of unexpected work.

5. A discussion of available infrastructure at the site to support each program, assuming full integration of site program, planning, management, and assessment.

6. A discussion of the current "contractual configuration" and future plans for meeting Departmental responsibilities, including any potential "privatization" of site functions

7. All proposed acquisitions and their effect (e.g., those procurements continuing as initially planned and any new procurements added to those already existing, in order to meet the site's mission).

VII. How is a Site Utilization and Management Plan Processed and Approved?

The Cognizant Secretarial Officers (CSO) are responsible for the development and coordination of the SUMP. The following process describes the approval and concurrence review of the SUMP (see the attached process map).

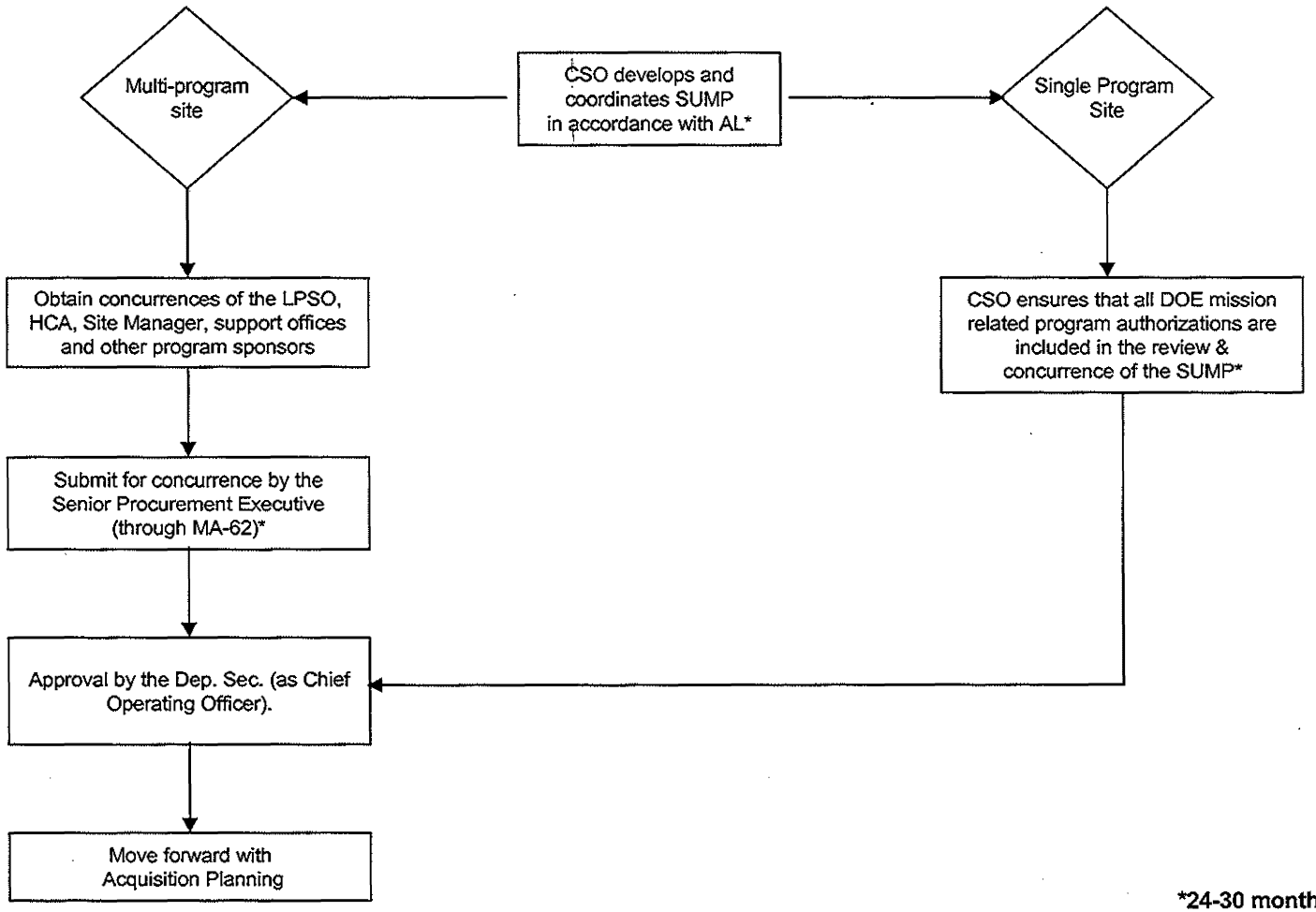
➢ The CSO should submit a SUMP 24-30 months prior to the preparation and submission of the acquisition plan required for approval by the Office of Contract Management (MA-62). This timeline is critical to meeting the acquisition milestones.

➢ The CSO approved SUMP should be reviewed and concurred by the Lead Program Secretarial Officer (LPSO), the Site Manager, Support Offices, and other program sponsors before submission for review to the Senior Procurement Executive (SPE).

➢ The fully coordinated SUMP is submitted to the Senior Procurement Executive (SPE) through the Office of Contract Management (MA-62) for review and concurrence and the Deputy Secretary in the capacity of the Department's Chief Operating Officer for approval.

➢ Once final approval of the SUMP by the Deputy Secretary is received, the CSO may initiate the acquisition planning process, integrating the approved SUMP into the Acquisition Plan.

Approval Process for the Site Utilization and Management Plan



***24-30 months prior to acquisition plan**

POLICY FLASH 2006-56

POLICY FLASH 2006-56

DATE: September 20, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Interim Cyber Security Guidance Concerning Disposal of Computer Storage Media, Including Hard Disk Drives**

SUMMARY: This Policy Flash forwards the attached memorandum by the Chief Information Officer, Thomas Pyke, Jr., establishing interim procedures for the disposal of computer storage media. Effective immediately, there should be no sale, donation, or transfer of hard disk drive or other magnetic computer storage media to an off-site contractor for disposal. The Office of the Chief Information Officer and the Cyber Security Working Group are preparing long term guidance on the disposal of these types of devices. Each Program Office should work with their contracting officer to provide appropriate contractor instructions.

This Policy Flash 2006-56 will be available online within a day, at the following website: http://professionals.opr.doe.gov.

Questions regarding this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy
Washington, DC 20585

September 12, 2006

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: THOMAS N. PYKE, JR.
CHIEF INFORMATION OFFICER

SUBJECT: Interim Cyber Security Guidance Concerning Disposal of Computer Storage Media, Including Hard Disk Drives

No hard disk drive or other magnetic computer storage media or device should be sold, donated, or transferred to an off-site contractor or other organization for disposal. In addition, degaussing should not be used as the sole means to purge data from hard disk drives or other magnetic computer storage media or devices. Please reflect this guidance in your Program Cyber Security Plans and implementing procedures, as soon as possible.

This guidance is being issued because of a recent Inspector General report of an incident in which degaussing may not have been fully successful in purging the data on a hard drive. Degaussing normally is expected to make the hard drive unusable. In addition, as a precaution following that incident, inspection of the effectiveness of degaussing at another site has found inadequate purging of data, possibly due to some combination of the degaussing equipment used and the procedures that were employed.

This guidance applies to all DOE organizations and sites, including contractor-operated facilities and sites that maintain disk drives or other magnetic computer storage media on behalf of the Department. The Office of the Chief Information Officer (OCIO) and the Cyber Security Working Group are preparing new, long term cyber security guidance on the disposal of these types of devices. Program Offices should work with their cognizant contracting officer to ensure that any appropriate contractor instructions are provided.

Printed with soy ink on recycled paper

POLICY FLASH 2006-58

POLICY FLASH 2006-58

DATE: September 27, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management
SUBJECT: **The Allowability of the Central Nonprofit Agency (CNA) Fee Under Javits-Wagner-O'Day (JWOD) Program Procurement Contracts**

SUMMARY: The purpose of this Flash is to update and clarify policy regarding the Central Nonprofit Agency (CNA) Fee applied to Javits-Wagner-O'Day (JWOD) Program contracts. The JWOD Program creates employment opportunities for people who are blind or have other severe disabilities through the fulfillment of Federal requirements for a wide range of products and services. The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is the Federal agency that administers the Program. The purpose of the CNA Fee is to provide funding for the operations of the Committee-designated CNAs – National Industries for the Blind and NISH (serving people with severe disabilities).

The CNA Fee that is a cost of each contract on the JWOD Program Procurement List is an allowable cost. This information is relevant in price negotiations requiring cost analysis, in which case the contractor will include the CNA Fee in its proposed overhead costs. The contractor is not required to disclose this cost specifically.

The attached September 22, 2006 memo to Chief Acquisition Officers and Senior Procurement Executives provides background information on this subject. This Flash can be viewed at http://professionals.pr.doe.gov.

If you have questions on the allowability of the cost in your price negotiations, please contact Michael Righi at (202) 287-1337 or Michael.Righi@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy

Attachment

COMMITTEE FOR PURCHASE FROM
PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

703-603-7740
FAX 703-603-0655

September 22, 2006

Jefferson Plaza 2, Suite 10800
1421 Jefferson Davis Highway
Arlington, Virginia 22202-3259

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM: Leon A. Wilson, Jr., Executive Director

SUBJECT: JWOD Program 2007 CNA Fee Ceiling

EFFECTIVE: October 1, 2006

The purpose of this memorandum is to update and clarify policy regarding the Central Nonprofit Agency (CNA) Fee applied to Javits-Wagner-O'Day (JWOD) Program contracts. As you know, the JWOD Program creates employment opportunities for people who are blind or who have other severe disabilities through the fulfillment of Federal requirements for a wide range of products and services. The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is the Federal agency that administers the Program. The purpose of the CNA Fee is to provide funding for the operations of the Committee-designated CNAs – National Industries for the Blind and NISH (serving people with severe disabilities).

The Committee has approved a policy clarifying that the CNA Fee is neither an add-on to the JWOD Program's fair market price nor a pass-through to the Government, but is included in overhead. The CNA Fee is an inherent part of the fair market price, and is paid by each participating nonprofit agency to its CNA. Each year, the Committee reviews the CNA Fee ceiling and determines the appropriate level for the following year, which may be found on the Committee's website at http://www.jwod.gov/jwod/library/CNA_FEE.html. The 2007 CNA Fee ceiling has been posted.

Contracting officers have a right and responsibility to negotiate recommended fair market prices for JWOD products and services. The Committee's policy is that price analysis should be used for any JWOD product or service that has equivalent or similar counterparts in the commercial market. Changes in the CNA Fee ceiling will not affect existing fair market prices, as JWOD fair market prices are validated with market price indicators, and the CNA Fee is a business cost for the nonprofit agency. Where there are no commercial equivalents, and cost analysis must be used, the CNA Fee will be included in overhead costs, not as a separate line item. This fee is similar to those paid by commercial firms to belong to trade and industry associations related to their government contracts, and is considered an allowable cost. Specific disclosure of this cost element is not required of commercial firms and is not specifically addressed in negotiations.

The attached questions and answers are intended to provide further information. Please contact Sheryl Kennerly or Kimberly Zeich at (703) 603-7740 if you have any questions.

Attachment

Frequently Asked Questions – JWOD Program 2007 CNA Fee Ceiling Determination

1. What is the CNA Fee?

The purpose of the CNA Fee is to provide funding for the operations of the Central Nonprofit Agencies (CNAs) – National Industries for the Blind and NISH (serving people with severe disabilities) – designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) in accordance with the provisions of the Javits-Wagner-O'Day (JWOD) Act. The CNA Fee is a percentage of the revenue of each contract on the JWOD Program Procurement List. The Committee establishes the fee ceiling annually for each CNA.

2. Who pays the CNA Fee?

The CNA Fee is paid by JWOD-participating nonprofit agencies to their Central Nonprofit Agency, either National Industries for the Blind or NISH, to fund CNA operations. The CNA Fee is not an add-on to the JWOD Fair Market Price, nor is it a pass-through to the Government.

3. When is the updated CNA Fee Ceiling effective, and is this rate permanent?

The FY 2007 CNA Fee Ceiling is effective on October 1, 2006, for the entire Fiscal Year. Each year, the Committee reviews the CNAs' budgets and planned activities, and determines the CNA Fee ceiling(s) for the following year. The Committee will make another determination for FY 2008. The Committee's web site will show the CNA Fee ceiling in effect for the current Fiscal Year at http://www.jwod.gov/jwod/library/CNA_FEE.html.

4. What does the new CNA Fee Ceiling for 2007 mean to Federal customers?

The CNA Fee should be invisible to Federal customers. The Committee has clarified that the fee is paid by the nonprofit agencies, and is not added on to the cost of contract performance to achieve a fair market price. The JWOD fair market price is to be validated in the commercial marketplace through price analysis. As the price is market-driven, any change in the CNA Fee (a nonprofit agency cost of doing business) does not affect customers' existing prices. Customers will continue to pay the fair market price.

5. What if the JWOD product or service does not have a commercial equivalent, then how is the price validated?

The Committee recognizes that for truly Government-unique requirements, it is necessary to use cost analysis to evaluate pricing proposals. In these cases, the CNA Fee will not be a separate line item, but included in overhead costs. This fee is similar to those paid by commercial firms to belong to trade and industry associations related to their government contracts, and is considered an allowable cost. Specific disclosure of this cost element is not required of commercial firms, and is not specifically addressed in price negotiations.

6. What impact will the new CNA Fee level have on existing contract prices?

None. A change in the CNA Fee paid by nonprofit agencies to their CNA does not change or affect existing contract prices. A fair market price on Sept. 30, 2006 remains a fair market price on October 1, 2006.

7. As the CNA Fee is the responsibility of the nonprofit agency, not the Government, can the Government seek a discount or rebate on JWOD pricing if the fee ceiling decreases?

There will be no discounts or rebates to Committee-established fair market prices as a result of the CNA Fee ceiling change. The CNA Fee has always been sent to NIB or NISH by the nonprofit agency from their contract revenues. The Committee's addition and price change procedures have always required Contracting Officers' concurrence that the proposed fair market price is reasonable. With firm, fixed prices established, the variations in the nonprofit agency's costs are not applicable to the Government.

8. Is the CNA Fee negotiable like other cost elements in order to reach a price agreement?

No. The CNA Fee will no longer be a stand-alone cost element in JWOD pricing proposals. First, JWOD pricing proposals will focus on market price indicators, not cost elements, unless there is no equivalent market for the Government requirement. In these cases, the CNA Fee will not be a separate line item, but included in overhead costs. As noted above, this fee is similar to those paid by commercial firms for trade and industry association memberships related to their government contracts, and it is considered an allowable cost. Specific disclosure of this cost element is not required of commercial firms, and is not specifically addressed in price negotiations.

9. Who may I contact for more information?

Federal customers may contact the Committee staff at info@jwod.gov or (703) 603-7740 for more information. Nonprofit agencies may contact their Central Nonprofit Agency.

POLICY FLASH 2006-59

POLICY FLASH 2006-59

DATE: September 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Guide Chapter 18, "Contingency Contracting"**

SUMMARY: This Flash transmits a new Acquisition Guide Chapter 18, "Contingency Contracting". The purpose of this Chapter is to provide guidance to DOE Contracting Officers when tasked to acquire goods and services in the event of a contingency operation or an emergency.

This Flash and the Guide Chapter may be viewed at http://professionals.pr.doe.gov.

Questions regarding this Policy Flash should be directed to Sandra Cover at (202) 287-1344 or Sandra.Cover@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Contingency Contracting

Guiding Principles

A national emergency may result in what is considered a "contingency operation," resulting in the increase of buying thresholds.

The granting of waivers and exemptions, and reduced documentation for acquiring services and supplies can only be used in support of the emergency and/or recovery.

When necessary, to support a contingency situation, use whatever authorities are permissible to effectively meet departmental procurement requirements.

Apply appropriate management controls to assure sound business decisions, price reasonableness and the appropriate level of documentation.

Authorities:

42 U.S.C. 5150, Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended

Preference shall be given to those organizations, firms, or individuals residing or doing business in the area affected for the purpose of debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities.

Defense Priorities and Allocation System Program (DPAS)

Title I of the Defense Production Act of 1950, as amended, authorizes the President to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials (including equipment), services, and facilities in such a manner as to promote these approved programs.

The authority of the President under the Defense Production Act has been delegated to the Secretary of Commerce. Under DPAS delegation 2 dated July 1, 1998, the Department of Commerce (DOC) delegated limited authority to the Secretary of Energy.

The Department of Energy (DOE), Office of Procurement and Assistant Management is delegated authority (Delegation of Authority Order Nos. 00-022.00A & 00-002.07A) for the implementation of section 101(a) of the Defense Production Act. Section 101(a) provides authority to place DO and DX priority rated contracts and orders in support of DOE approved energy programs. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. The DOE approved energy programs are listed in Schedule I of the DOC, DPAS Register (15 CFR Part 700).

Additional guidance on DPAS can be obtained from the Office of Contract Administration (MA-621).

Services Acquisition Reform Act of 2003 (Title XIV of P.L. 108-136)

Provides special emergency procurement authorities to increase the amounts for micro purchase and simplified acquisition in support of a contingency operation or to facilitate the defense against or the recovery from a nuclear, biological, chemical, or radiological attack and treats such supplies and services as commercial.

Definitions

Agency Head means: (1) The Secretary: (ii) Deputy Secretary: (iii) Under Secretaries of the Department of Energy and (iiii) the Chairman, Federal Energy Regulatory Commission (FERC) (see Department of Energy Acquisition Regulation (DEAR) 952.2).

Contingency operation (10 U.S.C. 101 (a)(13)) means a military operation that: (1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against any enemy of the United States or against an opposing military force; or (2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress.

Emergency acquisition flexibilities (defined within the new Federal Acquisition Regulation(FAR) Part 18) means flexibilities provided with respect to any acquisition of supplies or services by or for an executive agency that, as determined by the head of an executive agency, may be used—

(1) In support of a contingency operation as defined in FAR 2.101;
(2) To facilitate the defense against or recovery from nuclear, biological,

chemical, or radiological attack against the United States; or

(3) When the President declares an incident of national significance, emergency declaration, national emergency, or major disaster.

Head of the contracting activity (HCA), is the official who has overall responsibility for managing the contracting activity.

Overview

This chapter provides guidance to DOE contracting officers (COs) that will be tasked to acquire goods and services in the event of a contingency operation or an emergency, such as: attacks, accidents, floods, earthquakes, tornadoes, fires, etc. The FAR allows many methods for acquiring goods and services that can be used under certain conditions and that do not require an emergency declaration. In addition, the FAR prescribes additional streamlined methods that may be used only after an emergency declaration is made. Such declarations may result from Executive Orders with specific limitations, such as dollar levels, time limits, and funding appropriations. Thus, while the FAR provides contracting officers with sufficient latitude necessary to perform their duties, Executive orders, specific to a particular crisis such as Hurricane Katrina, can also provide higher thresholds and additional exceptions to regulations facilitating the response effort.

Background

The Department of Defense (DoD) was the first to issue directives and instructions on contingency contracting after World War II. DoD recognized the need to provide guidance to contracting officers deployed within the theater of combat back in 1947 and has continued to issue new guidance and revisions necessary to support its mission abroad. Since September 11, 2001, potential threats against the homeland renewed recognition for the need to act quickly and efficiently, Congress granted special emergency procurement authority to heads of executive agencies where such persons determine that procurements are to be used in the support of a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. The devastating severity and national impact of the 2005 hurricane season precipitated the use of the "contingency operation," to include significant domestic events. By way of guidance issued by the Office of Federal Procurement Policy (OFPP) and the General Services Administration (GSA), a contingency operation may be declared in the event of workforce preparedness for and participation in support of humanitarian missions, disaster relief, restoring civil order, drug interdiction, contingencies and emergency operations, and war (collectively referred to as contingencies and emergencies).

ACQUISITION STRATEGIES

FAR Part 18 provides a single location for contracting personnel to reference the regulations pertaining to contingency and emergency contracting. In addition, at the end of this chapter there is a table entitled, "Contingency Contracting Thresholds and Flexibilities." The table is a quick reference to assist in determining next steps and file documentation. Upon the receipt of the procurement request in a contingency contracting situation, DOE COs should consider the following acquisition alternatives in the order presented.

Existing Contract Vehicles

The CO should first seek to satisfy competitive commercial requirements by placing task orders and delivery orders against existing DOE contracts and Blanket Purchase Agreements (BPA)s. The GSA Federal Supply Schedules (FSS), Multiple Award Schedule (MAS), BPAs and Government Wide Acquisition Contracts (GWAC)s are also good sources to consider. GSA has grouped "disaster relief" services and products in one place on its website, at www.gsaelibrary.gsa.gov/ElibMain/ElibHome to expedite searching for: construction services, building supplies, communication, furniture, law enforcement, medical/laboratory supplies, temporary staffing, vehicle leasing, and other common emergency necessities. The purchase card as a method of payment will expedite the award, however the CO is responsible for ensuring that appropriate file documentation is created, dependent on current micro purchase and SAP thresholds.

Micro purchase

The government purchase card is the preferred acquisition method in the federal government, providing reduced administrative costs and time for purchasing and paying for small dollar commercial goods and services. In the event of a contingency operation or emergency, the micro purchase threshold will be raised from $2,500 to $15,000.[1] DOE Organizational Program Coordinators are expected to conduct closer oversight of their card systems during a contingency period when opportunities for fraud, waste and abuse are increased.

When using micro purchase procedures, card holders are not required to seek competition and there are no small business set-asides. Cardholders remain accountable for determining price reasonableness; therefore, making the best decision may include factors other than price, such as lead times, delivery, and (in accordance with the Stafford Act) giving preference to local businesses in the effected area, if possible under the circumstances.

DOE's "Policy and Operating Procedures for Use of the GSA Smart Pay Purchase Card

1 For any micro purchase card contract awarded and performed outside the United States, the threshold is increased to $25,000.

by DOE and Authorized Contractor Personnel" and "Charge Card Management Plan" have incorporated OMB's updated OMB Circular A-123, Appendix B - Improving the Management of Government Charge Card Programs. DOE's card policy requires that a system of internal controls are implemented through :

1. performing periodic reviews of spending and transaction limits;
2. conducting internal card program reviews;
3. monitoring reports to identify split purchases;
4. performing periodic reviews of the number of cards in use and the span of control for approving officials;
5. keeping current on new and innovative solutions to detect and prevent fraud and misuse, such as:
    - data mining
    - blocking high risk merchant codes
    - restrict limits during inactivity
    - review cardholder accounts
    - cancel accounts when employees terminate employment

Simplified Acquisition Procedures (SAP)

The threshold for SAP will be increased to $250,000 when a contingency operation or emergency is declared. DOE COs are reminded to promote competition to the maximum extent as practicable, however, as prescribed by FAR 13.106-1, contracting officers may solicit from a single source if it is determined that circumstances deem that only one source is "reasonably" available (e,g., urgency, exclusive licensing agreements, or industrial mobilization). In accordance with FAR 13.104, when not using FACNET or posting solicitation information on the Government Point of Entry (GPE) FedBizops, three sources within the local trade area are considered as promoting competition to the maximum extent practicable. Preference shall be given in accordance with FAR 26.201, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by the disaster or emergency.

DOE COs may use standing price quotes that are current and reflect maximum discounts before award, rather than requesting separate quotes with each order. In addition, the CO may solicit multiple quotes on supplies and services prior to the placement of the first order, requesting that the vendor guarantee those prices as standing price quotations for consideration on future orders, thus expediting subsequent orders and complying with the intent of competitive requirements.

Commercial Item Test Program

Orders up to $5 million for commercial items and $10 million for any supplies or services that are determined by the head of the agency (not delegable) to be used for contingency operations or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack, may use the simplified procedures of FAR Part 13, allowing for limited competition. Preference shall be given to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by the disaster or emergency under the authority of the Stafford Act. All procurements conducted under the Commercial Item Test Program must be documented, per FAR 13.501(b). The contract types are limited to firm fixed price or firm fixed price with economic adjustment. The documentation required shall include:

- a brief description of the procedures used to award the contract, including that the test procedures in FAR 13.5 were used,
- the number of offers received,
- an award decision justification, appropriate for the size and complexity of the contract, and
- any justification approved for the use of a Sole Source Contract in accordance with FAR 13.501.

Letter Contracts

Authority to use a letter contract is not new, however it is a procurement method that is used when the situation requires work to begin immediately and there is not enough time to negotiate a formal contract. A written determination must be made by the HCA that a letter contract can be issued. If the letter contract is based on price competition, the CO shall include an overall price ceiling. Each letter contract shall contain a negotiated definitization schedule that includes: dates for the contractor's price proposal, required cost and pricing data, and subcontracting plans. Definitization of the letter contract shall be at the earliest time practicable, usually within 180 days of the date of the letter contract or before 40 percent of the work is completed, whichever comes first. The CO shall assign a DPAS priority rating to the letter contract if it is appropriate under DEAR 911.602 and follow any other DOE or National Nuclear Security Administration (NNSA) policies or procedures required.

In accordance with FAR 16.603-4, the following clauses shall be included in the solicitation and contract when a letter contract is contemplated:

- 52.216-1 TYPE OF CONTRACT, unless for a fixed price acquisition made under SAP),

- The clause required for the type of definitized contract contemplated,
- 52.216-23 EXECUTION AND COMMENCEMENT OF WORK (may be omitted from letter contracts awarded on SF 26),
- 52.216-24 LIMITATION OF GOVERNMENT LIABILITY, and
- 52.216-25 CONTRACT DEFINITIZATION

Oral Requests for Proposals (RFP)s

SAP allow for the use of oral RFPs at any time; however, per FAR 15.203(f), oral RFPs are authorized and a notice is not required when preparing a written solicitation of any size that would delay the receiving of perishable items or be a detriment to the support of a contingency operation or emergency. Use of an oral RFP still requires following FAR acquisition planning. The contract file documentation shall include:

- a description of the requirement,
- rationale for use of an oral solicitation,
- market research,
- list of sources solicited, including date, time, names of individuals contacted and prices offered, and
- the solicitation number provided to the prospective offerors.

OTHER CONSIDERATIONS

Exemption from Registration in the Central Contractor Registration (CCR) Database

Contractors doing business with the Federal Government are required to be registered in the CCR database. However, FAR 4.1102 (a) exempts registration when contracts are awarded by,

- deployed contracting officers in the course of military operations, including, but not limited to, contingency operations, as defined in 10 U. S. C. 2302(7); or

- contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters, or national or civil emergencies, *e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121).*

Exemption from Electronic Funds Transfer (EFT)

Normally, contract payments by the government are made by EFT, however during contingency operations and emergencies it may be necessary to contract with firms that do not have an EFT mechanism. FAR 32.1103(e) provides for the exemption of this payment mechanism in situations of military operations, contingency operations, and emergencies, where requiring the EFT would seriously injure the acquisition of supplies and services necessary to meet the mission.

Exemptions and Suspensions with Labor Statutes

The Office of Federal Contract Compliance (OFCC) may exempt or waive some of the requirements of: Executive Order 11246, as amended, Section 503 of the Rehabilitation Act, as amended, and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act as amended, in contracts that would include any part of the equal opportunity clause when special circumstances in the national interest require the exemption or waiver. The exemption and waiver are related to the development of written affirmative action programs, reports, or notices administered by OFCC.

The President may suspend the enforcement of certain statutes, such as the Davis-Bacon Act, for all contracts performed in a specific jurisdiction (the affected areas) during a specified period of time consistent with disaster and recovery efforts. Contractors would not be required to pay workers the prevailing wage rates set by the Department of Labor for construction contracts and could pay wages relative to the competitive marketplace.

Use of Other Than Full and Open Competition

There are two authorities that will most likely be used in the event of a contingency or emergency, FAR 6.302-2, UNUSUAL AND COMPELLING URGENCY and FAR 6.302-5, AUTHORIZED OR REQUIRED BY STATUTE. Documentation requiring the use of either authority and the written Justification shall be signed by the appropriate officials, as described in DOE Acquisition Guide Chapter 6.1 (March 2006) and for NNSA, in the Coordination and Approval Process (CAP) of Contract Items.

- **FAR 6.302-2 Unusual and Compelling Urgency**

COs may cite the authority of 41 U.S.C. 253(c)(2) in the event that the Government would be seriously injured, unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. The contracting officer need not submit a notice required by FAR 5.201, on the Government Point of Entry (GPE) FedBizops. The file, in accordance with FAR 6.304, shall contain an approved justification for a sole source contract. However the justification may be prepared and approved by the required

officials within a reasonable time after contract award.

- **FAR 6.302-5 Authorized or required by statute**

In the event that an emergency declaration is made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U. S. C. 5150) the CO may use other than full and open competition, citing FAR 6.302-5(b)(5) as its authority. The use of this authority only applies to acquisitions made during the term of a major disaster or emergency for activities such as, debris clearing, distribution of supplies, or reconstruction. Preference shall be given to local trade firms, organizations, or individuals within the effected areas. The CO need not submit a notice required by FAR 5.201 on the Government Point of Entry (GPE) FedBizops. Justifications may be made on an individual or class basis and shall contain signature approvals at the required thresholds.

Protests

FAR 33.104 allows for the HCA to make a non delegable written decision to make award due to urgent and compelling circumstances when a protest is received from the General Accountability Office (GAO) either *before* or *after award.* The written determination shall state, "urgent and compelling circumstances that significantly impact the interest of the United States will not permit waiting for the GAO's decision".

Contract Close-out

Contingency contracting does not provide any flexibilities or expedited procedures for contract close-out. A complete and properly documented file is still required, although in certain circumstances the documentation and approvals on justifications can be prepared after the contract award. Contracting Officers must be prepared to have any contingency contract files audited as early as 60 days after the date of the transaction. The documentation should be appropriate for the size and complexity of the acquisition and should be able to withstand an audit.

Documentation

Although working in a contingency contracting environment is dynamic, uncertain, and risky for the taxpayer as well as the contractor, experience has demonstrated that logical, well documented files best justify the decisions that are made. DOE COs must document their decisions in order to maintain a proper "paper trail" of their actions for the inevitable follow-up reviews. A contingency contracting situation is no excuse for contracting officers to abandon: reasonable and prudent judgment, adherence to federal acquisition principles, or proper business acumen in their role as stewards of the

taxpayers' dollars.

In contingency situations, contract documentation and file maintenance may be subject to greater visibility and scrutiny, particularly because of the Congressional and public interest involved in disaster relief efforts. DOE COs are not relieved from and remain responsible for ensuring that contract files are complete and comply with documentation requirements set forth in the FAR and DOE acquisition policy. The file should "stand-alone" in documenting the acquisition planning, solicitation and award of a given contract. Below is a list of documentation that should be included in a contingency contract file:

- procurement request
- independent government estimate
- funds certification
- market research
- D&Fs as required
- Justifications and Approvals as required
- Headquarters' Clearance documentation
- Deviation approvals
- COR delegation
- Solicitation or written description of the requirement for an oral RFP
- List of sources solicited
- Contractor's proposal or notes documented from the oral RFP
- technical evaluation
- cost/price reasonableness determination
- source selection statement
- any other memorandum that may be important or necessary to understanding the procurement

Certain documents listed above may not be required depending on the type of acquisition and method of procurement selected.

CONTINGENCY CONTRACTING THRESHOLDS AND FLEXIBILITIES TABLE

	Micro Purchase	SAT	Commercial Test Program	FSS Schedule/GWACs Task or Delivery Orders	Letter Contracts	Contracts	Modifications
Buying Threshold	$15K	$250K	$10M	Review Schedule	All amounts	All amounts	All amounts
Certified Funds	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Contract Type	FFP	FFP, T&M & LH	FFP & FFP/EA	FFP, TM & LH	All types	All Types	All types
Set-Aside for Small Business	Not Required	Not Required	Not Required	N/A	Not Required	Not Required	N/A
Price Ceiling Established	N/A	T&M & LH	N/A	T&M and LH	T&M, LH, FFP & Cost Type	T&M & LH	T&M, LH & UCA
JWOD & FPI	Not Mandatory	Not Mandatory	Not Mandatory	N/A	Not Mandatory	Not Mandatory	N/A
Synopsis	N/A	Not Required for Open Market	Not Required	N/A	Not Required	Not Required	Not Required
Use of Oral RFPs	Yes	Yes	Yes	Yes	Yes	Yes	Yes
CCR Registration	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required
EFT Required	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required	Not Required
FAR 6.302-2 Unusual and Compelling Approval	N/A	Yes for Open Market Items	Yes	Yes	Yes	Yes	Yes to Increase Scope
FAR 6.302-5 Authorized by Statute	N/A	Yes for Open Market Items	Yes	Yes	Yes	Yes	Yes to Increase Scope

POLICY FLASH 2006-60

POLICY FLASH 2006-60

DATE: September 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Notice of Updated Chapters from the Contract Administration Handbook, Guide Chapter 70.7**

SUMMARY: This Flash is to inform you that several chapters of the Contract Administration Handbook have been updated recently. The Handbook is located at http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/ReferenceBookforContractAdministrators?OpenDocument.

The chapters that have recently been updated are:

Chapter 3, Contractor Human Resources Management
Chapter 6, Patent and Data Rights
Chapter 9, Records Management
Chapter 10, Subcontract Management
Chapter 12, Diversity Plan, EEO, and Small Business
Appendix A, Part II, DEAR Clause Matrix
Appendix C, Contractor Procurement System Reviews Risk Assessment Matrix

This Flash may be viewed at http://professionals.pr.doe.gov. Questions concerning this policy flash should be directed to Robert Webb at 202-287-1338 or Robert.Webb@hq.doe.gov .

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

POLICY FLASH 2006-61

POLICY FLASH 2006-61

DATE: September 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: **Issuance of Acquisition Letter 2006-12 on Corporate Audit Management Program (CAMP)**

SUMMARY: This Acquisition Letter (AL) provides information and guidance on the Corporate Audit Management Program (CAMP), which provides centralized funding management and oversight of DOE audit services.

This Policy Flash 2006-61 will be available online within a day, at the following website: http://professionals.pr.doe.gov.

Questions regarding this Policy Flash should be directed to Denise P. Wright at (202) 287-1340 or Denise.Wright@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

Department of Energy
Assistance Regulation

No. AL-2006-12
Date 09/29/06

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA

Subject: Corporate Audit Management Program (CAMP)

References:

FAR Part 7	Acquisition Planning
FAR Part 15	Contracting by Negotiation
FAR Part 42	Contract Administration and Audit Services
FAR Part 44	Subcontracting Policies and Procedures
FAR Part 45	Government Property
FAR Part 49	Termination of Contracts
FAR Part 51	Use of Government Sources by Contractors
Acquisition Guide	Chapter 7, Acquisition Planning
Acquisition Guide	Chapter 37, Service Contracting
Acquisition Guide	Chapter 42, Contract Administration
Acquisition Guide	Chapter 70.4, Cooperative Audit Strategy
DOE O 224.3	Audit Resolution and Follow-up Program
DOE O 413.3	Program and Project Management for the Acquisition of Capital Assets

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does This AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Denise Wright of the Office of Procurement and Assistance Policy at (202) 287-1340 or by email at denise.wright@hq.doe.gov.

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this Acquisition Letter?

The purpose of this Acquisition Letter (AL) is to provide information and guidance on the Corporate Audit Management Program (CAMP), which covers non-integrated contract audits. Non-integrated contracts are those not fully covered by DEAR 970.5232-3, Accounts, records, and inspection, Chapter 4 of the Accounting Handbook, and Chapter 18 of the Inspector General Audit Manual. The CAMP provides centralized funding management and oversight capability of DOE audit services through a four point approach of Budget, Accounting, Policy, and Maintenance. For the purpose of this AL, references to DOE include NNSA.

What is the Background?

The Department transfers through the Intra-governmental Payment and Collection System (IPAC) approximately $20 million each year for audit services spread among four Headquarters administered Interagency Agreements (IA) with Defense Contract Audit Agency (DCAA), Defense Logistics Agency/Defense Contract Management Agency (DLA/DCMA), Department of Health and Human Services (HHS), and the Office of Naval Research (ONR). Audit services are performed against subcontracts for Management and Operating (M&O) contracts as well as non M&O prime contracts. While DOE audit services are managed through the Office of Procurement and Assistance Management (OPAM), the Office of Inspector General (OIG) has audit cognizance for M&O contracts under the Cooperative Audit Strategy (see Acquisition Guide Chapter, 70.4).

CAMP provides centralized oversight, access, visibility, control, and reporting for the non-integrated contracts audit program. It is designed to:

⇒ Ensure efficient and effective application of a uniform corporate audit policy in concert with the cooperative audit strategy;

⇒ Integrate local policy and procedure into the larger corporate audit management strategy, where applicable; and

⇒ Develop and maintain a management information system (MIS) that allows for proactive decision making, planning, process control, corrective action, etc.

Guidance Included in this Acquisition Letter

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I. What Are the Components of CAMP and How do They Work?

CAMP is divided into four components, policy, budget, accounting, and maintenance. Each component comprises a number of actions to ensure effective management of the audit services provided under the OPAM interagency agreements and its associated Memorandum of Understanding (MOU). The established Interagency Agreements (IA) are mechanisms that provide for the reimbursement of services rendered through the IPAC system for each audit agency. Likewise, the MOU establishes detailed procedures as to what audit services are available and how the audit services are to be performed. For example, DCAA will audit incurred cost claims at all contractor locations where DCAA is cognizant and auditable dollars have been identified.

Policy - outlines a corporate strategy or plan of action to guide and manage the non integrated contract audit process. The corporate policy integrates local policy and procedure allowing for local program management flexibility while still providing for a corporate approach to audit management.

Budget – estimates are provided to the Chief Financial Officer (CFO) for future year DOE budget preparation and funding. Estimates provided to the CFO are based prior year cost accruals with an added escalation factor adjusted for inflation. Similarly, budget projections provided to the Program Offices are based on the same methodology but on an individual program level.

Accounting – provides a basis for budget development in that the Management Information System (MIS) captures detailed DOE Program accounting data on expenses related to audit services, such as, audit hours, contractor, total dollars per audit hours, etc. In addition, the accounting component provides increased DOE Program visibility into audit expenditures through data stream transmission, enabling the customer to monitor trends and track expenses.

Maintenance – provides for reporting, process review, process improvement, data security, and necessary corrective action. This is done through the MIS developed specifically for audit program management. The maintenance component encompasses an iterative process improvement, anticipating the need for producing new policies, procedures, and practices, and making use of lessons learned in carrying out CAMP functions and subsequently communicating those lessons to affected acquisition personnel throughout DOE.

II. How Are Audit Services Acquired Within DOE?

Consistent with FAR 42.1, Contract Audit Services, the Department has established Interagency Agreements to obtain contract audit services as required by the Contracting Officer. In most cases, DOE will negotiate a corporate MOU with the responsible audit agency to delineate the terms and conditions required to obtain the desired audits services. However, there are instances where a DOE Program may require that a separate audit service agreement be established in order to satisfy a determined need outside of the corporate audit service structure. For instance, a Program may require that the responsible audit agency establish an on-site office for a definitive period of time to provide the necessary audit services required at that site. When a unique separate audit service agreement is determined to be necessary, through local discussion among the stakeholders, procurement, legal, budget, program, etc., the Program Manager for CAMP, located in the Office of Procurement and Assistance Policy, should be notified in order to avoid potentially duplicative audits, reviews, inspections, and examinations of contractor and subcontract records associated with that site and project.

Ordering procedures under an executed IA and/or MOU provide for local ordering of audit services. The decentralized local ordering process produces a standardized cost effective mechanism in which to obtain audit services and provides an opportunity for discussion and dialogue among the parties involved in this process, e.g., procurement, legal, budget, program, IG, auditor, etc., ensuring that the necessary audit services are appropriately selected and funds properly allocated. The Contracting Officer is ultimately responsible for determining the need for and ordering audits.

The CAMP Program Manager has overall responsibility to ensure sufficient Program funds are available for the performance of required audit services. In support of CAMP, each DOE procurement activity that requests audits from any of the audit service providers may designate a single point of contact (POC) (as determined by local procedure) responsible for tracking all audit requests. The CAMP Program Manager will monitor, coordinate, provide oversight, and report on authorized expenditures when requested by the local program office or contracting activity POC.

Where DCAA is the cognizant audit agency, as defined in the MOU, the responsible audit office within DCAA is determined based on level of audit activity and geographical location. Consistent with this practice, the corresponding DOE Program site has been assigned, by DCAA and the CAMP Program Manager, an identifying Funding Customer Identification Code (FCID) which tracks billable hours, dollars spent and other information for a particular DOE Program Office.

In general, requests for audits to the responsible audit agency should incorporate the following:

- In some cases, an estimate of hours required for the requested services so that a reasonable estimate for billing is known;
- that the reasonable hours agreed to between the audit agency provider and DOE will not exceed the predetermined limit without additional coordination between the parties;
- on pre-award audits, that the audit agency provider initiates the service when an adequate proposal is received by the provider; and
- an audit projection inventory be maintained in order to ascertain the approximate number of audits and probable cost for successive years. The inventory projection should be based on audit category, such as, indirect rates, forward pricing, contract closeout, rate verification, incurred cost, etc.

In addition, the following risk factors should be considered when assessing the type of audit assistance needed:

- Dollar value of the proposal;
- Type of anticipated award;
- Past performance related to prior government experience with contractor or sub-contractor;
- Size of contractor or subcontractor; and
- Complexity and adequacy of contractor's or subcontractor's systems, policies, procedures, and internal controls.

Audits for Financial Assistance

While Federal audits are not required or the normal practice for financial assistance awards, they may be helpful in the review and approval of a budget. Therefore, audits should be considered for high dollar value awards, for high risk recipients with poor financial management systems or when other risk factors described above are in evidence. The audit should be done in accordance with the appropriate OMB Circular and provide a basis for determining the reasonableness of the budget.

DOE is the cognizant audit agency for a few financial assistance recipients. Audit assistance is appropriate for determining indirect rates in these cases. Audit assistance may be appropriate for approving management plans for single audits performed under OMB Circular A-133; however this is an exception and not the rule. Also, audit assistance is appropriate under this AL when, in accordance with 10 CFR 600.316, Audits, which require any recipient that expends more than $500,000 in a year to have an audit performed by an independent auditor for for-profit companies.

III. What Procedures Ensure Effective Audit Management?

Some strategies for managing required audit activity include:

1. Contracting officers should ensure that the requirement for audit services is addressed in the acquisition planning phase. For those sites that rely on audit and/or pricing staff to request audits, these offices should ensure that local procedure requires audit requests to be reviewed and approved by the contracting officer.

2. The responsible audit agency must be provided the appropriate billing information designed to send and receive audit related data. The attached DCAA FCID Program Guide allows for the specific Program location to be identified by its distinguishing number for funding assignment or correspondence. This ensures proper connectivity and tracking.

3. Contracting Officers should ensure that audit services are requested from the appropriate audit agency, e.g., DCAA, DCMC, HHS, or ONR, commensurate with the type of service required. For example, if audit service is required for an OMB Circular A-133 recipient, the cognizant audit agency may be HHS, ONR, or DCMA, versus DCAA who primarily performs audits on all DOE prime contracts and M&O subcontracts.

4. Contracting Officers should establish a corrective action plan for the resolution and settlement of audit reports received. This may include developing a negotiation strategy, if it is an incurred cost finding or development of a corrective measure for an accounting system deficiency.

Primary Program Code Look Up

FSID #		Primary Program Code	Office
200.01		NA	Albuquerque Operations Office
200.02		SC	Brookhaven Area Office
200.03		SC	Chicago Operations Office
200.04		NE	Idaho Operations Office
200.05		EM	Nevada Operations Office
200.06		FE	Morgantown Energy Technology Center
200.07		SC	Oak Ridge Operations Office
200.08		NR	Pittsburgh Naval Reactors Office
200.09		EM	Richland Operations Office
200.10		NA	Oakland Operations Office
200.11		NA	Savannah River Operations Office
200.12		NR	Schenectady Naval Reactors Office
200.13			
200.14		NA	Kansas City Area Office
200.15		MA	Headquarters Procurement Operations
200.16		EM	Office of Environment Management
200.17		BPA	Bonneville Power Administration
200.18		FE	Strategic Petroleum Reserve
200.19		FE	Naval Petroleum Reserve
200.20		SC	Princeton Area Office
200.21		SC	Superconducting Super Collider Project Office
200.22		EM	Rocky Flats Office
200.23		EM	Carlsbad Field Office
200.24		NR	Clinch River Breeder Reactor
200.25		EM	Portsmout/Paducah Project Office
200.26		SC	Enivronmental Measurements Laboratory
200.27		FE	Grand Forks Project Office
200.28		FE	Bartlesville Project Office
200.29		FE	Laramie Project Office (METC)
200.30		FE	Pittsburgh Energy Technology Center
200.31		NA	Los Alamos Area Office
200.32		N/A	FERC
200.33		EE	Boston Support Office
200.34		EE	New York Support Office
200.35		EE	Philadelphia Support Office
200.36		EE	Atlanta Support Office
200.37		EE	Chicago Support Office
200.38		EE	Dallas Support Office
200.39		EE	Kansas City Support Office
200.40		EE	Denver Support Office
200.41		EE	San Francisco Support Office
200.42		EE	Seattle Support Office
200.43		WAPA	Western Area Power Administration
200.44		SEPA	Southeastern Power Administration
200.45		SWPA	Southwestern Power Administration
200.46		EE	Alaska Power Administration
200.47		FE	Naval Petroleum & Oil Shale Reserves (HQ)
200.48		EM	Office of Repository Development (Yucca Mtn)
200.49			

200.50		EE	Golden Field Office
200.51		EM	Fernald Area Office
200.52		EM	Ohio Field Office
200.53		EM	Title X - EPACT 1992
200.54		EM	Richland On-Site Support
200.55		EM	Mound On-Site Support
200.56		EM	Fernald On-Site Support
200.57		FE	National Energy Technology Lab
200.58		EM	Office of River Protection
200.59			
200.60		NA	NNSA Albuquerque Service Center
200.61		NA	NNSA Nevada Site Office
200.62		NA	NNSA Oakland
200.63		NA	NNSA Oakridge Site Office
200.64		NA	NNSA Chicago
200.65		NA	NNSA Savannah River Site Office
200.66		NA	NNSA HQ
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200.68		NA	NNSA Sandia
200.69		NA	NNSA Amarillo
200.70		NA	NNSA Livermore
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201.01		NA	Albuquerque Operations Liaison Services

201.03		SC	Chicago Operations Liaison Services
201.05		EM	Nevada Operations Liaison Services
201.07		SC	Oak Ridge Operations Liaison Services
201.09		EM	Richland Operations Liaison Services
201.52		EM	Ohio Field Liaison Services
201.55		EM	Mound On-Site Liaison Services
201.56		EM	Fernald On-Site Liaison Services
201.58		EM	River Protection Liaison Services
201.60		NA	NNSA Albuquerque Service Center Liaison Services

POLICY FLASH 2006-62

POLICY FLASH 2006-62

DATE: September 29, 2006

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Revision to Chapter 42.5, Contract Management Planning, of the DOE Acquisition Guide

SUMMARY: This Flash forwards a revised Chapter 42.5. This revision updates references and adds contract management plan approval requirements and a template to assist the sites in structuring an effective plan for managing the contract.

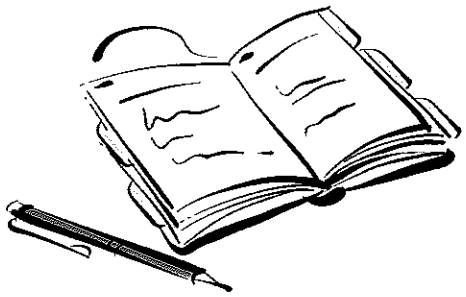
This Policy Flash 2006-62 will be available online within a day, at the following website: http://professionals.opr.doe.gov.

Questions regarding this Policy Flash should be directed to Lisa M. Jones at (202) 287-1420 or Lisa.Jones@hq.doe.gov.

Michael P. Fischetti, Director
Office of Procurement and
Assistance Policy

Attachment

CONTRACT MANAGEMENT PLANNING



Guiding Principle:

✓ Sound planning for the management of DOE's contracting is essential to the success of the Department's missions.

Applicability:

This section is applicable to elements of the Department of Energy but not to the National Nuclear Security Administration (NNSA). NNSA guidance is contained in a separate "Guide to Creating a Contract Management Plan," March 2002.

References:

- FAR 46.4, "Government Contract Quality Assurance"
- DEAR 970.1100-1, "Performance-based Contracting"
- OFPP Memorandum of August 8, 1997, "PBSC Checklist"
- DOE Acquisition Guide, Chapter 7.1, "Acquisition Planning"
- DOE Acquisition Guide, Chapter 37, "Service Contracting"
- DOE Acquisition Guide, Chapter 71.1, "Headquarters Review of Contract and Financial Assistance Actions"

What Is the Purpose of this Section?

The purpose of this section is to set forth guidance on proper contract administration planning under applicable DOE contracts.

What is the Background Information You Need to Know?

In October 1994, the Office of Federal Procurement Policy (OFPP) published the "Guide to Best Practices for Contract Administration." The OFPP guide considered the use of contract administration plans to be a best practice. DOE has broadened the

term to Contract Management Plan (CMP) to indicate the importance of managing our contracts as they evolve into more complex performance-based instruments. Because performance-based contracting necessitates our telling contractors "what" to perform (through the contract and through other communications) but not "how" to accomplish it, the art of contract management is becoming a more refined and complex discipline.

The purpose of a CMP is to assist sites in developing an appropriate level of planning for contract management commensurate with the level of complexity and involvement by members of the contract management team (project managers, program managers, attorneys, and financial and procurement officials) throughout the term of the contract. Contracts typically place many duties and responsibilities on both the contractor and Government.. Identifying these roles and responsibilities early on as well as applying the appropriate level of surveillance and risk mitigation is critical to the success of these contracts. The level of detail may vary, depending on the complexity of the contract and/or its project(s). The attached Guide is provided to assist the Department in formulating a structured and integrated systematic approach for performing contract management planning.

What is the Guidance Contained in this Section?

Contract Management Plans, in accordance with the attachment to this section, shall be prepared and utilized for:

- Management & Operating (M&O) contracts;
- Major site and facility contracts for performance of work at current or former M&O contract sites and facilities;
- Contracts subject to the requirements of DOE O 413.3, "Program and Project Management for the Acquisition of Capital Assets," and any successor directives; and,
- Procurement Directors should consider the use of a contract management plan for other service contracts where one or more of the following elements are present:
  (1) The dollar value of the contract is significant;
  (2) Contract administration is of a sufficiently complex nature to require a CMP because of unique contract terms and conditions (including contract type);
  (3) The contracting office has little or no historical familiarity with the contract requirements;
  (4) The number of contracting officer's representatives requires a greater degree of coordination; or,
  (5) Any other factor which the Contracting Officer (CO) believes warrants an enhanced level of contract administration.

A key component of effective contract management is the use of an integrated team to ensure that the individuals involved in contract management function together as a real team dedicated to the common goal of successful performance of the contract. The need to establish a contract management team is important even when a formal CMP is not used. A good practice is to plan for the contract management and administration of the contract prior to the award. Teaming early on reduces risk both to the Government and the contractor by leveraging resources and technology to meet customer and contractor expectations alike.

The following factors should be considered when creating a Contract Management Plan and at other times when building an integrated approach to contract management:

✓ The Contract Management Team (CMT) should be created during the formation of the acquisition strategy phase and should continue as a functioning team through contract award and until all requirements under the contract are satisfied and the contract is closed. See DOE Acquisition Guide, Chapter 7 for addressing contract management issues and risks during the acquisition planning phase. The CMT may consist of the same membership as the Integrated Project Team (IPT) required by DOE O 413.3. In parallel to creating the acquisition strategy and the acquisition planning documents, the participating contracting officer and IPT should:

(1) Form very clear criteria for measuring contract success,
(2) Develop a strategy for meeting project objectives, and
(3) Draft a strategy for managing unique terms and conditions (i.e., Government furnished materials or information).

✓ The criteria for success are pivotal when determining the contractor's incentive award. Upon contract award, the designated contracting officer has the lead in coordinating and finalizing the CMP. The key word here is "coordinating" because the entire CMT should be involved in ensuring that the CMP covers all significant contract management issues and forms a cohesive and coherent plan for successfully managing the contract. For contracts that have been awarded, the CMT should begin by implementing an effective team approach to managing the contract by emphasizing effective communications and coordination among all members of the team on all issues pertaining to contract performance.

✓ With the early involvement of the CMT, the team will be able to appropriately merge the key objectives of the contract into the Contract Management Plan (CMP) and fully integrate all necessary contract management functions including project management, financial management, and contract management by forming a clear and deliberate process for managing the contract.

✓ The membership of the CMT by necessity should include representatives from the program officials, project officials, Contracting Officer, financial officials, legal

counsel, Environmental Safety and Health (ES&H) officials, federal safeguards and security officials, and the designated Contracting Officer's Representative (COR) (if different than the Project Manager), technical monitors, and contractor delegates (when appropriate).

✓ The roles and responsibilities of the CMT should evolve to those of measurement, evaluation and management with clear lines of responsibility and accountability to promote a forum in which all the parties conducting contractor oversight have a well defined and integrated strategy for managing the contract.

✓ DOE Field Offices should confirm that those performing the duties of contractor oversight are adequately trained and appropriately placed within the organization to meet the challenges of performance measurement and evaluation of the contractor. This includes providing adequate training on the unique aspects of performance-based contracting, measuring predetermined work scope validation and performing earned value analysis as appropriate to uncover potential risk areas and in preparing more accurate forecasts of completion costs as well as understanding all aspects of the contract.

✓ The formal designation of a Contracting Officer's Representative (COR) is essential to streamlining and integrating all technical aspects of contractor oversight. In cases where it is necessary to designate multiple COR(s) because of the complexity of the contract, it becomes vital to ensure all parties communicate and work in concert with each other. Regular meetings and coordination are necessary to eliminate and/or mitigate issues as well as to develop a more disciplined approach to providing technical direction to the contractor.

✓ To streamline communications and minimize unnecessary interface with the contractor, individuals subordinate to the COR who are subject matter experts and perform day-to-day operational awareness, should receive appropriate training for performing contractor oversight and should be formally designated as "Technical Monitors" with responsibilities confined to monitoring and reporting the contractor's performance and providing immediate feedback to the COR and/or CO.

✓ Organizationally, when a COR manages and/or supervises a CO, there is a potential for a conflict of interest. This may be especially problematic when the COR does not have training in contracting and procurement issues. This conflict of interest may arise when a CO makes a decision on a contractual issue and the COR supervisor elects to overturn that CO decision for technical or other business reasons while unaware of the contractual ramifications of such an action. Early and frequent communication to ensure that all parties understand both the technical and contractual issues is paramount to avoiding or mitigating such situations. This will merge considerations for any of the COR's technical/business concerns and the CO's

contractual concerns into the final decision. The parties should establish cooperative ways to resolve any disagreements that may arise during contract performance.

What are the Review Requirements for CMPs?

When CMPs are required, they are to be submitted to the Office of Contract Management in accordance with Chapter 71.1, Headquarters Review of Contract Actions.

DEPARTMENT OF ENERGY

A GUIDE FOR

CONTRACT MANAGEMENT PLANNING

September 2006

U. S. Department of Energy
Office of Procurement and Assistance Management
Washington, D.C. 20585

Contract Management Planning

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BACKGROUND

Contract "administration" has been in the lexicon for quite some time and is used in the regulations governing Government procurement. The reason for using the word "management" rather than "administration" is to convey the broader context in which the administration and management of the contract occurs. "Contract management" includes a broader multi-disciplinary approach to contractor oversight. It encompasses the technical and administrative responsibilities in managing the contractor's performance.

To deliver on how the Department of Energy (DOE) will successfully manage its contracts, the Contracting Officer (CO) should work closely with all necessary disciplines during the early development of the acquisition strategy and project execution planning to more fully integrate the project objectives with contract management planning. Through early integration and strategic planning, project objectives are preserved and made part of the Contract Management Plan (CMP).

Contract management involves those activities performed by the entire Contract Management Team (CMT) (project/program management, technical, legal, contracting and financial officials, federal safeguards and security directors, etc.) after a contract has been awarded to determine how well the Government and the contractor perform to the requirements of the contract. It encompasses the management of all dealings between the Government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved. As such, contract management constitutes that primary part of the acquisition process that assures the Government gets what it pays for.

The CMP should blend technical, financial, and business aspects of the performing contractor as well as combining the Governmental responsibilities of reducing risk, managing performance-based incentives, conducting quality assurance, and adjusting to changing priorities. Good planning builds effective partnerships between both parties, open communications, clear expectations, and defines roles and responsibilities for getting the job done.

With the Department spending a majority of its budget on contracted services and products, contract management should be a core competency of the organization. To achieve core competency, an organization should ensure that those performing the duties of contractor oversight are adequately trained and appropriately placed within the organization to meet the challenges of performance measurement and management of the contractor.

This Guide is provided to assist the Department in formulating a structured and integrated systematic approach for performing contract management planning.

WHAT IS THE PURPOSE OF A CONTRACT MANAGEMENT PLAN?

The purpose of a CMP is to assist sites in developing an appropriate level of planning commensurate with the level of complexity and involvement by project managers, program managers, and financial and procurement officials throughout the contract term. Contracts typically place many duties and responsibilities on both the contractor and Government side. Identifying these roles and responsibilities early on as well as applying the appropriate level of surveillance and risk mitigation is critical to the success of these contracts. The level of detail may vary depending on the complexity of the contract and/or its project(s).

Contract management should focus on obtaining supplies and services of requisite quality, on time, and within cost. While the legal requirements of the contract are determinative of the proper course of action of Government officials in administering a contract, the exercise of skill and judgment is required in order to protect the public's interest.

Factors influencing the degree of contract management include the nature of the work, the type of contract, and the experience and commitment of the personnel involved. The CMP should adequately specify:

- ✓ the performance requirements of the statement of work;
- ✓ the method for conducting quality inspections, assessments, evaluations, etc.;
- ✓ individuals and their major roles, responsibilities, authorities, and limitations,
- ✓ Governmental milestones; and
- ✓ level and types of surveillance, roles and responsibilities of key participants (management, project manager, contracting officer, etc.) to ensure those performing the oversight have a clear understanding of the objectives.

WHEN IS A CONTRACT MANAGEMENT PLAN NECESSARY?

A specific challenge facing most sites that have historically managed major site facility contracts such as, management and operating (M&O) contracts, is the Department's implementation of performance-based contracts and more recently the use of cost plus incentive fee contracts. These new methods have presented interesting challenges to the way we do business. We must now look at ways to enhance our infrastructure to accommodate these new contract mechanisms. A CMP can help bring about a cultural change by identifying a new behavior in managing these performance-based contracts (a behavior that focuses more on performance measurement).

Regardless of contract type, a CMP helps to fuse human resources and activities into one corporate business oversight strategy. This should be a strategy that best describes the Government's approach in managing its contracts from the point of award through completion.

Ideally, a strategy for the CMP should be prepared during the acquisition strategy phase of the procurement cycle.

WHAT ARE THE APPROVAL REQUIREMENTS FOR CONTRACT MANAGEMENT PLANS?

In accordance with Acquisition Guide Chapter 71.1, Headquarters Review of Contract and Financial Assistance, the CMP should be submitted to the Contract Administration Division (MA-622) for approval.

If the CMP is not included in the review package of contract or major contract modification documents submitted to the Office of Contract Management (MA-62), the CMP should be submitted subsequently directly to MA-622. The CMP should be submitted for approval not later than 30 days after contract or major contract modification award. The CO should coordinate with the CMT, obtain their various inputs, and finalize the CMP to reflect the Government's "game plan" for ensuring contract success.

WHAT IS THE LINK BETWEEN THE PERFORMANCE EVALUATION MEASUREMENT PLAN (PEMP) AND THE CONTRACT MANAGEMENT PLAN?

To more effectively manage performance in mission critical areas, the Department develops a PEMP or similar document that incorporates performance objectives, measures and expectations allocated to the performance of specific tasks reflecting their priority and value to the Government. Much of the remaining work, i.e., work that is not mission critical, may not have fee directly associated with it, but may have fee paid contingent upon it being performed at a satisfactory level and within schedule. This approach encourages the contractor to meet the requirements of the PEMP as well as all other contractual requirements.

The PEMP is a tool for managing a contract and is viewed as a function within contract management. It is designed to measure contractor performance against specific performance objectives and measures and not the entire environment within which the contracted effort is proceeding.

Although business and financial areas connected to the performance measures are tracked and monitored as necessary, other areas do not receive the same level of analysis. A well-developed CMP would identify these gaps and would ensure that all areas are monitored to ensure compliance with the contract terms and conditions.

WHAT ARE SOME KEY COMPONENTS OF A CONTRACT MANAGEMENT PLAN?

The following is a sampling of key components that should be considered when drafting a CMP. This list is not meant to be all-inclusive. Attachment 1 to this Guide is a CMP template to assist sites in structuring a plan. The template format and headings are provided as guidance. Consequently, the CMP should be tailored to the unique management requirements of the contract.

Also, not all areas may apply to your contract; therefore, you should select only the ones that

apply. If there are other areas pertinent to your contract, please include.

Remember, the goal of the CMP is to identify the activities to be performed by Government officials in managing and administering the contract, particularly the measuring and monitoring of the contractor's performance. Many of the documents (QASP, PEMP, Risk Management Plans, etc.) mentioned herein may already exist separately and therefore should be included as attachments or references within the CMP. The goal is not to duplicate what is contained within these documents but to tie these documents into a cohesive management strategy.

1. A brief introduction and background on the scope of work, place of performance and goals of the contract.

2. The identification of key contract management team members, including authorities and limitations, of the CO, Contracting Officer Representative (COR), Technical Monitors (TM), Federal Project Directors, quality assurance monitors, facilities representatives, program officials, contractor human resource management specialists, or other Program Office Security Officials, etc. to further clarify the Government's roles and responsibilities.

3. Contractor name, contract type and number, key contractor personnel, performance period and total contract value.

4. A method for developing, negotiating, approving, and monitoring performance-based objectives, measures, expectations, and incentive fee arrangements. Include roles and responsibilities of those organizational elements (program and project management, financial management, and procurement) that have a direct role.

5. A listing of key contract vulnerabilities or performance risk areas that are inherent in the contract and describe the provisions for dealing with these, including, but not limited to the following:

   - ✓ Both the tangible and intangible realms of agency reputation, safeguards and security, operations interruption, third party liability, environmental liability, pollution, diverse operating risk factors and program liability.

   - ✓ Uncertainty in the future outcome of a specific task, contract milestone or deliverable.

   - ✓ The coordination with other sites as necessary to ensure timely agreements, shipments, receiverships, and any other support necessary to ensure the unencumbered success of the contract.

   - ✓ Achieving completion of one or more critical milestones that could impact the next phase of performance (preliminary designs, design and build, procurement of long-lead items, regulatory approvals, Environmental Protection Agency milestones, etc.).

- ✓ Major performance areas (waste management, science, safety, safeguards and security, Environment, Safety and Health (ES&H), operations, environmental clean up, project management, cost controls, etc.) that may have a level of risk or uncertainty to successfully achieving performance.

- ✓ The delivery of Government provided information, data, and equipment that if not delivered timely may have an impact on performance, cost and/or schedule.

- ✓ A formal Risk Management Plan, to the extent required by DOE O 413.3, must be integrated into the CMP. Participants' roles and responsibilities in both Plans should be clearly established.

6. A listing of Post-Contract Liabilities that are the sum total of liabilities for contractor employees and their beneficiaries, including a strategy for dealing with these liabilities.

7. A strategy that provides for the inspection and acceptance process that conforms to quality assurance requirements and provides risk identification through inspection and data verification.

8. Key performance metrics for determining contractor progress, quality of performance, and cost expenditures, etc.

9. Contract transition planning from an incumbent contractor to a new contractor and/or contract type; include transition strategies, schedules and list parties responsible for facilitating a smooth transformation.

10. A strategy to monitor and ensure that the Contractor conducts expedient reporting and processing of employee compensation claims and develops a proactive approach to settling or closing open claims to reduce the length of time a worker's compensation insurance policy or contract remains open.

11. An effective strategy for cost reduction by removing non-value added directives/requirements.

12. A listing of major contractor milestones, performance incentives, and reporting requirements along with the names of those individuals responsible for review and approval.

13. The structure for managing the change control process to scope, cost and schedule as well as mitigating variances to approved scope, cost or schedule. Identify individuals responsible for the review and approval of these baseline change proposals and variances.

14. Voucher processing or reviewing cost reports are an important aspect of contract management. Payment to the contractor for supplies and services rendered is the Government's obligation under the contract. A plan or process for quickly and efficiently meeting this obligation is essential.

15. A strategy for managing any unique terms and conditions of the contract (i.e., Government-furnished property, information, receiverships, etc.). Simply listing the contract terms and conditions may not be sufficient. Certain terms and conditions may represent significant risks or management issues. Just for one example, the terms and conditions associated with the provision of Government furnished services, information, etc., may be associated with risks or management challenges so critical to the successful management of the contract requirements as to necessitate addressing in the CMP. In such cases, identifying the responsible individual(s) and addressing the management strategy and processes may be appropriate. However, as mentioned elsewhere in this guidance, there is no intention of making the CMP redundant to other existing documents such as risk mitigation plans, etc. To the extent that such documents may exist, it may be sufficient to reference the individual responsible and the pertinent documents in the CMP.

16. A contractor litigation management outline listing what litigation is outstanding, approximate value, responsible parties and duration is a good way to track for budgeting purposes and general awareness when undergoing contract transition.

17. Partnering agreements with the state, community or other entities that are critical to the success of the contract should be referenced and parties responsible for nurturing these agreements should be identified.

18. A strategy for what records will be transferred to the new contract or maintained with the expired contract is necessary to ensure that the Government is protected and that there is a good records management program.

19. A strategy to ensure the contractor submits a proposed settlement of costs for Post Contract Liabilities that includes adequate documentation that is supported by a reasonable audit trail as to measurement, composition, cost methods and actuarial assumptions.

20. A contract closeout strategy, as necessary, when the contract is physically complete.

ARE THERE ANY OTHER SPECIAL EMPHASIS AREAS?

Yes, there are several special emphasis areas that should be included when designing a CMP. Each office is encouraged to include emphasis areas specific to the circumstances of the contract as well as the areas provided herein.

Post Award Conference:

Good contract management starts with a post award conference, either by conference, letter, or some other form of communication. This communication process can be a useful tool that helps the Government and contractor achieve a clear and mutual understanding of the contract requirements. It also helps the contractor understand the roles and responsibilities of the Government officials who will manage the contract.

A pre-meeting with applicable project, program, and contracting officials prior to the post award conference ensures a continued focus on project objectives and anticipated outcomes. Consistent with project objectives, the program office should describe their desired characteristics of contract success. The team should address how to facilitate communications both between and within the Government and contractor organizations.

Topics for the post-award conference include identifying the roles and responsibilities of government personnel managing the contract, quality control and testing, specific contract deliverable requirements, special contract provisions and conditions, surveillance requirements and responsibilities, voucher review and approval process, etc.

It is also a good idea to solicit from the contractor its approach to contract execution. For example, how will it manage the performance incentives, work prioritization, quality control, risk reduction, internal and external relations, scheduling conflicts, and critical path and project management?

With the exchange of approaches to contract management and execution, both parties start off with a clear understanding of each other's intent.

Project Management:

Whenever the contract to be administered contains the requirements of DOE O 413.3, *Program and Project Management for Acquisition of Capital Assets*, the CO should ensure that program and project management requirements are integrated into the CMP as appropriate. Recently, the Office of Management and Budget and the Government Accountability Office have placed increased emphasis on the effective management of projects across the Federal Government and at the DOE in particular. Project management tools currently contained in DOE O 413.3, "Program and Project Management for the Acquisition of Capital Assets," provide excellent means to ensure that DOE contracts and projects are properly managed. Integral to the effective management of the contract under the requirements of DOE O 413.3 is the monitoring of schedule and cost performance through the ANSI Standard 748 compliant Earned Value Management System (EVMS). To the extent that contracts contain a requirement for DOE O 413.3, CMPs should address the application of the Order and the use of EVMS in particular. The roles of the Contracting Officer, Project Director and other key individuals and their responsibilities relating to DOE O 413.3 and EVMS should be discussed in the CMP.

Quality Assurance Surveillance Plan:

If a contract is a performance based service contract, then it must have a Quality Assurance Surveillance Plan (QASP).

The Government may either prepare the QASP or require the offerors to submit a proposed QASP for the Government's consideration in development of the Government's plan. The contract quality assurance shall be performed at such times (including any stage of manufacture or performance of

services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. QASPs should be prepared in conjunction with the preparation of the statement of work. Since the QASP is intended to measure performance against standards in the statement of work, these interdependent documents should be linked. The plans should specify all work requiring surveillance; and the method of surveillance.

Requirements and guidance for quality assurance and QASPs are discussed at 46.4 and in the "7 Steps to Performance Based Services Acquisition Guide". It should be noted that the quality assurance plan discussed in the "7 Steps to Performance Based Services Acquisition Guide" and the QASP discussed at FAR 46.4 refer to the same document.

Written and Oral Direction:

The CO, in coordination with the COR and the program office, should strive to provide a structured and integrated approach for coordinating written and oral direction to a contractor on technical and contractual matters. The CMP should identify who is authorized to give direction to the contractor both orally and in writing. Normally, oral and written direction is limited to the CO and the COR (with limitations). However, when it is necessary to give oral directions to the contractor, it should always be followed up in writing.

The Role of the Contract Management Team:

The Contract Management Team (CMT) consists of all participants in Government acquisition, including not only representatives of the technical and procurement communities, but also the customers they serve, and the contractors who provide the products and services. The primary team members are the CO, COR, TM(s), Project Director, etc. The CMT may be augmented with other subject matter experts (local federal safeguards and security director, ES&H, as well as other critical functional areas) as necessary. The Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communications among team members, internal and external customers, and the public.

As referenced in FAR subpart 1.602-2, CO's are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States. CO's are challenged to take the lead in encouraging business process innovations and ensuring that business decisions are sound. This new mind-set opens the door for Contracting Officers to be business managers and strategists.

The COR plays a critical role in affecting the outcome of the contract management process. It is absolutely necessary that those entrusted with the duty to ensure that the government gets all that it has bargained for be competent in the practices of contract management and aware of and faithful to the contents and limits of their delegation of authority.

Within the Department, most CORs are Senior Managers with direct Contractor oversight

performed by subordinates. These subordinates are usually subject matter experts that provide specialized monitoring of the contractor in Program and Project areas, such as Quality Assurance, Safeguards and Security, and ES& H. To formalize this practice, these individuals should be formally designated as TM(s) for the COR and should therefore be trained in contract management.

The TM does not usually have specific delegations of authority to act as a designated COR and therefore cannot direct the contractor, redirect scope, or impact the contract in any way. However, the TM plays a vital role in providing day-to-day oversight of the contractor's performance and in communicating results to the CO and COR.

Project Directors are responsible, in part, for successfully developing, executing, and managing projects within the approved Performance Baseline in accordance with DOE O 413.3. They are responsible for project management activities for discrete projects under their cognizance. They are accountable for planning, implementing, and completing a project using a systems engineering approach. They serve as the Contracting Officer's Technical Representative, as appointed. The CMP should discuss the responsibilities of the Project Director under the contract. Also, the CMP should discuss the certification the Project Director in accordance in DOE O 361.1A. If the Project Director does not have the required certification level, the CMP should discuss the steps being taken to obtain the required level of certification.

In order to promote a corporate oversight strategy, the Team should convene regular meetings with top-level contractors, procurement, and program officials to discuss the contractor's performance, delivery schedules, quality of services, safeguards and security issues, risk issues, cost and any other contractual matters. To promote continued communications, regularly scheduled meetings between the CO and COR should be conducted.

It is essential that only the members of the Team with the appropriately delegated authorities give direction. These individuals should be identified in writing to the contractor along with any limitations on authorities. The identification of these individuals at the time of contract award streamlines the process and eliminates and/or minimizes interruptions, schedule delays, unnecessary cost impacts, and false starts. This is especially necessary when there are multiple COR(s) monitoring and directing contractor performance within their functional areas.

WHAT ARE SOME SAMPLE TASKS PERFORMED BY THE GOVERNMENT PERSONNEL?

- ✓ Monitoring contractor's quality assurance program;
- ✓ Furnishing government resources, information, data or equipment;
- ✓ Reviewing and responding to contractor reports/requests;
- ✓ Owner in-process inspection, assessment, acceptance, deliverable review, etc.;
- ✓ Certifying costs incurred or physical progress for cost reimbursement and fee payment purposes;
- ✓ Assessing/validating performance in the manner required by the contract (Earned Value Management System, etc.);

- ✓ Developing/submitting annual budget plans;
- ✓ A general awareness of personnel/labor;
- ✓ Assessing regulatory compliance;
- ✓ Data verification;
- ✓ Evaluating cost reports;
- ✓ Reviewing potential problem or risk areas;
- ✓ Developing milestones for reports from government team members;
- ✓ Monitoring compliance with subcontracting plans;
- ✓ Assessment validation;
- ✓ Peer reviews; and
- ✓ Lab appraisals.

HOW CAN I USE THE CONTRACT MANAGEMENT PLAN TO ENSURE SUCCESSFUL CONTRACT PERFORMANCE?

- ✓ By coordinating and soliciting input from all Government staff that play an active role in contract management and contractor oversight;
- ✓ By disseminating the CMP for all parties to become familiar with and refer to on a daily basis;
- ✓ By conducting a special session with the contractor on the goals and objectives of the CMP as well as identifying the individuals with key roles and responsibilities;
- ✓ By meeting regularly with all parties performing contractor oversight to share contractor status on all technical, financial, business areas, discuss any key contract vulnerabilities or performance risk areas, decide on any course of action, and determine any future activities;
- ✓ By tracking and reporting on milestones from the CMT, contractor deliverables and identifying and taking immediate action on any risk areas that may develop during contractor performance; and,
- ✓ Finally, as the contract progresses, you may find it necessary to shift responsibilities or add tasks that could not have been anticipated at the time of award. Therefore, over the life of the contract, you will need to update your plan to reflect these developments.

Your goal is to identify what must be done, when it must take place, who must do it and as necessary, how and where it is to be accomplished.

CONTRACT MANAGEMENT PLAN TEMPLATE (Optional)

CONTRACT MANAGEMENT PLAN

CONTRACTING ACTIVITY NAME

CONTRACT NUMBER

DATE

Name
Contracting Officer
Office Symbol, Telephone Number
Date

Name
Head of Contracting Activity (HCA)
Office Symbol, Telephone Number
Date

CONTRACT MANAGEMENT PLAN

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CONTRACT MANAGEMENT PLAN FOR THE *CONTRACT ACTIVITY NAME*

Please note that this template contains key components that should be considered when drafting a Contract Management Plan (CMP). This list is not all-inclusive and all areas may not apply to your contract. Also, include other components or areas pertinent to your contract.

In addition, information required in the CMP may already exist under another document (i.e. Functional Requirement Accountability Management, Performance Evaluation Measurement Plan (PEMP), Quality Assurance Surveillance Pan (QASP), Risk Management Plans, etc.). You should include these documents as attachments or references within the CMP to create a cohesive management strategy.

Although the procurement person prepares the CMP, it is vitally important that the CMP contain the input of other members of the contract management team to ensure that existing issues, vulnerabilities, and risks are adequately addressed. Consequently, the draft CMP should be routed for input through members of the contract management team.

Purpose of the Contract Management Plan

This section should address the purpose of the Contract Management Plan as it directly relates to the project or program. The purpose should include the value or benefits, intended audience, and the uses of the CMP. See pages 2 and 10 of the Guide for Contract Management Planning for the general purpose and uses of the CMP to ensure successful contract performance.

1.0 Contract Summary and Background of the Scope of Work

In this section, provide a summary of the project or program. This section should include the type of work being performed, the goals of the contract, the place of performance, and significant features of the contract. See Section C of the contract.

2.0 Identification of Key Contract Management Team Members, Including Authorities and Limitations

This section should identify individuals (e.g. Contracting Officer, Contracting Officer Representative, Technical Monitors, Federal Project Director, quality assurance monitors, facilities representatives, program officials, contractor human resource management specialists, organizational property management officer, or other Program Office Security Officials, etc.) that have direct contract oversight responsibilities in ensuring that the government receives the deliverables and services identified in the contract. These individuals may consist of the same membership as the Integrated Project Team (IPT). See page 8 of the Guide for Contract

Management Planning for general roles and responsibilities of the contract management team members.

3.0 Contract Management Team Coordination

The CMP should incorporate detail and specificity regarding identification of the members of the contract management team, the IPT, and their responsibilities. How the members of contract management team and the IPT are integrated to interact to resolve contract management issues is key to effectively managing the contract. The CMP should state how the team members relate to, and coordinate with, each other. Discuss how post award conferences, regular meetings, ad hoc meetings, established relationships, etc. are used to identify, analyze and resolve contract management issues and challenges.

4.0 Contract Identification

The CMP should include the following contract information.

Contractor name:	
Contract number:	
Current period of performance:	
Current contract value:	
Contract type:	
Contractor key personnel: (Note: You may reference the contract clause.)	

5.0 Contract Management Processes

In this section, identify the critical process or guidelines for successfully managing the contract and reference sections of the contract (e.g. conditions, instructions, contract clauses, etc.) that support these functions. In each critical process, explain how the team members are integrated to effectively address and resolve contract management issues. Successfully integrating team members into an effective team goes a long way toward ensuring issues are addressed in a timely manner and effectively resolved. This interaction can be through regular meetings to discuss pertinent issues or it can be through Ad Hoc groups specifically formed to address more compelling issues and problems.

5.1 Contract Transition Planning

Address the plan for transitioning from an incumbent contractor to a new contractor

and/or contract type and the plan for ensuring that government furnished items, property, or information is accounted for (The incumbent contractor is responsible for reconciling discrepancies.). Include transition strategies, schedules and identify the individuals responsible for facilitating a smooth transition.

5.2 Contract Communication Protocol

In the following sections, address how formal, informal and outside communication is expected to flow. See page 8 of the Guide for Contract Management Planning for information on written and oral direction.

Formal communications with the Contractor

Include in this section technical direction to the contractor, correspondence instructions, and correspondence controls and tracking systems. This section should reference contract requirements regarding formal communication.

Informal communications

In this section, address non binding communication and meetings with CMT and IPT members. Informal communication can occur between members of the CMT and IPT and any contractor employee. This type of communication is non-binding for both the government and contractor and does not constitute contract direction.

Outside Communications

Include in this section the communication protocol with parties other than DOE staff (e.g. non CMT and IPT members, other government agencies (state & local government), etc.) regarding responsibilities and work scope. The section should address the coordination process with CMT and IPT members. It is critical that communications with entities outside of the contractual relationship between the contractor and DOE not be construed as contractual direction to change the scope or terms and conditions of the contract.

5.3 Government Furnished Services/Items (GFS/I) Review Process

Reference any government furnished services, items, property, or information identified in the contract. Also, in this paragraph, discuss the strategy for furnishing and monitoring the GFS/I and the strategy for ensuring the contractor maintain lifecycle accountability of all furnished sensitive and high risk property including contaminated assets. If applicable, address the approach for ensuring the contractor complies with DOE O 580.1 and property clauses identified in the contract. Identify the key individuals responsible for ensuring timely provisions to the contract. Include government reviews approvals and performance, cost and/or schedule impacts if not timely delivered Below is an illustration of a table delineating the GFS/I identified in the contract.

Scope	Requirement	GFS/I	Responsible Individual
The Contractor shall support DOE by performing infrastructure support described in Section C, PWS.	DOE shall ensure Government controlled data systems are available for Contractor access as needed to provide infrastructure activities.	DOE will ensure the following systems are available to the Contractor throughout the period of performance of this contract: Integrated Planning Accountability and Budget Systems Facility Information Management System	Project Manager
The Contractor shall store, characterize, process, package, ship and dispose of waste in accordance with applicable laws, regulations and DOE directives.	DOE shall provide disposal rates and requirements for waste.	DOE will provide estimated disposable rates by within 30 days of request.	Contracting Officer Representative

5.4 Method for Monitoring Performance-Based Objectives

Describe the methods for monitoring and evaluating the performance-based objectives. The Quality Assurance Surveillance Plan (QASP) addresses the methods for monitoring performance against the contract. This section should address contractor oversight (e.g. field inspections, monthly assessment of project status, contract administration, deliverable reports, budgetary data, physical inspections, etc.). Also, identify the roles and responsibilities of the individuals involved in monitoring and evaluating the performance-based objectives. See Page 7 of the Guide for Contract Management Planning for a discussion on the QASP. (Note: If this information is contained in the QASP, you may reference the QASP in this section or provide it as an attachment to the CMP.) Some Performance Evaluation Measurement Plans (PEMPs), which fulfill the requirements for a QASP, also provide this information. See Page 3 of the Guide for Contract Management Planning for a discussion on the link between the PEMP and the CMP.

5.5 Inspection and Acceptance Process

Discuss the strategy for ensuring contract requirements conforms to quality assurance provisions and address the roles and responsibilities of the individuals involved in this process. Also, reference the sections in the contract that addresses inspection and acceptance.

5.6 Invoice Review

Discuss the plan or process (e.g. instructions, certifications, documentation, etc.) for reviewing and approving invoices; and reference the invoice requirements addressed in the contract. Also, discuss the roles and responsibilities of those individuals that have direct involvement in the process.

5.7 Fee Administration

Discuss the strategy for administering the fee (e.g. cost incentives, award, conditional payment, etc.) and reference all contract fee related requirements. Also, discuss the roles and responsibilities of those individuals that have direct involvement in the process. If the information is contained in a PEMP or similar document, it may be referenced in, or attached to, the CMP.

5.8 Contract Change Control Process

Discuss the strategy and procedures for managing the formal change control process to scope, cost and schedule as well as mitigating variances to approved scope, cost or schedule. This paragraph should include the individuals responsible for the review and approval of baseline changes and variances.

5.9 Review of Contractor's Requests for Equitable Adjustments

Discuss the review and approval process for evaluating the requests for equitable adjustments (REAs). Also, include the roles and responsibilities of the parties involved in the process. Discuss procedures for ensuring that REAs are proposed, evaluated, negotiated and contractually implemented in a timely manner.

5.10 Contractor Litigation Management

Address the contractor litigation management process and include contract references to legal management requirements. Also, identify individuals responsible for controlling and overseeing this process.

5.11 Contractor Employee Claims System

Discuss the strategy for monitoring and processing employee claims (e.g. workforce restructuring, contractor human resource, etc.). Also, identify the individuals involved in the process. Reference any areas in the contract that address contractor employee concerns.

5.12 Proposed Settlement of Costs for Post Contract Liabilities

Discuss the strategy for ensuring post contract liabilities will be addressed (e.g. pension plans, post retirement benefits (PRB) other than pension, the displaced workers' medical benefit program (DWMBP), IBNR workers' compensation claims and any associated insurance reserves, etc.). Reference any areas in the contract that addresses post-contract liabilities.

5.13 Contract Records

Identify the records acquired or generated by the contractor in performing this contract (i.e. property records, occupational and health records, audit records, etc.). Discuss the strategy and the parties involved in ensuring that the records will be transferred to the new contract or maintained with the expired contract.

5.14 Contract Closeout

Address the strategy for ensuring that requirements of contract are met when the contract is physically complete. Contract closeout shall conform to the requirements of FAR 4.804, Closeout of Contract Files.

6.0 Contract Deliverables and Performance Risk Areas

6.1 Contract Deliverables

Identify critical milestones and contract deliverables (e.g. Transition Plan, Risk Mitigation Plan, Project Management, Integrated Safety Management System, Quality Surveillance Assurance Plan, Government Furnished Services/Items, Litigation Management Plan, Collective Bargaining Units, etc.); and the individuals responsible for the requirement. Also, reference the contract requirement. These documents are usually

required within 90 days of contract award. See Appendix A for a sample of a deliverables matrix.

6.2 Key Contract Vulnerabilities or Performance Risk Areas

Identify known significant contract vulnerabilities or performance risks and the individuals responsible for mitigating these risks. If DOE O 413.3 is applicable, reference the risk management plan in this section or include it as an attachment to the CMP. See pages 4 of the Guide for Contract Management Planning for examples of contract vulnerabilities and performance risk areas. Below is an illustration of a table delineating the performance risks identified in the contract.

Risk/Vulnerabilities	Consequences	Mitigating Actions	Responsible Individual
Unknown project end-state (e.g., entombment, Greenfield, or Brownfield, backfill density, demolition to grade or to 3 feet below grade)	Delay in project completion, increased costs and schedule delays; Potential contract modification	Develop a NEPA EIS and Record of Decision. NEPA EIS determination	Project Manager
Delay in receipt of T-3 Cask license renewal	Impact sodium-bonded fuel shipments to ANL-W. Delay in project completion, increased costs, reduced resources	Submit SARP addendum. Track activities at DOE-HQ and NRC	Contracting Officer Representative
Unaccounted sensitive or high risk property	Health/safety risks to employees and public; potential litigation and liability, congressional visibility; prompt GAO/IG audits	Maintain lifecycle accountability of sensitive or high risk property. Report losses within 24 hours of known loss	Organizational Property Management Officer or Property Administrator

7.0 Strategy for Cost Reduction

In this section, address any cost reduction or removal of value added contract requirements and

procedures. Also, include in this section, the roles and responsibilities of the individuals involved in the process.

8.0 Key Performance Metrics

The section should identify any key performances for determining contractor progress. Below is an illustration of a table delineating major milestones identified in the contract.

Contract Requirement	Major Milestones	Due Date
M-81-13	Complete reactor and heat transport system sodium drain	6/30/2005
M-81-11	Submit FFTF end point criteria document	8/31/2005
M-92-10	Submit Sodium Disposition Evaluation Report	9/30/2005
M-81-14-T01	Complete fuel storage facility sodium drain	4/30/2007
M-81-14-T02	Initiate interim decay storage vessel sodium drain	6/30/2008
M-81-00A-T02	Complete transfer of unirradiated fuel to secure onsite storage	3/31/2009
M-81-00A-T03	Complete transfer of irradiated fuel to secure onsite storage	3/31/2009

9.0 Agreements with State, Community, or Other Entities

This section should address any partnering agreements (e.g. Resource Conservation and Recovery Act Permit, Clean Air Act Air Operating Permit, Toxic Substances Control Act, Nuclear Safety Management [10 Code of Federal Regulations (CFR) 830], Radiological Protection (10 CFR 835), State Environmental Policy Act, etc.) with the state, community, or other entities the contractor must comply with in meeting the requirements of the contract. This paragraph should also identify the parties responsible for fostering these agreements.

10.0 Other Special Emphasis Areas

In this section, discuss approaches to contract management and execution (i.e. contract startup, post award orientation for government personnel, post award conference with contractor, lessons learned, etc.) to ensure the government and contractor have a clear understanding of the contract requirements and each other's intent. See page 6 of the Guide for Contract Management Planning for examples of other special emphasis focus areas.

Attachment(s)

List all of the attachments (e.g. Transition Plan, Risk Mitigation Plan, QASP, PEMP, Deliverables Matrix, Property Management Systems, etc.) referenced in the CMP.

Appendix

A. Sample of Deliverables Matrix

Appendix A – Sample of Deliverable Matrix

PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
B-4	B.6(b)	Quarterly	The Contractor may submit invoices for ordinary fee payments following the submittal of the Quarterly Critical Analysis in accordance with Clause H.1.03(e)(2).	Jones	Government will review and approve invoice within 30 days of submittal and provide contractor written notice of approval.
B-5	B.6(d)(3)	March 31, 2000	Invoice of $4,116,374 for ordinary fee payment during Transition to new Baseline	Jones	Review and provide CO notification of approval within 15 days of receipt.
B-5	B.6(d)(3)	June 30, 2000	Invoice of $6,143,838 for ordinary fee payment during Transition to new Baseline	Jones	Review and provide CO notification of approval within 15 days of receipt.
B-5	B.6(d)(3)	September 30, 2000	Invoice of $6,143,838 for ordinary fee payment during Transition to new Baseline	Jones	Review and provide CO notification of approval within 15 days of receipt.
B-5	B.6(d)(3)	December 31, 2000	Invoice of $6,143,838 for ordinary fee payment during Transition to new Baseline	Jones	Review and provide CO notification of approval within 15 days of receipt.

*This column should contain the name or position title of the individual responsible for the deliverable.

PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
C-3	C.3.1	• Within 30 days of contract effective date • Annually on September 1 • Quarterly updates • Amendments—45 days in advance of need date	Annual projection which details contractor projection of needed Government Furnished Services/Items, identified in column 3 of exhibit A	Jones	Government will review, approve, and ensure Government Furnished Services/Items provided in accordance with the procedures identified in Section G of the contract.
C-4	C.5	Unspecified	The Contractor and the Government will develop a Partnering Agreement that establishes a common vision with supporting goals and missions		
C-12	C, Tech. Ex. A, IV	Unspecified	Prepare a draft interim final ROD		
C-13	C, Tech. Ex. A, IV,C.	Unspecified	End State: Develop and submit draft interim final ROD and Proposed Plan		
C-14	C, Tech. Ex. A, V,A.	Annually	Annual updates to the Historical Release Report and CERCLA Administrative Record		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
Exhibit E, P. 3	Exhibit E	Every six months (1st report due July 2000)	Notify DOE of potential outsourcings that are being considered for implementation during the six month period and report outsourcings that became effective during the preceding six month period.		
F-2	F.3(a)	Upon completion of elements (1), (2), (3), and (4) of physical completion as defined in Clause C.1.2	Submit documentation demonstrating completion of elements (1), (2), (3), and (4) of physical completion as defined in Clause C.1.2. Contracting Officer will project the Contractor's expected fee earnings and release withheld fees accordingly.		
F-2	F.3(b)	Upon physical completion of contract as set forth in Clause C.1.2	Submit letter declaring that the Rocky Flats Closure Project has been physically completed.		
F-2	F.3(b)	Upon completion of punch list material deficiencies	Submit a Final Declaration Letter for physical completion of the contract		
F-3	F.3(c)	90 days prior to start of fiscal year (June 30)	Submit request for reserve of appropriate budget to fund all or a portion of the Contractor's withheld fee		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
H-2	H.1.01(a) and (c)	Within 30 days of contract effective date	Submit detailed description of proposed project controls system.		
H-4 H-6	H1.02.(d)(2) H1.03(d)(2)	Unspecified, Quarterly updates	Develop a Risk Management Plan and provide quarterly updates		
H-5	H.1.03 (b)(1)	Monthly	Record all actual direct costs incurred for resources applied in the performance of work.		
H-5	H.1.03 (c)(2)	Annually, by July 31	Submit an Annual Work Analysis, including a project performance forecast for all upcoming fiscal years and a comprehensive analysis of total project status		
H-6	H.1.03 (d)(1)	Monthly	Review and analyze differences between planned and actual performance against the total project baseline and the Target Cost and Schedule		
H-6	H.1.03(d)(3)	Quarterly	Review and evaluate EAC for consistency with observed trends in performance, emerging issues and changes in project risk		
H-7	H.1.03(e)(2)	Quarterly	Prepare Quarterly Critical Analysis		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
H-8	H.1.04(e)	June 30, 2000	Updated baseline to the Rocky Flats Closure Baseline and system of earned value		
H-10	H.2(e)	Within 5 workdays of receipt of DOE direction	Notify the Contracting Officer in writing that technical direction received by RFFO is believed to be beyond the Statement of Work		
H-12	H.8	Unspecified	Submit an audit plan for internal audits and for audits of prime onsite, cost type subcontractors for Contracting Officer approval.		
H-13	H.10(a)	Within 60 days of contract effective date	Submit Litigation Management Plan		
H-14	H.11(a)	Within 30 days of contract effective date	Submit list of key personnel		
H-15	H.16(a)(1)	Within 30 days after contract execution	Participate in a dispute aviodance partnering workshop		
H-16	H.16(a)(2)	Unspecified	Jointly select a "standing neutral" to resolve disputes		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
J,Att C, P.3 and P.6	J, Att C, II.B.4 and VII.A	Annually on October 1	Submit proposed small business, small disadvantaged business, and woman-owned small business goals		
J,Att C, P.6	J, Att C, VI.C	Semi-annually	Provide Small Business Act Reports		
J, Att F, P. 0-1	J, Att F 4.A	Within 30 days of contract effective date and as required	Management Plan		
J, Att F, P. 0-1	J, Att F 4.A	Quarterly and as required	Status Report		
J, Att F, P. 0-1	J, Att F 4.A	Quarterly	Summary Report		
J, Att F, P. 0-1	J, Att F 4.B	Within 30 days of contract effective date and Quarterly	Milestone Schedule/Plan		
J, Att F, P. 0-1	J, Att F 4.B	Within 30 days of contract effective date and Quarterly	Cost Plan		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
J, Att F, P. 0-1	J, Att F 4.B	Monthly	Milestone Schedule/Status		
J, Att F, P. 0-1	J, Att F 4.B	Monthly	Cost Management Report		
J, Att F, P. 0-1	J, Att F 4.D	Within 30 days of contract effective date and with significant changes	Management Control System Description		
J, Att F, P. 0-1	J, Att F 4.D	Within 30 days of contract effective date and with significant changes	WBS Dictionary/Index		
J, Att F, P. 0-1	J, Att F 4.D	Monthly	Cost Performance Reports/Format 1—WBS		
J, Att F, P. 0-1	J, Att F 4.D	Monthly	Cost Performance Reports/Format 3—Baseline		
J, Att F, P. 0-1	J, Att F 4.E	Within 30 days of contract effective date and Quarterly	Cash Flow Statement		

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PAGE#	CONTRACT CLAUSE#/ DIRECTIVE	DUE DATE/ FREQUENCY	DELIVERABLE	COGNIZANT MANAGER*	ACTION REQUIRED
J, Att F, P. 0-1	J, Att F 4.E	Within 30 days of contract effective date and Quarterly	Operating Budget		
J, Att F, P. 0-1	J, Att F 4.F	Quarterly	Quarterly Critical Analysis		

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SUPPORT CONTRACTOR: No support contractor required.

POINT OF CONTACT: Richard Langston

SPONSORING ORGANIZATION: Office of Procurement and Assistance Management

CONFERENCE TITLE: Procurement Directors Conference

CONFERENCE DATES: October 18-19, 2005

REQUESTED ACTION: That you approve this request to sponsor a Procurement Directors meeting in Washington, DC in October, 2005.

____ APPROVAL ____ DISAPPROVAL

RICHARD H. HOPF, DIRECTOR
OFFICE OF PROCUREMENT
ASSISTANCE MANAGEMENT

cc: Shirley Campbell, ME-1.1
Debra Nelson, ME-65