

AUTHORITY

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301.

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CITATION

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DEAR 970.1702-1	Term of Contract and Option to Extend

- I. **Purpose.** The purpose of this Acquisition Letter is to: (1) establish procedures for obtaining approval of the Head of the Agency to extend, on a noncompetitive basis, management and operating contracts, including performance-based management contracts; (2) provide guidance concerning the submission of requests to renew the use of the management and operating form of contract, and (3) provide guidance concerning the inclusion of options to extend the term of the contract in certain competitively awarded management and operating contracts.

- II. **Background.** Subpart 17.6 of the Federal Acquisition Regulation (FAR) prescribes policies and procedures for the award, renewal, and extension of management and operating contracts. Section 17.602 permits Heads of Agencies to award and renew management and operating contracts in accordance with an agency's statutory authority, or the Competition in Contracting Act of 1984 (CICA), and agency regulations governing such contracts.

Subpart 917.6 of the Department of Energy Acquisition Regulation (DEAR) implements the FAR by prescribing the Department of Energy's policy regarding competition and extension of management and operating contracts. Section 917.602(a) affirms that the Department will provide for full and open competition in the award of contracts for the management and operation of the its facilities and sites. Section 917.602(b) permits the use of other than full and open

competition for an extension to the term of management and operating contracts, provided that the use of other than full and open competition can be justified in accordance with the authorities and requirements of CICA and FAR Part 6, and that such a justification be approved by the Head of Agency.

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III. Guidance.

A. Processing of Requests for Extension. This Acquisition Letter is issued to revise and consolidate internal procedures regarding the extension of management and operating contracts, including performance-based management contracts, on a noncompetitive basis beyond the term of the contract. The procedures set forth herein supersede all previous procedures regarding decisions to extend management and operating contracts.

Because of the significance of the management and operating contracts to the fulfillment of the Department's mission, there is a need to balance the benefits of competition with the benefits of relatively long-term contract relationships. The Department's policies, as set forth in DEAR 917 and 970, accommodate both of these objectives by establishing competition as the norm and providing for a period of up to 10 years, including options.

Although competition is the norm, under certain circumstances there may be a need to continue the contract with the incumbent contractor beyond the period of performance contemplated in the original contract. In these instances, the need to extend the contract on a noncompetitive basis shall be justified based on the statutory authorities identified in FAR 6.302 and supported by the pertinent facts and circumstances. As part of the approval of the extension by the Head of the Agency, the justification for other than full and open competition shall be subjected to a rigorous, rational examination to ensure that the need to maintain a relationship with an incumbent contractor beyond the term envisioned by the original contract is in the best interests of the Department of Energy.

The procedural and documentation requirements necessary to extend a management and operating contract beyond the period of performance authorized in the extant contract are set forth in Attachment A to this Acquisition Letter. The exercise of an option to extend the term of the contract, where such an option is included in the contract, is not considered a noncompetitive extension for purposes of this guidance. The exercise of options under management and operating contracts shall be accomplished in accordance with DEAR 970.1702-1.

B. Renewal of the Management and Operating Contract Form.

- (1) Under current FAR policy, found at FAR 17.602(a), the Head of the Agency may authorize contracting officers to enter into

or renew management and operating contracts. FAR 17.605(b) requires contracting officers to review each management and operating contract periodically, but at least every five years, to consider whether the management and operating contract should be renewed and extended with the incumbent contractor. The practical effect of these two requirements is that Agency

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Head authorization to renew and extend a management and operating contract and the contracting officer's review occurred as part of a serial process.

- (2) In order to institutionalize and facilitate the Department's competition policy for its management and operating contracts, as set forth in DEAR 917.602, and preserve the benefits of long-term contract relationships, a class deviation to the requirement of FAR 17.605(b) that the Agency Head authorize the renewal and extension of a management and operating contract in conjunction with, and at the time of, the contracting officer's review of the contract has been authorized by the Procurement Executive. The essence of this deviation is to permit a revision to the timing of the Agency Head authorization for the renewal and extension of management and operating contracts. Accordingly, the Head of Agency may authorize, prior to award of the contract, the use of the management and operating form of contract for a period of up to ten years and permit extension of the contract with the incumbent contractor beyond the base term through the exercise of an option to extend the term of the contract. The length of the base term and any optional terms shall be in accordance with DEAR 970.1702-1. The Head of the Agency authorization to use the management and operating form of contract and permit a contract term of up to ten years is subject to a condition subsequent that, prior to the exercise of the option, the contracting officer complies with the review and approval requirements of DEAR 970.1702-1(b). Attachment B to this Acquisition Letter provides a copy of the deviation to FAR 17.605(b).
- (3) Where an extension using noncompetitive procedures pursuant to authority under CICA is anticipated, the request to authorize the continued use of the management and operating contract shall be submitted as part of the documentation supporting the justification for the use of

other than full and open competition.

- (4) The Head of the Contracting Activity shall submit a request to authorize the use of the management and operating form of contract to the Head of the Agency through the cognizant Assistant Secretary(s) and the Deputy Assistant Secretary for Procurement and Assistance Management

C. Inclusion of Options in Competitively Awarded Management and Operating Contracts.

Contracts competitively awarded prior to September 28, 1994 may be modified to include an option to extend the term for a period not to exceed 5 years where:

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- (1) the total period of performance, including the continuation, will not exceed 10 years;
- (2) the contractor's past performance under the contract has been determined to be of high quality;
- (3) the contractor has also agreed to a contract modification needed to implement other performance-based management contract provisions; and
- (4) the applicable requirements of DEAR 970.1702-1(b) are satisfied regarding the contracting officer's assessment of the contractor's past performance, the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract, and the impact of a change in a contractor on the Department's discharge of its programs.

In instances where an option to extend the term has been incorporated into the contract in accordance with this paragraph, a justification for other than full and open competition shall be prepared and approved in accordance with FAR Part 6 and DOE Order 4200.1C (or successor Order effective at the time the justification is prepared) prior to the exercise of the option. Approval requirements pertaining to the Contracting Officer's decision to exercise an option are set forth in DEAR 970.1702-1(b).

IV. **Effective Date.** This Acquisition Letter is effective August 23, 1996.

V. **Expiration Date.** This Acquisition Letter will remain in effect until canceled or otherwise superseded.

PROCEDURES FOR NONCOMPETITIVE EXTENSION

1. Circumstances may exist that warrant the noncompetitive extension of a management and operating contract (including a performance-based management contract) beyond the basic and option periods. In such cases, a performance-based management contract may be extended for an additional period not to exceed 5 years when authorized by the Head of the Agency. Requests for extension shall be subject to the following procedures:
2. A recommendation to extend a management and operating contract (including a performance-based management contract), where required, shall be submitted to the Head of the Agency through the Deputy Assistant Secretary for Procurement and Assistance Management no later than 18 months prior to the expiration of the contract term. The recommendation shall be supported by:
 - (1) a justification for other than full and open competition prepared in accordance with FAR Part 6 and DOE Order 4200.1C (or successor Order in effect at the time the justification is prepared), including a separate certification by the Head of Contracting Activity and cognizant program Assistant Secretary(s) that the use of full and open competition is not in best interests of the Department of Energy;
 - (2) a detailed description of the incumbent's performance history in areas such as program accomplishment, safety, health, environment, energy conservation, financial and business management and socio-economic programs, including measurable results against established performance measures and criteria;
 - (3) an identification of significant projects or other objectives planned for assignment under the contract if extended;
 - (4) an outline of principal issues and/or significant changes to be negotiated in the terms and conditions of the extended contract, including the extent to which performance-based management provisions are present, or can be negotiated into, the contract;
 - (5) in the case of a Federally Funded Research and Development Center, a review of the use and continued need for FFRDC designation in accordance with FAR 35.017-4;
 - (6) a determination that the management and operating contract or performance-based management contract remains the appropriate form of contract;

(7) a discussion of the potential impact of a change in contractors on program needs and;

(8) any other information pertinent to the decision.

FINDINGS AND DETERMINATION
CLASS DEVIATION TO THE
FEDERAL ACQUISITION REGULATION

I. Findings

A. The Federal Acquisition Regulation (FAR), subpart 17.6, recognizes a special contract method known as management and operating contracting. FAR 17.601 defines management and operating contracts as contracts for the operation, maintenance, or support of Government-owned or Government-controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency. This subpart establishes requirements for entering into management and operating contracts and it provides procedures for extending or competing such contracts. Such contracts are to be used only by agencies with requisite statutory authority. The Department of Energy has authority for the use of such contracts based on the Atomic Energy Act, the Energy Reorganization Act of 1974, and the Department of Energy Organization Act.

B. The Department of Energy Contract Reform Team Report concluded that the Department's policies and practices regarding the extension of its management and operating contracts needed to be revamped. The Contract Reform Team found that existing policies favored indefinite extensions of incumbent contractors and that in practice, few competitions for management and operating contracts were undertaken. Such policies and practices effectively precluded the introduction of new companies and best management practices into the Department's laboratory and weapons production complex. The Report also recognized the need to balance the benefits of a competitive environment with the recognition that long contract terms of up to 10 years can facilitate superior performance. Accordingly, the Contract Reform Report recommended that the Department institute a new policy that establishes competition as the norm, and that exceptions to competition be made only in exceptional circumstances.

C. Under current FAR policy, found at FAR 17.605(c), management and operating contractors should only be replaced when the Agency expects that such replacement might result in meaningful improvement in performance or costs. FAR 17.605(b) requires contracting officers to review each management and operating contract periodically, but at least every five years, to consider whether the management and operating contract should be renewed and extended with the incumbent contractor.

D. In accordance with FAR 17.602(a) and 17.605(b), a

renewal and extension of a management and operating contract must be authorized by the Head of the Agency. Because management and operating contracts were usually extended with the incumbent contractor, rather than competed, the requirement for Agency Head authorization to renew and extend the contracts at intervals of no more than five years served to ensure control at the highest levels and prevent unbridled use of this unique contracting authority.

E. In order to institutionalize a policy that favors competition, yet preserves the benefits of long-term contract relationships, a class deviation to the requirement of FAR 17.605(b) that the Agency Head authorize the renewal and extension of a management and operating contract in conjunction with, and at the time of, the contracting officer's review of the contract is needed.

The essence of this deviation is a revision to the timing of the Agency Head authorization for the renewal and extension of competitively awarded management and operating contracts.

Under the Department's new policy that favors competition, the Head of Agency would authorize the use of the management and operating contract for a period of up to ten years and permit extension of the contract with the incumbent contractor beyond an initial 5 year contract term through the exercise of an option period of no longer than 5 years.

The requirement of FAR 17.605(b) that the contracting officer periodically review the management and operating contract would be preserved and would occur at the time the contracting officer performs an assessment as to whether competing the contract would produce a more advantageous offer than the exercise of the option. The contracting officer's decision to exercise of the option would be subject to the approval of the Head of the Contracting Activity and the cognizant program Assistant Secretary(s) or equivalent, thus ensuring high-level authorization of the action.

F. Management and operating contracts awarded and extended on a noncompetitive basis would require justification and reauthorization by the Agency Head at such time as the need to renew and extend the contract is determined, that is, at intervals of no more than 5 years. Authority for such extensions will be accomplished using new, more stringent procedures implemented on an interim basis through a Department of Energy Acquisition Letter. The issuance of Acquisition Letters is authorized by Subpart 901.301-70 of the Department of Energy Acquisition Regulation.

G. This is a class deviation which affects all management and operating contracts.

H. Such a deviation has not been requested before.

I. It is intended that the revised extend/compete policy will establish competition as the norm and encourage higher quality contractor performance by linking contract extensions more directly to performance.

J. It is intended that this deviation will remain in effect until such time as the DEAR is amended to reflect the contract reform initiatives.

II. Determination

A. Based upon the above findings, I hereby determine that it is reasonable and prudent that:

(1) the Head of the Agency authorize the use of the management and operating contract for a period of up to ten years when the initial contract is awarded competitively and permit extension of the contract with the incumbent contractor beyond an initial 5-year contract term through the exercise of an option period of no longer than 5 years; and,

(2) the Head of the Contracting Activity and cognizant program Assistant Secretary(s) approve the contracting officer's decision to exercise an option to extend a competitively-awarded management and operating contract, provided that the Head of the Agency previously has authorized use of that form of contract beyond the basic contract period.

B. Therefore, in accordance with the authority vested in me by 48 CFR 901.404, Class deviations, I hereby grant a deviation, on a class basis, to the requirements of 48 CFR 17.605(b) with respect to determinations to extend or compete performance based management contracts.

Signed

Richard H. Hopf
Procurement Executive
Department of Energy

9/27/94
Date

Concurrence: **Signed**

Deputy General Counsel
For Technology Transfer
And Procurement

9/23/94
Date