



Department of Energy  
Acquisition Regulation

No. 98-02R  
Date 11/20/98

# ACQUISITION LETTER

## 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(a)(2).  
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## CONTENT

### CITATION

Chapter 1, Acquisition Guide  
FAR 1.4  
DEAR 917.6  
DEAR 970.1702-1  
DEAR 970.5202

### TITLE

Acquisition Regulations System  
Deviations from the FAR  
Management and Operating Contracts  
Term of contract and option to extend  
Deviations

**Subject: FY 99 Energy and Water Provisions**

- I. **Purpose.** The purpose of this Acquisition Letter (AL) is to provide guidance regarding the implementation of Sections 301, 302, 305 and 307 of the Energy and Water Development Appropriations Act, 1999, Pub. L. 105-245, which was enacted on October 7, 1998.
- II. **Applicability.** The guidance set forth in this AL with respect to sections 301, 302, and 305 is applicable to actions which are funded under Pub. L. 105-245, and any prior appropriations Act. However, the guidance provided with respect to section 307 is applicable to actions funded under Pub. L. 105-245. This guidance is not applicable to actions which are funded under Public Laws enacted subsequent to Pub. L. 105-245, including legislation making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1999, under which certain Departmental programs are funded. Detailed guidance regarding the scope of Sections 301, 302, 305 and 307 is set forth in paragraph IV. below.
- III. **Background.** Sections 301, 302 and 305 of Pub. L. 105-245 are carried-over from the Energy and Water Development Appropriations Act, 1998 (Pub. L. 105-62); whereas, Section 307 of Pub. L. 105-245 provides new authorities concerning the funding of multi-year contracts entered into by the Department of Energy (DOE). The following is a summary of these provisions:

**Section 301** prohibits the use of funds appropriated under Pub. L. 105-245, or any prior appropriations Act, to award or extend a management and operating (M&O) contract unless the contract or extension is awarded using competitive procedures, or the Secretary of Energy

## 2. Procedures:

a. The justification and Secretarial authorization required by DEAR 917.602(b) will address and satisfy the Secretarial authorization requirements of Section 301 for new M&O contracts and extensions that are awarded without providing for full and open competition.

b. The Office of Management Systems will review and process the justification for Secretarial authorization, and will coordinate, for approval by the Secretary, the written notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate as soon as practicable following the Secretarial authorization required by DEAR 917.602(b), but not later than 60 days prior to the award or modification of an M&O contract that is subject to the requirements of Section 301.

## **B. Deviations From Provisions and Clauses Prescribed By The FAR (Sec. 302)**

1. Scope: This guidance applies to the use of solicitation provisions and contract clauses that deviate from solicitation provisions or contract clauses that are prescribed by the FAR. The requirements of Section 302, and the guidance set forth herein, do not apply to the use of the following in DOE solicitations, contracts, or modifications because they do not constitute deviations from the FAR:

- ▶ Provisions and clauses prescribed in DEAR Parts 952 and 970, including any deviations, or modifications thereto which are authorized in accordance with the policies and procedures set forth in FAR Subpart 1.4, and internal DOE procedures;
- ▶ Provisions and clauses prescribed by local policies and procedures, as long as such provisions and clauses are not inconsistent with provisions and clauses prescribed by the FAR for use in the immediate contract or modification;
- ▶ Provisions and clauses prescribed in the FAR which have been modified in accordance with FAR 52.104;
- ▶ Provisions and clauses prescribed in the FAR with their alternate(s) in accordance with FAR 52.105; and
- ▶ FAR provisions and clauses which are otherwise not prescribed for the particular contract or modification in which the provisions or clauses will be used.

## 2. Procedures:

a. For all DOE solicitations/contracts, including M&O contracts, deviations from FAR solicitation provisions or contract clauses that are to be incorporated into a DOE solicitation or contract shall be made only in accordance with the deviation procedures set forth at FAR

Section 305 does not preclude DOE from issuing RFPs subject to the availability of funds (e.g., see FAR 32.703-2), as long as the RFP is not in support of a program for which Congress has, as described above, specifically denied funding under Pub. L. 105-245, or any prior appropriations Act.

2. Procedures:

a. DOE Program/Project Managers and Budget Officials shall not initiate/certify procurement requests for goods or services that are in support of a program for which funding has been specifically denied by Congress under Pub. L. 105-245, or any prior appropriations Act, as described above.

b. DOE contracting activities shall not prepare or issue RFPs, including draft RFPs, for goods or services in support of a program requirement for which funds have not been properly certified by the designated authorities as appropriate and available for the requirement.

D. Multi-Year Contract Funding (Sec. 307)

1. Scope: This guidance applies to multi-year contracts entered into by DOE in accordance with FAR Subpart 17.1 using funds appropriated under Pub. L. 105-245.

2. Procedures: Notwithstanding the requirements of 41 U.S.C. section 254c(a), funds appropriated by Pub. L. 105-245 may be used to enter into multi-year contracts for the acquisition of property or services without obligating the estimated costs associated with any necessary cancellation or termination of the contract. The costs of termination or cancellation may be paid from:

- ▶ appropriations originally available for the performance of the contract concerned;
- ▶ appropriations currently available for procurement of the type of property or services concerned, and not otherwise obligated; or
- ▶ funds appropriated for those payments.

V. Effective Date. This AL is effective on the date of its issuance.

VI. Expiration Date. September 30, 1999, or such later date as awards utilizing funds from the Energy and Water Development Appropriations Act, 1999, or prior appropriations Acts may be made.