



Department of Energy
Acquisition Regulation

No. AL-2009-03
Date 12/23/08

ACQUISITION LETTER

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

Subject: Acquisition Planning--Extending A Management and Operating Contract Without Full and Open Competition; and Site and Utilization Management Planning

References: FAR Subpart 6.1	Full and Open Competition
FAR Subpart 6.3	Other than Full and Open Competition
FAR Part 7	Acquisition Planning
FAR Part 34	Major System Acquisition
DEAR Subpart 917.6	Management and Operating Contracts
DEAR 970.1706-1	Award, Renewal, and Extension
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 upon issuance. It cancels two ALs: AL 96-09, Full and Open Competition – M&O Contracts; and AL 2006-11, Site and Utilization Management Planning.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom do you Contact for More Information?

For Department of Energy (DOE) contracts, contact Michael Righi, Office of Procurement and Assistance Policy, MA-61, at (202) 287-1337 or at Michael.Righi@hq.doe.gov. For National Nuclear Security Administration (NNSA) contracts, contact Mr. Joseph Waddell, Office of Acquisition and Supply Management, NA-63, at (202) 586-6681 or at joseph.waddell@nnsa.doe.gov.

What is the Purpose of this AL?

The purpose of this AL is to streamline the acquisition process for the Department's major contracts by better integrating two key sub-processes into the acquisition planning process.

What is the Background Information You Need to Know?

This AL removes unnecessary or obsolete requirements in AL 96-09, Full and Open Competition – M&O Contracts, and AL 2006-11, Site and Utilization Management Planning, and integrates the revised, still applicable requirements of the two ALs into DOE Acquisition Guide Chapter 7.1, Acquisition Planning (and its two attachments--Acquisition Plan Preparation Guide and Acquisition Plan Template). Additionally, this AL establishes the requirement that the cognizant Undersecretary concur in and the Deputy Secretary approve any acquisition for a management and operating (M&O) contract or for a contract exceeding \$100 million. NNSA will follow the approval levels as stipulated in NNSA Policy Letter BOP-003.0304R5, or more current version if applicable. A formal change to Guide Chapter 7.1 will occur in the near future. The intent of these changes is to establish the acquisition plan as the driving document for all major acquisition decisions.

- a. Extending an existing M&O contract without full and open competition
 - i. Because competition has become the norm for M&O contracts, the concept of “Extend/Compete” has become obsolete. Those portions of AL 96-09 concerning the extend/compete process are no longer applicable. AL 96-09 also addresses options in M&O contracts, and those portions of that AL are also no longer applicable. The requirements of AL 96-09 that remain in effect, along with appropriate revisions, are included in this AL, which requires the acquisition planner to incorporate them as an integral part of the acquisition plan.
 - ii. Subpart 17.6 of the FAR prescribes policies and procedures for the award, renewal, and extension of M&O contracts. Section 17.602 permits Heads of Agencies to award and renew M&O contracts in accordance with an agency's statutory authority or the Competition in Contracting Act of 1984 (CICA), and agency regulations governing such contracts.
 - iii. Subpart 917.6 of the Department of Energy Acquisition Regulation (DEAR) implements the FAR by prescribing DOE's policy regarding competition of M&O contracts. Section 917.602 (b) affirms that DOE will provide for full and open competition in the award of contracts for the management and operation of its facilities and sites. Section 917.602 (c) permits the use of other than full and open competition for an extension to the term of an M&O contract, provided it can be justified in accordance with CICA and FAR Part 6, and the Head of Agency approves the justification.
 - iv. Because of the significance of M&O 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. DOE'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 contract period of up to 10 years, including options.

- v. Under FAR 17.602(a), the Head of the Agency may authorize contracting officers to enter into or renew M&O contracts. FAR 17.605(b) requires contracting officers to review each M&O contract periodically, but at least every five years, to consider whether the M&O contract should be renewed and extended with the incumbent contractor. The practical effect of these two requirements is the Agency Head's authorization to renew and extend an M&O contract and the contracting officer's review occur serially.
- b. Site Utilization and Management Planning
- i. Because DOE's experience has shown that site utilization and management planning is integral to acquisition planning, it has become clear that treating it as a discrete function from acquisition planning is not as effective as incorporating it as a contributing part of that planning. Consequently, this AL requires acquisition planners to include the requirements, with appropriate revisions, of AL 2006-11, Site Utilization and Management Planning, as an integral part of the acquisition plan.
 - ii. The Department has identified institutional site planning as essential to acquisition planning and major procurement decisions. DOE sites often have program responsibilities to multiple program offices. This complicates the process of developing an appropriate site-specific acquisition strategy. One DOE program's goals, for example, may be in direct competition with another's for the resources available at a site.
 - iii. Prudent institutional planning requires "buy-in" by all affected stakeholders. It identifies the affected program offices and describes a management approach for successfully completing the work at a site. Site utilization and management planning helps identify the best acquisition strategy to achieve interrelated mission objectives.

What is the Guidance contained in this AL?

The cognizant Undersecretary must concur in and the Deputy Secretary must approve any acquisition plan for an M&O contract or for a contract exceeding \$100 million. NNSA approvals will be in accordance with the most recent revision of NNSA Policy Letter BOP-003.0304. Both competition and site utilization and management planning must be fully discussed in the acquisition plan. In preparing an acquisition plan, the acquisition planner (with the assistance of the contracting officer) must adhere to Federal Acquisition Regulation (FAR) 7.105, Contents of written acquisition plans, and the associated coverage of these requirements in Guide Chapter 7.1, Acquisition Planning, including the following guidance.

- a. Extending an existing M&O contract without full and open competition (This guidance must be addressed in the discussion required by FAR 7.105 (b) (2), Competition.)
 - i. Justification of longer contract term

1. If a need arises to consider continuing an M&O contract beyond its term with the incumbent contractor using other than full and open competition, pursuing that course of action must be justified in the acquisition plan. Additionally, after the acquisition plan is approved, a justification for other than full and open competition must be prepared using the most appropriate statutory authority listed in FAR 6.302, and the approved acquisition plan must be included as an attachment. The maximum length of the extension cannot exceed five years. Both the acquisition plan and the subsequent justification for other than full and open competition must provide clear evidence that: (1) the need to maintain a relationship with the incumbent contractor beyond the term of the contract justifies an exception to full and open competition; and (2) extending the contract is in the best interests of DOE, as justified by one of the seven statutory authorities listed in FAR 6.302 permitting contracting without providing for full and open competition.
2. The acquisition plan must include:
 - a. 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;
 - b. significant projects or other objectives planned for assignment under the contract if extended;
 - c. a discussion 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;
 - d. in the case of a Federally Funded Research and Development Center, a review (typically included as an attachment to the acquisition plan) of the use and continued need for FFRDC designation in accordance with FAR 35.017-4; and, as an attachment to the acquisition plan, the authorization for a Federally Funded Research and Development Center, to be signed by the Secretary;
 - e. a determination, and its rationale, that the M&O contract remains the appropriate form of contract; and, as an attachment to the acquisition plan, the authorization to continue to use the M&O form of contract for the requested additional term, to be signed by the Secretary; see Attachment A to this AL;

- f. a discussion of the potential impact of a change in contractors on program needs;
 - g. rationale that competition for the period of the extension is not in DOE's best interest; and
 - h. any other information pertinent to the decision.
 - 3. The justification for other than full and open competition that will be submitted after the acquisition plan is approved must:
 - a. be prepared in accordance with FAR Part 6 and include 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;
 - b. include as an attachment the approved acquisition plan; and
 - c. be submitted for approval by the Secretary, through the cognizant Assistant Secretary and the Senior Procurement Executive.
- b. **Site Utilization and Management Planning** (This guidance must be addressed in the discussion required by FAR 7.105 (b) (4), Acquisition considerations. The discussion may be streamlined by referring to other documents, which to the extent they are referenced, must be attached to the acquisition plan. See Attachment C to this AL for a discussion of the purpose and role of site utilization and management planning.)
 - i. A DOE contracting officer may not award any M&O contract, or other contract subject to this guidance, either competitively or noncompetitively, or exercise an option under an M&O contract, unless its requirements are derived from, and the acquisition strategy is consistent with, site utilization and management planning that was included in an approved acquisition plan. In preparing an acquisition plan, the acquisition planner (in consultation with and with the assistance of the contracting officer) must meet the requirements of FAR 7.105, Contents of written acquisition plans, and the associated coverage in Guide Chapter 7.1, Acquisition Planning, including the following guidance:
 - ii. The acquisition plan's site utilization planning information must include:
 - a. the mission of the site and the activities (current and projected) of each

program in order to track performance objectives for each DOE program supported at the site over the next 5-10 years. Years one and two must be discussed with greater specificity than years 3-5. There should also be a clear link between budget and performance.

- b. a discussion of the site's responsibilities under the DOE Strategic Plan.
- c. An identification of the DOE Program Office(s) supported and a detailed description of the activities involved and their intended objectives.
 - i. Projection of business line activities, e.g., new and developing missions or significant changes to the current mission, including any reduction or expansion.
 - ii. Interrelationship among various business line activities, including identification of their relative significance and reconciliation of competing mission objectives and any other open issues.
 - iii. Any internal or external events that may affect site operations.
 - iv. Any local area considerations.
 - v. Single program site discussion connecting budget, acquisition, and mission related performance data.
- d. 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).
- e. A discussion of the management approach to be employed to control changes to the work as planned and the assignment of unexpected work.
- f. A discussion of available infrastructure at the site to support each program, assuming full integration of site program, planning, management, and assessment.
- g. A discussion of the current "contractual configuration" and future plans for meeting Departmental responsibilities, including any potential "privatization" of site functions.
- h. All proposed acquisitions and their effect.
- i. Evidence that the Lead Program Secretarial Officer, the Cognizant Secretarial Officer, the Site Manager, Support Offices, and all other affected program sponsors at the site have concurred in the acquisition plan's site utilization planning information.

Attachment A

AUTHORIZATION OF M&O FORM OF CONTRACT

To meet competition policy for M&O 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 M&O contract in conjunction with, and at the time of, the contracting officer's review of the contract has been authorized by the Senior 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 M&O contracts. Accordingly, the Head of Agency may authorize, prior to award of the contract, the use of the M&O 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 970.1706-1. The Head of the Agency authorization to use the M&O form of contract and permit a contract term of up to ten years is subject to the condition that, prior to the exercise of the option, the contracting officer complies with the review and approval requirements of DEAR 970.1706-1(b). Attachment B to this Acquisition Letter provides a copy of the deviation to FAR 17.605(b).

Where an extension using noncompetitive procedures pursuant to FAR is anticipated, the request to authorize the continued use of the M&O contract shall be submitted as part of the acquisition plan.

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 has 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.

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 and 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.

(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

SITE UTILIZATION AND MANAGEMENT PLANNING

Purpose of Site utilization and management planning

All major acquisitions at a given DOE site must be considered together and in light of the site's strategic goals, such as remediation, closure, or continuance of existing mission. No effective business strategy can be formed for a specific acquisition unless the HCA, the contracting officer, the program managers, and all others involved are aware of the impact it will have in attaining the site's mission. Many DOE sites have responsibilities to more than one program. Each program will have its own strategy requiring resources of the site. In addition, the missions at the site may change, necessitating assessing the effects of the changes on all planned acquisitions.

Site utilization and management information in the acquisition plan 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 assign roles properly to the various DOE organizations, programs, site office, and support offices.

Site utilization and management information must represent a coordinated perspective and be developed from existing plans or generated as a new plan. It must provide a single structure, approved by all affected programs and offices, for pursuit of DOE's mission at the site. It must include the DOE Strategic Plan, Site Institution Plan, Budget, Program Plans and Field Office Plans.

The Role of Site utilization and management planning in Acquisition Planning

Each proposed acquisition must be analyzed in light of site utilization and management requirements. Because a requirement was previously satisfied using a particular statement of work in a certain manner does not assure that the previous method will best satisfy subsequent requirements. A restructuring of a continuing requirement in light of the site utilization and management information should always be considered.

Site utilization and management information must establish realistic cost, schedule, and performance goals for each planned acquisition. It must consider both proceeding with a historical acquisition approach and restructuring that approach to reflect modified requirements. It must include a summary level discussion on the integration of program scope, schedule, and cost objectives. It must also establish performance data into a baseline plan for accomplishing program objectives during the execution phase. The type of contract or other strategy must fit the current needs of the site.

Site utilization and management information must be revised as necessary to reflect any changes in the site's mission.