

U.S. Department of Energy
Washington, D.C.

Cancelled by
DOE 4200.3C,
of 5-17-91

ORDER

DOE 4200.3B

10-3-85

Change 1: 6-27-89
ERRATA SHEET

SUBJECT: MANAGEMENT OF SUPPORT SERVICES CONTRACT ACTIVITY

1. PURPOSE. To provide the policy, procedures, and responsibilities for the management of support service contracts within the Department of Energy (DOE).
2. CANCELLATION. DOE 4200.3A, MANAGEMENT OF SUPPORT SERVICES CONTRACT ACTIVITY, of 4-5-83.
3. REFERENCES.
 - a. DOE 1270.1, FUNDS-OUT-INTERAGENCY AGREEMENTS, of 6-13-79, which provides guidance on the use of interagency agreements for obtaining support services.
 - b. DOE 1360.1, ACQUISITION AND MANAGEMENT OF AUTOMATIC DATA PROCESSING EQUIPMENT AND RESOURCES, of 8-9-78, which identifies the requirements for reviews when automatic data processing (ADP) resources are required.
 - c. DOE 4200.1B, COMPETITION IN CONTRACTING, of 4-17-85, which establishes policies and procedures to assure that competitive procedures are utilized to the maximum practical extent in the acquisition of personal property and nonpersonal services.
 - d. Office of Management and Budget (OMB) Circular A-49, "Use of Management and Operating Contracts," 44 FR 37192, which provides guidance on cost reimbursement contracts with firms which administer research and development establishments wholly devoted to Government work or to Government research and development programs, or which administer and operate Government-owned or -leased industrial facilities.
 - e. OMB Circular A-76, "Performance of Commercial Activities," of 8-4-83, which specifies in part that Government employees must perform those functions which are essential to retaining control over the conduct of Government programs.
 - f. OMB Circular A-120, "Guidelines for the Use of Consulting Services," 45 FR 30197, which provides policy guidance on the use of consulting support service contractors.
 - g. Federal Personnel Manual Letters 300-8, of 12-12-67, and 300-12, of 8-20-68, which provide guidance concerning employer-employee relationships between Government and contractor personnel.

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- h. DOE 1450.1B, ACQUISITION, UTILIZATION, AND ADMINISTRATION OF TELEPROCESSING SERVICES, of 6-12-84, which sets forth DOE policies and procedures for acquiring and utilizing teleprocessing services from commercial sources.
- i. HQ 1360.4, AUTOMATIC DATA PROCESSING TERMINAL ADMINISTRATION, of 5-30-80, which provides procedures for the administration and acquisition of terminal equipment at Headquarters.
- j. Title 48 CFR Chapter 1, Federal Acquisition Regulation (FAR), Subpart 17.2, which sets policies for the exercise of contract options and Subpart 36.6 which sets policies for the procurement of architectural and engineering services and which includes the Brooks Act Guidelines.
- k. Title 48 CFR Chapter 9, Department of Energy Acquisition Regulation (DEAR), Subpart 917.6 which implements FAR policy on management and operating contracts.
- l. Federal Procurement Data System Product and Service Codes, of 10-82, which assigns reporting codes for Government contracts based on the nature of what is acquired.

4. DEFINITIONS.

- a. Government Management Functions. Those functions so intimately connected with Government operations that they must be performed by Government employees in order to retain essential control and responsibility. These functions involve exercising discretionary authority and making final value judgments which affect the day-to-day or long-term development, execution, and evaluation of Government programs. Government management functions include but are not limited to:
 - (1) Assignment and evaluation of organizational responsibilities;
 - (2) Establishment of employment goals and priorities;
 - (3) Selection and direction of Federal employees;
 - (4) Evaluation of Federal employee performance;
 - (5) Development of budget policy, guidance, and strategy;
 - (6) Determination of acquisition strategy and acquisition plans;
 - (7) Selection of procurement sources;
 - (8) Action in a fiduciary capacity in the control and disbursement of Government funds;

- (9) Determination of the success or failure of DOE internal management and program management activities;
 - (10) Determination of reporting requirements;
 - (11) Determination of requirements and design of management information systems;
 - (12) Determination of requirements for, and final design of, program or project management systems;
 - (13) Determination of environmental impacts of energy policies and projects;
 - (14) Determination of economic barriers and tradeoffs for particular energy technologies;
 - (15) Establishment of technical performance criteria for energy technologies;
 - (16) Promulgation of any regulation;
 - (17) Determination of the legality of proposed policies;
 - (18) Final determinations regarding performance of DOE projects;
 - (19) Determination and advocacy of legislative initiatives on behalf of the Department;
 - (20) Representation of DOE in policy matters;
 - (21) Determination of energy production and consumption targets;
 - (22) Establishment of performance goals, priorities, and schedules; and
 - (23) Establishment of assumptions for scientific and economic models.
- b. Support Services. Describes all services and activities required by the Government to support the development and execution of assigned functions and programs. Support services do not include the exercise of discretionary authority which is the essence of a Government management function. The following activities are considered support services.

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- (1) Commercial Activities. As described in OMB Circular A-76, commercial activities are ones which are operated by a Federal executive agency and which provide a product or service which could be obtained from a commercial source. Commercial activities are not Governmental functions. A commercial activity also may be part of an organization or a type of work that is separable from a Government function and is suitable for performance by contract. Examples of commercial activities are listed below. Further definition of these examples are in Attachment A to OMB Circular A-76.
 - (a) Provision of audiovisual products and services;
 - (b) Automatic data processing services;
 - (c) Maintenance, overhaul, repair, and testing services;
 - (d) Manufacturing, fabrication, processing, and packaging;
 - (e) Industrial shops and services;
 - (f) Health services for Government employees;
 - (g) Security services;
 - (h) Office and administrative services;
 - (i) Printing and reproduction services (excluding those subject to Title 44 of the U.S. Code);
 - (j) Systems engineering, installation, operation, maintenance, and testing;
 - (k) Transportation services;
 - (l) Real property services; and
 - (m) Management and fiscal support services.
- (2) Advisory and Assistance Services. As identified in OMB Circular A-120, management and professional services, special studies and analyses, management support services, training, and consulting support services are services of a purely advisory nature relating to the Government management functions, as defined in subparagraph 4a.

- c. Management Control. The means by which the Government seeks to ensure that Government management functions are not performed by contractors. These controls may be considered adequate when provisions have been made to ensure that:
 - (1) The Government has adequate basic management resources and technical core capabilities available in-house to make the value judgments and exercise the discretionary authority required to retain control by the Government; and
 - (2) Government personnel review the work of support service contractors at each stage of contract performance when value judgments must be made or discretionary authority must be exercised in order to retain control by the Government. Necessary decisions are made by Government personnel.
 - d. Support Service Request. Comprises all the documentation required to perform an adequate review of each proposed support service contract for compliance with the policies of this Order. The contents of a support service request are specified in subparagraph 7c.
5. POLICY. No contract for support services will be deemed to be in the best interest of the Government if it is not consistent with the following policies:
- a. No contractual arrangement may be used to create what is tantamount to an employer-employee relationship between Government and contractor employees (see "Pellerzi Opinion," FPM Letters 300-8 and 300-12).
 - b. The Department shall not enter into or maintain any contractual arrangement which results in contractor performance of Government management functions as defined in subparagraph 4a, above. A contractor may be used to perform analyses and render advice related to a Government management function only if adequate management controls, as defined in subparagraph 4c, above, are provided by the requesting organization.
 - c. The Department shall not enter into or maintain a support services contract under any of the following conditions:
 - (1) The requesting Organizational Element has been staffed to provide the service;
 - (2) Services are more economically available within DOE or another Federal agency;

- (3) The services are readily available and may be provided through other means at a substantial savings in cost to the Government;
 - (4) The services are not essential to the effective execution of the program; or
 - (5) For any other reason it is not in the best interest of the Government to acquire the services by contract.
- d. Contractor involvement in issues relating to the establishment or alteration of Departmental policy, programs, plans, or addressing issues for which there is no established policy, must be avoided. The following are specific prohibitions for use of a contractor:
- (1) Initiating or originating draft testimony or presenting, as a representative of the Government, testimony before a congressional committee or regulatory body;
 - (2) Editing transcripts of congressional committee or regulatory body hearings or drafting, without attribution, inserts to transcripts;
 - (3) Speaking before public or private groups as a representative of the Government;
 - (4) Initiating or originating drafts of official documents and correspondence which are intended to represent the policies or plans of the Government;
 - (5) Contracting, on behalf of the Department, Members of Congress, congressional committees, staff members, or officials of State or foreign governments;
 - (6) Drafting official correspondence to State and local governments;
 - (7) Drafting official correspondence to congressional offices except to provide routine information requested in constituent mail; and
 - (8) Drafting official responses to correspondence requiring substantial technical research, where the response reflects a Departmental policy position.
- e. The period of performance for support services contracts subject to the review under this Order shall be no longer than 5 years, including options. The basic contract may be for a period of 3 years unless there is a valid justification for a longer period of performance. Exercise of successive 1-year options to extend the support services for up to 5 years are based on contractor performance, availability of funds, a

continuing need for the services, and a determination by the organization sponsoring the contract that exercising the option is in the best interest of the Government (see FAR Subpart 17.2).

- f. If a contractor assists in the drafting of legislative initiatives, implementing regulations, or similar products, the Department shall take steps to ensure that the contractor will not be, or appear to be, improperly influencing or promoting the product.
- g. The Department is committed to a continuing program of review of support service contracts to assess compliance with existing policies, to initiate steps to ensure the propriety of current contractual arrangements, and to make improvements in the use and management of support service contractors.
- h. Departmental employees are solely responsible for determining work requirements under support service contracts and preparing statements of work. A support service contractor must not be allowed to identify its own work requirements or write its own task assignments for the existing contract.
- i. Purchase or lease of ADP hardware items (i.e., automatic data processing terminals, computing equipment, communications equipment, and word processing equipment), particularly for use in Government facilities, is not an appropriate use of support service contract funds. Such acquisitions should be accomplished using other contract types.
- j. No Departmental Element shall direct a DOE management and operating contractor to procure a subcontract to provide support services directly to a DOE Element.
- k. No Headquarters DOE Element shall use management and operating contracts as solely a means to obtain support services that are not part of the primary mission of the management and operating contractor.
- l. No Departmental Element shall utilize a contractor in the preferential procurement program (small business or labor surplus area set aside, or awards to small disadvantaged businesses through the Small Business Administration 8(a) program) as a means to obtain support services for DOE directly from a nonpreferential subcontractor.
- m. DOE shall employ full and open competition to obtain support services unless fully justified in accordance with DOE 4200.1B and DOE acquisition regulations.

6. RESPONSIBILITIES AND AUTHORITIES.

a. Deputy Assistant Secretary for Human Resource Management (MA-5).

- (1) Reviews each support service request which may exceed \$250,000 to ensure that the proposed action conforms to policies concerning the use of support service contractors. No contract subject to this review may be entered into until authorized pursuant to this authority.
- (2) Serves as principal point of contact within the Department regarding policy decisions on the management and use of support services contracts.
- (3) Ensures that support services contracts will not be used as a device to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures, or to establish employer-employee relationships between Government and contractor personnel.
- (4) In cooperation with the head of the subject organization, performs periodic reviews of support services activities within DOE organizations to assess compliance with the provisions of this Order and with other applicable Government-wide and DOE regulations.
- (5) Determines whether a support services contract is subject to the provisions of this Order, and authorizes exceptions as appropriate.

b. Heads of Headquarters Elements.

- (1) Prepare support service requests for their organizations as outlined in paragraph 7, below.
- (2) Ensure that the performance of all support service contracts being used to support their organizations conforms with the procedural requirements and policy guidelines of this Order.
- (3) As appropriate, review and endorse requests originating in their field organizations.
- (4) In cooperation with the Deputy Assistant Secretary for Human Resource Management, participate in the periodic review of support services activities supporting their organizations.

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c. Heads of Field Elements.

- (1) Prepare support services requests as outlined in paragraph 7, below.
- (2) Ensure that the performance of all support service contracts being used to support their organizations conforms with the procedural requirements and policy guidelines of this Order.
- (3) Ensure compliance with procurement rules and regulations on support service contracting.
- (4) In cooperation with the Deputy Assistant Secretary for Human Resource Management, participate in the periodic review of support services activities supporting their organizations.

d. General Counsel. Reviews each proposed support service contract which may exceed \$250,000 for compliance with existing laws and regulations, and advises the requesting organization and the Deputy Assistant Secretary for Human Resource Management as to the legal sufficiency of the proposed procurement.

e. Contracting Officers.

- (1) Determine whether a proposed contract is for support services and is correctly coded in accordance with the guidelines provided in the Federal Procurement Data System's Product and Service codes.
- (2) Ensure that the review requirements of paragraph 7 are met on all support service contracts.

7. REVIEW REQUIREMENTS.

a. The following types of contracts are exempted from the review requirement detailed below:

- (1) Research and development (R&D) contracts unless the primary purpose of a task under an R&D contract is for support services described in subparagraphs 4b(1) and (2);
- (2) Architectural and engineering services which are procured under the Brooks Act Guidelines;
- (3) Construction and construction management services;
- (4) Management and operating contracts (FAR Subpart 19.6 and DEAR Subpart 917.6); and

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(5) Production contracts and the services thereunder.

- b. No contract for support services shall be procured until a support request for the proposed support services action has been reviewed and authorized by an official at an appropriate level to ensure that it conforms to the provisions of this Order. The review requirements in subparagraphs 7b(1) and (2), below, are triggered when the cost of a proposed contract, including options, exceeds the stated threshold or when an existing contract is modified to allow costs in excess of the stated threshold. When the \$250,000 threshold is exceeded due to a modification, the original support service request prepared and authorized pursuant to subparagraph 7b(1), below, may be submitted, with updated cost information, for review under subparagraph 7b(2), below. Additionally, any changes to the statement of work authorized pursuant to subparagraph 7b(2) need to be separately reviewed.

(1) Support service requests for which the total contract cost, including options, will not exceed \$250,000 must be reviewed and authorized by Heads of Headquarters Elements. Heads of Field Organizations may also authorize contract requests up to this dollar level if the program being supported has been formally decentralized for field management and procurement. Heads of Headquarters Elements may delegate this signature authority to an individual within their organization by filing a written delegation of authority with the Deputy Assistant Secretary for Human Resource Management. For proposed contracts for which the cost, including options, is in the range of \$50,000 to \$250,000, a copy of the support service request must be submitted to the Management Systems Development and Evaluation Branch (MA-513.1) for information purposes.

(2) Support services requests for which the contract cost, including options, may exceed \$250,000 must be reviewed and authorized as in subparagraph 7b(1), above. In addition, requests at this level must be transmitted to the Deputy Assistant Secretary for Human Resource Management through the Office of General Counsel. The Deputy Assistant Secretary for Human Resource Management will review the request for conformity with the provisions of this Order and, as appropriate, authorize the requesting organization to proceed with the acquisition.

(a) Field counsel review of field-originated requests may be substituted for the Office of General Counsel review.

(b) No support service acquisition at this dollar level may be executed without review and authorization by the Deputy Assistant Secretary for Human Resource Management.

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- c. The requesting organization prepares the support service request. Each request must include:
- (1) The signature of the Head of the Headquarters or Field Element in whose organization the requirement originates for requests over \$250,000;
 - (2) The statement of work for the proposed contract;
 - (3) The proposed contract number and contractor, if known; and
 - (4) An analysis of the proposed action which includes the following items:
 - (a) An estimate of the cost (including options), the proposed period of performance (including options), and an estimate of the staffing requirement for each category of labor.
 - (b) A brief description of the program to be supported by the proposed contract, including statements on:
 - 1 The programs being managed by the requesting organization;
 - 2 The current workload and staffing levels for the organization;
 - 3 Why the product of the proposed contract is essential to the program mission; and
 - 4 The authority under which the program operates (statutory base, functional statement, OMB guidance, or other).
 - (c) A brief justification for performing the work through the use of a contract, including:
 - 1 Why the particular skills identified in subparagraph 7c(4)(a), above, are required for the work;
 - 2 Alternatives to contractor performance, including the use of in-house resources and resources of other Federal agencies, and why each of these alternatives is not recommended; and
 - 3 A description of reasonable efforts made to ascertain that the required product or service is not already available to the program from within the Federal Government.

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(d) A statement describing the adequacy of management controls over the proposed contractor effort, including an analysis of:

- 1 The program staff resources which will be available for monitoring and reviewing contractor performance; and
- 2 The respective decision-making roles of the contractor and the Government during performance of the proposed contract.

(e) A brief description of how work will be assigned to contractor personnel and a statement indicating whether or not each of the following conditions will exist in the proposed contractual arrangement:

- 1 Performance on Government site (detail any Government space requirements, including approximate square feet);
- 2 Principal tools and equipment shall be furnished by the Government;
- 3 Services will be applied directly to an integral effort of the requesting organization in furtherance of an assigned mission or function;
- 4 Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel;
- 5 The need for the type of service provided can reasonably be expected to last beyond 1 year; and
- 6 The inherent nature of the service or the manner in which it is provided reasonably requires direct or indirect Government supervision of contractor employees in order to:
 - a Adequately protect the Government's interest;
 - b Retain control of the function involved; or
 - c Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

- (f) A description of any automatic data processing terminals and computing, telecommunications, or word processing equipment which will be leased or purchased under this contract, including how and where such equipment will be used.
- d. If the support service request meets the review threshold identified in subparagraph 7b(2), above, the original of the request package should be addressed to the Deputy Assistant Secretary for Human Resource Management, through the Office of General Counsel, unless reviewed by field counsel per subparagraph 7b(2)(a). The procedure is expedited if an advance copy is sent to the Deputy Assistant Secretary for Human Resource Management (ATTN: Management Systems Development and Evaluation Branch, MA-513.1).
- e. Normally, 10 working days will be required for review by the Office of General Counsel and by the Deputy Assistant Secretary for Human Resource Management. That review will result in a memorandum to the requesting organization giving or denying authorization to proceed with the procurement process.
- f. In order to minimize the procurement processing time, this procedure may be completed concurrently with other procurement processes as long as no request for proposal is issued, or in the case of a sole source procurement, no final negotiations are conducted prior to the receipt of the authorization.
- g. Requesting organizations are encouraged to direct inquiries concerning these procedures to the Management Systems Development and Evaluation Branch.

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