

# U.S. Department of Energy

Washington, D.C.

## ORDER

DOE 4200.3C

*Cancelled by DOE 4200.3D  
9-8-92*

5-17-91

Change 1: 3-26-92

SUBJECT: MANAGEMENT OF SUPPORT SERVICES ACTIVITY

1. PURPOSE. To provide the policy, procedures, and responsibilities for the management of support services contracts within the Department of Energy (DOE).
2. CANCELLATION. DOE 4200.3B, MANAGEMENT OF SUPPORT SERVICES CONTRACT ACTIVITY, of 10-3-85.
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 1360.1A, ACQUISITION AND MANAGEMENT OF COMPUTING RESOURCES, of 5-30-86, which identifies the requirements for reviews when automatic data processing (ADP) resources are required.
  - c. DOE 1450.1C, ACQUISITION, UTILIZATION, AND ADMINISTRATION OF TELEPROCESSING SERVICES, of 9-3-86, which sets forth DOE policies and procedures for acquiring and utilizing teleprocessing services from commercial sources.
  - d. DOE 4200.1C, COMPETITION IN CONTRACTING, of 1-9-87, 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.
  - e. Office of Management and Budget (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," of 1-4-88, which provides policy guidance on the use of consulting support services contractors.
  - g. Federal Personnel Manual (FPM) Bulletin 300-90, of 2-9-89, which provides guidance concerning employer-employee relationships between Government and contractor personnel.

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- h. Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulation (FAR), Chapter I, 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.
- i. Title 48 CFR Chapter 9, Department of Energy Acquisition Regulation (DEAR), Subpart 917.6, which implements FAR policy on management and operating contracts.
- j. Federal Information Resources Management Regulations (FIRMR), Title 41 CFR, Charter 01-20.305, and Bulletin C-5 which discusses Agency Procurement Requests (APRs).

#### 4. DEFINITIONS.

- a. Government 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 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 development of 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 trade-offs 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 of goals, priorities, and schedules;
  - (23) Establishment of assumptions for scientific and economic models;
  - (24) Determination of final agency action on claims for or against the United States (U.S.);
  - (25) Contract award and administration functions; and
  - (26) Development and formulation of program goals, policy, strategy and guidance.
- 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 function. The following activities are considered support services.

- (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) Federal Information Processing (FIP) support services, as defined in FIRM 201-4.001 and Bulletin A-1.
  - (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 functions, as defined on page 2, paragraph 4a.

- c. Management Control. The means by which the Government seeks to ensure that Government 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. All decisionmaking authority rests with Government personnel.
  - d. Support Services Request. Comprises all the documentation required to perform an adequate review of each proposed support services contract or modification to an existing support services contract for compliance with the policies of this Order. The contents of a support service request are specified on page 12, paragraph 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 equivalent to an employer-employee relationship between Government and contractor employees (see FPM Bulletin 300-90).
  - b. The Department shall not enter into or maintain any contractual arrangement which results in contractor performance of Government functions as defined in paragraph 4a, above. A contractor may be used to perform analyses and render advice related to a Government function only if adequate management controls, as defined in paragraph 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 reasonably 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. Contractors shall not be involved in the actual establishment or alteration of Departmental policy, or in the formulation of policy documents. 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) Initiating contact or following up, on behalf of the Department, with Members of Congress, congressional committees, congressional staff members, or officials of State or foreign governments;
  - (6) Drafting official correspondence to congressional offices except to provide routine information requested in constituent mail;
  - (7) Drafting official correspondence to State and local governments except to provide requested routine information; 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 1, 2, or 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 performs analyses and/or renders advice 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. Further, assistance of a contractor will be limited to such use as background research, scientific or technical analysis of issues, editorial assistance, and word processing services.
- g. The Department is committed to a continuing program of review of support services 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 services contractors.
- h. Departmental employees are solely responsible for determining work requirements under support services contracts and preparing statements of work (SOW). A support services 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 services 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 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 4200.1C and DOE acquisition regulations.
- n. Contracts for FIP support services must receive a delegation of procurement authority (DPA) from the General Services Administration (GSA) prior to issuance of a solicitation, if the proposed acquisition exceeds the blanket delegation levels established in the FIRMR.

#### 6. RESPONSIBILITIES AND AUTHORITIES.

- a. Director of Administration and Human Resource Management (AD-1).  
Serves as principal point of contact within the Department regarding policy decisions on the management and use of support services contracts.
- b. Director of Organization, Resources and Facilities Management (AD-10).
  - (1) Reviews each support services request which exceeds \$1,000,000 in total estimated award value and each succeeding contract modification which exceeds 10 percent of the original award value or \$100,000, whichever is less, to ensure that the proposed action conforms to policies concerning the use of support services contractors. No contract subject to this review may be entered into until authorized pursuant to this authority.
  - (2) 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 except as specifically provided by FPM Bulletin 300-90.
  - (3) In cooperation with the Head of the Departmental Element, 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.

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- (4) Determines whether a support services contract is subject to the provisions of this Order, and authorizes exceptions as appropriate.
- (5) Authorizes all FIP support services requests prior to the office of Clearance and Support (PR-13) submitting the APR to GSA.

b. Heads of Headquarters Elements.

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

c. Heads of Field Elements.

- (1) Prepare support services requests as outlined in paragraph 7, below.
- (2) Ensure that the performance of all support services 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 services contracting.
- (4) In cooperation with the Director of Organization, Resources and Facilities Management, participate in the periodic review of support services activities supporting their organizations.

- d. General Counsel (GC-1). Reviews each proposed support services contract which may exceed \$1,000,000 in total estimated award value for compliance with existing laws and regulations, and advises the requesting organization and the Director of Organization, Resources and Facilities Management as to the legal sufficiency of the proposed procurement.

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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 "DOE Handbook for Preparation of DOE Procurement Request Forms" and "Handbook for Preparation of Individual Procurement Action Request."
- (2) Ensure that the review requirements of paragraph 7, below, are met on all support services contracts.

f. Director of Information Resources Management (AD-20) through the Director of Information Resources Management Policy, Plans, and Oversight (AD-24).

- (1) Concurs in all APRs for FIP support services prior to PR-13 submitting the APR to GSA.
- (2) Provides guidance to Headquarters and field elements on definitions, use, and approval process for FIP support service contracts.

g. Director of Clearance and Support (PR-13). Submits requests for and obtains delegations of procurement authority from GSA for applicable FIP support services 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 paragraphs 4b(1) and (2), above;
- (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 17.6 and DEAR Subpart 917.6); and
- (5) Production contracts and the services thereunder.

## b. No contract for support services shall be procured until a 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

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the provisions of this Order. The review requirements are triggered when the total estimated award value of a proposed contract, including options, exceeds the stated threshold or when an existing contract is modified to allow award value in excess of the stated threshold. When the \$1,000,000 threshold is exceeded due to a modification, the original support services request prepared and authorized pursuant to paragraph 7b(1), below, must be submitted, with updated cost information, for review under paragraph 7b(2), below. Proposed modifications which will exceed 10 percent of the original award value or \$100,000, whichever is less, shall be submitted for review pursuant to paragraph 7b(2), below. Additionally, any substantive changes to the statement of work authorized pursuant to paragraph 7b(2), below, need to be separately reviewed.

- (1) Support services requests for which the total estimated award value, including options, will not exceed \$1,000,000 must be reviewed and authorized by Heads of Headquarters Elements. Heads of Field Elements 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 individuals within their organization by filing a written delegation of authority with the Director of Organization, Resources and Facilities Management. For proposed contracts and modifications for which the total estimated award value, including options, is in the range of \$50,000 to \$999,999, a copy of the support services request must be submitted to the Systems Management and Evaluation Branch (AD-121) for information purposes.
- (2) Support services requests for which the total estimated award value, including options, exceeds \$1,000,000 or succeeding modifications which will exceed 10 percent of the original award value or \$100,000, whichever is less, must be reviewed and authorized as in paragraph 7b(1), above. In addition, requests at this level must be transmitted to the Director of Organization, Resources and Facilities Management through the Office of General Counsel. Modifications will not require General Counsel concurrence unless there is a significant change in scope of work. The Director of Organization, Resources and Facilities 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.

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- (b) No support services acquisition at this dollar level may be executed without authorization by the Director of Organization, Resources and Facilities Management.
  - (3) FIP support service contracts must be reviewed and authorized as in paragraphs 7b(1) or 7b(2), above. In addition, FIP support service contracts for which the total estimated award value, including all options and periods over the life of the contract may exceed \$2.5 million (\$250,000 for requirements available from only one source) must be transmitted to PR-13 in the form of an APR, as required by the FIRM 201-20.305-1. The Director of Clearance and Support will review the package and request a delegation of procurement authority (DPA) from GSA. The support services request submitted to AD-10 should be attached to the APR.
- c. The requesting organization prepares the support services request. Each request, regardless of the dollar threshold, must include:
- (1) The signature of the Head of the Headquarters or Field Element in whose organization the requirement originates for requests over \$1,000,000;
  - (2) The statement of work for the current or 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 for the initial period and each of the options, the proposed period of performance (including options), and an estimate of the staffing requirements for each category of labor for the base period and each option year.
    - (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;

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- 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 paragraph 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.
- (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. Submission requirements for those support services contracts meeting thresholds described in paragraphs 7b(2) and 7b(3), above:
- (1) If the support services request meets the review threshold identified in paragraph 7b(2), above, the original of the request package should be addressed to the Director of Organization, Resources and Facilities Management, through the Office of General Counsel, unless reviewed by field counsel per paragraph 7b(2)(a), above. The procedure is expedited if an advance copy is sent to the Director of Organization, Resources and Facilities Management (ATTN: Systems Management and Evaluation Branch, AD-121).
  - (2) If the support services request meets the review threshold identified in paragraph 7b(3), above, the original of the request package should be addressed to the Director of Organization, Resources and Facilities Management (AD-10), through the Office

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of General Counsel, unless reviewed by field counsel per paragraph 7b(2)(a), above. Concurrently, the APR, including a copy of the support services request package sent to AD-10, should be addressed to PR-13. The procedure is expedited if an advance copy is sent to the Director of Organization, Resources and Facilities Management (ATTN: Systems Management and Evaluation Branch, AD-121).

e. Headquarters review and approval/denial process:

- (1) Normally, 10 working days will be required for review by the Director of Organization, Resources and Facilities Management. That review will result in a memorandum to the requesting organization giving approval, conditional approval with required changes, or denying authorization to proceed with the procurement process.
- (2) For FIP support services requests, the request for a DPA will not be submitted to GSA until the Office of Organization, Resources and Facilities Management has approved the support service request. The support service request approval does not authorize proceeding with the FIP procurement. This may not occur until GSA has provided the Department, through PR-13, a delegation of procurement authority. PR-13 will provide this DPA to the procurement organization at the requesting site. It is anticipated that approximately 60 working days will be required to obtain a DPA approval from GSA.

f. To minimize the procurement processing time, this procedure may be completed concurrently with other procurement processes by forwarding a copy of the request and the SOW to the cognizant contracting office for the procurement request initiator. No request for proposal may be issued, or in the case of sole source procurement, no final negotiations may be conducted prior to the receipt of the authorization.

g. Authorization of support services requests are valid for a 12-month period. If formal procurement action is initiated more than 12 months after the original authorization, a new authorization is required from the Director of Organization, Resources and Facilities Management.

- h. Requesting organizations are encouraged to direct inquiries concerning these procedures to the Systems Management and Evaluation Branch (AD-121).

BY ORDER OF THE SECRETARY OF ENERGY:



JOHN J. NETTLES, JR.  
Director of Administration  
and Human Resource Management

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