

Approved: 4-21-04

This directive was reviewed and certified as current and necessary by James T. Campbell, Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer, 4-21-04.

**SUBJECT: APPOINTMENT OF CONTRACTING OFFICERS AND CONTRACTING OFFICER REPRESENTATIVES**

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1. OBJECTIVES.

- a. To establish procedures governing the selection, appointment, and termination of Department of Energy (DOE)/National Nuclear Security Administration (NNSA) contracting officers and contracting officer representatives.
- b. To ensure that, within the scope of this Order, only trained, qualified procurement and financial assistance professionals serve as contracting officers.
- c. To ensure that project directors certified under the Project Management Certification Development Program are provided training to be contracting officer representatives and that trained project directors are delegated contracting officer representative authority commensurate with their responsibilities. (See DOE O 361.1A, *Acquisition Career Development Program*, dated 4-19-04, for requirements.)

2. CANCELLATIONS. DOE O 541.1A, *Appointment of Contracting Officers and Contracting Officer Representatives*, dated 10-27-00. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Canceled Orders that are incorporated by reference in a contract remain in effect until the contract is modified to delete reference to requirements in the canceled Order.

3. APPLICABILITY.

- a. Primary DOE Organizations, Including National Nuclear Security Administration (NNSA) Organizations. Except for the exclusions in paragraph 3c, this Directive applies to all Primary DOE Organizations (see Attachment 1 for a complete list of Primary DOE Organizations). This Directive automatically applies to Primary DOE Organizations created after it is issued.

Note that only the Administrator of NNSA can direct NNSA employees. Wherever this Directive gives direction to NNSA employees, it should be understood that direction is provided only for the convenience of the Administrator and is not intended to assume or replace the authority of the Administrator's direction.

- b. Site/Facility Management Contractors. This Order does not apply to contractors.
- c. Exclusion. This Order does not apply to the Bonneville Power Administration.

d. Exceptions.

- (1) Appointment requirements for contracting officers do not apply to the following.
  - (a) Purchases and purchase methods that have the following appointment/authorization requirements.
    - 1 Government purchase card [also known as the General Services Administration (GSA) SmartPay Card] program purchases generally limited to the micropurchase threshold. [See Federal Acquisition Regulation (FAR) 13.301.]
    - 2 U.S. Government National Credit Card, Standard Form (SF) 149 (Federal Property Management Regulation 101-38.8).
    - 3 SF 44, Purchase Order-Invoice-Voucher (FAR 13.306).
    - 4 Imprest Fund (FAR 13.305).
    - 5 Purchase of transportation tickets on a common carrier and travel-related purchases while on official travel.
  - (b) The procurement executive, who is not required to follow the appointment process described in this Order, appoints heads of contracting activities (HCAs) with delegated contracting officer authority.
  - (c) An employee assigned to a contracting activity under the direct supervision of the contracting officer does not require designation as a contracting officer representative to perform assigned duties.
- (2) Notwithstanding the exceptions to appointment requirements discussed in paragraph 3d(1), the requirements in paragraphs 4i and 4j and the responsibility in paragraph 5c(5) are applicable as stated.
- (3) Contracting officer representative designations are not required for financial assistance actions.

4. REQUIREMENTS.

- a. All contracting officer nominees must be Federal DOE/NNSA employees or personnel detailed to the Department.
- b. Except as provided in paragraph 4c, all contracting officer or contracting officer representative nominees must meet the qualification requirements set forth in

DOE O 361.1. Failure to meet those qualification requirements may result in revocation of a contracting officer warrant or delegated authority as a contracting officer representative.

- c. The HCA may appoint a contracting officer or contracting officer representative who does not meet the qualification requirements defined in DOE O 361.1 if the following requirements are met.
  - (1) A determination is made, with supporting rationale in writing, explaining why the appointment is necessary to meet mission requirements.
  - (2) The procurement executive or his/her designee has concurred with the determination that the appointment is necessary.
  - (3) The HCA making the appointment establishes as part of the determination a training plan detailing how the individual will meet the requirements set forth in DOE O 361.1 within 18 months from the date of appointment. Failure to do so may result in revocation of the warrant for contracting officers or of delegated authority as contracting officer representatives.
- d. Contracting officers must comply with requirements in statutes, regulations, Executive orders, and policy letters of the Office of Federal Procurement Policy; DOE acquisition letters, financial assistance letters, and DOE directives; and other Federal agencies' procurement policies and procedures.
- e. Upon being nominated, all contracting officers and contracting officer representatives who have not filed financial disclosure reports previously are required to file either confidential financial disclosure report SF 450 or public financial disclosure report SF 278 for review by local counsel (for field employees) or the Office of Assistant General Counsel for General Law (for Headquarters employees). The financial disclosure report is required as part of the appointment process only if the employee has not previously filed a new entrant report or the most recent annual report.
- f. Supervisors of positions to be occupied by a contracting officer appointed on an SF 1402 must—
  - (1) review a personal qualifications statement prepared and signed by the nominated contracting officer and
  - (2) complete and sign a recommendation for appointment for each nominee (see format example, Attachment 2).

The document must include reasons that there is a clear and convincing need to appoint a contracting officer.

- g. SF 1402 certificates must be signed by the HCA, who must not redelegate this authority.
- h. A contracting officer whose authority is limited to the micropurchase threshold (see FAR 13.6) must be appointed in writing in accordance with procedures established by the HCA.
- i. A contracting officer whose authority is limited to Government purchase card (GSA SmartPay Card) program purchases no more than \$25,000 per transaction must be appointed in writing in accordance with procedures established by the HCA.
- j. Unless exempt in the FAR, DOE employees and Federal employees detailed to DOE with contracting authority must comply with the requirements of FAR section 3.104, Procurement Integrity.
- k. Each contracting activity must issue an internal directive on contracting officer authorities which—
  - (1) establishes and maintains an up-to-date database of the contracting activity's contracting officers and contracting officer representatives by name and position and
  - (2) identifies the limitations on each of the identified personnel.
- l. Each contracting activity must provide an updated database annually to the Office of Procurement and Assistance Management for incorporation into the contracting officer and contracting officer representative database.
- m. The following documentation is required for appointment of contracting officers.
  - (1) Qualification statements, which must list—
    - (a) formal education completed and degrees earned;
    - (b) training completed in business administration, law, accounting, and related fields;
    - (c) specialized courses completed in Government acquisition, assistance instruments, and sales;
    - (d) a schedule of courses required to meet minimum qualifications;
    - (e) professional affiliations;
    - (f) previous related experience;

- (g) previous appointments as a contracting officer and the appointing organizations; and
    - (h) a copy of the Acquisition Career Development Program Certificate.
  - (2) SF 1402 certificates must include on the face—
    - (a) the functional areas to which authority has been delegated (see Attachment 3 for a list of functional areas) and
    - (b) the designation, “For Administration Only,” for individuals whose authority is limited to post-award or administrative contracting activities and/or financial assistance.
- n. An individual designated a contracting officer representative must meet the qualifications set forth in DOE O 361.1. All designated contracting officer representatives must be listed in the database by name and position title.
- o. Contracting officer representatives for management and operating, management and integration, and performance-based contracts must be designated formally, in writing, and will be subject to the requirements of this Order.
- p. Contracting officer representative appointments must be documented in writing and must include—
  - (1) name and position,
  - (2) instructions delineating actions that may or may not be taken on behalf of the contracting officer, and
  - (3) copies of certificates indicating completion of training required under DOE O 361.1, which must be included with the appointment letter in the contracting officer representative’s file that is maintained by the contracting activity.
- q. When a contracting officer is assigned to a new position, the following requirements apply.
  - (1) When reassignment is within the same contracting activity—
    - (a) officials at a level the HCA deems appropriate must revoke the contracting officer appointment (on SF 1402) in writing and
    - (b) if the revocation may affect the employee’s official job classification, it must be coordinated with the responsible personnel office.

- (2) When reassignment is within the Department, the SF 1402 certificate is terminated automatically.
- (3) The gaining organization that determines a need to reappoint the individual must—
  - (a) obtain documentation supporting the initial or latest appointment from the losing organization and
  - (b) prepare and distribute the new certificate appropriately.
- (4) The contracting officer must continue to file annual financial disclosure reports.

5. RESPONSIBILITIES.

- a. Directors, Office of Procurement and Assistance Management. In his/her capacity as procurement executive, establishes an effective contracting officer certification program and maintains clear lines of contracting authority and accountability.
- b. Heads of Primary DOE Organizations or Designees.
  - (1) Ensure that nominees for contracting officer representative meet all qualification requirements before being nominated.
  - (2) Ensure that the terms of paragraph 5c, below, are implemented.
- c. Heads of Contracting Activities.
  - (1) Appoint contracting officers and sign all SF 1402 certificates. (NOTE: neither authority will be redelegated.)
  - (2) Use the criteria defined in DOE O 361.1 when selecting contracting officers.
  - (3) Distribute documents in accordance with requirements (see Attachment 4).
  - (4) Establish procedures for appointing contracting officers in accordance with requirements defined in paragraphs 4h and 4i of this Order. (DOE O 361.1 identifies required training.)
  - (5) Issue internal directives or other documentation as required (see paragraph 4k).
- d. Assistant General Counsel for General Law or Local Field Counsel. Grants nominees' clearance prior to their appointment or reappointment as contracting officers/contracting officer representatives.

- e. Contracting Officers. Comply with the procurement integrity requirements in FAR 3.104 and all other requirements established for contracting officers.

6. DEFINITIONS.

- a. **Contract**. A mutually binding legal agreement obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them; includes all types of written commitments that obligate the Government to expenditure of appropriated funds. Contracts do not include grants and cooperative agreements.
- b. **Contracting officer**. A person with authority to enter into, administer, and terminate contracts and make related determinations and findings; includes certain authorized representatives of the contracting officer acting within the limits of authority as delegated by the contracting officer.
- c. **Administrative contracting officer (ACO)**. One who administers contracts.
- d. **Contracting officer representative**. A Government employee formally designated to act as an authorized representative of a contracting officer for specified functions that do not include actions that could change the scope, price, terms or conditions of a contract (e.g., technical monitoring). Under limited conditions, non-Government personnel may be appointed contracting officer representatives on an as-needed basis that does not allow the performance of inherently governmental functions.
- e. **Financial assistance**. The transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute. For purposes of this Order, financial assistance instruments are grants, cooperative agreements, and subawards.
- f. **Micropurchase**. Acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500. For construction, the limit is \$2,000.
- g. **Resident engineer**. A contract monitor assigned to one or more construction contracts with limited authority to issue changes to the contract affecting price and/or completion time.
- h. **Sales contract**. A legal agreement under which DOE will provide to a non-Federal source products or services, such as energy research and development and related technical and analytical services or oil/nuclear waste disposal and interim storage services. Excluded transmission and related services by the power marketing administrations and sales under international treaties.
- i. **Simplified acquisition procedures**. The methods prescribed in Federal Acquisition Circular 97-02, Part 13, for making purchases of supplies or services. The simplified acquisition threshold is \$100,000 except for contracts to be

awarded and performed, or purchases to be made, outside the United States in support of contingency operation.

7. REFERENCES.

- a. DOE Acquisition Regulation 901.6, Contracting Authority and Responsibilities.
- b. DOE O 361.1, *Acquisition Career Development Program*, dated 6-13-03.
- c. FAR Subchapter A, Part 1, Subpart 1.6, Career Development, Contracting Authority, and Responsibilities.
- d. Office of Federal Procurement Policy, Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, dated 6-24-92.

8. CONTACTS. Information on general policy matters involving the appointment of a contracting officer and on the process of appointing a contracting officer and the submission of documents to the Office of Procurement and Assistance Management can be obtained from the Acquisition Career Development Program Office within the Office of Procurement and Assistance Management at 202-586-1140.

BY ORDER OF THE SECRETARY OF ENERGY:



KYLE E. McSLARROW  
Deputy Secretary

**PRIMARY DOE ORGANIZATIONS TO WHICH DOE  
O 541.1B, *Appointment of Contracting Officers and Contracting Officer Representatives*  
IS APPLICABLE**

Office of the Secretary  
Chief Information Officer  
Departmental Representative to the Defense Nuclear Facilities Safety Board  
Energy Information Administration  
National Nuclear Security Administration  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Counterintelligence  
Office of Economic Impact and Diversity  
Office of Electric Transmission and Distribution  
Office of Energy Assurance  
Office of Energy Efficiency and Renewable Energy  
Office of Environment, Safety and Health  
Office of Environmental Management  
Office of Fossil Energy  
Office of General Counsel  
Office of Hearings and Appeals  
Office of Independent Oversight and Performance Assurance  
Office of Intelligence  
Office of Legacy Management  
Office of Management, Budget and Evaluation and Chief Financial Officer  
Office of Nuclear Energy, Science and Technology  
Office of Policy and International Affairs  
Office of Public Affairs  
Office of Science  
Office of Security  
Office of Security and Safety Performance Assurance  
Office of the Inspector General  
Secretary of Energy Advisory Board  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration

**RECOMMENDATION FOR APPOINTMENT  
(EXAMPLE)**

The following findings and determinations have been made pursuant to applicable laws and regulations.

1. There is a clear and convincing need to appoint a Contracting Officer for the following reason (quantify where practicable).
2. \_\_\_\_\_, the nominated contracting officer, is an employee of or is detailed to the U.S. Department of Energy.
3. The nominee Contracting Officer will occupy the following organizational position:  
\_\_\_\_\_, which is responsible for the processing of acquisitions, financial assistance instruments, and/or sales.
4. The nominee's personal qualifications statement (attached) has been evaluated and (check as applicable):
  - ☐ The nominee's experience, education, and training meet the established DOE minimum qualifications.
  - ☐ The determination to nominate pursuant to the procedures of paragraph 4c of the Order is attached.
5. The nominee's knowledge of the Federal Acquisition Regulation, the Department of Energy Acquisition Regulation, the Department of Energy Financial Assistance Rules, and other applicable laws, Executive Orders, and regulations affecting acquisition, financial assistance, and/or sales, as appropriate, is adequate for the appointment.
6. The nominee's business acumen, judgment, character, reputation, and ethics are sound.
7. The nominee has completed an Executive Branch Confidential Financial Disclosure Report (SF-450) or Executive Branch Public Financial Disclosure Report (SF 278) and has been cleared by the Assistant General Counsel for General Law (GC-80) or local field counsel.
8. The nominee is well qualified for the appointment.

Supervisor:

Concur:

\_\_\_\_\_  
Signature of Supervisor of Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Designating Official  
Head of Contracting Activity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

Concur: \_\_\_\_\_

Assistant General Counsel for General Law  
OR Field Counsel

## **FUNCTIONAL AREAS OF DELEGATION**

The following are functional areas to which contracting officer authority may be delegated.

1. Procurement contracts, including interagency acquisitions, and sales contracts.
2. Grants and cooperative agreements.
3. Loans and loan guarantees.
4. Government purchase card and DOE/C-Web purchases up to \$25,000 for open market purchases and Federal Supply Schedule purchases.
5. Simplified acquisitions (described in Federal Acquisition Circular 97-02, Part 13; Department of Energy Acquisition Regulation 913) and orders against Federal Supply Schedules totaling \$25,000 to \$100,000 using the purchase card, DOE/C-Web, purchase orders, or delivery orders.
6. Individual transactions up to \$2,500 if using Government purchase card.
7. Nonacquisition personnel with unrestricted warrants.
8. Non-1102, administrative only warrants.
9. Resident engineer, administrative only, limited in authority as follows:
  - a. may issue change orders with an estimated amount not to exceed \$50,000, in accordance with the procedures (see FAR 43.2);
  - b. is limited to specific contracts;
  - c. authority expires upon completion of the contract; and
  - d. does not include authority to issue the modification to the contract to definitize the change order.
10. Real property management.

## DISTRIBUTION REQUIREMENTS

	Distribution					
Document	Contracting Officer (Original)	Contracting Officer (Copy)	Contracting Activity File	Cognizant Finance Office	Counsel <sup>1</sup>	ME-652
Certificate of Appointment (SF 1402), or written appointment to award an individual micropurchase or Government purchase card with \$25,000 limit	✓		✓	✓	✓	✓
Personal Qualifications Statement			✓			✓
Recommendation for Appointment			✓			✓
HCA Appointment Determination	✓		✓	✓	✓	✓
Termination of Appointment	✓		✓	✓	✓	✓
Local Directive (or other issuance) on Appointments		✓	✓	✓		✓
Appointment of Resident Engineer as an Administrative Contracting Officer with Limited Authority		✓	✓	✓		
Appointment as Contracting Officer Representative		✓	✓		✓	

<sup>1</sup>For Headquarters employees and SF 278 filers:

US Department of Energy  
Assistant General Counsel for General Law (GC-80)  
Headquarters

For field employees who file SF 450:

Local Field Counsel