



**NOT
MEASUREMENT
SENSITIVE**

**DOE G 430.1-7
XX-XX-11**

Alternative Financing Guide

[This Guide describes acceptable, but not mandatory means for complying with requirements. Guides are not requirements documents and are not to be construed as requirements in any audit or appraisal for compliance with associated rule or directives.]



**U.S. Department of Energy
Office of Engineering and Construction Management**

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I. PURPOSE

This document provides guidance for identification, planning and approval of alternatively-financed projects.

II. BACKGROUND

Alternative Financing (“AF”) is a process whereby DOE and its operational elements obtain the use of privately-developed capital assets through a lease. AF may be used by the DOE itself, or by DOE Management and Operations (“M&O”) contractors with the prior approval of the DOE, to obtain the use of real property assets as appropriate. If the lease is a DOE lease, payments would be made directly by the Departmental element to the property owner. If the lease is with the M&O contractor, the lease cost may be reimbursed by DOE through the M&O contract.

III. SCOPE

The Guide applies to proposals to lease real property assets developed via AF (an “AF Proposal”) when said proposals are otherwise required by the Office of Management and Budget (“OMB”) to be submitted for OMB review. The Guide applies to Departmental elements, including NNSA, with responsibility for real property assets.

IV. EXCLUSIONS AND EXEMPTIONS

No guidance herein should be implemented in a manner that would conflict with provisions of the National Nuclear Security Administration Act. The Power Marketing Administrations are excluded.

V. REFERENCES

- OMB Circular A-11, *Appendix A-Scorekeeping Guidelines, section 11- Scoring Purchases, and Appendix B, Budgetary Treatment of Lease-Purchases and Leases of Capital Assets(current year)*
- OMB Circular A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, section 5.c.3. Evaluation of Alternatives, and section 13. Special Guidance for Lease-Purchase Analysis (current year)*
- DOE O 413.3(series), *Program and Project Management for the Acquisition of Capital Assets*
- DOE O 430.1(series), *Real Property Asset Management*

VI. ALTERNATIVE FINANCING CRITERIA

Alternative Financing criteria begin with approval of mission need in accordance with DOE O 413.3(series) Critical Decision 0 (CD-0).

Thereafter, an Alternatives Analysis should be conducted and approved in accordance with OMB Circular A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (http://www.whitehouse.gov/omb/circulars_a094) (“A-94”) and DOE O 413.3(series) Critical Decision 1 (CD-1).

The final criterion for Alternative Financing projects is concurrence by OMB under OMB Circular A-11, *Appendix A-Scorekeeping Guidelines, section 11- Scoring Purchases, and Appendix B, Budgetary Treatment of Lease-Purchases and Leases of Capital Assets(current year)* (http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc) (collectively “A-11”). The Circular is reissued each year by OMB, and the most recent version should be consulted. The Office of Management and Budget (OMB) typically evaluates AF proposals against these criteria.

In addition to stated criteria, there are additional DOE directives and guidance that may apply to an AF transaction, including:

- DOE O 451.1B, *National Environmental Policy Act Compliance Program*, establishes DOE internal requirements and responsibilities for implementing the National Environmental Policy Act of 1969 (NEPA) and other environmental requirements
- DOE *Real Property Desk Guide*, with regard to the real estate lease acquisition process. http://fimsinfo.doe.gov/real_estate.htm

The specific internal operational criteria that should be considered include:

- **Location of proposed project** – If the proposal contemplates construction on Government land, it may be presumed to be for the special purpose of the Government.
- **Conveyance of Government-owned land** - If the proposal contemplates a sale, or transfer at no cost, of Government land to a private party, then Congressional notification may be required. Real estate staff, including a Certified Realty Specialist as applicable per DOE O 430.1(series), and legal counsel should be consulted if such a sale or transfer is contemplated.
- **Davis-Bacon Act Applicability** - The Davis-Bacon Act, 40 U.S.C. §276a (the “DBA”), applies to DOE contracts and subcontracts for construction of a public building or work in excess of \$2,000 and may apply to an AF project under certain circumstances. Review by legal counsel is necessary to determine if DBA applies to an AF proposal as discussed more thoroughly in section VIII – Phase 3.

VII. ROLES AND RESPONSIBILITIES

Site Office

Develops the Mission Need, Alternatives Analysis and AF Proposal with subject matter experts from the Site Office and local DOE servicing organizations, including, at a minimum, financial management, realty management (certified realty specialists), legal counsel, the NEPA Compliance Officer and the Contracting Officer. Where the M&O contractor will be party to the proposed lease in an AF project, develops an agreement for the reimbursement of the M&O contractor for allowable proposal

preparation costs. Reviews and endorses AF Proposal. Submits AF Proposal to Program Office. Makes a presentation of AF Proposal to Headquarters Review Team (HRT) in conjunction with Program Office.

Program Office

Approves Mission Need and Alternatives Analysis. Submits AF Proposals to OEMC for HRT review. Responds to comments and recommendations from HRT, provides additional information and/or revises AF Proposals if necessary. Forwards complete OMB Package to CFO for submission to OMB. Requests Under Secretary review, if desired, of AF Proposals not recommended by HRT. Makes presentation to OMB, in conjunction with HRT members as appropriate. Notifies Site Office when AF Proposals receive OMB concurrence. Coordinates with DOE-GC on Congressional notification, if applicable.

M&O Contractor

Develops, or contributes to the development of AF Proposals.

Office of Engineering and Construction Management (OECM)

Coordinates the headquarters review of AF Proposals. Distributes AF Proposals to HRT. Leads independent reviews and distributes to HRT and Program Office. Provides recommendations to HRT on real property aspects of AF Proposals and comments on other relevant issues. Communicates results of HRT review to Program Office.

Office of the Chief Financial Officer (CFO)

Reviews AF Proposals. Provides recommendations to HRT on budgetary and financial aspects of AF Proposals and comments on other relevant issues. Submits OMB Package. Communicates with OMB and arranges for presentation of OMB Package, when required.

Office of General Counsel (DOE-GC)

Reviews AF Proposals. Provides recommendations to HRT on legal aspects of AF Proposals and comments on other relevant issues. Coordinates with Program Office on Congressional notifications, when applicable.

Headquarters Review Team (HRT): (OECM, CFO and GC (DOE or NNSA, as appropriate) representatives.)

Meets to consider presentation of AF Proposals by Program Office and/or Site Office. Meets to discuss recommendations and comments made by members following review of AF Proposals. Reach consensus among members to produce HRT recommendations.

Director, Office of Management (MA-1)

Convenes meetings of HRT and Program representatives, and others, as appropriate.

Under Secretary

Directs implementation of AF Proposals, for Program Offices under his/her authority, following concurrence by OMB.

Deputy Secretary

When necessary, may review and resolve outstanding AF Proposal issues.

VIII. ALTERNATIVE FINANCING PROCESS

The process for evaluating an AF proposal will typically be conducted in five phases:

Any reimbursement to a contractor for proposal preparation costs should be in accordance with authorization provided by the Contracting Officer, such as in an “Advanced Agreement on Cost Allowability.”

Phase 1: Development of Mission Need

A Mission Need statement should be developed in accordance with DOE O 413.3(series)(CD-0).

Phase 2 – Development of Alternatives Analysis

Upon Program Office approval of the Mission Need, an Alternatives Analysis should be developed under A-94 and DOE Order 413.3(series)(CD-1).

Phase 3 - Development of an AF Proposal

After the mission need is established (CD-0) and Alternative Analysis (CD-1) is approved, the process to secure use of a facility developed through alternate financing may be formally pursued. An Alternative Financing proposal (the “AF Proposal”) should be developed and submitted to the Site Office addressing the requirements of A-11. The AF Proposal should also include, as attachments:

- a proposed facility lease
- land lease or deed, if applicable
- a proposed Congressional notification of land transfer, if applicable.

As early as possible during this phase, the DOE site Labor Standards Committee and its counsel should confer with DOE-HQ Office of the Assistant General Counsel for Labor and Pension Law (GC-63)(or NNSA General Counsel, as applicable) to determine if the DBA is applicable to a proposed alternatively financed project. The site should submit drafts of documents to which DOE or the M&O is anticipated to be a party (and any other relevant planning or other documents), including deeds, leases and any other agreements concerning the role of DOE or its contractors in the proposed alternatively financed transaction, to GC-63 (or NNSA General Counsel, as appropriate).

After Site Office review and endorsement, the AF Proposal should be forwarded to the Program Office for review.

Phase 4: Submittal of the AF Proposal to Headquarters (Headquarters Review Team (HRT)).

If the AF Proposal receives Program Office approval, it is submitted to OECM for review and distribution to the CFO and DOE-GC (or NNSA Counsel, if the proposal concerns an NNSA facility) for review. These offices comprise the HRT. The Program Office should provide multiple copies, at least 7 are recommended, of the complete AF Proposal and supporting documentation to OECM for distribution as follows: DOE-GC (2 copies)(or NNSA-GC, as applicable); CFO (3 copies), and OECM (2 copies).

The HRT would review the proposal, in accordance with their roles and responsibilities, identified herein, in accordance with Departmental and OMB A-11 criteria.

The Director, Office of Management (MA-1) would convene a formal meeting of Federal employees representing the appropriate review offices within (30) calendar days after distribution of the AF Proposal (the "HRT Meeting"). Federal officials of the Program and Site Offices should present and explain the AF Proposal at the HRT Meeting.

The HRT review and any external reviews should be completed within ninety (90) calendar days after formal receipt of the AF Proposal. If the HRT identifies additional information required to complete its review, the 90-day timeline could be suspended until the requested information is received. In the event the AF Proposal is modified from the original submission, the Program Office should conduct follow up meetings with the HRT and document the results. The review period could be adjusted if necessary.

The results of OECM's, CFO and DOE-GC (or NNSA-GC, when applicable) reviews and analyses would be forwarded to the Program Office by memorandum from MA with copies to HRT members. The Program Office would then have the opportunity to respond to any issues raised in the review prior to the HRT issuing its final recommendations. If revisions to the AF Proposal are required, the timeframe for completing the revisions and review thereof would be as mutually agreed to by the Program Office and the HRT.

After all HRT reviews have been completed, MA-1 would convene a meeting of the HRT to discuss the results. If the HRT endorses the AF Proposal, the Program Office would then prepare a package, along with supporting documentation, (including copies of the AF Proposal, the HRT recommendations, and all pertinent legal documents, as appropriate) (the "OMB Package") for submission to OMB through the CFO. The CFO would then submit the OMB Package to OMB.

AF Proposals not endorsed would be returned to the Program Office with a written explanation prepared by OECM. When the HRT does not endorse the AF Proposal, the Program Office may choose to:

- return the AF Proposal to the Site Office for further review and revision
- terminate the AF Proposal, or
- request a review by the Under Secretary who may ultimately decide to submit the AF Proposal to OMB, via CFO.

Phase 5: Submittal of the OMB Package; OMB review; notification of OMB concurrence, and; Under Secretary implementation.

After submitting the OMB Package, the CFO should communicate with OMB and, if requested, arrange for the Program Office, accompanied by HRT personnel (as appropriate), to make a formal presentation to OMB. The presentation should be made by a Federal employee who is familiar with the AF Proposal.

If OMB concurs, the AF Proposal would then be presented to the Under Secretary or other appropriately designated authority for implementation. The Program Office should notify the site manager that the AF Proposal has been approved. The site manager would then be able to authorize the M&O to initiate the process to develop and submit a final, formal proposal (the "Final AF Proposal") for development of the facility.

The Final AF Proposal should be within the parameters of the OMB Package. The site manager should review the Final AF Proposal for consistency with the elements of the OMB Package. The site manager should send copies of the Final AF Proposal to each member organization of the HRT.

If applicable, Congressional notification should be made and the AF project will not proceed until the applicable review period (i.e., 60 days for non-standard land transfers) has passed or the Congressional committees advise DOE that they are terminating their reviews. The Program Office should coordinate any such notification with legal counsel.

If the terms and conditions of the Final AF Proposal substantially change the scope of the proposal or negatively affect the scoring under A-11, the Program Office should submit a modified AF Proposal to OECM which would then distribute it to the HRT. MA-1 would strive to convene a meeting to discuss the changes, and then the same process as outlined above would be followed.