



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professionals of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Acquisition Planning Considerations for Management and Operating Contracts

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. AL 2009-03 is cancelled and superseded by this AL

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Who Is the Intended Audience For this AL?

Department of Energy (DOE) Contracting Officers are the audience for this AL.

Who is the Point of Contact for this AL?

DOE Contracting Officers may contact Jason Taylor of the Contracts and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management by phone at (202) 287-1560 or by email to Jason.Taylor@hq.doe.gov.

Need More Information on ALs?

Visit the website at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement> for information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to provide updated guidance on the unique acquisition planning procedures associated with management and operating (M&O) contracts.

What Types of Contracts Are Affected by this AL?

This AL applies to all management and operating (M&O) contracts.

What is the Background of this AL?

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.

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.

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, when the contract is awarded utilizing full and open competition. In addition, FAR 17.605 (b) and (c) indicate that replacement of an incumbent contractor should usually be based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, CO's should consider:

1. The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;
2. The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and
3. Whether it is likely that qualified offerors will compete for the contract.

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 extended with the incumbent contractor or competed. The practical effect of these two requirements is the Agency Head's authorization to extend or compete an M&O contract and the contracting officer's review occur serially.

What Guidance is included in this AL?

1. *What's new for Contracting Officers?*

Acquisition Alternatives Package

Prior to finalizing the written acquisition plan required by FAR, the Secretary must decide whether to extend or compete an M&O contract. To inform this decision, programs must prepare an Acquisition Alternatives Package twenty-four months before contract expiration. The package consists of an action memo for the Secretary to approve either a noncompetitive extension or a full and open competition, and the following attachments:

- a) A summary of acquisition alternatives which provides background, the statutory and regulatory basis for FFRDC and M&O contract decisions, a summary discussion of the continuing need for FFRDC designation (if applicable) and M&O form of contract, and a recommendation of whether to extend or compete the action supported by the analysis required by FAR 17.605(c);
- b) A discussion of the incumbent's performance history;
- c) An authorization to continue operating under an M&O contract for the Secretary to sign (See Attachments A, E and F to this AL);
- d) If applicable, an authorization to continue sponsorship of an FFRDC for the Secretary to sign (See Attachments C and D to this AL);
- e) If applicable, a review of the use and need for continued operation as an FFRDC in accordance with FAR 35.017-4; and
- f) If applicable, Congressional notification letters required by Section 995 of the Energy Policy Act (EPACT) of 2005

Acquisition Plan

At DOE, the cognizant Assistant Secretary must concur in and the Senior Procurement Executive must approve any acquisition plan for an M&O contract. However, NNSA approvals will be in accordance with the most recent revision of NNSA Policy Letter BOP-003.0304. The acquisition plan must adhere to Federal Acquisition Regulation (FAR) 7.105, Contents of written acquisition plans, and the associated coverage of these requirements in the Acquisition Guide Chapter 7.1, Acquisition Planning. In addition to the FAR and Acquisition Guide Chapter guidance, the acquisition plan must include the following:

1. In the discussion required by FAR 7.105 (b) (2), Competition, include a summary of the Acquisition Alternatives considered and the acquisition alternative approved by the Secretary.
 - a. If extension was the acquisition alternative approved by the Secretary, summarize the rationale and justification for the non-competitive extension. The maximum length of the extension cannot exceed five years. Both the acquisition plan and the 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.
 - b. If the acquisition alternative approved by the Secretary is full and open competition, include the supporting rationale and include a discussion of how it is anticipated that competition will meet the Department's expectation of meaningful improvement in performance or cost.
2. In addition, the acquisition plan must include:
 - a. A 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. The detailed performance history included in the Acquisition Alternatives analysis package approved by the Secretary may be attached and referenced.
 - b. Significant projects or other objectives planned for assignment during the planned contract period.
 - c. A discussion of principal issues and/or significant changes to be negotiated in the terms and conditions of the planned contract, including the extent to which performance-based management provisions are present in the existing contract, will be incorporated into the new contract, or can be negotiated into the existing contract.
 - d. a discussion of the potential impact of a change in contractors on program needs;
 - e. a discussion of whether it is likely that qualified offerors would compete for the contract;
 - f. Include the approved Authorization to Continue Operation of the Laboratory/Site/Facility Under a Management and Operating Contract as an attachment;

- g. Include the approved Approval to Continue Sponsorship of the Laboratory/Site/Facility as an attachment;
- h. Any other information pertinent to the decision.

The Acquisition Plan must be submitted for approval by the Senior Procurement Executive, through the cognizant Assistant Secretary and the Head of the Contracting Activity (HCA).

Justification for Other than Full and Open Competition

A justification for other than full and open competition (JOFOC) must be prepared when a non-competitive extension is contemplated, and must use the most appropriate statutory authority listed in FAR 6.302. The JOFOC must be prepared in accordance with FAR Part 6. Include the JOFOC as an attachment to the acquisition plan. The HCA and the cognizant program Assistant Secretary(s) shall sign the JOFOC to indicate their concurrence.

2. What's new for Other Officials Involved in the Acquisition Process?

This AL requires the Senior Procurement Executive to approve acquisition plans for M&O contracts, and HCA, and Assistant Secretary concurrence on JOFOCs to extend M&O contracts without competition.

3. Who has what responsibility for implementing this AL's guidance?

The Contracting Officer has the responsibility of implementing this AL.

4. What changes implemented by this AL's guidance affect current contracts, future contracts, or both?

This AL's guidance affects both current and future contracts.

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). Attachments E and F to this Acquisition Letter provide templates for Agency Head authorization of the M&O form of contract.

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 Alternatives Package.

Attachment B

**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 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 an 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

FFRDC Determination for a Contract Competition

**APPROVAL TO CONTINUE SPONSORSHIP OF
THE [insert the name of the laboratory/site/facility]
AS A FEDERALLY FUNDED RESEARCH AND
DEVELOPMENT CENTER**

The [insert the name of the laboratory/site/facility] is a Department of Energy (DOE) Federally Funded Research and Development Center (FFRDC) managed and operated by [insert the name of the contractor] under DOE Contract [insert contract number]. The current contract, which serves as the sponsoring agreement, expires [insert date]. [insert one or two sentences briefly describing the laboratory/site/facility mission]. Federal Acquisition Regulation (FAR) 35.017-4 provides for the Head of the sponsoring Agency to approve the continuance of the sponsorship of the FFRDC.

A new sponsoring agreement is currently being procured by the DOE [insert DOE office name], under Request for Proposals (RFP) number [insert RFP number]. The resultant contract from this competitive RFP will include a base period of [insert number of years] years with a [option or award term]/select appropriate clause clause that allows the contract to be extended for up to an additional [insert number of years] years. It is anticipated that the new contract will be in place by [insert date].

As Head of the Agency, as defined in FAR 2.101, I hereby determine, pursuant to FAR 35.017-4, that: (1) the technical needs and mission requirements performed by the FFRDC continue to exist at a level consistent with current needs; (2) consideration has been given to alternative sources in meeting DOE's needs; (3) in accordance with current annual assessments of the FFRDC's performance, the FFRDC continues to maintain a high level of performance in meeting the sponsor's needs; (4) the FFRDC has maintained an adequate and cost-effective operation; and (5) the criteria for establishing the FFRDC continue to be satisfied and the sponsoring agreement is in compliance with FAR 35.017-1. Accordingly, I approve the continued operation of [insert the name of the laboratory/site/facility] as a DOE FFRDC for a five year period that will be effective on the date of the new contract award. **[Note - The term of a FFRDC cannot exceed 5 years]**

[insert the Secretary of Energy's name]
Secretary of Energy

Date

Attachment D

FFRDC Determination for a Contract Extension

**APPROVAL TO CONTINUE SPONSORSHIP OF
THE [insert the name of the laboratory/site/facility]
AS A FEDERALLY FUNDED RESEARCH AND
DEVELOPMENT CENTER**

The [insert the name of the laboratory/site/facility] is a Department of Energy (DOE) Federally Funded Research and Development Center (FFRDC) managed and operated by [insert the name of the contractor] under DOE Contract [insert contract number]. This contract, which serves as the sponsoring agreement, expires on [insert date]. A non-competitive contract extension is currently being pursued in accordance with FAR 6.301. [In one or two sentences, briefly describe the laboratory/site/facility mission]. Federal Acquisition Regulation (FAR) Subpart 35.017-4 provides for the Head of the sponsoring Agency to approve the continuance of the sponsorship of the FFRDC.

As Head of the Agency, as defined in FAR 2.101, I hereby determine, pursuant to FAR 35.017-4, that: (1) the technical needs and mission requirements performed by the FFRDC continue to exist at a level consistent with current needs; (2) consideration has been given to alternative sources in meeting DOE's needs; (3) in accordance with current annual assessments of the FFRDC's performance, the FFRDC continues to maintain a high level of performance in meeting the sponsor's needs; (4) the FFRDC has maintained an adequate and cost-effective operation; and (5) the criteria for establishing the FFRDC continue to be satisfied and the sponsoring agreement is in compliance with FAR 35.017-1. Accordingly, I approve the continued operation of [insert the name of the laboratory/site/facility] as a DOE FFRDC for the period [insert the starting date] through [insert the end date]. **[Note – The term of a FFRDC cannot exceed 5 years]**

[insert the Secretary of Energy's name]
Secretary of Energy

Date

[M&O Authorization for a Contract Competition]

**AUTHORIZATION TO CONTINUE OPERATION OF
THE [insert the name of the laboratory/site/facility]
UNDER A MANAGEMENT AND OPERATING CONTRACT**

The [insert the name of the laboratory/site/facility] is currently managed and operated by [insert the name of the contractor] for the Department of Energy under a Management and Operating (M&O) contract as defined in Federal Acquisition Regulation (FAR) Subpart 17.6. The current contract and the determination authorizing the M&O form of contract expire on [insert the expiration date]. [In one or two sentences, briefly describe the laboratory/site/facility mission].

A new contract is currently being procured by the DOE [insert DOE office name], under Request for Proposals (RFP) number [insert RFP number]. The resultant contract from this competitive RFP will include a base period of [insert number of years] years with a [option or award term]/select appropriate clause clause that allows the contract to be extended for up to an additional [insert number of years] years. It is anticipated that the new contract will be in place by [insert date].

The continued operation of [insert the name of the laboratory/site/facility] will require the type of contractual arrangement that, by both its purpose and special relationship it creates between the government and the contractor, is characterized as an M&O contract as defined in FAR 17.601. As set forth in FAR 17.602(a), the Head of an Agency may determine in writing to authorize contracting officers to enter into, or renew, M&O contracts in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts.

As Head of the Agency, as defined in FAR 2.101, I hereby authorize the continued use of a management and operating contract arrangement for the operation of [insert the name of the laboratory/site/facility] during the period of [insert the starting date] through [insert the end date].

[Note: In accordance with DEAR 970.1706-1, the total term of an M&O contract cannot exceed ten (10) years.]

[insert the Secretary of Energy's name]
Secretary of Energy

Date

[M&O Authorization for a Non-competitive Extension]

**AUTHORIZATION TO CONTINUE OPERATION OF
THE [insert the name of the laboratory/site/facility]
UNDER A MANAGEMENT AND OPERATING CONTRACT**

The [insert the name of the laboratory/site/facility] is currently managed and operated by [insert the name of the contractor] for the Department of Energy under DOE contract [insert contract number]. This contract is a Management and Operating (M&O) contract as defined in Federal Acquisition Regulation (FAR) Subpart 17.6. The current contract and the determination authorizing the M&O form of contract expire on [insert the expiration date]. A non-competitive extension is currently being pursued in accordance with FAR 6.301. [In one or two sentences, briefly describe the laboratory/site/facility mission].

The continued operation of [insert the name of the laboratory/site/facility] will require the type of contractual arrangement that, by both its purpose and special relationship it creates between the government and the contractor, is characterized as an M&O contract as defined in FAR 17.601. As set forth in FAR 17.602(a), the Head of an Agency may determine in writing to authorize contracting officers to enter into, or renew, M&O contracts in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts.

As Head of the Agency, as defined in FAR 2.101, I hereby authorize the continued use of a management and operating contract arrangement for the operation of [insert the name of the laboratory/site/facility] during the period of [insert the starting date] through [insert the end date].

[insert the Secretary of Energy's name]
Secretary of Energy

Date