Department of Energy
Acquisition Regulation

No. AL 2002-02
Date: 1/08/2002

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executive of DOE and NNSA

Subject: **Implementation of Fiscal Year (FY) 2002 Legislative Provisions**

References:

DEAR 917.6	Management and Operating Contracts
DEAR 970.1702-1	Term of Contract and Option To Extend

When is this Acquisition Letter (AL) Effective?

This AL implements certain provisions contained in the Energy and Water Development Appropriations Act 2002, Pub. L. 107-66, and the Department of Interior and Related Agencies Appropriations Act 2002 Pub. L. 107-63. The statutory provisions addressed in this AL are effective on the date of enactment of the Act containing the provision. The Energy and Water Development Appropriations Act 2002, was enacted on November 12, 2001. The Department of Interior and Related Agencies Appropriations Act 2002, was enacted on November 5, 2001.

When Does this AL Expire?

This AL will remain in effect until superseded or canceled. This AL supersedes AL 2000-11 dated December 15, 2000.

Who is the Point of Contact?

Contact Denise Wright of the Office of Procurement and Assistance Policy at (202) 586-6217.

Visit our website at www.pr.doe.gov for additional information on Acquisition Letters and other policy issues.

AL-2002-02 (1/08/2002)

What is the Purpose of this Acquisition Letter?

The purpose of this Acquisition Letter (AL) is to provide information and guidance regarding the Department's implementation of the following statutory provisions and legislative direction.

- Sections 301, 304, 501, 502 and legislative direction provided in the House and Conference Reports (Augmenting Federal Staff, Limitation on Multi-Year Funding Agreements, Contractor Travel) of the FY 2002 Energy and Water Development Appropriations Act, Pub. L. 107-66, hereinafter referred to as the "Energy and Water Act."

- Sections 301, 302 and an administrative provision contained in the FY 2002 Department of Interior and Related Agencies Appropriations Act, Pub. L. 107-63, hereinafter referred to as the Interior Act.

Detailed guidance regarding the scope of these provisions is provided below.

What is the Background?

Sections 301, 304, 501, and 502 of Energy and Water Development Act are carried-over from the FY 2001 Energy and Water Development Appropriations Act (Pub. L. 106-377). However, Section 301 includes a modification from previous years Energy and Water Development Acts.

Sections 301 and 302 of the Interior Act are carried-over from the FY 2001 Department of Interior and Related Agencies Appropriations Act (Pub. L.106-291). An unnumbered administrative provision included in this Act is similar to Section 304 of the Energy and Water Act whereby no funds provided in this Act may be expended to prepare, issue, or process procurement documents when appropriations have not been made. This provision is a carry-over from the FY 2001 Department of Interior Act (Pub. L. 106-291) and FY 2001 Energy and Water Act (Pub. L. 106-377) Section 304.

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I. Summaries of Statutory Provisions and Legislative Direction

Energy and Water Act

Section 301. Prohibits the use of funds appropriated by this Act for the award of a management and operating (M&O) contract or an award of a significant extension or expansion to an existing M&O contract unless competitive procedures are used. The Secretary of Energy may grant, on a case-by-case basis, a waiver to allow for other than competitive procedures. The Secretary may not delegate the authority to grant a waiver. The requirement parallels existing DOE policy set forth in DEAR 917.602 providing for full and open competition in the award, amendment, or modification of M&O contracts and requiring a justification and Head of Agency authorization when such awards are made without providing for full and open competition. Additionally, Section 301 requires the Secretary to submit a report 60 days before contract award, for which the Secretary intends to grant such a waiver, to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate. The notification to the Subcommittees of the waiver shall set forth, in specificity, the substantive reasons why the Secretary believes the requirement for competition should be waived for this particular award. *Note: The underlined words are changes from prior year statutory language.*

Section 304. Prohibits the use of funds appropriated in the Energy and Water Act to prepare or initiate Request For Proposals (RFPs) for a program if Congress has not funded the program.

Section 501. Prohibits the use of funds appropriated in the Act, either directly or indirectly, to influence congressional action on any legislation or appropriation matter pending before Congress, other than to communicate to Members of Congress as described in section 1913 of title 18, United States Code.

Section 502. Provides that it is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds appropriated by this Act should be American-made. Additionally, when providing financial assistance to or entering into any contract with any entity notice of this policy shall be given. This section prohibits the award of contracts and subcontracts to persons who falsely label products as made in America. Persons determined by a court or Federal agency to have intentionally affixed such a false label, or any inscription with the same meaning, will be ineligible to receive any contract or subcontract using funds made available in the Act, pursuant to the debarment, suspension, and ineligibility procedures contained in FAR 9.4.

Interior Act

Section 301. Provides that any publicly funded consulting service contract pursuant to 5 U.S.C. 3109 be limited to those contracts where expenditures are a matter of public record and are available for public inspection, except where otherwise provided by law or Executive order.

Section 302. Prohibits the use of appropriations for any activity or publication/distribution of literature to promote public support or opposition to any legislative proposal on which Congressional action is not complete.

Administrative Provision (unnumbered). Similar to Section 304 of the Energy and Water Act, this section of the Interior Act prohibits the use of funds to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

Legislative Direction - Energy and Water Act

Augmenting Federal Staff. Requires that the Department of Energy provide a report to the Energy and Water Development Appropriations Committee on the use of M&O contractor employees assigned to the Washington metropolitan area and support service contractors at headquarters.

Limitation on Multi-year Funding Agreements (Environmental and Other Defense Related Activities). Directs the Department of Energy not to sign any new funding agreements that commit more than one year of funding for science and technology activities.

Contractor Travel. Directs the Department to maintain a tracking system that will allow for periodic reviews of contractor travel costs and destinations.

II. Use of Other Than Competitive Procedures for Management and Operating Contracts and Extensions

What is the scope of this requirement?

The requirements of Section 301 of the Energy and Water Act apply to M&O contract awards. This section affects new M&O contracts and the award of a significant extension or expansion to an existing M&O contract beyond the term provided for in the contract (except as noted below) that are awarded using funds appropriated in the Act without providing for full and open competition in accordance with the policies and procedures set forth at DEAR 917.602(b) and FAR Subpart 6.3. Section 301 and the guidance set forth herein, do not apply to the exercise of an option in accordance with DEAR 970.1706-1.

What procedures need to be followed to implement this requirement?

The justification and Secretarial authorization required by DEAR 917.602(b) will address and satisfy the Secretarial authorization requirements of Section 301 of the Energy and Water Act for M&O contracts and significant extensions or expansions that are awarded without using competitive procedures.

The Office of Contract Management will develop the Secretarial notification to Congress and will coordinate its approval and signature by the Secretary. The written notification to the Subcommittees on Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate will be provided as soon as practicable following the Secretarial authorization required by DEAR 917.602(b), but not later than 60 days prior to contract award, amendment, or modification of an M&O contract that is subject to the requirements of Section 301 of the Energy and Water Act.

III. Preparation and Issuance of Procurement Documents for Unfunded Programs

What is the scope of this requirement?

The requirement of Section 304 of the Energy and Water Act and the unnumbered administrative provision contained in the Interior Act apply to initiatives proposed as budget line-item programs or projects for which Congress has specifically denied funding in either of these acts, or in any prior appropriations act. These provisions also apply to any program or project that Congress explicitly has declined to fund.

These provisions do not preclude issuing RFPs subject to the availability of funds (e.g., FAR 32.703-2), as long as the procurement is not in support of a program or project for which Congress has, as described above, specifically denied funding under either of the acts, or any prior appropriations act.

What procedures need to be followed to implement this requirement?

- Program/Project Managers and Budget Officials shall not initiate and/or certify procurement requests for goods or services that are in support of a program or project where funding has been specifically denied by Congress under the Energy and Water Act, the Interior Act, or any prior appropriations act, as previously described.

- Contracting activities shall not prepare, issue, or process procurement documents, including RFPs or draft RFPs for goods or services in support of a program or project requirement for which funds have not been properly certified by the designed authorities as appropriate and available for the requirement.

IV. Lobbying Restrictions

What is the scope of this requirement?

Section 501 of the Energy and Water Act, and Section 302 of the Interior Act apply to all solicitations and awards of contracts under which funds appropriated in either act are obligated.

What procedures need to be followed to implement this requirement?

The following clause shall be incorporated into solicitations and awards of contracts where the expenditure of funds is made available under the Energy and Water Act:

Lobbying Restriction (Energy and Water Development Appropriations Act, 2002)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

The following clause shall be incorporated into solicitations and awards of DOE contracts where the expenditure of funds is made available in the Interior Act:

Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2002)

The contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

V. Purchase of American-Made Equipment and Products-Sense of Congress

What is the scope of this requirement?

Section 502, paragraphs (a) and (b) of the Energy and Water Act apply to all solicitations and awards of contracts using funds appropriated in the act.

What procedures need to be followed to implement this requirement?

The following notice shall be incorporated into solicitations and awards of contracts using funds appropriated in the Energy and Water Act.

Notice Regarding the Purchase of American-Made Equipment and Products-Sense of Congress.

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American -Made.

(End of Notice)

VI. Prohibition of Contracts with Persons Falsely Labeling Products as Made in America.

What is the scope of this requirement?

Section 502, paragraph (c), of the Energy and Water Act, applies to contracts, and subcontracts, under which funds are appropriated in this act and obligated.

What procedures need to be followed to implement this requirement?

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

If DOE, or contractor personnel become aware of a possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported to the contracting officer.

The report of an entity in violation of the prohibition against falsely mislabeling products as American-Made should be submitted to the DOE Office of Contract Management, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

VII. Legislative Direction - Energy and Water Act

Augmenting Federal Staff

What is the scope of this requirement?

The Department is to provide a report on January 31, 2002 for the period October 1, 2000 through September 30, 2001 on the use of M&O contractor employees assigned to the Washington metropolitan area. The report is also to include detailed information for each support service contract at Headquarters. The committee continues to believe there is too much reliance on support service contractors and other non-Federal employees throughout the Department of Energy.

What procedures need to be followed to implement this requirement?

Controls for the use of facility contractor employees for services in the Washington metropolitan area are established in DOE Order 350.2, "Use of Facility Contractor Employees for Services to DOE in the Washington, D.C. Area". The HQ Office of

Contract Management is responsible to prepare and submit the report to the Committee. While support service contract ceilings were discontinued, the use of such contracts will continue to be monitored by the Office of Procurement and Assistance Management.

Limitation on Multi-year Funding Agreements for Environmental and Other Defense Related Activities

What is the scope of this requirement?

The Department may not sign any new funding agreements that commit more than one year of funding for science and technology activities. Exemptions to this direction include basic and applied research projects that have been competitively awarded; competitively awarded science and technology projects that are phased, providing that each successive award period is predicated on successful performance of the previous phase; continued scientific merit, and mission relevance of the work to environmental management; and projects requiring significant infrastructure investment that will be cost shared between the Department of Energy and the performing entity.

For new science and technology projects not satisfying one of the exemptions, the Department shall provide written notification to the Committee of its intent to enter into an agreement that commits more than one year of funding a minimum of 60 days prior to award. This notification must provide a detailed description of the project, the expected benefits, and a justification for multiple year funding.

What procedures need to be followed to implement this requirement?

The program responsible for the science and technology project provides the written notification to the Committee of its intent to enter into an agreement that commits more than one year of new funding. New funding agreements will not be signed unless notification has been made a minimum of 60 days prior to award. Contracting officers will include a copy of the notification in the award file.

Contractor Travel

What is the scope of this requirement?

A statutory ceiling limitation on contractor travel has not been imposed on the

Department for FY 2002, however, each program organization within the Department is expected to ensure that contractor travel is limited to critical mission functions and that administrative travel to Washington is limited. The Department is directed to maintain a tracking system that will allow for periodic reviews of contractor travel costs and destinations.

What procedures need to be followed to implement this requirement?

Internal departmental ceilings will be established and tracked as administrative targets managed by the Office of Management, Budget, and Evaluation. Questions concerning travel ceilings may be directed to the Budget Analysis Division (ME-31) within the Office of Budget.