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U.S. DEPARTMENT OF ENERGY

memorandum

DATE: October 5, 1983

REPLY TO
ATTN OF: MA-421 (Cumesty)

SUBJECT: Management and Operating Contracts

TO: Those On Attached List

ACTION C & D
INFO Mgr
R.F. _____
AMA ✓
AME & S _____

The contractual instrument used by Department of Energy (~~DOE~~) ^{AMO} for its major research, production and weapons facilities has come to be called a management or operating contract. For some forty years this Department and its predecessor agencies have benefited from this unique relationship which was fashioned by the Manhattan Engineer District during the Second World War, refined by the Atomic Energy Commission and continued under Energy Research and Development Administration and DOE. Over the years these contractors have had a remarkable record of scientific and technical success. Their successful performance is due, in part, to the contractual relationship itself. That is, the management contract is designed to dedicate the technical and administrative skills of a private organization to a significant Federal mission in a close, long-term cooperative relationship.

The Federal Acquisition Regulation (FAR) -- one of the Administration's major procurement reform efforts -- recognizes the management and operating contract as a distinct concept. The FAR defines management and operating contract as ". . . an agreement under which the Government contracts for the operation, maintenance or support, on its behalf, of a Government-owned or -controlled research, development, special production or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency."

If the nation is to continue to benefit from the use of the management contract concept in carrying out DOE's program responsibilities, we must ensure that the concept is well understood and thoughtfully employed. At this time, there are a number of issues relating to this group of contracts raised by the White House Science Council's Federal Laboratory Review Panel and the President's Private Sector Survey on Cost Control as well as issues generated within the Department. The Department's response to these issues must be consistent with the nature and purpose of these contracts. It is, therefore, timely to state and reaffirm the principles which have been the basis for this group of contracts as well as call attention to the significant characteristics that these contracts share which set them apart from the normative Federal acquisition contract.

Central to a proper understanding of the management contract is the decision by the Government to take advantage of private sector expertise rather than develop that capability in the public sector. Given this premise, the following principles provide the policy framework for the actual contracts:

- (i) The Government retains responsibility for overall program management and project technical direction while the contractor is responsible for the day-to-day management of the work.

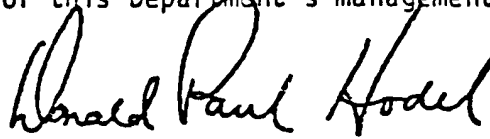
- (ii) The Government and contractor have an identity of interest in the mission being pursued.
- (iii) The parties intend a long-term close relationship.
- (iv) The Government assumes virtually all financial risk.
- (v) The contractor is hired to manage.
- (vi) The contractor broadly supports the performance of Government functions by executing programs of national significance on behalf of the Government.
- (vii) The Government ultimately is responsible for security, health and safety and the proper use of public funds.

The specific contract language that honors these principles varies somewhat with the particular contractor and the nature of the mission to which that contractor is dedicated. However, the following common characteristics of management contracts are worthy of note:

- (i) All are cost reimbursement contracts with cost allowability predetermined in almost all instances.
- (ii) The contracts are normally extended in five year increments. If it appears likely that the Government's position may be meaningfully improved in terms of cost or performance, competition is sought unless a change in contractor would be contrary to the best interest of the Government.
- (iii) The contract describes in broad terms the scope of work and recognizes that long-term and annual work programs will be jointly developed without formal amendment of the contract.
- (iv) Broad administrative personnel and fiscal policies and procedures are established by the contract with the details reserved to extra contractual documents.
- (v) Funds are advanced pursuant to a letter of credit and deposited in a special bank account for use as needed.
- (vi) The contractor is organizationally segregated from its parent organization but is expected to utilize corporate experience and practices.
- (vii) Normally the books of account are Government owned and integrated into the DOE system of accounts.

- (viii) The contractor is required to provide fair and equitable treatment of its subcontractors and is encouraged to use the flexibility inherent in its private business practices.
- (ix) The Government retains broad rights to give direction in technical matters as well as generally control security, health and safety and the overall budget of the operation. The contractor performs its management and operating functions consistent with such guidance.

It is expected that each of you will bear in mind the foregoing as you consider various issues which could, either directly or indirectly, impact the continued effective utilization of this Department's management and operating contracts.



DONALD PAUL HODEL