



The Deputy Secretary of Energy
Washington, DC 20585

June 13, 2005

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM

CLAY SELL

A handwritten signature in cursive script that reads "Clay Sell".

SUBJECT:

Interim Guidance for Evaluating Certain Contractor Proposals to
Obtain the Use of Real Property

There is growing interest and activity by Department of Energy contractors to obtain the use of office space or other facilities through various third-party financing and lease arrangements. These kinds of arrangements differ from traditional line item funding, are often complex, and have the potential to assist the Department in achieving its missions cost effectively and efficiently. However, they must stand up to rigorous review and analysis.

I am directing the Office of Engineering and Construction Management, within the Office of Management, Budget and Evaluation, to coordinate with you and your staff to develop the details of policies and procedures for validating the business case before contractors proceed with a private capital arrangement. In the meantime, the attached Interim Guidance will ensure that the Department reviews and analyzes contractor proposals appropriately.

Attachment



Interim Guidance for Evaluating Certain Contractor Proposals to Obtain the Use of Real Property

In the past few years, Department of Energy contractors have submitted for DOE review and approval an increasing number of proposed arrangements whereby the contractor would obtain the use of office space or other facilities through various third-party financing and lease arrangements. These proposals are sometimes referred to as alternative financing, third party financing, public-private partnerships, privatization, and/or private capital arrangements. While contractors have advocated the use of these arrangements, and they may be advantageous to the contractor and DOE in some circumstances, they require special scrutiny to ensure that they comply with applicable Office of Management and Budget (OMB) guidance, do not obscure accurate budget depiction, and comply with all applicable laws and regulations.

Therefore, I believe it is essential that we apply rigorous and consistent policies and procedures throughout the Department when reviewing certain arrangements in which a contractor proposes to obtain the use of real property or an improvement thereto. I am directing the Office of Engineering and Construction Management (OECM), within the Office of Management, Budget and Evaluation/Chief Financial Officer, to coordinate with you and your staffs in developing the details of those policies and procedures. To ensure that appropriate and rigorous reviews are performed in the meantime, I am directing that any proposed financing arrangement involving a DOE contractor obtaining and charging to DOE as an allowable cost the use of real property assets valued at \$5 million or more, and involving an arrangement other than a contractor of the Department purchasing the asset or entering into a capital lease for the asset, be reviewed by OECM, approved by appropriate field counsel and the Department of Energy's Office of General Counsel, and approved by the appropriate principal secretarial officer.

In reviewing such arrangements, and before approving them, the cognizant Department officials should ensure that they are in the best interest of the taxpayers and that they are not being used to acquire government ownership of assets. When submitting a proposal for the Department's review, the contractor must submit an economic analysis demonstrating that any costs to the Department are reasonable in the circumstances. Any lease costs to be passed on by a contractor to the Department must be reasonable in comparison to available alternatives and reflect realistic projections of appropriate costs. OECM must also conduct an independent economic analysis consistent with Appendix B of OMB Circular A-11 (Preparation, Submission and Execution of the Budget), and OMB Circular A-94 (Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs), and any successors to those circulars. In developing the analysis of constructions cost and evaluating a contractor's proposal, the process and analysis set out in DOE O 413.3, "Program and Project Management for the Acquisition of Capital Assets" should be followed. Even though the methodology employed in Critical Decision O, "Determining Mission Need" and the alternative strategy/business case analysis component of Critical Decision 1, "Approve Alternative Selection and Cost

Range" is geared toward evaluating the acquisition of DOE property, it is also well suited to evaluating contractor proposals covered by this Interim Guidance. Determinations regarding contractor proposals involving third-party financing and lease arrangements and meeting the monetary threshold identified above should have the same approval levels within the Department as those used in the DOE Order and Manual for CD-0 and CD-1 and should indicate why a DOE acquisition or lease of existing space would not be viable alternatives.

The legal and economic review conducted by the Department must address all relevant issues; what those issues are will depend upon the unique circumstances of each transaction. At the very least, however, the Department's analysis must address the budget scoring implications of the proposal, and whether provisions of the Davis-Bacon Act (40 U.S.C. 276a) will be implicated.

OECM is designated as the Departmental point of contact for coordinating the review of contractor proposals of the type discussed above. OECM is responsible for assuring that such proposals are supported by an evaluation of business case alternatives and are otherwise in compliance with applicable laws and regulations based on the required approval of the Department's Office of General Counsel.

This Interim Guidance is not applicable to capital improvement projects entered into under Energy Savings Performance Contract authority (42 U.S.C. 8287).

This Interim Guidance and its requirements are effective immediately. For additional information, or for guidance in processing proposed, in-process, or future arrangements of the type discussed in this memorandum, please contact Jim Rispoli, Director of OECM, at 202-586-5195.

ALL DEPARTMENTAL ELEMENTS:

Associate Deputy Secretary
Under Secretary for Energy, Science and Environment
Under Secretary for Nuclear Security/Administrator for National Nuclear Security Administration
Executive Director, Office of the Secretary of Energy Advisory Board
Departmental Representative to the Defense Nuclear Facilities Safety Board
Assistant Secretary for Energy Efficiency and Renewable Energy
Assistant Secretary for Environmental Management
Assistant Secretary for Environment, Safety and Health
Assistant Secretary for Fossil Energy
Assistant Secretary for Congressional and Intergovernmental Affairs
Assistant Secretary for Policy and International Affairs
Chief Information Officer
Administrator, Energy Information Administration
General Counsel
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Director, Office of Civilian Radioactive Waste Management
Director, Office of Nuclear Energy, Science and Technology
Director, Office of Science
Director, Office of Legacy Management
Director, Office of Counterintelligence
Director, Office of Economic Impact and Diversity
Director, Office of Hearings and Appeals
Director, Office of Intelligence
Director, Office of Management, Budget & Evaluation/Chief Financial Officer
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Director, Office of Security and Safety Performance Assurance
Director, Office of Electricity Delivery and Energy Reliability
Power Marketing Administration Liaison Office

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Los Alamos National Laboratory
National Energy Technology Laboratory
National Renewable Energy Laboratory
New Brunswick Laboratory
Oak Ridge National Laboratory
Pacific Northwest National Laboratory
Princeton Plasma Physics Laboratory
Sandia National Laboratories New Mexico and California
Savannah River Ecology Laboratory
Savannah River National Laboratory
Stanford Linear Accelerator Center
Thomas Jefferson National Accelerator Facility (Jefferson Lab)
University of California, Los Angeles (Center for Molecular Medicine – formerly
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| Nevada Site Office | Stanford Site Office |
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FIELD CHIEF FINANCIAL OFFICERS:

Vice-President, Policy Management & Finance/Bonneville Power Administration
Chief Financial Officer, Chicago Operations Office
Chief Financial Officer, Federal Energy Regulatory Commission
Finance Team Leader, Golden Field Office
Chief Financial Officer, Idaho Operations Office
Director, Capital Accounting Center
Chief Financial Officer, National Energy Technology Laboratory
Director, NNSA Office of Field Financial Management/CFO, Nevada Site Office
Finance Manager, Naval Petroleum Reserves 3
Chief Financial Officer, Ohio Field Office
Chief Financial Officer, Oak Ridge Operations Office
Chief Financial Officer, Pittsburgh Naval Reactors Office
Assistant Manager, Administration, Richland Operations Office
Chief Financial Officer, Office of River Protection/Richland Operations Office
Assistant Administrator, Finance and Marketing/Southeastern Power
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Chief Financial Officer, Schenectady Naval Reactors Office
Director, Planning and Financial Management Division/Strategic Petroleum
Reserve Project Management Office
Chief Financial Officer, Savannah River Operations Office
Director, Division of Financial Management/Chief Financial Officer,
Southwestern Power Administration
Chief Financial Officer, Western Area Power Administration