

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. DEPARTMENT OF ENERGY
AND THE
U.S. DEPARTMENT OF THE ARMY

8/87

I. INTRODUCTION.

a. Background.

The Department of Energy (DOE) is responsible for the acquisition and management of real estate needed for the programmatic mission of that Department, pursuant to the provisions of section 647 of the Department of Energy Organization Act (42 U.S.C. 7257, P.L. 95-91, 91 STAT 565) and other statutes. The U.S. Department of the Army, acting through the U.S. Army Corps of Engineers (Corps), is willing to assist DOE in all facets of work involved in the acquisition of real estate that may be required by DOE, and such other services as may, from time to time, be required to accomplish DOE's programmatic mission.

b. Authority.

(1) Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256).

(2) Section 219 of P.L. 89-298 (79 STAT 1073 (1965)).

~~(3) The Economy Act of 1932 (40 U.S.C. 278a) (Repealed by P.L. 100-678, 17 Nov 88.~~

c. Purpose.

The purpose of this Memorandum of Understanding (MOU) is to provide DOE and the Corps with procedural guidance for the orderly and timely accomplishing of real estate actions by the Corps on behalf of DOE.

d. Policy.

The Corps will provide real estate services when requested by the DOE, subject to availability of manpower and necessary funds. Nothing in this MOU shall be construed to require DOE to use the services of the Corps, nor to require the Corps to accept the work from DOE. However, both agencies shall cooperate to the extent possible in furtherance of DOE's programmatic mission.

2. MANAGEMENT AND PROGRAM GUIDELINES.

a. General.

(1) The Corps will acquire land and interests therein on behalf of DOE in accordance with normal Corps procedures and with all applicable generic Federal laws and regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 84 STAT 1894, 42 U.S.C. 4601), as amended.

Department of Energy

- (2) Any instructions, constraints, or conditions unique to a specific project or program will be set forth in the Task Order Statement for that project or program.
- (3) In any situation traditionally dictated by specific Agency policy rather than generic Federal legislation or policy, a mutually agreeable policy shall be determined between DOE and the Corps.
- (4) The Corps will also be guided by the policies of the Department of Justice (DOJ) as specifically defined in the following publications:
 - (a) "A Procedural Guide for the Acquisition of Real Property by Government Agencies," Department of Justice, Land and Natural Resources Division, 1972;
 - (b) "Uniform Appraisal Standards for Federal Land Acquisition," Interagency Conference, 1973;
 - (c) "Standards for the Preparation of Title Evidence in Land Acquisition by the United States," Department of Justice, Land and Natural Resources Division, 1970; and
 - (d) Any other publication or Attorney General opinion as appropriate, or amendment or revision to the standards listed above.

b. Requesting Real Estate Acquisition Services.

(1) New Requests.

- (a) New requests for real estate services, whether on a one time basis or for a multiphase project or program, shall be initiated by the DOE Chief, Real Property Branch, Office of Project and Facilities Management and forwarded to the Corps' Director of Real Estate, Office of the Chief of Engineers. Requests for services may be divided into planning and acquisition phases and DOE may request the Corps to provide planning/analysis reports or appraisals without any obligation to retain the Corps to acquire the real estate interests.
- (b) Planning services may include the location, analysis, estimate of costs, both administrative and acquisition related, and comparison of alternative sites as requested by and in conformance with criteria specified by the DOE Chief.
- (c) Activities related to real estate acquisition including, but not limited to, appraisals, title examination, negotiation of the terms of easements, leases, acquisitions, settlements, closings, and preparation of condemnation papers. also, all matters relating to relocation assistance under P. L. 91-646, including determinations on appeals and decisions with respect to

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as amended,

last resort housing will, if requested by the DOE Chief, be the responsibility of the Corps. These services shall be performed in accordance with the terms of this MOU and any other guidance that the DOE Chief shall provide to the Corps.

- (d) Site selection and condemnation decisions shall be the responsibility of DOE.
- (e) The request for real estate services shall include sufficient information on the tasks and duration of the project to permit the Corps to determine if it can provide the requested services.
- (f) Upon agreement between the DOE Chief and the Corps' Director of Real Estate on a Statement of Work and time of performance, the DOE Chief will provide this information to the appropriate DOE Field Organization.
- (g) As the DOE Field Organization will provide the funding, the Head of the DOE Field Organization will review and, if in agreement, authorize the DOE Field Organization Contracting Officer (DOE Contracting Officer) to sign the Task Order. The Task Order will be the obligating document once it is signed by the DOE Contracting Officer.
- (h) The DOE Chief will provide the Corps' Director of Real Estate with the name of the DOE Field Organization requesting the real estate services, and the Corps' Director of Real Estate will provide the name of the District or Division Office of the Corps that will perform the requested services.
- (i) Thereafter, the DOE Field Organization will provide any necessary additional information.

(2) Amendment of Requests.

- (a) The DOE Contracting Officer may, during the course of the project, make reasonable revisions in the Statement of Work or the costs set forth in the Task Order, except as limited below:
 - 1 When there is a proposal to acquire interests different than those specified in the original Statement of Work.
 - 2 When the original cost is exceeded by more than 25 percent for projects of \$1,000,000 or less or 15 percent for projects of more than \$1,000,000.
 - 3 When the number of acres to be acquired is exceeded by more than 25 percent for projects of 1,000 acres or less and 15 percent for projects of more than 1,000 acres.

4 When the original administrative cost paid by DOE for services provided by the Corps is exceeded by more than 25 percent.

- (b) It will be the responsibility of the DOE Field Organization to advise the DOE Chief of any change in the Statement of Work or costs.
- (c) Any amendments which exceed the above-noted limitations to the authority of the DOE Contracting Officer, shall be approved by the DOE Director of Administration (the DOE Director).
- (d) Amendments which require the approval of the DOE Director will be forwarded by the DOE Chief to the Corps' Director of Real Estate for continuance of action. Those amendments which are done under the authority of the DOE Field Organization may be forwarded by the DOE Field Organization directly to the appropriate Corps District Office.

(3) Other Real Estate Services.

From time to time, DOE may request the Corps to perform some real estate functions not related to acquisition, such as, assistance in the disposal of real property, outgranting and inleasing of real property, related general appraisal services, etc. In these circumstances, DOE may request the Corps to provide such services and the procedures outlined above will be followed.

c. Special Conditions.

While the Corps procedures will generally be followed to accomplish the required work, the following special conditions will apply to all projects undertaken by the Corps for DOE:

- (1) Rights-of-Entry. When necessary, reasonable fees for rights-of-entry will be paid.
- (2) Delegation of Authority to Acquire by Condemnation. In some instances, individuals at DOE Field Organizations have been delegated limited authority to acquire by condemnation. Where applicable, DOE shall advise the Corps accordingly. Wherever the word DOE appears in paragraphs 3 and 4 below, it shall mean the DOE employee with the authority to acquire by condemnation. However, whenever the Corps' Director of Real Estate corresponds directly with a DOE Field Organization, courtesy copies of such correspondence shall be furnished to the DOE Chief.
- (3) Condemnation Because of Disagreement Over Value. No "final and best offer" letter will be sent without the prior approval of DOE. If, after review of the record of negotiation, DOE determines that it is in the best interest of the Government to accept an offer from a landowner, DOE will so notify the Corps in writing, and the Corps will conclude the

acquisition. If the landowner does not accept the "final and best offer," the Corps shall take such actions as necessary to initiate condemnation proceedings including preparation of necessary condemnation papers. Although general information on condemnation procedures may be provided during acquisition negotiations, landowners will not be informed of any intent to condemn without the prior approval of DOE.

- (4) Settlement After Condemnations are Filed. The Corps will provide to the DOJ information related to any acquisition negotiations that preceded the DOE decision to initiate condemnation proceedings, and will assist DOE and DOJ in any subsequent negotiations conducted in an attempt to settle a condemnation case. Any recommendations for settlement by stipulation must be approved by DOE. The Corps will submit their recommendation to DOE. DOE's decision will be transmitted to DOJ and the Corps advised accordingly.
- (5) Records Maintenance and Disposition. The Corps will maintain, at the appropriate office, all records of work undertaken for DOE which will be available for inspection by DOE personnel at any reasonable time. Upon completion of the actions requested by DOE, the Corps will forward all project files to the appropriate DOE Field Organization for final retention.
- (6) Program Funding. Details of the scope of work will be incorporated in the Statement of Work for the specific request. The request or Task Order will also set forth the approved funding and any limitations on the use of such funds. Funding will generally be provided in advance. For the work under major Task Orders, funding transfer will be accomplished by Standard Form 1151, Nonexpenditure Transfer Authorization, pursuant to the Treasury Fiscal Requirement Manual, Volume 1, Section 2060, and OMB Circular A-34, Paragraph 81.2b. For work under small value Task Orders, funding will be provided in advance or on a reimbursable basis by use of Standard Form 1080 with funds furnished directly to the appropriate Corps District Office. The Corps District Office will provide the appropriate DOE Field Organization with a monthly accounting of funds expended and, when requested by DOE, will allow review of pertinent records documenting the basis for the charges to DOE. The general format for the Statement of Work is attached as Appendix I to this MOU.
- (7) Appraisals. The Corps will review and approve all appraisals. A copy of all appraisals which require review by the Corps' Director of Real Estate will be sent to the DOE Chief who will have 10 working days after receipt to furnish any comments to the Corps. The Corps will consider any comments furnished prior to completing review of the appraisal. All other appraisals will be held in the Corps' District Offices and copies will be made available to DOE upon request. It is the policy of the Corps, DOE, and DOJ not to release appraisal reports to landowners or any other party prior to the completion of the acquisition.

- (8) Status Reports. A quarterly report shall be submitted to the appropriate DOE Field Organization by the appropriate Corps District Office showing the status of each project. It will be the responsibility of the appropriate field offices to determine the contents and format of the report. This report may be included in the monthly accounting of funds.

3. ADMINISTRATION.

a. Public Information Coordinator.

- (1) Consistent with the Freedom of Information Act (FOIA) (5 U.S.C. 552), procedures for timely release of information to the public regarding projects and programs implemented under this MOU will be by mutual agreement between DOE and the Corps.
- (2) Consistent with the exemptions provisions of FOIA, appraisal reports will not be released during negotiations or condemnation proceedings.

b. Amendment and Termination.

This MOU may be modified or amended by written agreement between DOE and the Corps and terminated by either party upon 90 days prior written notice. DOE reserves the right to unilaterally change those portions of this MOU that concern its internal administrative procedures.

c. Effective Date.

This MOU is effective immediately upon signature by authorized personnel of both agencies. Any similar MOU currently in effect is cancelled concurrently.

U.S. Department of Energy

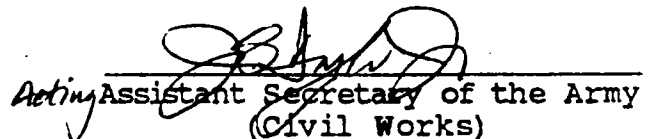


Director of Administration

Date:

Aug 26, 1987

U.S. Department of the Army



Acting Assistant Secretary of the Army
(Civil Works)

Date:

June 26, 1987

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MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF THE ARMY
AND THE
UNITED STATES DEPARTMENT OF ENERGY

ARTICLE I - AUTHORITY

a. Dire Emergency Supplemental Appropriations Act, Public Law No. 102-229, section 108, 105 Stat. 1701, 1708 (1992).

b. Agreement Between the United States of America and the Russian Federation Concerning the Safe and Secure Transportation, Storage and Destruction of Weapons and the Prevention of Weapons Proliferation of June 17, 1992 (hereinafter referred to as the Weapons Destruction and Non-Proliferation Agreement).

c. Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Technical Assistance for an Ecologically Sound Storage Facility for the Destruction of Nuclear Weapons of October 1992 (hereinafter referred to as the Storage Facility De

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d. The Economic Espionage Act of 1996, U.S.C. section 1535.

of 1932, as amended, 31

ARTICLE II - PURPOSE

This Memorandum of Agreement (MOA) is entered into by and between the United States Department of the Army (DA) and the United States Department of Energy (DOE) to establish a cooperative framework between the DA and the DOE to provide technical assistance from the United States to the Russian effort to design a safe, secure, and ecologically sound storage facility for fissile material derived from the destruction of nuclear weapons. This MOA defines the relationship between the DA and the DOE, including the responsibilities of each party, and specifies the process for DA requests for assistance, subsequent to DOE provision of assistance, and the mechanism for DA funding of DOE assistance.

ARTICLE III - INTERAGENCY COMMUNICATION

To provide for consistent and effective communication between the DA and the DOE, the DA designates the Commander of the U.S. Army Engineer Division, Transatlantic, and the DOE designates the Assistant Manager for Operations and Weapons, Albuquerque Field Office, as their representatives to discuss, consider, and agree upon activities that may be pursued under this MOA. The DA and the DOE representatives shall coordinate

all requests for assistance under this MOA and shall serve as the points of contact between the DA and the DOE on all matters relating to this MOA.

ARTICLE IV - PROVISION OF ASSISTANCE

a. The DOE will provide the DA with such assistance as is requested by the DA to support the Russian design effort. Such assistance will be furnished in accordance with the general terms and conditions of the Weapons Destruction and Non-Proliferation Agreement, the Storage Facility Design Agreement, and this MOA, and the specific provisions of Individual Support Agreements (ISAs). Such assistance may include, but is not limited to, safety analysis and risk assessment, heat transport analysis, radiation transport analysis, physical security analysis, analysis of operational considerations, and design of a material control and accountability system.

b. Although the DA and the DOE both will share responsibility for the technical execution and sound fiscal management of this program, overall program management and funding authority rests with the DA.

c. Nothing in this MOA is intended to affect ongoing arrangements under other MOAs between the parties.

ARTICLE V -PROCEDURE

a. The DA representative, after consultation with the DOE representative, shall submit requests for assistance under this MOA to the DOE representative. Such requests for assistance shall be in writing and shall describe the scope of the services desired and the necessary schedule for completion of the technical assistance. The DOE representatives shall provide, in response, a written proposal for provision of the requested assistance. The DOE proposal shall detail the costs for the DOE assistance, including the costs of DOE and contractor personnel, and all applicable overhead charges. The DA and the DOE representatives may enter into implementing arrangements to establish additional procedures for activities pursued under this MOA.

b. The DA and the DOE representatives may conclude ISAs pertaining to the requests for assistance. No technical assistance shall be initiated by the DOE until such an ISA has been concluded. The ISAs shall identify individual project managers and describe in detail the scope of the technical assistance to be provided, schedules for completion of specific tasks, necessary funding arrangements, and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested services.

c. Upon notification of the DA, the DOE may engage in technical consultations within the scope of ISAs with representatives of the Russian Federation. The DA shall be notified of and approve in advance any DOE contacts, communications, and consultations made pursuant to this MOA with any representative of the Russian Federation concerning matters outside the scope of ISAs.

d. The DA and the DOE recognize that valuable data and information may result from activities under this MOA and agree that both parties shall have rights to any design and construction information to include but not limited to design issues and solutions, construction issues and solutions, and operating requirements and procedures.

ARTICLE VI - FUNDING

a. The DA shall fund all costs associated with the DOE provision of assistance. The DOE, however, shall not incur costs without the advance written approval of the DA. The DA shall provide these funds to the DOE through ISAs. Specific provisions regarding funding will be agreed upon by the designated representatives on a case-by-case basis when ISAs are prepared.

b. If the actual cost to the DOE is forecast to exceed the amount of funds available in an ISA, the DOE shall promptly notify the DA of the amount of the additional funding necessary to pay for the assistance. The DA shall either provide the additional funds to the DOE within thirty (30) days, require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of DOE involvement in the assistance.

c. The DOE shall conduct a final accounting within one hundred and twenty (120) days of completion of all tasks assigned under an ISA to determine the actual costs of the assistance provided. Upon completion of all tasks assigned under an ISA, the DOE shall return any excess funds advanced by the DA within thirty (30) days, less an agreed upon contingency amount. Upon completion of the final accounting, the DOE shall return any additional excess funds immediately.

ARTICLE VII - APPLICABLE LAWS, REGULATIONS, AND POLICIES

The DOE shall furnish all assistance under this MOA in accordance with applicable U.S. laws, regulations, and policies.

ARTICLE VIII - RECORDS AND REPORTS

a. The DOE shall establish and maintain records and receipts of the expenditures of all funds provided by the DA for a minimum of three (3) years after completion of all work under

each ISA. Records shall be maintained in sufficient detail to permit identification of the nature of expenditures made by the DOE and shall be made available for inspection and audit by authorized representatives of the DA upon request.

b. The DOE shall provide the DA with project status reports on DOE assistance provided pursuant to this MOA, including financial reports on all funds received, obligated, and expended. Frequency of reports will be agreed upon in the ISAs.

ARTICLE IX - CLAIMS

a. All claims submitted by contractors arising under or relating to contracts awarded by the DOE shall be resolved in accordance with United States law and the terms of each contract. The DOE has dispute resolution authority for these claims. The DOE shall consult with the DA regarding any settlement negotiations.

b. The DOE shall notify the DA of any claims or appeals determined to be meritorious and shall submit requests to the DA for funds to cover such claims or appeals. Subject to the availability of funds, the DA shall promptly provide such funds as are necessary to pay the costs of meritorious claims or appeals and related expenses.

ARTICLE X - PUBLIC INFORMATION

Explanation of the assistance provided under this MOA before Congress and the Executive Branch shall be the responsibility of the DA. The DA and the DOE agree to coordinate jointly any proposed press releases or other public affairs information related to work pursuant to this MOA before release. Such coordination is not required for the release of information necessary to comply with requirements of the contracting process. Such coordination is also not required for the release of information in internal DA or DOE publications. Subject to the Freedom of Information Act, decisions on the disclosure of information related to this MOA shall be made by the agency receiving the request for information, after consultation with the other party to this MOA.

ARTICLE XI - EFFECTIVE DATE, AMENDMENT, AND TERMINATION

a. This MOA is effective upon the date of the last signature by the authorized representative of the parties.

b. This MOA may be amended or modified only by written agreement. Upon the request of either party, both parties shall review this MOA to ensure that it continues to reflect the appropriate understandings and procedures necessary for current needs and capabilities. Unless otherwise extended by the

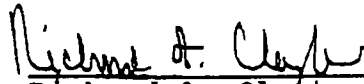
parties, this MOA shall terminate one (1) year after the termination of the Storage Facility Design Agreement.

c. Either party may terminate this MOA by submitting a written termination notice to the other party at least one hundred and twenty (120) days prior to the effective date of termination. The notice will include proposed termination milestones. The DA and the DOE shall consult with each other concerning all claims for termination costs. Subject to the availability of funds, the DA shall continue to be responsible for all costs incurred under this MOA or subsequent ISAs for the costs of closing out or transferring any ongoing contracts.



Nancy P. Dorn
Assistant Secretary of the
Army (Civil Works)

Date: 6 Jan 93



Richard A. Claytor
Assistant Secretary of
Energy (Defense Programs)

Date: 1-6-93