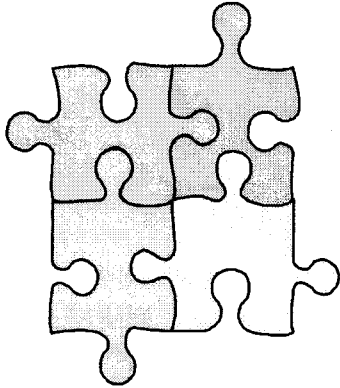


The Department of Energy Directives System



[Reference: DEAR 970.5204-2, Laws, regulations, and DOE Directives; DOE Order 251.1, Directive System; DOE Manual 251.1-1A, Directive System Manual.]

Overview

This section provides guidance to contracting officers on their responsibilities under the Department of Energy Directives System.

Background

The Department of Energy Directives System is a means by which DOE policies, requirements, and responsibilities are disseminated throughout the Department. The term “directives” encompasses Policies, Notices, Orders, Manuals, Guides, Regulations, and Technical Standards. Directives generally provide internal instruction to Federal officials. However, because of the role played by management and operating and other facility management contractors in implementing DOE programs and operating DOE facilities some directives may directly instruct contractors and become contract obligations by operation of the Laws, Regulations and DOE Directives clause. In this case the direction to the contractor is contained in a Contractor Requirements Document that is appended to the directive, which will be incorporated by reference into the contract as a contractor obligation. (When a directive includes

Guiding Principles

- ✓ Communicate early, clearly, and often with program and technical officials to ensure appropriate directives are included in affected site/facility management contracts;
- ✓ Support the timely resolution of exemption requests by assisting program officials in analyzing impacts, obtaining concurrences, and integrating approved requests into contracts.

requirements that the Department determines should apply to other than site/facility management contracts, the directive includes direction to either the DOE or NNSA Procurement Executive to develop and issue an appropriate contract clause through the regulatory process. Since other than site/facility management contracts are not directly affected by directives, the following discussion does not address them.)

For site/facilities contracts the integration of the directive system and the acquisition DOE Directives and the language in the directives themselves.

The Laws, regulations, and DOE Directives clause is included in site/facility management contracts. It requires the contractor to comply with the requirements of DOE directives that are identified in the contract's List of Applicable directives (List B). The clause also grants the contracting officer the unilateral right to revise List B at any time. The standard language in each directive specifies that any requirements that apply to a site/facility management contract are included in the directive's contractor requirements document.

(At the time of this writing there are a few older directives that do not conform to the directive system in that they do not have contractor requirements documents or clear direction on applicability. These directives are being brought up to date as they are renewed.)

In this context "site/facility management" contracts is used to describe management and operating contracts, former management and operating contracts (M&I, ERM, etc.), and other contracts for the stewardship of DOE facilities. The Laws, Regulations, and DOE Directives clause is included in these contracts as long as the contractor manages and operates a DOE site or facility. Support service contracts, general consulting contracts, prime construction contracts, supply contracts, utility contracts, etc. are not site/facility management contracts and do not contain the Laws, regulations, and DOE Directives clause.

As a result of several initiatives, the Department has developed standard language that will be used in all new directives if and where the directives address site/facility management contracts. Most of this standard language has been appearing in

system is accomplished through the clause at DEAR 970.5204-2, Laws, Regulations, and new directives issued since 2001, since starting at that time directive drafters have been directed to use a template created by the Office of Procurement and Assistance Management. The standard language addresses applicability (to both site/facility management contracts and other than site/facility management contracts), subcontract flow-down, responsibilities of Federal officials for applying requirements to contractors, and the contractor requirements document. The template is now being formally incorporated into the DOE directives system by a revision to the directive on directives, DOE Order 251.1, "Directive System." The current version of the template is attached (titled "Contractor Applicability Template"), and as you can see it addresses several topics. It requires the directive drafter to delineate clearly which official will identify affected site/facility management contracts. It then requires that official to notify the contracting officer who then becomes responsible for modifying the contracts through the Laws, regulations, and DOE directives clause. The template also provides detailed guidance on subcontracts. The two main points are to remind the contractor (in the contractor requirements document) not to flow-down requirements unnecessarily and to remind the directive drafter to leave the implementation of the contractor requirements document to the contractor in most cases.

If a DOE activity believes an otherwise applicable directive should not apply to an identified site/facility management contract or the directive requirements should be modified to match unique circumstances in the contract, the activity can follow the Directive systems procedure for requesting an exemption to directive requirements. The procedure is explained in DOE Manual 251.1-1A, "Directive System Manual." As of the publication date of this guide chapter,

the exemption process is being revised, but no changes to the basic rationale for requesting an exemption or to the requirement to include the headquarters office responsible for the directive in the process are being contemplated. The revised exemption process focuses on easing the difficulty of removing inappropriate, overly burdensome, or unduly restrictive processes on contractors. It calls for the early participation of the responsible headquarters office, emphasizes collaborative effort (by the contractor, DOE field activity, and headquarters office), and explicitly describes the appropriate method to resolve disagreements at the appropriate level within the Department.

Contracting Officer Responsibilities

Contracting officers are responsible for incorporating directives into site/facility management contracts consistent with the DOE directive that provides the contractor requirements document and its applicability provisions and in accordance with the Laws, Regulations, and DOE Directives clause. They also have the equally important responsibility of assisting program and other interested officials in carrying out their responsibilities under the DOE directive

system. In composing RFPs, new contracts, contract extensions, contract modifications, and similar contractual actions, contracting officers must communicate early, clearly, and often with their customer offices (program offices and technical offices, such as security or environment, safety, and health, etc.) regarding which directives those offices have determined must apply to the contractual action. The end product of these interactions must be an unambiguous compilation of all affected offices' decisions on which DOE directives to include in the contractual document. Contracting officers must also contribute to the processing of any exemption requests by, among other things, helping the affected officials analyze the impact of contemplated exemptions, ensuring the appropriate offices concur, and integrating any approved exemptions into the contractual action's construct in a prudent manner. Finally, during the term of each contract contracting officers should maintain communications with their program and technical offices to ensure that their decisions on the applicability of changes to directives (for example, as new directives are issued, old ones cancelled, or current ones revised) are reflected in the contract in a timely manner.

CONTRACTOR APPLICABILITY TEMPLATE

If the requirements of a Directive are intended to be made applicable to contractors, the following language must be added to the appropriate paragraphs of the directive. (Note: The following paragraphs are numbered and/or formatted as they typically would be in a directive.)

3. APPLICABILITY.

b. Site/Facility Management Contracts.

(1) The Contractor Requirements Document (CRD), Attachment X, sets forth requirements of this Order that will apply to site/facility management contracts that include the CRD.

(2) This CRD must be included in site/facility management contracts that

[Here the office of primary interest (OPI) must fill in the criteria that identify to which site/facility management contracts the OPI intends the order to apply. If the OPI intends the CRD to apply to only certain types of work within a contract, the OPI must describe that work here. Here also the OPI must articulate what authority is granted to an official identified in the responsibilities paragraph to modify the CRD.]

(3) This Order does not apply to other than site/facility management contracts. Any application of any requirements of this Order to other than site/facility management contracts will be communicated separately from this Order.

[In the responsibilities section of the directive, the OPI may task the Department of Energy (DOE) and National Nuclear Security Administration (NNSA) procurement executives to work with the OPI to develop, publish for public comment, and incorporate into the DOE acquisition regulation any required contract clause and clause prescription that should be inserted in other than site/facility management contracts.]

(4) The office identified in the Responsibilities paragraph is responsible for notifying the contracting officer of which site/facility management contracts are affected. Once notified, the contracting officer is responsible for incorporating the CRD into each affected site/facility management contract via the laws, regulations, and DOE directives clause of the contract.

- (5) As the laws, regulations, and DOE directives clause of a site/facility management contract states, regardless of the performer of the work, the site/facility management contractor with the CRD incorporated into its contract is responsible for compliance with the requirements of the CRD. An affected site/facility management contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the site/facility management contractor's compliance with the requirements. In doing so, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts. That is, the contractor shall both (1) ensure that it and its subcontractors comply with the requirements of this CRD and (2) only incur costs that would be incurred by a prudent person in the conduct of competitive business.

[Generally, implementation of CRD requirements should be left to the site/facility management contractor. If the OPI determines it necessary to address flow down of requirements, it should do so in the CRD. The OPI should not require flow down unless it is necessary to ensure that the purpose of the order is achieved.]

5. RESPONSIBILITIES.

[In this paragraph, the OPI must identify an office as responsible for ensuring the CRD is incorporated into each affected site/facility management contract, task that office with telling the contracting officer of each affected site/facility management contract, and articulate what authority is granted to the identified office to modify the CRD. If the OPI has indicated that the CRD is to apply to only certain types of work within a contract, the OPI must task the identified office with telling the contracting officer which work is affected.

Also in this paragraph, the OPI must task the contracting officer, after he or she has been notified, with incorporating the CRD into the affected site/facility management contract via the laws, regulations, and DOE directives clause of the contract.

If it is appropriate, the OPI may task the DOE and NNSA procurement executives to work with the OPI to develop, publish for public comment, and incorporate into the DOE acquisition regulation any required contract clause and clause prescription that should be inserted in other than site/facility management contracts.]

CONTRACTOR REQUIREMENTS DOCUMENT

The following paragraph must be added to the CRD, usually in the opening paragraphs.

Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. In doing so, the contractor shall not unnecessarily or imprudently flow down requirements to subcontracts. That is, the contractor shall (1) ensure that it and its subcontractors comply with the requirements of this CRD and (2) only incur costs that would be incurred by a prudent person in the conduct of competitive business.

[Generally, implementation of CRD requirements should be left to the site/facility management contractor. If the OPI determines it necessary to address flow down of requirements, it should do so in the CRD. The OPI should not require flow down unless it is necessary to ensure that the purpose of the order is achieved.]

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