

Subpart 17.6 - Management and Operating Contracts

Parent topic: [Part 17 - Special Contracting Methods](#)

17.600 Scope of subpart.

This subpart prescribes policies and procedures for *management and operating contracts* for the Department of Energy and any other agency having requisite statutory authority.

17.601 Definition.

Management and operating contract means 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*.

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, *may determine in writing* to authorize *contracting officers* to enter into or renew any *management and operating contract* in accordance with the agency's statutory authority, or [41 U.S.C. chapter 33](#), and the agency's regulations governing such contracts. This authority *shall* not be delegated. Every contract so authorized *shall* show its authorization upon its face.

(b) Agencies *may* authorize *management and operating contracts* only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in [17.604](#).

(c) Within 2 years of the effective date of this regulation, agencies *shall* review their current contractual arrangements in the light of the guidance of this subpart, in order to-

(1) Identify, modify as necessary, and authorize *management and operating contracts*; and

(2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

17.603 Limitations.

(a) *Management and operating contracts* shall not be authorized for-

- (1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;
 - (2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;
 - (3) Functions of determining basic Government policies;
 - (4) *Day-to-day* staff or management functions of the agency or of any of its elements; or
 - (5) Functions that can more properly be accomplished in accordance with subpart 45.3, Authorizing the Use and Rental of Government Property.
- (b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above *shall* affect the validity or legality of such an authorization.
- (c) For use of project labor agreements, see subpart 22.5.

17.604 Identifying management and operating contracts.

A *management and operating contract* is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying *management and operating contracts*:

- (a) Government-owned or -controlled facilities *must* be utilized; for instance-
- (1) In the interest of *national defense* or mobilization readiness;
 - (2) To perform the agency's mission adequately; or
 - (3) Because private enterprise is unable or unwilling to use its own facilities for the work.
- (b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government *must* maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (*e.g.*, safety, security, cost control, site conditions).
- (c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.
- (d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need-
- (1) To ensure its continuity; and
 - (2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under *management and operating contracts* usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under *management and operating contracts*, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore *contracting officers should* take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The *contracting officer shall* review each *management and operating contract*, following agency procedures, at appropriate intervals and at least once every 5 years. The review *should* determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract *must* be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with [17.602\(a\)](#).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, *contracting officers should* consider-

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, *national defense*, and mobilization considerations; and

(3) Whether it is likely that qualified *offerors* will compete for the contract.