



Department of Energy
Washington, DC 20585

April 23, 2009

MEMORANDUM TO HEADS OF CONTRACTING ACTIVITIES
PROCUREMENT DIRECTORS

FROM:


EDWARD R. SIMPSON
DIRECTOR
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

SUBJECT: Management Controls to Ensure the Appropriate Use of Support Service Contractors, Subcontractors, and Consultants in Implementing the American Recovery and Reinvestment Act of 2009

The recent signing of the American Recovery and Reinvestment Act of 2009 (ARRA) will be placing unprecedented demands on our acquisition system and personnel. The Secretary has committed to carrying out the activity with the highest level of speed, transparency, and accountability. This will require the strategic use of all available resources. In some instances, sites and procurement offices will place additional reliance on contractors, subcontractors, and consultants to help carry out the mission of the ARRA.

In using support service contractors, the Heads of Contracting Activities (HCA) and Procurement Directors must ensure that their organizations comply with long established regulations, policies, and guidance on the appropriate use of contractors (a reference list of major regulations, policies, and guidance are provided as an attachment to this memorandum). As the Department of Energy Senior Procurement Executive, I rely on your diligence in ensuring that:

- inherently governmental functions are performed by Government personnel;
- physical and organizational separation of contractor and Government employees is established;
- acquisition personnel are reviewing contract requirements to identify, address, resolve, and document any conflict of interest issues that would prevent a contractor from providing impartial and objective assistance or that would provide a competitive advantage on future requirements; and
- there is an avoidance of an employer-employee relationship since "personal services" requires specific congressional authorization.

Please coordinate with your respective site and project managers to perform a self-assessment to identify and resolve any potential vulnerabilities. If vulnerabilities are identified or if there are questions regarding implementation, consult your legal counsel for assistance. At this time, it is especially important that we have a heightened sense of vigilance and that we are taking the necessary steps to fully comply with the Secretary's commitment in guarding the public trust.

Attachment



REFERENCE LIST OF REGULATIONS, POLICIES, AND GUIDANCE ON THE
APPROPRIATE USE OF SUPPORT SERVICE CONTRACTORS

- Federal Acquisition Regulation (FAR)
 - FAR 7.5, Inherently Governmental Functions
 - FAR 9.5 Organization and Consultant Conflicts of Interest
 - FAR 37, Service Contracting

- Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management and Oversight of Service Contracting (May 18, 1994)

- Office of Management and Budget (OMB) Memorandum M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (February 18, 2009)

- Department of Energy Acquisition Regulation (DEAR) Subpart 909.5, Organizational and Consultant Conflicts of Interest

- Department of Energy (DOE) Acquisition Guide (AG)
 - AG Chapter 9.1, Conflicts of Interest
 - AG Chapter 37, Service Contracting
 - AG 70.7, Reference Book for Contract Administrators, Chapter 8, Business and Contract Management

- DOE Contracting for Support Services:
http://www.management.energy.gov/policy_guidance/1384.htm

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