

**COMPARISON OF  
GOVERNMENT-OWNED CONTRACTOR-OPERATED (GOCO) FACILITIES AND  
MANAGEMENT AND OPERATING (M&O) CONTRACTORS<sup>1</sup>**

**DEFINITION**

**GOCO<sup>2</sup>:** (Government-Owned, Contractor Operated) facility is a manufacturing plant that is owned by the Government and operated under contract by a non-government, private firm. Operation and maintenance of facilities when done by contract with the private sector.<sup>3</sup>

**M&O<sup>4</sup>:** (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.<sup>5</sup>

**Key Difference:** The Federal Agency uses an M&O contractor “to carry out the actual performance of the agency’s mission; that is, these contractors were to perform the agency’s mission as opposed to the agency’s using civil servants.”<sup>6</sup>

**COMPARISONS**

<u>GOCO</u>	<u>M&amp;O</u>	<u>Reference</u>	<u>Functions</u>
X		FAR 16.101	1. <i>Type of U.S. Government Contract</i> a. Fixed price
	X	FAR 16.300	b. Cost reimbursable

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<sup>1</sup> Information updated June 7, 2013. For further information, contact Mr. David W. Bradford, Oak Ridge National Laboratory, at (865) 574-9798 or [fdb@ornl.gov](mailto:fdb@ornl.gov)

<sup>2</sup> Source: Department of Defense Joint Publication (JP) 1-02, dated April 15, 2013

<sup>3</sup> Source: OMB Circular A-11, August 2012

<sup>4</sup> Source: FAR 17.600, current as of September 29, 2010

<sup>5</sup> See Supreme Court Decision, United States v. New Mexico, 455 U.S. 720, 723(1982) where the Supreme Court opined that management and operating contracts are a unique type of contract, in that they have a special identity with DOE and indicia of agency without actually causing the contractors to be agents of the Department. The Court stated: [I]n several ways DOE agreements are a unique species of contract, designed to facilitate long-term private management of Government-owned research and development facilities. As the parties to this case acknowledge, the complex and intricate contractual provisions make it virtually impossible to describe the contractual relationship in standard agency terms. . . . While subject to the general direction of the Government, the contractors are vested with substantial autonomy in their operations and procurement practices. . . .

AEC management contracts were developed in an attempt to secure Government control over the production of fissionable materials, while making use of private industry's expertise and resources. . . .

<sup>6</sup> DOE Acquisition Guide, Chapter 17.6, dated October 2007.

			2.	<i>Relationship with Sponsoring Federal Agency</i>
X		CICA (PL 98-369)	a.	Organizationally separate from contracting federal agency operations
	X	FAR 17.604	b.	Fully integrated with contracting federal agency financial operations
	X	FAR 17.601/17.604	c.	Performs major function or program of contracting federal agency.
			3.	<i>Normal Type of Work</i>
X			a.	Performs routine production (All categories minus nuclear related)
	X	FAR 17.601	b.	Conducts Research and Development (R&D)
	X	Atomic Energy Act	c.	Performs Special Production (Nuclear)
	X	Stevenson-Wydler Tech. Act	d.	Performs Special Production (non-Nuclear technology invention or application)
	X	FAR 17.601	e.	Operates a Testing Establishment
	X	FAR 35.017	f.	Operates a Federally Funded Research and Development Center (FFRDC)
	X	FAR 35.005/35.006	g.	Does work on Level of Effort (LOE) status
X	X	FAR 35.005/35.006	h.	Designs firmly established so that risks are reduced.
X	X	FAR 35.005.35.006	I.	Uses production tooling, equipment, and processes that are developed and proven.
			4.	<i>Organizational Conflicts of Interest (OCI)</i>
	X	FAR 35.001/35.017	a.	Has special access to Government and supplier data, employees, and facilities beyond that which is common in a normal contractual relationship.
X			b.	Has operations that are commingled with commercial operations.
X			c.	Can compete in the U.S. private, commercial sector.
	X	FAR 35.017/17.504(e)	d.	Accept cost-reimbursable work from other federal agencies through federal sponsor.
	X	FAR 35.017	e.	Has Special OCI restrictions on communicating with parent company.
			5.	<i>Contractor Changeover after New Contract Award</i>
X			a.	Wholesale replacement of personnel; may hire some previous contractor personnel.
	X	FAR 17.604(d)	b.	Retain en masse the trained scientific and technical staff; may replace senior management
			6.	<i>Use by Federal Agencies (Sample only)</i>
X			a.	Department of Defense (DOD)
	X		b.	Department of Energy (DOE)
X			c.	Internal Revenue Service (IRS)
X			d.	General Services Agency (GSA)
X	X		e.	National Aeronautics and Space Administration (NASA) <sup>7</sup>

<sup>7</sup> NASA contractors work under "National Aeronautics and Space Act of 1958," Public Law #85-568, 72 Stat., 426 as a variation of the M&O contract.

## APPENDIX A: SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS

As of FAC 2005–46, September 29, 2010

### **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 the Competition in Contracting Act of 1984, 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.

## **APPENDIX B: SPECIAL CONTRACTUAL FEATURES OF DOE'S M&O CONTRACTS**

Under a DOE M&O contract, the terms of the contract differentiate it from typical contracts awarded by other agencies under the FAR. These terms are indicators of a “special relationship,” the M&O contractors share with DOE:

1. DOE's involvement in M&O contractor labor relations, e.g., DOE's stewardship of M&O contractor pension and post-retirement medical systems, review of contractor executive compensation,
2. Laws governing contractor wages and working conditions affect DOE's M&O contractors differently than they affect other Federal contractors. For example, M&Os are not subject to the Service Contract Act (41 USC § 351 et seq.); however, the M&O contractors must flow down the Act to service subcontracts they award. Generally, DOE prohibits its M&O contractors from performing construction with their own workforces but requires them to apply the Davis-Bacon Act to M&O subcontracts for construction.
3. DOE's significant involvement in M&O contractor management controls.
4. DOE's involvement with the M&O contractor's purchasing process.
5. DOE's application of specific DOE directives to the operations of the M&O contractor.
6. DOE's authorizing the M&O contractor to finance contract performance by use of Special Financial Institution Accounts, under which checks written by the contractor one day are covered by the Department of Treasury overnight.
7. DOE's requiring the M&O contractor to maintain integrated accounting systems, under which the contractors budgeting and accounting follow DOE's Accounting Handbook.
8. DOE's relying on the DOE Inspector General for auditing its M&O contractors. DOE requires the M&O contractor to maintain an internal audit function, which performs critical audit functions under DOE's Cooperative Audit Strategy.
9. The M&O contractor's reconciling its accounts annually by use of DOE's Statement of Costs Incurred and Claimed.
10. The M&O contractor's accepting no work from entities other than DOE, except as specifically allowed by its contract with DOE. DOE assigns program work to the M&O by means of DOE's work authorization system.
11. The M&O contractor's operating under certain cost principles designed by DOE for use in its M&O contracts.