



Department of Energy
Washington, DC 20585

April 7, 2000

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM:  **RICHARD H. HOPF, DIRECTOR**
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

 **MICHAEL L. TELSON**
CHIEF FINANCIAL OFFICER

SUBJECT: PROCUREMENT AND FINANCIAL GUIDANCE TO SUPPLEMENT
THE CHIEF FINANCIAL OFFICER'S FEBRUARY 24, 1998, GENERAL
GUIDANCE ON ONE-YEAR APPROPRIATIONS

This guidance is being issued jointly by the Office of Chief Financial Officer (CFO) and the Office of Procurement and Assistance Management to recognize the roles and responsibilities of both Offices when time-limited funds are involved and to ensure that guidance used by both Offices is consistent with respect to the use of time-limited appropriations. It has been reviewed by the Field Management Council and has been approved by the Deputy Secretary for release.

As you may be aware, since FY 1998, the Department has been receiving time-limited funding in various appropriation accounts. For example, the Energy Supply Appropriation Account received one-year funding for FY 1998 and both one-year and two-year funding for FY 1999. Since most of the Department's funding prior to FY 1998 was on a no-year basis, on February 24, 1998, the CFO issued guidance on time-limited appropriations¹ as an attachment to a memorandum to Field Chief Financial Officers and Program Liaisons (copy attached).

Since then, we have become aware of time-limited-appropriations issues that are not addressed in the CFO's February 24, 1998, guidance. For example, one issue concerns the roles and responsibilities of the program, procurement, and finance staffs vis-à-vis each other when recommending and making severability determinations in the process of funding various activities. Another issue is that the Department's guidance implementing the Federal Acquisition Streamlining Act of 1994 is silent with respect to sections 1072 and 1073, multi-year contracting and contracts for severable services, respectively, which are pertinent to time-limited appropriations.

¹"Concept Paper - Time Limited (One-Year) Appropriations"

Consequently, the attached two-part document, "Supplemental Guidance, Time-Limited Appropriations," is being issued as a supplement to the Office of CFO's February 24, 1998, guidance and is intended to address the aforementioned issues, as well as other issues that have subsequently come to our attention. Please note that while Part I of the attachment is comprised of guidance which applies to both the procurement and financial aspects of time-limited appropriations, Part II is comprised of accounting and funds control guidance that applies primarily to the finance staffs.

If you have questions or concerns regarding this guidance, please feel free to have your staff contact Paul Kelley, Office of Budget (CR-10), on 301-903-5327 for funds control matters; Mary Rosicky, Office of Financial Policy (CR-20), on 202-586-9354 for accounting and financial matters; or Bob Webb, Office of Procurement and Assistance Policy (MA-5), on 202-586-8264 for procurement related matters.

Attachments

cc: Field CFOs
CR Office Directors
Program Liaisons
DOE Procurement Directors

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SUPPLEMENTAL GUIDANCE, TIME-LIMITED APPROPRIATIONS

PART I. PROCUREMENT AND FINANCIAL MANAGEMENT GUIDANCE

1. General Rules Governing Time-Limited Appropriations

- a. The purpose of this Part is to aid those Department of Energy (DOE) employees involved in the origination and award of contracts, grants, or cooperative agreements involving one-year or other time-limited appropriations.
- b. Time-limited appropriations are available for obligation only during the period for which made and cease to be available for obligation (expire) if they are not properly obligated prior to the end of the period for which they were appropriated. Further, in accordance with the **bona fide needs rule**¹, a time-limited appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year (period) for which the appropriation was made. A project funded under a time-limited appropriation must pass the **bona fide needs** test. A **bona fide need** exists if the item or service in question satisfies a need of the government that exists during the period of funds availability. The question of whether these funds may be obligated for activities that continue after the period of funds availability is determined by whether the project activity is **severable** or **nonseverable**.
- c. An activity is **severable** if the work is of a continuing or recurring nature and the benefit from the work is received as the work is performed. An example of a **severable** activity is an ongoing research project in which no specified end product is required to be produced. Notwithstanding the lack of a required specified end product, on a day-to-day basis, work is accomplished and benefit is accrued by completing the day's activity. Such research could be terminated (severed) at virtually any point, and some intended benefit would be realized.
- d. Generally, time-limited funds of the current fiscal year may not be obligated against contracts for severable type activities occurring in subsequent fiscal years. However, an exception is provided by section 1073 of the Federal Acquisition Streamlining Act (FASA) of 1994 (Public Law 103-355, October 13, 1994), which provides civilian agencies authority to enter into contracts for severable services that cross fiscal years if performance under the contracts does not exceed one year. Provisions of FASA are discussed in detail later.

¹The bona fide needs rule is codified at 31 U.S.C. § 1502(a) (1988). It provides that "an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability."

- e. An activity is **nonseverable** if the benefit from the work accrues only upon completion of the work specified. A simple example of a **nonseverable** activity is a contract for the production of a video. The government has a **bona fide need** for the video in the current fiscal year and no benefit will be received until completion of production of the video. One could not "sever" the production of the video earlier than at completion of the production process and realize the intended benefit.
- f. Performance under a contract for a **nonseverable** activity funded in a particular fiscal period may cross fiscal periods. The general rule is that payments under the entire contract must be charged to the fiscal year appropriation current at the time a nonseverable (entire) contract is made, although performance thereunder may extend into ensuing fiscal years. A **nonseverable** activity must be fully funded from the appropriations current at the time the contract for that nonseverable activity is executed and not with funds appropriated in other fiscal years. Under some circumstances, it may be possible to separate a project into nonseverable phases if the phases, in and of themselves, can logically provide a benefit for the current fiscal year independent of the overall project.

2. **Making Bona Fide Need and Severability Determinations**

- a. Appendix A contains a model questionnaire that may be used in the process of performing an analysis of *bona fide* need and severability. It is recommended that the questionnaire be answered by the technical manager at Headquarters where the work is defined at Headquarters or the technical manager at the DOE office where the work is defined locally. There must be consultation to assure that the answers are accurate and complete. Various program, financial, legal, and procurement personnel at the local level should be consulted on an as needed basis so that the final severability/non-severability determination will be the culmination of a consensus process among those possessing knowledge of the work requirements and those possessing technical knowledge of the various disciplines (e.g., finance, law, procurement) involved.
- b. After the consultations discussed in 2.a. above are completed, the subject determinations--and ultimately final responsibility for the severability determinations--reside with the contracting officer who has overall responsibility for administering contracts and controlling work.

3. **Construction Projects Funded with Time-Limited Appropriations**

- a. Historically, Congress has appropriated funding to DOE for major construction projects on an incremental basis over a number of years utilizing no-year funding. In recent years, however, Congress has begun to appropriate time-limited (one-year) funds for these projects. Although construction projects are a classic example of nonseverable activities, Congress has continued to appropriate funds incrementally (as though no-year funds were appropriated) from several fiscal years, rather than appropriating the entire amount in the

first year of the project as should be the case with one-year funds. Currently, DOE is attempting to achieve a legislative remedy by convincing Congress to again appropriate no-year funds for construction.

- b. In the meantime, although multi-year, line-item construction projects are nonseverable, they may be funded with one-year funds appropriated in fiscal years subsequent to those in which the *bona fide* need arose if the following conditions exist:
 - (1) the project must be clearly delineated in the Congressional budget justifications as a line-item construction project; and
 - (2) the contract as awarded must contain an adequate "Limitation of Government Funds" clause, which limits the Government's total liability, including termination costs, to those funds then obligated to the contract.

4. **Applicability of Federal Acquisition Streamlining Act of 1994**

Background. On October 13, 1994, the President signed into law the Federal Acquisition Streamlining Act (FASA), Public Law 103-355. This law contains two key provisions that directly affect how **severable type activities** are administered.

- a. Section 1072 of FASA deals with multi-year contracts that use time-limited appropriations for acquisition of severable services spanning more than one fiscal year. This section provides authority for civilian agencies to enter into multi-year contracts regardless of the type of funding so long as adequate termination costs are obligated up front in the contracts and remain obligated and available for the length of the contracts. Prior to the passage of FASA, civilian agencies could award multi-year contracts only through the use of no-year funds or, in the case of time-limited appropriations, specific statutory authority. However, with the passage of FASA (section 1072), DOE may enter into multi-year contracts using time-limited funds for acquisition of severable services as long as adequate termination costs are obligated at the time of contract award.
- b. Section 1072 of FASA did not alter the statutory requirement that nonseverable activities awarded using time-limited funds must be fully funded with funds available for obligation during the fiscal year in which the *bona fide* need arises.
- c. Section 1073 of FASA authorizes civilian agencies: (1) to enter into contracts for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year; and (2) to obligate funds made available for a particular fiscal year up to the total amount of the contract entered into under this authority. Prior to the passage of FASA, performance under severable service contracts using time-limited funds could not cross fiscal years, and funds made available for a particular fiscal year could be obligated only for severable services provided in that fiscal year.

- d. Section 1073 of FASA is applicable to severable work placed under DOE's M&O and other major operating cost-type contracts and funded with time-limited appropriations. (See paragraph 6 below for more detail).

5. Grants and Cooperative Agreements

- a. Application of *Bona Fide* Needs Rule and Severability Analysis to Grants and Cooperative Agreements. Generally, the *bona fide* needs rule and the concept of severability apply to grants and cooperative agreements funded with time-limited appropriations, as well as to contracts [Comp. Gen. Decision B-240264 (February 24, 1994), which promotes the view that nonseverable research work orders of multiple-year duration may not be incrementally funded]. If the activity under a financial assistance award fills a public purpose of the appropriation during its period of funds availability, such activity will be considered to have met the *bona fide* needs rule. Further, if these awards are for a severable activity, the current appropriation may be obligated only for performance during the period of funds availability of the current appropriation and not for performance occurring in prior or subsequent fiscal years.² If, however, the activity is nonseverable, the awards must be fully funded by the appropriation current at the time of award and may not be funded with funds from any other fiscal year.
- b. Applicability of Section 1073 of FASA to Grants and Cooperative Agreements. Section 1073 of FASA is not applicable to severable activities performed under grants and cooperative agreements. This means that performance of severable activities under grants and cooperative agreements funded with time-limited appropriations must not cross fiscal periods; and time-limited appropriations available for a particular fiscal period cannot be obligated for severable activities performed in another fiscal period. In short, the flexibilities provided by section 1073 of FASA are only applicable to contracts and not to grants and cooperative agreements.
- c. Paragraph 2b(4)(b) of Chapter 11, "Liabilities," of the DOE Accounting Handbook states: "For financial assistance instruments that are \$200,000 or less, cost the entire amount at time of obligation; otherwise, generally accrue monthly on a straight-line basis."

Recently, we have become aware of an attempt to use the guidance contained in Paragraph 2b(4)(b) as justification to obligate the entire amount of financial assistance instruments for severable activities to the time-limited appropriation current at the time of

²There is a limited exception to this rule. The Comptroller General held in B-229873 (Nov. 29, 1988) that there are certain programs expressly designated by statute where the statutory objective is met by the mere obligation of money under an award independent of when the money is spent by the recipient (i.e., block grants to States). The result is that in these programs, obligation of one-year funds even on September 30 (i.e., the end of the fiscal year) is proper even if the activity would be otherwise severable.

award, regardless of the fact that performance was expected to cross fiscal periods. Paragraph 2b(4)(b) is intended to provide guidance for use in the process of accruing costs for financial reporting purposes only, which is a process that occurs independently and subsequent to the process of obligating funds. It presumes that officials responsible for obligating funds have completed the necessary analysis and have determined that the obligations are valid obligations of the appropriations sought to be charged; e.g., if the awards are to be funded by time-limited appropriations and are for severable activities, the obligation will not exceed the amount required for performance in the current fiscal period. The current policy contained in Paragraph 2b(4)(b) was implemented at a time when DOE's financial assistance programs were funded with no-year appropriations. Therefore, it was intended to apply only to financial assistance awards funded with no-year appropriations.

In a future Page Change to Chapter 11 of the DOE Accounting Handbook, paragraph 2b(4)(b) will be amended as follows: (1) revision of existing paragraph 2b(4)(b) to include language limiting its applicability to financial assistance instruments funded with "no-year" funding, and (2) addition of two new subparagraphs to specifically address severable and nonseverable financial assistance instruments funded with limited-period appropriations. The policy is presently effective on an interim basis.

- (1). The revised paragraph 2b(4)(b) will appear as follows: "For financial assistance instruments that are \$200,000 or less **and that are funded with no-year appropriations**, cost the entire amount at time of obligation; otherwise, generally accrue monthly on a straight-line basis."
- (2). In addition, the following paragraphs will be added as 2b(4)(b)(i) and (ii), respectively, to address severable and nonseverable financial assistance instruments funded with time-limited appropriations:
 - **Severable activities under financial assistance instruments funded with time-limited appropriations.** Generally, financial assistance instruments that are funded with time-limited appropriations and are for the performance of severable work cannot cross fiscal periods. Therefore, only funding for activities to be performed in the current fiscal period may be obligated to the current fiscal period; and if such obligation is \$200,000 or less, cost the entire amount at the time of obligation; otherwise, generally accrue monthly on a straight-line basis throughout the period of obligational availability of the appropriation charged or throughout the period of performance, if less than the period of obligational availability.
 - **Nonseverable activities under financial assistance instruments funded with time-limited appropriations.** Financial assistance instruments that are funded with time-limited appropriations and are for the performance of nonseverable activities must be fully funded by the appropriation current at

the time the financial assistance instruments are executed and may not be funded with funds from any other fiscal year. If the obligation for such nonseverable activity is \$200,000 or less, cost the entire amount at the time of obligation; otherwise, generally, accrue monthly on a straight-line basis over the period of the agreement which cannot exceed five years after the end of the period of obligational availability of the appropriation charged.

6. Effect of Time-Limited Appropriations on M&O and Certain Other Contracts

- a. Simply put, a time-limited appropriation is only available for incurring obligations during the fiscal year(s) for which made. Further, in the context of federal appropriations law, the process of incurring obligations, as well as making determinations on *bona fide* need and severability, are inherent federal functions and, as such, only have relevance to federal agencies and not contractors (M&O, other major operating cost-type, industrial, etc.). However, once *bona fide* need and severability determinations are made, the appropriate limitations (such as limits on periods of performance) must be incorporated in related contracts. In short, contracts or other award instruments must reflect statutory direction.
- b. Section 1073 of FASA is deemed applicable to severable activities accomplished through all contractual vehicles, including DOE's M&O and other major operating cost-type contractors. Further, because the twelve-month time limitation imposed by section 1073 is statutory, the period of performance must be constrained to that time frame regardless of the performing agent. With regard to M&O and other major operating cost-type contractors, the following applies:
 - (1). The specific level of work scope at which *bona fide* need and severability determinations should be made is difficult to define universally for all the affected programs, projects, and activities. However, logic dictates that these determinations will be applied to work scope or work packages that constitute a discrete and meaningful segment of work that accomplishes a particular mission, goal, or objective. Thus, a "work package" can be comprised of a single task or combination of several tasks with the attendant funding and work authorizations. In this regard, either excessive segregation or excessive aggregation of tasks comprising the work package could distort and unnecessarily complicate making credible and defensible *bona fide* need and severability determinations.
 - (2). The clock for determining the not-to-exceed-one-year performance period limitation imposed by section 1073 of FASA starts on the date funds are originally obligated to the M&O or other major operating cost-type contractor for reasonable work packages (see Part I, paragraph 6b(1) above). For example, if work on a severable type activity performed by an M&O or other major operating cost-type contractor is funded quarterly during the fiscal year (via four contract modifications), then the twelve-month performance period limitation for the entire activity is governed by the date of the initial obligation to the contract.

- (3). Any subcontracts issued by the M&O or other major operating cost-type contractor must, in turn, constrain the performance period so as not to exceed one calendar year from the date of the associated contract modification implemented by the Department. Further, to minimize the administrative burden, we recommend that those subcontracts provide for renewal options to extend performance into subsequent fiscal years if work is deemed severable and continuing in nature.
 - (4). To provide greater flexibility for executing severable program activities within the twelve-month statutory period of performance limitation, Departmental Elements may elect to defer making the initial obligation of time-limited appropriations on M&O and other major operating cost-type contracts until the contractor is ready to actually perform the required work. However, such deferral may not extend beyond the fiscal year of the appropriation. This procedure will help ensure the contractor will have the full twelve months available to perform the work.
- c. *Bona fide* need and severability determinations are required for direct mission program activities accomplished by contracts, grants, and cooperative agreements. Thus, these determinations are not required for activities accomplished through contractor indirect or overhead processes.

7. **Changes in Contract Administration**

- a. When programmatic responsibility moves from one contractor to another contractor, and this transfer did not occur because of contract termination or default, (e.g., selection of a new M&O or other major operating cost-type contractor due to competitive selection process), expired time-limited funds that are deobligated from the predecessor contract may be “reobligated” against the successor contract subject to the following conditions:
- (1). the *bona fide* need (as contemplated at the time of the original obligation) for the incomplete portion of the work scope on the predecessor contract continues to exist at the time the successor contract is executed;
 - (2). no change in scope, deliverables, tasks, performance time period for the tasks, or other conditions is imposed; and
 - (3). the successor contract is implemented without undue delay.
- b. Any departure from these conditions would constitute a new obligation, and therefore the work scope must be charged to the appropriation current at the time the new contract is executed.

PART II. ACCOUNTING AND FUNDS CONTROL GUIDANCE

1. Upward Adjustments to Obligations (Expired Phase)

- a. After the obligational availability of a time-limited appropriation has expired, upward adjustments to previously recorded obligations or recording previously unrecorded obligations, must be documented and approved by the respective CFO. This procedure was implemented during FY 1998 as a safeguard to help ensure unobligated balances related to expired appropriations are not inappropriately used for incurring new obligations. CFO's may consider delegating authority to a senior staff member for approving minor upward obligational adjustments not exceeding \$250.00.
- b. Determining which fiscal year to charge for an upward adjustment to a previously recorded obligation necessitates a review and assessment on a case-by-case basis with full knowledge of the facts, circumstances, and contractual provisions giving rise to the cost increase. This review and assessment is necessary for work or services acquired through all types of contracts (commercial, M&O, other cost-type contracts). Proper administration of time-limited appropriations necessitates credible discernment of which fiscal year to charge for cost increases realized in subsequent fiscal years.
 - (1). Generally, contract cost increases that arise in subsequent years, within the scope of and enforceable under the provisions of the original contract, must be charged to the appropriation current at the time the original contract was executed. Conversely, cost increases attributable to modifications or changes to a contract, which effectively exceed the scope of the original contract and are not enforceable under the provisions of the original contract, typically constitute a new obligation/liability and must be charged to the appropriation current when the new liability was executed. In this regard, the following may be consulted when assessing such adjustments: GAO Principles of Federal Appropriations Law (Red Book), Volume I, Second Edition, July 1991, 5-31; and Comptroller General (CG) Decisions: 61 CG 609, September 23, 1982; 65 CG 741, July 22, 1986; and 59 CG 518, June 11, 1980.
 - (2). With respect to M&O and other major operating cost-type, multi-year contracts, the basic guidance in Part II, paragraph 1b(1) above is applicable with one qualification. Because M&O and other cost-type contracts are typically very broad in scope and cover a 5-year time period, specific work activities must be tasked to contractors for execution over the life of the contract. Typically work is tasked to these contractors by increasing the dollar value of the contract and providing the associated work scope, work authorizations, and program guidance to accomplish the work. As work is tasked or placed into these contracts, the related funds are obligated to recognize the liability. Thus, when determining which fiscal year to charge for cost increases realized in subsequent years for M&O and other major operating cost-type contracts, the principles denoted in

Part II, paragraph 1b(1) above will be applied against individual tasks placed under the overall contract. As such, the references in Part II, paragraph 1b(1) above to “scope of the original contract” should be interpreted as relating to the original task and work scope as obligated and authorized to the M&O contractor through DOE’s monthly contract modification process. In short, the same degree of discernment is required for cost increases related to work performed by DOE’s M&O and other major operating cost-type contractors as for other individual commercial contracts.

2. Funding Controls for Expired and Closed Appropriations

Proper administration of expired balances associated with time-limited appropriations across DOE presents significant challenges. As previously indicated, unobligated balances for expired appropriations will be retained by allottees and remain available for an additional 5 years only for valid upward adjustments; that is, to liquidate obligations properly incurred during the period of obligational availability. These balances are not legally available for incurring new obligations.

It must be noted that DOE will maintain the integrity of all legal funding controls for expired and closed appropriation accounts. Legal funding controls are amounts established by appropriations, apportionments, and allotments and by statutory restrictions imposed on the use of funds, such as the Antideficiency Act. Because these funding controls are derived from statute, they must remain in effect until all financial activity for expired or closed appropriation accounts is closed out. For additional information on the Department’s policies and procedures for administering funding controls, please refer to Chapter 2, “Administrative Control of Funds,” of the DOE Accounting Handbook, which contains additional information on legal and administrative controls.

To provide allottees flexibility to accommodate valid upward adjustments to previously recorded obligations (e.g., due to cost overruns, DCAA closeout adjustments, etc.), the obligational control levels (administrative controls) within each expired appropriation account(s) by allottee will be relaxed. Currently, an obligation that exceeds an obligational control level in an unexpired account will result in an administrative violation (i.e., a violation of CFO administrative controls). However, if it is determined that a vendor invoice is to be paid from an expired appropriation account, but the remaining unobligated balance in the associated obligational control level is less than the amount of the invoice, even though payment will cause the obligational control level to be exceeded, it will not result in a reportable administrative violation. However, if this payment exceeds the remaining unobligated balances within the overall allotment, then a violation will have been incurred and must be reported in accordance with established procedures.

Accordingly, allottees initiating obligational adjustments to expired accounts that will exceed an obligational control level must coordinate this activity in advance with the Director, Office of Program Liaison and Financial Analysis (CR-30), Office of CFO, to preclude initiating a formal reporting process. In this regard, the administrative control of

funds procedures contained in Chapter 2, "Administrative Control of Funds," of the DOE Accounting Handbook will be amended accordingly.

3. Unobligated Balances

a. Expired Appropriations:

As was the case for FY 1998, unobligated balances associated with all **expired** appropriations will be retained by allottees and remain available only for valid upward obligational adjustments for an additional 5 years (expired period).

b. Unexpired Appropriations:

Since FY 1998, DOE has received several multi-year appropriations that require special attention. Since unobligated carryover balances associated with unexpired appropriations represent a budgetary resource available for obligation in the succeeding fiscal year(s), they must, in turn, be apportioned by OMB prior to obligation. Accordingly, unobligated carryover balances remaining at fiscal year-end for all **unexpired** appropriations will be withdrawn from allottees pending reapportionment by OMB. This is the same procedure utilized for DOE's no-year appropriations.

4. Downward Adjustments to Prior Year Obligations

Normally for DOE's no-year appropriations, downward adjustments to obligations incurred in prior fiscal years are subject to DOE's recovery-of-prior-year-obligations (Prior Year Deobligations or PY) process detailed in paragraph 5, "Adjustments to Obligations," of Chapter 5, "Accounting for Obligations," of the DOE Accounting Handbook. With no-year appropriations, balances recovered through this process are withdrawn from allottees and remain available indefinitely for subsequent obligation utilizing DOE's established administrative review and approval procedures. However, administration of DOE's time-limited appropriations warrants special treatment of downward adjustments of prior-year obligations.

a. Expired Period:

The recovery-of-prior-year-obligations process detailed above (see the introduction to this paragraph 4) is suspended for all expired appropriation accounts. Accordingly, during the expired period, those resources derived from downward adjustments to obligations that were incurred during the unexpired period will not be withdrawn but will remain with allottees and will increase the amount of unobligated balances in the expired appropriation account. As indicated in paragraph 3a above, unobligated balances associated with expired appropriations remain available only for valid upward adjustments of prior obligations and not for incurring new obligations.

b. Unexpired Period:

During the unexpired period for all multi-year appropriations, the recovery-of-prior-year-obligations process will remain operative and will utilize existing procedures detailed in Chapter 5, "Accounting for Obligations," of the DOE Accounting Handbook.

In light of the special requirements of time-limited appropriations, the procedures for administering the recovery of prior year obligations contained in Chapter 5 of the DOE Accounting Handbook will be modified accordingly.

APPENDIX A.

PROGRAM STATEMENT OF FACTS FOR MAKING A SEVERABILITY DETERMINATION

The purpose of the Program Statement of Facts is to provide project information that is pertinent to the contracting officer's making a determination of whether a project is **severable** or **nonseverable**. It is recommended that this Program Statement of Facts be answered by the technical manager at Headquarters where the work is defined at Headquarters or the technical manager at the DOE office where the work is defined locally. Further, it is recommended that this information be provided for each project that is funded from a time-limited appropriation, one that stipulates a time by which funds must be obligated (typically September 30 of a given fiscal year), as opposed to "no-year funds," if the project will be ongoing after the period of availability for obligation has passed.

1. Is funding for this project from a time-limited appropriation? (If the answer is no, go no further.)

YES _____ NO _____

2. Provide a brief, general description of the activity and attach the work statement.

3. What type of award instrument do you propose to accomplish this work, contract or assistance instrument (i.e., grant or cooperative agreement)? (If assistance instrument, do not answer question #12.)

Contract _____

Grant _____

Cooperative Agreement _____

4. Is there a ***bona fide* need** in the current fiscal year for the activity? Please explain the need for the activity in detail.

YES _____ NO _____

Explanation:

5. Is the activity to be performed of a recurring or continuing nature?

YES _____ NO _____

Explanation:

6. What is (are) the deliverable item(s) from which the government (if a contract) or public (if a financial instrument) receives benefit?

7. What is (are) the scheduled delivery date(s) of each item?
8. What is the impact to the government (if a contract) or the public (if a financial assistance instrument) if the item(s) is (are) not delivered? Please provide a detailed explanation.

9. Would any benefit accrue to the government (if a contract) or the public (if a financial assistance instrument) if a deliverable were only partially completed? If so, what is the benefit?

YES _____ NO _____

Explanation:

10. Can the work to be done be logically organized into separate phases? If so, does the activity in each phase provide benefit independent of the overall project?

YES _____ NO _____

Explanation:

11. Is adequate funding available in the current fiscal year to fully fund the project or phase of the project to be undertaken?

YES _____ NO _____

Explanation:

12. Is this a contract for support services?

YES _____ NO _____

Statement prepared by:

Telephone number: _____

Fax number: _____

E-mail address: _____

(typed name)

(title)

(signature)

(date)

Recommendations:

Legal: _____ Severable _____ Nonseverable
(signature) (date)

Finance: _____ Severable _____ Nonseverable
(signature) (date)

Determination:

Contracting
Officer: _____ Severable _____ Nonseverable
(signature) (date)