



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM:

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SUBJECT:

Revised Guidance on Computer Acquisitions

The Budget Enforcement Act requires the total present value of payments for lease-purchase agreements to be scored upfront in the first year of the lease-purchase.

Based upon discussions among representatives of the Office of the Deputy Assistant Secretary for Information Management, the Office of the Chief Financial Officer, the Offices of the General Counsel, the Office of the Deputy Assistant Secretary for Procurement, and others within the Department of Energy, and with the agreement of the Office of Management and Budget, the Department of Energy has revised Departmental guidance relative to scoring of computer acquisitions. Previous guidance for telecommunications systems is unchanged.

Where there are demonstrable benefits over outright purchase of computers, Department of Energy Elements, laboratories, management and operating contractors, and other field sites (collectively, "Departmental sites") may negotiate multiyear contracts, funded with no-year appropriations, for computer lease-to-ownerships (commonly referred to as LTO), lease with option to purchase (commonly referred to as LWOP), and other lease agreements for computer resources. Contracts awarded under this authority shall contain language stipulating zero dollars or clearly stated dollar ceilings for cancellation liabilities, and expressly state that no further obligations are allowed unless appropriations are provided for the computer acquisition in advance of the next fiscal year's obligation. Please refer to the below sample cancellation clause for additional guidance.

This clarification to Departmental policies for complying with the Office of Management and Budget scoring rules for computer LTOs, LWOPs, or other leases that are funded with no-year appropriations, enables the Department to meet the Office of Management and Budget's principal concerns that the Department be aware of the amount of the out-year mortgage for major



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computer acquisitions, that it not violate the Anti-Deficiency Act, and that it use benefit-cost analyses as part of its computer acquisition process. Due to the short term (3-5 years) of LTOs or LWOPs of computers, the Department will meet the Office of Management and Budget's concerns by the following:

1. The Chief Information Officer will annually provide the Office of Management and Budget a table identifying the Department's major computer acquisitions under an LTO, LWOP, or lease plan to include the total out-year costs (mortgage) of each acquisition.
2. The Chief Information Officer will continue annually to publish the latest discount rates to be used in benefit-cost analyses of computers.
3. Departmental sites will score all LTOs or LWOPs of computers funded with no-year appropriations as follows: The amount to be scored is the current fiscal year liability which is the amount (or best estimate if the contract is not yet finalized) of the total monthly payments for the current fiscal year plus the potential cancellation payments, if any, as defined in the contract, should the LTO, LWOP, or lease be canceled by or on behalf of the Government during the current fiscal year. Either capital, operating, or a combination of the two types of funding can be used to score the current fiscal year liability of the computer's costs.
4. Departmental sites will include a cancellation clause, substantially similar to the sample clause below, in all computer LTOs, LWOPs, or other lease contracts funded with no-year appropriations:

The Lessor understands that funding of this Lease Agreement is subject to the future availability of annually appropriated, apportioned, and allotted funds; and that this agreement must be made and administered consistent with 31 United States Code (U.S.C.) §1341 and 41 U.S.C. §11. Accordingly, funding of lease costs under this agreement shall be provided on a fiscal year basis, subject to a determination by the Department of Energy that sufficient appropriated and apportioned funds are available to be allotted for such costs. The Departmental site which could be a Departmental element, laboratory, M&O contractor, or other field site agrees to give written notice not later than 30 days before the beginning of each successive fiscal year. This notice shall indicate that funds for the next fiscal year, which may be lawfully applied to this Agreement are available. Such funds shall be applied to continue the agreement subject to the availability of funds. In the event that no funds are appropriated and/or apportioned, or a determination is not made by the Department that sufficient funds are available to continue this agreement and no written notice of availability of funds is made within the time prescribed, then this agreement shall end on the last day of the current fiscal year without penalty or expense of any kind to the Departmental site. If funding previously available for this agreement is withdrawn during the current fiscal year as a result of budgetary action by the Office of Management and Budget or by Congress, the (Departmental site) will notify the Lessor of this occurrence and may cancel this agreement upon (2) two weeks written notice to the

Lessor. Upon cancellation of this agreement, and upon written direction from the Lessor, the (Departmental site) shall deliver the leased equipment to Lessor within the Continental United States consistent with the terms and conditions described in the Master Agreement.

- 5. Site information managers, contracting officers, Departmental Elements, and the Office of Information Management, will take appropriate actions for assuring their individual sites, and/or the sites under their cognizance, adhere to the above policies and sample cancellation clause guidance.

Scoring policies shall not be interpreted as authorizing avoidance of antideficiency requirements and restrictions. Regardless of any scoring rules or guidance, the making of expenditures or the incurring of obligations in excess or in advance of available appropriations is not permitted under the Antideficiency Act and related statutes. As a practical matter, this means that multi-year contracts for the lease of computers ordinarily cannot be accomplished with one-year appropriations absent specific statutory authority, except where the contracts provide for a base period limited to the current fiscal year followed by option years. In any case where questions arise concerning funds obligation for a particular contract, you are encouraged to discuss the matter with the responsible contracting officer, representative of the Office of the Chief Financial Officer and legal counsel before the contract is awarded.

If you have any questions regarding this guidance please contact Michael Orosz, Policy Integration Team, on 301-903-2957 or via Internet - "michael.orosz@hq.doe.gov".

John F,
 Thanks for all
 the help & support.
 Michael Orosz
 11/27/95