

July 28, 2000

MEMORANDUM TO: Michael L. Springer, Director
Office of Administration

FROM: Donald F. Hassell
Assistant General Counsel
for Administration

SUBJECT: PROPOSED MANAGEMENT DIRECTIVE AND HANDBOOK
(MD) 11.8, "NRC PROCEDURES FOR PLACEMENT AND
MONITORING OF WORK WITH OTHER FEDERAL AGENCIES"

This responds to your July 7, 2000, seeking our review and comments on proposed Management Directive 11.8. Our comments follow.

We believe that the introductory and other appropriate portions of Handbook 11.8 should be revised to indicate that the procedures outlined there are not appropriate in all circumstances and that, instead, judgement should be exercised as to whether, and to what extent those procedures apply. As outlined in the Handbook, these procedures entail preparing cost estimates; drafting statements of work; requiring the servicing agency to submit a proposal based on the statement of work; and a negotiating final agreement based on the proposal. However, the uniform imposition of these procedures on interagency arrangements, without express allowance for differences, fails to take into account the varying techniques used by other agencies that provide services to NRC.

For example, under NRC's February 5, 1996, MOU with Treasury's Debt Management Services group, fees for debt collection services are based on predetermined percentages of what DMS collects. Further, the nature of the services Treasury offers is predetermined. That is, when Treasury collects debts for other agencies, it uses standard procedures, rather than providing differing services tailored to each agency's specifications. In this circumstance, the only cost estimate that can be prepared is to multiply the estimated amounts that Treasury will collect by the appropriate percentages that it charges for collections. This same situation, predetermined services and rates of payment, termed an administrative add-on in that case, applies to the Department of Agriculture's Direct Premium Remittance System for servicing health benefits of individuals the requesting agency does not employ.

We selected the above examples because we happened to have documents available describing how these two agencies do business, i.e., they offer fixed types of services at fixed prices. However, there are undoubtedly other instances where the procedures prescribed in draft MD 11.8 will prove unsuitable. In this regard, NIH's provision of computer services may

also be based on prescribed terms and payment rates, rather than responding to statement of work outlining the needs of individual agencies.

For the above reasons, we strongly recommend against processing NRC's interagency agreements under a single procedure that does not reflect the varying business methods of an undermined, but perhaps substantial, portion of the agencies that provide NRC with essential services. In making this recommendation, we realize that Section II(H)(2)(a) of the Handbook does not require price negotiations when acquiring goods and services from a required source, but that does not cover the situations discussed above. We also realize that Section II(H)(2)(b) provides that the other agency's forms may be used and certain other procedural requirements avoided when obtaining training and other routine, off-the-shelf services, but those exceptions do not take all of the circumstances into account. For example, these abbreviated procedures still require the use of a request for proposals, which request, according to Exhibit 9(a), requires the servicing agency to furnish "a discussion of the performing agency's understanding of the scope of work" and to discuss the capabilities of their key personnel, among other things. Referring again to Treasury's debt collection, we do not believe it is useful in such situations to require the preparation of a proposal discussing their understanding of NRC's work and the capabilities of their key personnel.

In summary, we believe that because the work performed under interagency agreements does not fit a uniform model, greater flexibility or discretion would be desirable. Accordingly, we recommend adding a provision to the Handbook requiring a preliminary assessment to determine whether and to what extent its general procedures apply to the circumstances of a proposed interagency agreement. Because this assessment would be a preliminary step in all cases, this provision should appear in the introductory portion of the Handbook. Further, we recommend that this provision identify the considerations that should be taken into account when making this determination, to include references to specialized areas such as required sources when appropriate. Also, we suggest that you add language to other portions of the Handbook to explain when and how the standard procedures may be varied in response to differing circumstances. Finally, the Directive should identify the individuals who are authorized to make these determinations.

In addition, we recommend the following changes in the proposed Management Directive:

1. Section 11.8-01, last line. Add "and other relevant statutes authorizing an agency to perform work for other agencies."
2. Section 11.8-033(b), 1st line, pg. 2. For purposes of clarity, insert the words "internal NRC" between "of" and "policy."
3. Section 11.8-035(a), 1st line, pg. 2. In light of recent concerns regarding OGC's role reviewing contract documents, insert the words "When requested" at the beginning of the first sentence.
4. Section 11.8-036, 1st line. In order to preserve the legal distinctions between contracting and procurement on the one hand and interagency transfers on the other hand, substitute "obtaining goods and services under" for "contracting and procurement services for."

5. Section 11.8-037(e), last line. Add at the end of the sentence “or other appropriate authority.”

Finally, while we assume that the final version of the Handbook will contain a table of contents, because including a proposed table of contents with proposed issuances would assist other offices in their reviews, we recommend that proposed issuances include one in the future.

cc: T. Hagan, DCPM

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