

BUSINESS OPERATING PROCEDURE

BOP-02.08

Approved: 6-6-17

WORKFORCE DECISION PROCESS



**NATIONAL NUCLEAR SECURITY ADMINISTRATION
Management and Budget**

CONTROLLED DOCUMENT

OFFICE OF PRIMARY INTEREST (OPI):

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WORKFORCE DECISION PROCESS

1. **PURPOSE.** This document describes the staffing options available to supervisors and includes a step-by-step process for selecting the most appropriate staffing option and funding source to fulfill new or changing workforce requirements.
2. **CANCELLATION.** None.
3. **APPLICABILITY.**
 - a. **Federal.** This applies to all NNSA elements.
 - b. **Contractors.** Does not apply to contractors.
 - c. **Equivalency.** In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 United States Code sections 2406 and 2511, and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
4. **SUMMARY OF CHANGES.** Not applicable.
5. **BACKGROUND.** Numerous options are available to supervisors who need additional staff to fulfill new, increased, or changed work requirements. Staffing options include hiring full- or part-time federal employees (permanent or time-limited), hiring from temporary programs, or using contractors. Hiring flexibilities include Pathways position(s), recent graduates or Presidential Management (PM) Fellows, legal interns and externs, and Minority Serving Institutions (MSI) interns. Contractor options include using management and operating (M&O) contractor employees as details or using support service contracts. Intergovernmental Personnel Act (IPA) assignments may also be considered for providing technical expertise on a short-term basis.

The type of funding available to fill the position is a major consideration: Program or Federal Salaries and Expenses (FSE) funds are both governed by law and can only be used to finance specific types of positions.

This Business Operating Procedure (BOP) describes a step-by-step process to help supervisors navigate the staffing and funding decisions to be made when selecting the best solution to address changing work requirements and the organization's needs.
6. **REQUIREMENTS.**
 - a. The Workforce Decision Process in Appendix 1 must be used to determine the best option to fill a needed position or complete a type of work.

- b. A Human Resources (NA-MB-10) representative must be contacted to begin the hiring process when the decision is reached to hire a federal employee (including a Pathways position or legal intern).
- c. A Learning and Career Management (NA-MB-40) representative must be contacted to begin the hiring process when the decision is reached to use an MSI intern.
- d. FSE funding must be used for the following staffing options:
 - (1) Federal staff (full-time, part-time, temporary, term-limited),
 - (2) Management and professional support service contractors, and
 - (3) Legal interns.
- e. Program funding must be used for the following staffing options (for additional details refer to NAP-32, *Managing Support Service Contract Funding* and NAP-31, *NNSA M&O Offsite Extended Duty Assignments*):
 - (1) Technical support service contracts,
 - (2) M&O details, and
 - (3) IPA assignments.
- f. Federal Acquisition Regulation (FAR), Part 37, *Service Contracting*, sets forth the policy and procedures that are specific to the acquisition and management of services by contract. The guidance in FAR Part 37 must be considered when determining the appropriateness of a service contract to perform certain types of work for the government.
 - (1) Restrictions on support service contracts:
 - (a) Personal services contracts. FAR Subpart 37.1 states that agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C. 3109). FAR Subpart 37.1 states a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. This relationship occurs when, as a result of (1) the contract's terms, or (2) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer.

The Department's acquisition guide (Chapter 37.1, "Support Service Contracting") states that when the Department restricts a

contracted position's requirements to match a particular person's qualifications, this establishes a personal services relationship.

- (b) FAR 37.102(c) and FAR Subpart 7.5, "Inherently Governmental Functions," prohibit the use of contracts for functions that are inherently governmental. FAR 7.503(c) identifies specific functions considered to be inherently governmental, such as the determination of agency policy and program priorities, and the direction and control of federal employees. Under FAR 7.503(d), "certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance." These include services such as those that involve or relate to budget preparation; evaluating another contractor's performance; and developing analyses, feasibility studies, and strategy options. For more information on the use of support service contracts, see DOE Acquisition Guide 37.1.
- g. A budget officer must sign off on Appendix 2, *NNSA Staffing Selection Justification* form, when the decision is made to procure a contractor to perform support services for NNSA.
- h. The requirements specified in NAP-31, *NNSA M&O Off-Site Extended Duty Assignments*, or subsequent applicable policy, must be followed when a Program Office makes the decision to detail an M&O employee.
- i. When using the authority provided by the Intergovernmental Personnel Act to temporarily transfer personnel from a State or local government, institutions of higher education, Native American tribal governments, or other eligible non-federal organizations (including federally funded research and development centers), the requirements specified in DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, or subsequent applicable policy, must be followed.

7. RESPONSIBILITIES.

- a. Associate Administrator for Acquisition and Project Management (NA-APM):
 - (1) Works with NNSA elements to implement the process to procure a support service contractor.
 - (2) Establishes and maintains NNSA policies on M&O contractor details.

- b. General Counsel (NA-GC):
- (1) Initiates the legal intern or legal extern recruitment process.
 - (2) Reviews M&O detail packages for conflicts of interest, and IPA packages (to the extent provided for under DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, or subsequent applicable policy).
- c. Human Resources (NA-MB-10): Implements the hiring or onboarding process for federal, IPA, Pathways position(s), legal interns, legal externs, or details from other federal agencies.
- d. Learning and Career Management (NA-MB-40): Implements the MSI intern onboarding process.
- e. Program Offices: Initiate M&O contractor detail process in accordance with NAP-31 or subsequent applicable policy.
- f. Hiring Approval Official (An Organization's Principal Deputy): Confirms the workforce decision process was properly executed prior to initiating the recommended hiring option.
- (1) If approved, signs Appendix 2 and authorizes the hiring manager to initiate the decision.
 - (2) If the option is disapproved, sends Appendix 2 to the hiring manager with a justification for the decision.
- g. Hiring Manager:
- (1) Uses the process flowchart in Appendix 1 to determine the best option for fulfilling new or changing workforce requirements.
 - (2) Documents the decision process on Appendix 2 for all choices other than federal employees.
 - (3) Coordinates with Human Resources for Federal, IPA, Pathways position(s), legal intern, legal extern, or details from other Federal agencies; and with Learning and Career Management (NA-MB-40) for MSI intern hiring.
- h. Field Office Contracting Officer:
- Works with the program office to confirm M&O contractor detail assignments to DOE/NNSA are conducted in accordance with NAP-31 or subsequent applicable policy, and to implement an M&O contractor IPA assignment to NNSA/DOE in accordance with DOE M 321.1-1.

8. REFERENCES.

- a. Federal Acquisition Requirement (FAR) 37, *Service Contracting*.
- b. DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, dated 8-24-00.
- c. DOE Acquisition Guide, Chapter 37.1, *Support Service Contracting*.
- d. NNSA NAP-31, *NNSA M&O Off-Site Extended Duty Assignments*, dated 11-22-16.

9. DEFINITIONS. See Appendix 3.

10. CONTACT.

- a. For Federal hiring and IPA assignments contact Human Resources, NA-MB-10, 505-845-5474.
- b. For support service contract issues and M&O details, contact Director of Acquisition Management, NA-APM-10, 202-586-7439.

BY ORDER OF THE ADMINISTRATOR:



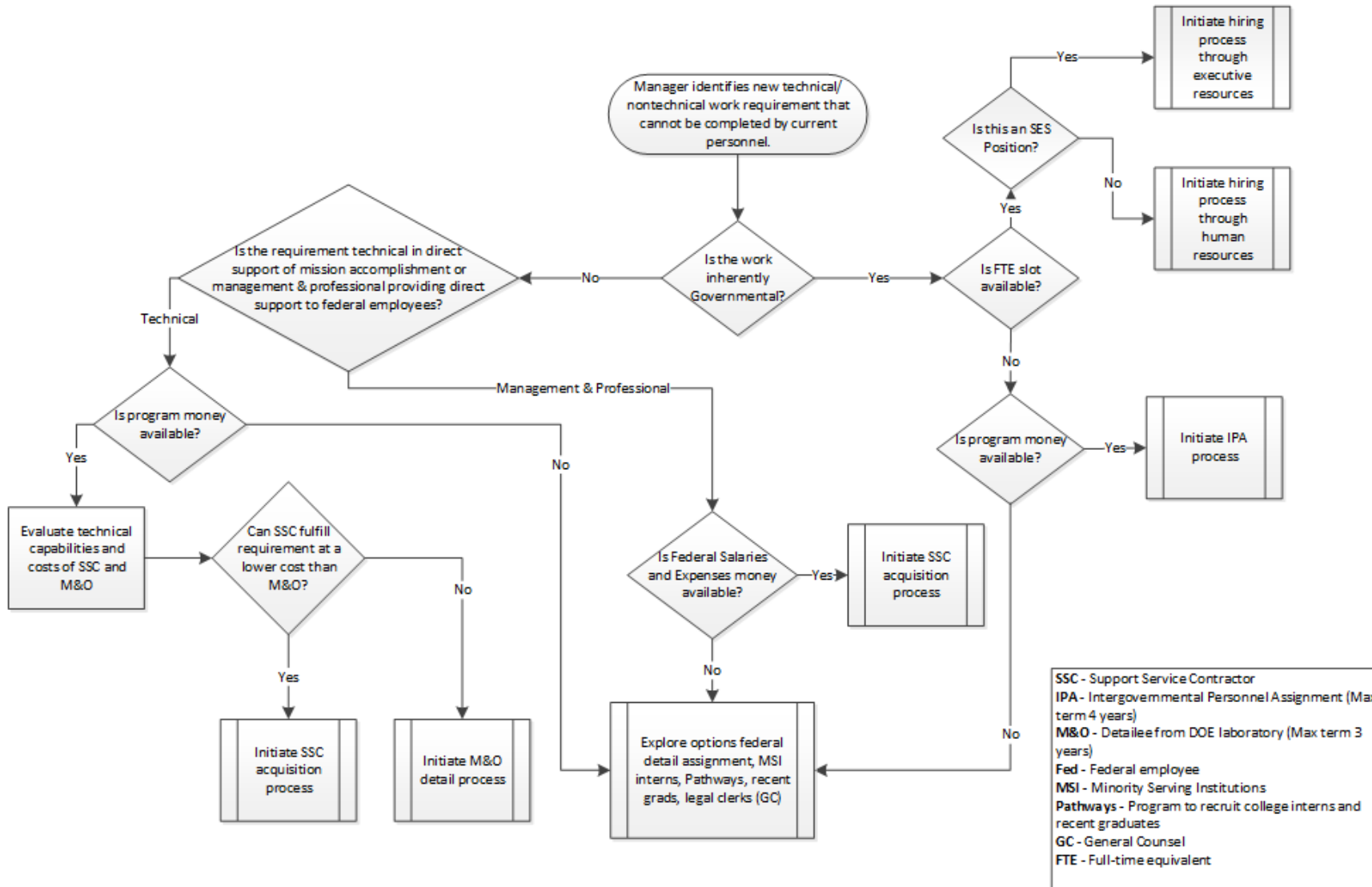
R. M. Hendrickson
Associate Administrator
for Management and Budget

Appendixes:

1. Workforce Decision Process Flowchart
2. Staffing Selection Justification
3. Definitions

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Workforce Decision Process



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**NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA)
STAFFING SELECTION JUSTIFICATION**

HIRING MANAGER TO COMPLETE THE FOLLOWING SECTIONS AND SUBMIT TO THEIR HIRING APPROVAL OFFICIAL FOR APPROVAL.

SECTION 1 – GENERAL INFORMATION

_____ Telephone Number: _____
Hiring Manager (Printed/Typed Name)

Routing Symbol: _____

SECTION 2 – DECISION JUSTIFICATION

New Hire Backfill

Funding Type: Program Federal Salaries and Expenses N/A

Is the Work Inherently Governmental? Yes No

Is the support Technical or Management and Professional

Justification: _____

Scope of Work: _____

Staffing Option Selected: _____

Proposed Start Date: _____

SECTION 3 – CERTIFICATION AND APPROVAL

I certify that the process in Appendix 1 of BOP 03.XX was used to make my decision.

_____ ^X _____
Hiring Manager (Printed/Typed Name) Signature Date

_____ ^X _____
Budget Official (Printed/Typed Name) Signature Date
(Support Service Contractor Only)

Approve: _____ Disapprove: _____
Hiring Approval Official (Signature) Date

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APPENDIX 3: DEFINITIONS

- a. Career Pathways Program. Innovative employment program targeting students and recent college graduates.
- b. Federal Salaries and Expenses (FSE). The funding used for advice or assistance provided to a federal employee or for hiring a contractor in lieu of a federal employee (excluding Naval Reactors and the Office of Secure Transportation).
- c. Head of NNSA Element. The most senior level executive in an NNSA element. These positions are currently Deputy Administrators, Associate Administrators, Field Office Managers, and the General Counsel.
- d. Inherently Governmental. An inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992 (Federal Register, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities.
- e. Legal Extern. A student selected by NA-GC to work during the semester for credit. This position is unpaid.
- f. Legal Intern. A student selected by NA-GC to work during the summer as a paid intern.
- g. Minority Serving Institution (MSI) Intern. A student pursuing a degree in science, technology, engineering, and mathematics that attends a minority serving institution that NNSA supports via a Federal grant. The intern goes to headquarters, a field office, or national laboratory for 10 weeks where all of their expenses are paid by the school using funding provided through the grant.
- h. NNSA Element. NNSA elements consist of headquarters program offices and field offices which report directly to the Office of the Administrator.
- i. NNSA Hiring Approval Officials. This is the Deputy to the Head of Element or the first Senior Executive Service (SES) in the management chain when hiring any Federal employee.
- j. Program Direction Funds. Program Direction funds are general operating appropriations for administrative expenses. The most common (but not the only) form of general operating appropriation is entitled "Salaries and Expenses (S&E)." Typically employee salaries, together with related items such as agency contributions to health insurance and retirement, of course, comprise the bulk of an S&E appropriation. NNSA has a Federal S&E appropriation with a Program Direction account. Secure Transportation Asset and Naval Reactors contain separate Program Direction accounts for their operations.
- k. Program Funds. Program Funds are appropriations provided for expenses in support of a specific action or function authorized by law. Expenditures in this category must bear a

logical relationship, make a direct contribution to carrying out the authorized function and not be otherwise provided for.