

CHAPTER 2**PROJECT ORDERS****0201 INTRODUCTION**

020101. This chapter reissues guidance formerly contained in DoD Instruction 7220.1, “Regulations Governing the Use of Project Orders.” This chapter prescribes regulations governing the use of project orders in the Department of Defense pursuant to authority contained in Title 41, United States Code, section 23.

020102. The referenced authority provides that:

“All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors.”

020103. The term “approved projects,” as used in the referenced authority, has no special meaning. It refers simply to projects that have been approved by officials having legal authority to do so.

0202 APPLICABILITY AND SCOPE. The provisions of this chapter apply to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “DoD Components”).

0203 DEFINITIONS

020301. **Project Order.** A “project order” is a specific, definite and certain order issued under the authority contained in 41 U.S.C. 23 which, when placed with and accepted by a separately managed DoD establishment, serves to obligate appropriations in the same manner as orders or contracts placed with commercial enterprises. A project order is a valid and recordable obligation of the issuing entity when the order is issued and accepted, providing the obligation otherwise meets the criteria for recordation of an obligation contained in 31 U.S.C. 1501.

A project order which lacks, at the time of issuance or acceptance, a description of the product to be provided is not sufficient to create a recordable obligation. (However, often there may be repeat orders for which the performing installation will have detailed and definite specifications available. Thus, if the performing activity has on file those elements which make a project order specific, definite, and certain, and those elements are in sufficient detail to enable the performing installation to proceed in carrying out the work ordered, it is not necessary to also

include those elements within the project order itself. In such cases, reference may be made on the project order that specification documentation is retained on file by the performing activity.)

020302. Project Order Form. Although the use of a specific project order form is not prescribed, a form substantially in the format of that shown in addendum 4, “Universal Order Format,” to chapter 1, “General Reimbursement Procedures and Supporting documentation,” of this volume should be used whenever practicable. However, any form may be deemed to be a “project order” and shall be subject to the provisions of this chapter, regardless of the form in which it is issued when it is:

- A. Issued by, and accepted for performance in, a DoD-owned and operated establishment,
- B. The subject of any of the purposes set forth in paragraph 020504.B of this chapter, and
- C. Placed with a DoD-owned and operated establishment.

All forms that are to be treated as project orders clearly shall be identified as such by inclusion of a statement such as “This order is placed in accordance with the provisions of 41 U.S.C. 23, as implemented by Department of Defense regulation.”

020303. DoD Owned Establishment. A “DoD owned establishment” for the purpose of this chapter is any DoD owned and operated activity (i.e., not contractor owned or operated). Such activities include working capital fund activities; other revolving fund activities; and appropriated fund activities provided the appropriated funded activity engages in reimbursable operations that are not reasonably severable into fiscal year segments and those reimbursable operations can be forecasted with reasonable accuracy. Examples of such activities include equipment overhaul or maintenance shops, manufacturing or processing plants or shops, research-and-development laboratories, computer software design activities, testing facilities, and proving grounds owned and operated by the Department.

020304. Contractual Relationship, Commercial Contracts, Defaulting Contractors, and Commercial Contracting. Terms such as “contractual relationship,” “commercial contracts,” “defaulting contractors,” and “commercial contracting” are used to indicate the close relationship between project orders and commercial contracts in the particular circumstances involved. The use of these and similar terms should neither be construed as requiring project orders to be subject to the provisions of the “Federal Acquisition Regulations System,” nor as imposing upon the parties to a project order agreement, responsibilities (legal or otherwise) not provided for in this chapter.

020305. Allotment. The term “allotment” includes approved operating budgets for operation of the U.S. Armed Forces.

0204 ADVANCE PLANNING

020401. Ordering DoD Components shall give performing DoD Owned establishments advance planning data covering the work estimated to be placed with the performing DoD Owned establishment. This advance planning data shall be used by a performing DoD Owned establishment in the development of its operating budget. An operating budget is subject to revision as subsequent specific work requirements, including significant revisions thereof, are determined.

020402. At the appropriate time during project order negotiations, performing DoD Owned establishments shall give ordering DoD Components cost estimates for each item to be produced, or work to be performed, under the project order.

0205 CONDITIONS GOVERNING ISSUANCE AND ACCEPTANCE OF PROJECT ORDERS

020501. A contractual relationship must exist (be created by the project order) between the parties involved.

020502. Consistent with the concept that one entity cannot enter into a formal contract with itself, a project order shall not be used by one organizational unit to order work from another organizational unit under the same activity commander.

020503. Expiration dates of project orders may not extend beyond the point in time in which the ordering appropriation will be canceled (generally, five years after the appropriation expires for new obligation).

020504. Project orders may be issued only to DoD owned establishments (see subsection 020303) that have been given the authority to operate a reimbursable program in an amount equal to or exceeding the project order amount(s). Transactions between the Department and other government agencies are governed by the Economy Act (31 U.S.C. 1535). To determine whether the project order statute, rather than the Economy Act, provides the statutory authority for an intra-DoD order, determine whether the order is being placed with a DoD owned establishment as that term is defined in paragraph 020303, whether the order is “entire” under paragraph 020509, or whether it satisfies the requirements of the Economy Act set forth in chapter 3 of this volume.

020505. All payments by an ordering DoD Component to a performing DoD owned establishment shall be based upon either an approved payment schedule in the order or upon billings from the performing DoD owned establishment to the ordering Component.

020506. Specific, Definite and Certain. Project orders are analogous to contracts placed with commercial concerns and, similar to such contracts, shall be specific, definite and certain both as to the work encompassed by the order and the terms of the order itself. A project

order must be accepted by the performing DoD Owned establishment as a basis of obligation by the issuer.

020507. Certification of Availability for Purpose. Project orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. However, the performing entity may not be aware of all such appropriation limitations. Therefore, an official of the issuing entity should provide a certification, on or attached to the project order, that the funds cited on the project order are properly chargeable for the purposes cited in the project order.

020508. Bona Fide Need. Project orders must serve a bona fide need, of the issuing activity, that exists in the fiscal year in which the project orders is issued; otherwise, a valid obligation is not accomplished. It is not intended that the rule of bona fide need of the fiscal year rule be construed to preclude procurement lead time. Thus, where materials, for example, cannot be obtained in the same fiscal year in which they are needed and contracted for, a provision for delivery in the subsequent fiscal year does not violate the bona fide need rule so long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources. Bona fide need generally is a determination of the requesting activity and not that of the performing activity. A performing activity should, however, refuse to accept a project order if it is obvious that the project order does not serve a need existing in the fiscal year in which issued.

020509. “Entire” versus “Severable.” To be eligible for project order financing, the need must be present in the fiscal year in which the project order is issued, require a series of actions over a period of time which may cross a fiscal year, and call for work or services that are not reasonably severable between fiscal years. For instance, an order for an “entire” end item or service would call for a single or unified outcome or product, and would be one in which few, if any, benefits would accrue if the work were terminated without completion at the end of the fiscal year in which it was placed. The distinction between “entire” and “severable” may not be evident readily and, therefore, requires some judgment. The objective desired by the requesting customer should be used in the determination. For example, if the customer provides an item (e.g., an aircraft) for overhaul or renovation and desires the entire item to be returned in a serviceable state, then a repair of a single component (e.g., avionics, landing gear, electronics) of the item when the item consists of many components needing repair, would not be a “severable” action. Conversely, if a customer desires an automated system that consists of multiple modules and some (or all) modules can be used independent of the entire system, then each module that can be used independent of the entire system is severable.

A. The following are examples that ordinarily are severable and therefore not eligible for project order financing.

- (1) Custodial or housekeeping services.
- (2) Security or fire protection services.

(3) Refuse collection.

(4) Routine maintenance in general, including grounds or surfaced area maintenance; heating and air conditioning systems operation and maintenance; and other real and personal property maintenance.

(5) Services such as education, training, subsistence, storage, printing, laundry, welfare, transportation (including port handling), travel, utilities or communications when any of these purposes is the primary purpose of the request.

(6) Efforts where the stated or primary purpose of the order is to acquire a level of effort (e.g., 100 hours, 20 weeks or one year) rather than a specific, definite, and certain end-product.

B. The following are examples in which an entire need generally exists and, therefore, are eligible for project order financing.

(1) Manufacture, production, or assembly of items including experimental prototypes or items manufactured and assembled for test. "Items" includes ships, aircraft, guided missiles, other weapons, vehicles of all kinds, ammunition, clothing, machinery and equipment for use in such operations, and other military and operating supplies and equipment (including components and spare parts).

(2) Renovation, rebuild, rehabilitation, reconditioning or overhaul of items, including such operations as are necessary to restore an item to a condition of serviceability equivalent to its original state.

(3) Alteration or modification in design or assembly of an item to meet revised specifications or to correct defects.

(4) Construction or conversion of items (including buildings and other structures), utility and communication systems and other public works.

(5) Development of software programs and automated systems when the purpose of the order is to acquire a specific, definite, and certain non-severable end-product that is reasonably achievable with the resources (financial, human, and plant) available to the provider rather than a level of effort over an extended period.

(6) Production of engineering and construction related products and services.

020510. Commencement of Work. The work to be performed under project orders shall be expected to begin within a reasonable time after its acceptance by the performing DoD owned establishment.

A. Although work on a project order is not required to commence in the year of project order acceptance, as a minimum requirement, evidence must exist at the time of project order acceptance showing the intention that work (or procurement if required prior to the beginning of work) will begin without delay (usually within 90 days) and will be completed within the normal production period for the specific work ordered.

B. If work (or procurement if required prior to the beginning of work) financed from an appropriation that expired for obligation on September 30 on a project order does not begin, or is not expected to begin, before January 1 of the following calendar year, the project order shall be returned by the performing activity for cancellation unless it is documented that the delay is unavoidable and could not have been foreseen at the time of project order acceptance and that documentation is retained for audit review.

020511. Contingent Event Prohibition. Project orders shall not be issued if commencement of work is contingent upon the occurrence of a future event or authorizing action by the ordering DoD Component.

020512. Lawful Purpose. Project orders shall not be used to contravene provisions of the law or to accomplish, by means of this device, what regulations do not permit under commercial contracts.

020513. Authorized Purpose. Project orders shall not be issued for the primary (or secondary) purpose of continuing the availability of appropriations.

020514. Project Order Modification and Amendment. Project orders, similar to commercial contracts, may contain special provisions and may subsequently be modified or amended. Unlike procurement contracts with commercial concerns, where competition requirements limit contract modifications, project orders may be changed or increased as long as proper funding is available, and the new work otherwise meets the general conditions governing issuance and acceptance of project orders identified above. If the appropriation used to fund the initial order remains available for new obligation, use it to fund modifications and amendments that are a bona fide need of that appropriation, even if the modification changes the scope of the order. If the appropriation used to fund the initial order has expired, use it to fund only those amendments and modifications that are within the general scope of the initial project order. In cases where the original appropriation has expired and no longer is available for new obligations, and the modification or amendment changes the general scope of the original order, the amendment or modification should be funded from the current appropriation. However, the appropriation cited on the project order will remain available for price increases and changes that are within the scope of the original project order. Subject to the provisions of subsection 020708, amendments to project orders, which have the effect of partial or complete termination of such orders, shall provide for the inclusion of the costs of termination.

020515. Ability to Perform. Project orders shall be issued only to those DoD owned establishments that are capable of substantially performing the work ordered. “Substantially,” as used in this paragraph, means that the project order recipient should incur

costs of not less than 51 percent of the total costs attributable to rendering the work or services ordered. Total costs to render the work or services ordered include the costs of goods or services obtained from/provided by contractors.

020516. Subsidiary Ordering. The provisions of this chapter are not intended in any way to authorize one DoD owned establishment to act as a general contracting or purchasing agent for another entity.

A. Subsidiary ordering (within the government) and contracting (with commercial firms) pursuant to a project order is authorized, provided such subsidiary ordering and contracting is incident to, and is for use in, carrying out the purpose of the project order.

B. Project orders must contemplate the use of personnel and facilities (but may include use of other resources) on the part of the project order recipient, beyond those incident to contract procurement. In this connection, it is not improper for a project order recipient to subcontract for component parts when such parts will be assembled later by the recipient into the end product ordered. However, the assembly operation must require the use of personnel whose technical skills are essential to completion of the job. In addition, the work expended in the assembly operation should be of such an extent that it avoids a perception of the project order being used for contract procurement.

C. If a project order cannot be placed with another DoD owned establishment because that establishment would fill the order by contracting with a commercial concern for performance of substantially the entire order, it is possible that the order could be placed pursuant to the Economy Act [31 U.S.C. 1525(a)(3)], which permits the agency or agency unit filling the order to provide or procure by contract the goods and services necessary to perform the order.

020517. Project Order Default. Where recipients of project orders default or fail to perform work or services specified in the orders, and replacement contractors are required as the result of such default;

A. Defaulted work or services may be procured from another source to the extent of any unobligated balance in the appropriation thus obligated. Similarly, a project order also may be issued to a DoD establishment under an appropriation obligated by contracts with outside contractors when such contract is terminated for default or failure on part of the contractor to perform work or services specified in the contract. All such replacement project orders resulting from defaults may be issued and obligated subsequent to the period of availability of the appropriations for obligation if the replacement project order is made without undue delay after the termination of the original contract or project order.

B. Replacement project orders fulfill bona fide needs of the appropriation that had funded the contract or project order that was terminated for default. The replacement project order shall be awarded on the same basis and be similar substantially to the original project order in its scope and size. The replacement project order must not extend beyond the point in time in

which the ordering appropriation will be canceled (generally, five years after the appropriation expires for new obligation).

020518. Project Order Financing. Project orders shall be fully financed by the ordering DoD Component from obligational authority current at the time the project order is issued and accepted. However, project orders issued for projects or programs financed by a research, development, test and evaluation appropriation may be prepared on an incrementally programmed basis. Research, development, test and evaluation appropriation projects or programs financed on an incrementally programmed basis are ones that are funded for the remainder of the funding appropriation's period of current availability or the current fiscal year vice a fully funded to completion basis.

020519. Direct-Cite Prohibition. Project orders shall be issued to a DoD-owned establishment for performance only on a reimbursable basis. They may not be made a subdivision of funds, similar to an allotment; nor may appropriations of the ordering DoD Component be cited by the performing DoD owned establishment when incurring and recording obligations incurred in performance of the order.

020520. Reimbursement of Costs Incurred in Performance of a Project Order. Reimbursement of costs incurred by a performing activity in fulfillment of a project order may be accomplished in the manner ordinarily used by that performing activity. The usual and accepted manner of accomplishing reimbursement is by citing the funds of the requesting activity as the funds charged on the SF 1081, "Voucher and Schedule of Withdrawals and Credits."

0206 CONDITIONS GOVERNING PERFORMANCE OF PROJECT ORDERS

020601. After acceptance, project orders shall be performed as expeditiously as possible according to the terms as accepted. (See subsection 020510 for additional information.)

020602. Performing DoD owned establishments shall be responsible for promptly advising ordering DoD Components concerning changes in delivery schedules.

020603. In the case of cost-reimbursement project orders, performing DoD Owned establishments shall give ordering DoD Components a summary of costs incurred to date and estimates of costs to complete the order only when specifically requested by the ordering DoD Component. The ordering DoD Component shall not request the submission of this cost information any more frequently than monthly. No special report forms are authorized for this purpose.

020604. Expiration dates of project orders may be extended with the approval of the ordering DoD Component. Expiration dates of project orders may not extend beyond the point in time in which the ordering appropriation will be canceled (generally, five years after the appropriation expires for new obligation).

0207 REIMBURSEMENTS TO PERFORMING DOD OWNED ESTABLISHMENTS

020701. Performing DoD Owned establishments shall be reimbursed for work covered by project orders upon the basis of costs incurred or on the basis of fixed prices.

020702. Fixed Price Project Orders. A fixed-price project order shall establish a firm price for purposes of reimbursement for the work or services ordered. This shall not preclude amendments to cover changes in scope of any item in the order. A fixed-price basis maybe used if all of the following conditions are present:

A. Work specifications are stable, specific and definite, and they are made part of the order (or incorporated by reference) for each item at the time the project order is accepted for performance on a fixed-price basis or amended for any changes in the scope of the work. This requirement is especially critical for project order accepting activities that are financed by a direct appropriation. An activity financed by a direct appropriation should not accept a fixed-price project order unless it can predict with a high degree of certainty the actual cost to complete the project order. Otherwise, the prohibition against inappropriately augmenting an appropriation and/or using an appropriation for a purpose not authorized could be violated.

B. When there is more than one item of work or service in a project order, including amendments for changes in scope, each item is made the subject of a separate price as shown by the order or in a list incorporated therein by reference. When the work to be performed is the subject of a work list (e.g., equipment overhaul), each entry on the work list shall be considered to be an item.

C. No substantial contingencies are included in the price, nor considered to be involved in performance, so that cost variations in performance can reasonably be expected to be minor.

D. There is a satisfactory system of cost estimating used as a basis for establishing fixed prices. When cost standards are used in cost estimating for the purpose of pricing, they shall be adjusted for this purpose to include expected cost variances.

E. The same elements of cost are used in cost estimating and establishing fixed prices as would be required for use if reimbursements were based upon actual cost incurrence.

020703. Cost-Reimbursement Project Orders. The amount stated in a cost-reimbursement project order shall be a sound estimate of the costs to be incurred in performance of the work or services ordered. Such estimates shall be determined upon the basis of the specific work to be performed. The estimate of costs shall be the ceiling amount for purposes of reimbursement for the work or services ordered.

A. The performing DoD Owned establishment and the ordering DoD Component shall effect timely renegotiations for revisions of the ceiling amount of cost-

reimbursement project orders. Such renegotiations should take place whenever cost performance indicates the need for adjustment of the ceiling amount upward or downward, but before cost of performance has exceeded 75 percent, when compared with the current ceiling amount. However, renegotiations need not be conducted when the probable cost of renegotiation is greater than the adjustment amount. In such cases the difference, upward or downward, should be absorbed by the performing establishment.

B. Cost-reimbursement project orders may be converted to a fixed-price basis, provided all of the conditions governing the use of fixed-price project orders are present (see subsection 020702). In addition, the conversion must be effected prior to incurring either 50 percent of the total cost of the work, or 50 percent of the period of performance, whichever comes first.

020704. Unfunded Costs. For purposes of this subsection, unfunded costs are costs that are not funded in the account or appropriation funding the performing activity. (Examples of unfunded costs are not universal. Some performing revolving fund accounts [primarily the working capital fund accounts] may fund costs that are unfunded by appropriated funds. Unfunded costs of an appropriated funded performing activity normally include labor of military personnel and depreciation of capital assets.) When an ordering DoD Component places an order on behalf of persons or agencies outside the U.S. Government (including reimbursable transactions pursuant to the Foreign Military Sales Act), the ordering DoD Component shall indicate this fact on the project order. In those instances, the amount of unfunded costs shall be included and identified in the items listed below.

- A. Project orders issued to performing activities;
- B. Billings made by the performing activity to the ordering activity;
- C. Reimbursements by the ordering activity to the performing activity; and
- D. Reimbursements obtained by the ordering activity from the non-federal customer.

020705. Reimbursable costs, in the case of performing DoD owned establishments operating under a working capital fund, shall be determined in accordance with Volume 11B of this Regulation.

020706. When the performing DoD owned establishment is not operating under a working capital fund, reimbursable agreements negotiated prior to placement of project orders costs shall be determined in accordance with policy established in chapter 1, "General Reimbursement Procedures And Supporting Documentation," of this volume.

020707. Reimbursable costs include the cost of machinery or equipment acquired specifically for the performance of a single project order, provided (a) such costs specifically are approved in advance by the ordering DoD Component, (b) the machinery or equipment could

legally be acquired directly by the ordering fund or appropriation, and (c) the approval is incorporated into the term of the project order agreement or amendments thereto. When this is the case, the approved costs shall be segregated from other costs and shown as a separate item in the reimbursable billing. Such machinery and equipment are the property of the ordering DoD Component and shall be disposed of in accordance with instructions from the ordering DoD Component.

020708. Costs incurred in the termination of project orders shall be reimbursable to the performing DoD Owned establishment when those orders are terminated by the ordering DoD Component, to the extent that such costs do not exceed the amount of the fixed price, or the current ceiling amount in the case of cost-reimbursement project orders. When ordering DoD Components and performing DoD Owned establishments cannot agree on the costs of termination, the case will be referred for settlement to the Under Secretary of Defense (Comptroller).

020709. To the extent feasible, performing DoD owned establishments shall bill ordering DoD Components for work performed upon the basis of jobs completed or services rendered in accordance with the terms of the project order. However, whenever a long period of time is required in the performance of a project order, periodic progress payments approximating costs incurred may be provided for in the order. Progress payments may be made to the performing DoD Owned establishment to cover the accrued cost (and other direct obligations incurred) of performance to the end of the fiscal year under an uncompleted project order. Reimbursement to a working capital fund activity for work performed prior to completion of the project order shall normally be accomplished on either a progress payment or a percentage-of-completion basis.

0208 ACCOUNTING FOR COST OF PERFORMANCE

020801. Project orders are reimbursable orders and shall be administered and accounted for as such. Project orders, therefore, shall neither be administered nor accounted for by performing DoD owned establishments as separate subdivisions of appropriations or funds similar to an allotment. The appropriation-type accounting for project orders shall be performed by the ordering DoD Component in a manner similar to that performed for contracts.

020802. The operations of performing DoD owned establishments financed under a working capital fund shall be accounted for in accordance with Volume 11B of this Regulation.

020803. Project orders received and accepted are the source of obligational authority, in the amount of the project order, for the performance of the work requested.

020804. A cost account or other device shall be used to accumulate the costs of performance for all project orders. Those cost accounts shall serve as a basis for determining the amount reimbursable for cost-reimbursement project orders and as a basis of determining a fixed price for similar future fixed-price project orders.

020805. Billings covering reimbursements shall identify costs by each item listed in the project order.

0209 EXEMPTIONS

Requests for exemptions, along with appropriate justification, shall be submitted to the Director for Accounting Policy, Office of the Deputy Chief Financial Officer, Under Secretary of Defense (Comptroller).