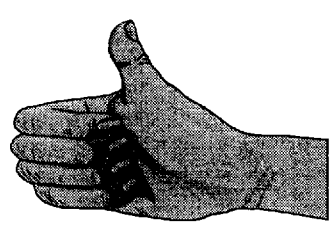
Headquarters Review of Contract and Financial Assistance Actions



❑ Overview

This section discusses the procedures for Headquarters Business Clearance review and approval of contract and financial assistance actions managed by DOE contracting activities.

❑ Background

Solicitations, contract awards, and other contract and financial assistance actions which exceed the authority delegated to the Head of Contracting Activity (HCA), are likely to provoke unusual public interest, or, are new or of an unusual nature, are to be submitted to the Procurement Executive, or designee, for appropriate review and approval.

Reviewable actions include those relating to the solicitations and award of contracts, financial assistance, subcontracts, and agreements with other governmental agencies, and subsequent modifications, extensions, and settlements or terminations thereof.

The Office of Contract Management (OCM) is available to consult with Headquarters and Field Office personnel regarding actions that are likely to provoke unusual public interest, or, are of a new and unusual nature, or raise questions of policy or are questions of a procedural nature that may arise in the course of contract negotiation, award, and administration. Such issues should be raised to the OCM at the earliest practicable date.

❒ Annual Projected Actions

Prior to the beginning of each fiscal year, the OCM issues a request for each contracting activity to provide a projection for the upcoming fiscal year of known or contemplated contract and financial assistance actions exceeding delegated thresholds, and other sensitive or unique actions expected for that year. Based on the contracting activity's submission, the OCM will identify specific actions to be submitted to the OCM for Headquarters Business Clearance review and approval. If an action is selected for Headquarters Business Clearance review and approval, the OCM, will notify the Procurement Director at which point(s) in the acquisition cycle the action must be submitted for Headquarters Business Clearance review and approval. The OCM may, under certain circumstances, select an action for "limited" review, e.g., review of the solicitation only as opposed to review of both the solicitation and the subsequent award documents. Actions not selected for Headquarters Business Clearance review and approval are deemed to have received a waiver from such review.

Contracting activities are also expected to report to the OCM actions that may arise during the course of the fiscal year which exceeds the local delegation thresholds and that has not been submitted in the annual projected actions. The OCM will review each action on a case-by-case basis to determine if the action should be submitted for Headquarters Business Clearance review and approval. Accordingly, contracting officers (COs) should ensure that adequate lead time exists in the acquisition schedule to permit Headquarters Business Clearance review and approval to occur. Poor acquisition planning is not an acceptable basis for a waiver.

❒ Headquarters Business Clearance Review

A complete package must be submitted to OCM in order to facilitate the review process. The attachments to this chapter list the documentation to be submitted for each type of action. A complete package is one that contains all the appropriate documentation listed in the attachments hereto. The initial review is one that results in the first set of questions, comments, issues and/or suggestions that are provided to the CO for resolution. The final review is one that results in the receipt of Headquarters Business Clearance review and approval based upon the resolution of questions, comments, issues and/or suggestions that were provided to the CO. Normally the initial review should be completed within 10 working days from receipt of a complete package. The initial review may, or may not, result in Headquarters Business Clearance review and approval. The time required to receive Headquarters Business Clearance review and approval varies on a case-by-case basis, as approval is dependent on such things as the complexity of the procurement, the nature and extent of review comments, internal coordination requirements, and the quality of the documents submitted for review. Experience indicates that final Headquarters Business Clearance review and approval for competitive solicitations and contracts for major site and facility management may take significantly longer. Contract and financial assistance lead times should take these variables into consideration. In the event that an expedited review is

needed to support program needs, COs should contact the contracting activity's OCM liaison ("buddy").

An advance review is one that is performed on a less than complete package and has not been through any internal review and approval by the contracting activity. Advance review of preliminary draft documents for advice/consultation or to facilitate the review process should be coordinated with the contracting activity's "buddy". However, an advance review of preliminary draft documents should not be considered as final Headquarters Business Clearance review and approval, and does not substitute for the initial review.

Depending on the type of action being reviewed, the OCM will send the review package to the following offices for review, as appropriate:

- Assistant General Counsel for Procurement and Financial Assistance (GC-61).
- The Office of Procurement and Assistance Policy (ME-61)
- The Office of Resource Management (ME-63)
- Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62)
- The cognizant Headquarters program official
- The Office of Small and Disadvantaged Business Utilization (ED-3)
- The Office of Environment, Safety, and Health (EH-73)
- The Deputy General Counsel for the Environment and Nuclear Programs (GC-50)
- The Office of Worker and Community Transition (WT-1)

Additional offices may be requested to review a package depending on the nature of the requirement. The OCM is aware of the time constraints the contracting activities are under, therefore, every attempt will be made to coordinate the action and resolve questions, comments, issues and/or suggestions in "real time". That is, OCM will facilitate dialogue between Headquarter's review offices and the contracting activity during the course of the review.

❒ Special Considerations for Delivery Orders

If a contract has been reviewed, or the review has been waived (under the provisions of Federal Acquisition Regulation (FAR), Part 15, Contracting by Negotiation), then delivery orders issued against that contract need not be identified to OCM for any additional review. However, delivery orders which exceed the delegation of the HCA issued against Governmnet-wide Acquisition Contracts (GWACs), or under the provisions of FAR Subpart 8.4, Federal Supply Schedules, must be reported to OCM so that OCM can make a decision on the need for any review.

❒ Submission of Documents

In general, electronic submission of the review package is preferred. If paper copies are to be provided, the number of copies needed should be coordinated with the contracting activity's "buddy" based on anticipated review requirements.

Attached hereto, by type of action, are document submission requirements and a summary of the general scope of OCM's Headquarters Business Clearance review and approval. Attachment E, Management and Operating (M&O) Contracts, applies specifically to extend/compete, option exercise, and Performance Based Incentive (PBI)/award fee actions as they relate to M&O or other major site and facility contracts. Any other actions for M&O or other major site and facility contracts should refer to the other attachments to this document for guidance as appropriate.

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ATTACHMENT A

CONTRACT SOLICITATIONS

DOCUMENTATION SUBMISSION

Draft Request for Proposal (RFP) (Including the Model Contract)

The following documentation and information should be provided:

- Draft RFP, including the model contract;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Name and telephone number of the cognizant Headquarters program official;
- Acquisition Plan;
- Site Utilization and Management Plan (or equivalent), if required;
- Justification for Other Than Full and Open Competition (JOFOC), if applicable;
- Rating Plan or Source Selection Plan, if applicable;
- Copies of any deviations processed or being requested; and,
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

Draft Invitation for Bid (IFB)

The following documentation and information should be provided:

- Draft IFB;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Name and telephone number of the cognizant Headquarters program official;
- Acquisition Plan; and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

DOCUMENTATION REVIEW

Draft RFP (Including the Model Contract)

The OCM review of the solicitation package will include:

- Appropriateness and adequacy of the acquisition strategy;

- Review the solicitation to ensure that it is internally consistent. For example, verify the following:

  - Sections L and M are consistent and there are no discrepancies between what offerors are asked to provide in section L versus what the Government plans to evaluate as stated in section M;
  - Section M is consistent with the rating/source selection plan;
  - The evaluation criteria are clear and do not overlap;
  - The evaluation criteria are appropriate for the acquisition, including how cost/price will be evaluated and how best value trade-offs will be determined; and
  - Past performance is evaluated in accordance with FAR Part 15, and that the information requested in the past performance questionnaire is consistent with the information requested and evaluated in sections L and M.

The OCM review of the model contract will include:

- Regulatory and policy compliance;
- Position descriptions are clear and appropriately written to meet the Government's requirements (that is, not overly restrictive or overly permissive);
- Verification that the clauses, including the Section H, Special Contract Requirements and deviations, are appropriate for the type of contract requirements;
- The following as appropriate:

  - Foreign Ownership, Control and Influence (FOCI) clauses;
  - If the solicitation contemplates a set-aside, the required small business or small disadvantaged business clauses;
  - Appropriate cost accounting standards clauses;
  - Organizational Conflicts of Interest clauses specified by FAR Subpart 9.5 and Department of Energy Acquisition Regulation (DEAR) Subpart 909.5; and
  - Compliance with the requirements of FAR Part 19. Review the solicitation for price evaluation adjustment factors and any other required evaluation factors for small disadvantaged business and HUBZone business participation as specified in FAR Subparts 19.11, 19.12, and 19.13.

- Verification that the RFP contains the required performance based elements.

  - Is the Statement of Work (SOW) written in terms of results/outcome vs. "how" the work is to be accomplished? Ensure that performance objectives are focused on the outcome and results rather than process or activities.
  - Are there performance requirements that define the work in measurable, mission-related terms?

- Does it contain performance standards (e.g., quality, timeliness, quantity, cost control) tied to the performance requirements?
- Is there a Government quality assurance (QA) plan that describes how the contractor's performance will be measured against the performance standards?
- Are there positive and negative incentives tied to the Government QA plan measurements?
- Ensure that the performance objectives, measures and PBIs are appropriate in scope, number, etc., fee allocated to the specific objective is reflective of the value or importance of the work contemplated.
- If the SOW is not performance based, the cognizant contracting officer must provide a written explanation as to why the solicitation cannot be performance based or why it is exempt from the requirement.

- Verification that the SOW does not contain any inherently Governmental functions.

Draft IFB

The OCM review of the model contract will include:

- Regulatory and policy compliance;
- Verification that the clauses, including the Section H, Special Contract Requirements and deviations, are appropriate for the type of contract requirements;
- The following as appropriate:

  - Foreign Ownership, Control and Influence (FOCI) clauses;
  - If the solicitation contemplates a set-aside, the required small business or small disadvantaged business clauses;
  - Appropriate cost accounting standards clauses;
  - Organizational Conflicts of Interest clauses specified by FAR Subpart 9.5 and Department of Energy Acquisition Regulation (DEAR) Subpart 909.5; and
  - Compliance with the requirements of FAR Part 19. Review the solicitation for price evaluation adjustment factors and any other required evaluation factors for small disadvantaged business and HUBZone business participation as specified in FAR Subparts 19.11, 19.12, and 19.13.

- Verification that the SOW does not contain any inherently Governmental functions.

ATTACHMENT B

COMPETITIVE/NON-COMPETITIVE CONTRACTS/CONTRACT MODIFICATIONS

DOCUMENTATION SUBMISSION

The following documentation and information should be provided:

- Draft RFP/contract modification;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Name and telephone number of the cognizant Headquarters program official;
- Justification for Other Than Full and Open Competition (JOFOC), if applicable;
- Documentation (including technical evaluation of costs) to support a pricing action;
- Copies of any deviations processed or being requested; and,
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

DOCUMENTATION REVIEW

The OCM review of the contract/contract modification will include:

- Appropriateness and adequacy of the acquisition strategy;
- Regulatory and policy compliance;
- Verification that the clauses, including the Section H, Special Contract Requirements, and deviations, are appropriate for the type of contract requirements;
- Verification that the contract/contract modification is in compliance with the terms and conditions of the contract.
- Verification that the SOW does not contain any inherently Governmental functions;
- Verification that release language, if appropriate, is included;
- Ensure that the cost evaluation makes sound business sense and was accomplished using all appropriate resources (i.e. DCAA audit reports, government estimate, technical evaluation of costs, etc.); and
- Verification that the contract/contract modification contains the required performance based elements.

ATTACHMENT C

NEGOTIATION MEMORANDUM

DOCUMENTATION SUBMISSION

The following documentation and information should be submitted to the OCM, in accordance with the procurement cycle phase set forth below:

Prior to Negotiations.

Prior to the start of formal negotiations and briefing of the Source Selection Official (not discussions with offerors) concerning contract awards, the following documents are required for review:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Technical Evaluation Committee (TEC) or Source Evaluation Board (SEB) report (if applicable);
- Draft (unsigned) Source Selection Statement (SSS) (if applicable);
- Documentation (including technical evaluation of costs) to support a pricing action (including evaluation of fee or profit); and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

For IFBs the following documentation and information is required:

- Record of bid opening and selection;
- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- A copy of the successful bid;
- A record of the price analysis that was performed; and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

Prior to the Completion of Negotiations.

If there were significant departures from the objectives of the pre-negotiation plan or provisions of the model contract, or if new and significant issues developed which were not addressed in the pre-negotiation plan, the CO shall submit these revisions to the OCM for review and approval.

After Completing Negotiations.

One copy of the post negotiation summary and negotiated contract should be submitted for Headquarters Business Clearance review and approval to the OCM prior to award of the contract. In the event all of the pre-negotiation objectives were substantially met, OCM may elect to waive, or limit, its review of post negotiation documents. In this event, the CO should provide OCM with a copy for information purposes and not for the purpose of obtaining Headquarters Business Clearance review and approval.

DOCUMENTATION REVIEW

The OCM review of the pre-negotiation package will:

- Ensure that TEC or SEB report is consistent with the rating/source selection plan;
- Ensure that the evaluation (technical and cost) of offers conforms with Sections L and M of the solicitation and that evaluation criteria were properly evaluated;
- Ensure that strengths and weaknesses cited in the TEC or SEB report are supportable and properly documented;
- Ensure that evaluation of offerors was consistent and in accordance with the rating/source selection plan;
- Ensure that the cost evaluation makes sound business sense and was accomplished using all appropriate resources (i.e. DCAA audit reports, government estimate, technical evaluation of costs, etc.);
- If discussions were held, ensure that discussions were complete and meaningful;
- Ensure that the SSS is in accordance with the rating/source selection plan, applies sound business judgement, and is legally supportable; and
- Ensure that the SSS contains a sufficiently documented discussion of cost vs. technical tradeoffs.

IFBs

The OCM review of the IFB will:

- Ensure the price analysis documentation was performed properly and makes sound business sense;

- Ensure that the award will be made to the lowest acceptable bidder; and
- Ensure that the apparent successful bid, and the award, conform to the provisions of the IFB.

ATTACHMENT D

FINANCIAL ASSISTANCE

DOCUMENTATION SUBMISSION

Prior to the release of the solicitation the following documentation and information shall be provided:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Copies of any deviations processed or being requested;
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof;
- If it is a competitive action, the draft solicitation including the Program Policy Factors and the model agreement, and the Merit Review Plan;
- If it is a non-competitive action, the Determination of Non-competitive Financial Assistance and the model agreement; and
- Renewal applications/awards. The CO shall notify OCM when the renewal will cause the financial assistance award to exceed the delegated authority of the contracting activity.

Prior to the award of the financial assistance action, the following documentation and information shall be provided:

- The model agreement if not previously reviewed;
- Supporting documentation such as a copy of the selected proposal, budget review documentation and technical evaluation (if applicable);
- Recommendation to the Source Selection Official and the SSS (if applicable); and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

DOCUMENTATION REVIEW

The OCM review of the financial assistance package prior to release of the solicitation will include:

- Solicitation strategy to include technical, business and financial aspects;
- Regulatory and policy compliance; and
- Verification that the solicitation provisions are appropriate (i.e non-profit, universities, etc.).

The OCM review of the financial assistance package prior to award of the financial assistance action will include:

- Verification that the solicitation provisions are appropriate (i.e non-profit, universities, etc.), if not previously reviewed;
- Ensure that the cost evaluation makes sound business sense and was accomplished using all appropriate resources (i.e. DCAA audit reports, government estimate, technical evaluation of costs, etc.); and
- Verification that the selection documentation is consistent with the solicitation selection criteria and programmatic policy factors.

ATTACHMENT E

MANAGEMENT AND OPERATING CONTRACTS

DOCUMENTATION SUBMISSION

Extend/Compete Actions (including options in non-competitively awarded contracts)

No later than 18 months prior to the expiration of the term of the contract, a recommendation to extend/compete a management and operating contract shall be submitted to the Head of the Agency through the Director for Procurement and Assistance Management. In accordance with AL 96-09, the following documentation must accompany such a submittal.

- A JOFOC (if extension is recommended) prepared in accordance with FAR Part 6;
- Certification by the HCA and cognizant program Assistant Secretary that the use of full and open competition is not in the best interests of the Department (if extension is recommended);
- A description of the incumbent's performance history including measurable results against established performance measures and criteria;
- Identification of significant projects planned during the extension period;
- Identification of issues and negotiation objectives for the extension period, including the extent to which performance based management provisions are present, or, can be negotiated into the contract;
- If the contractor is a Federally Funded Research and Development Center (FFRDC), a review of the use and continued need for the FFRDC designation in accordance with FAR 35.017-4;
- A determination that the M&O contract or performance based management contract remains appropriate;
- A discussion of the potential impact of a change in contractor on program needs; and
- Site Utilization and Management Planning Documentation.

Exercise of Option for an M&O or Other Major Site or Facility Contract

The exercise of an option shall be approved by the Procurement Executive and the cognizant Assistant Secretary(ies). The documentation required is identical to the documentation required in an extend/compete package, less the JOFOC and the Certification by the HCA and cognizant program Assistant Secretary that the use of full and open competition is not in the best interests of the Department. The contracting activity shall submit documentation prepared by the CO and approved by the cognizant Assistant Secretary(ies) that the exercise of the option is in the best interest of the Government.

PBIs/Award Fee Plans

This section does not apply to the yearly fee negotiations of M&O contracts where PBI waiver requests had previously been approved in accordance with DOE Acquisition Guide Chapter 71, Performance Based Incentives and Related Approvals, Section D, Administrative Requirements for PBI Waiver Requests. The following information should be provided with the documentation submitted to OCM for Headquarters Business Clearance review and approval:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- The Performance Evaluation and Management Plan/Award Fee Plan (or equivalent document);
- Documentation supporting the fee methodology;
- Documentation supporting the selection and/or changes to performance-based requirements, objectives, measures and incentives; and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

DOCUMENTATION REVIEW

Extend/Compete Actions

The OCM will:

- Review the JOFOC and supporting documents;
- Prepare Action Memo from Procurement Executive to ME-1;
- Prepare Action Memo from ME-1 through the Undersecretary to the Secretary;
- Prepare Statement authorizing The Use of a Management and Operating Contract with signature line to be authorized by the Secretary, Deputy Secretary or Under Secretary;
- Prepare Statement authorizing the continued Use of an FFRDC Designation; and
- Prepare letters notifying Congress of non-competitive extensions in accordance with Acquisition Letter 2000-11 (12/15/00).

Exercise of Option for an M&O or Other Major Site or Facility Contract

The OCM will:

- Review supporting documents;
- Prepare letters informing Congress of the option exercise; and
- Prepare Action Memo for Procurement Executive.

PBIs/Award Fee Plans

The OCM will:

- Review the relationship of the performance objectives, measures and incentives to the critical strategic path and the tactical objectives of the site;
- Ensure that the performance objectives, measures and incentives PBIs are appropriate in scope, number, etc..for the work contemplated;
- Ensure that the objectives to be measured are suited for the application of PBIs/award fee;
- Review the structure of the PBI itself;
- Ensure that the amount of fee allocated to the specific objective are reflective of the value or importance of the work;
- Ensure that performance objectives are focused on the outcome and results rather than process or activities;
- Review the fee structure and the allocation between, and among, objective and subjective measures;
- Ensure that performance objectives, measures and incentives are structured to improve overall contractor performance;
- Verify that any performance objectives, measures and incentives are in accordance with procedures of the applicable Headquarters program office and that appropriate Headquarters program office coordination has occurred;
- Review the relationship of proposed performance objective, measures and incentives to current/past performance objectives, measures and incentives to ensure that proposed metrics have considered/built on past metrics; and
- Ensure that the impact of year-to-year changes to operating conditions have been considered in the development of performance objectives, measures and incentives.

ATTACHMENT F

RATIFICATION ACTIONS

DOCUMENTATION SUBMISSION

The ratification of an unauthorized commitment shall be supported with the following documentation:

- All records and documents concerning the commitment;
- A written statement through the cognizant local supervising Program Office Director containing:
  - Name of the Government representative who entered into the unauthorized commitment;
  - A statement as to why authorized procurement procedures were not used;
  - Rationale why the contractor was selected;
  - A list of other sources considered;
  - Description of work performed or products delivered;
  - A reference to funds availability at the time of the unauthorized commitment.
  - The status of the work; and
  - Recommendation(s) for corrective action(s) for avoidance of unauthorized commitments; and
- A document originated by the CO and signed off by the HCA that includes:
  - A statement that supplies or services have been provided and accepted by the Government, or that the Government has or will obtain a benefit resulting from performance;
  - A synopsis of events that transpired resulting in the unauthorized commitment;
  - A statement that the resulting contract would have been proper if made by a CO;
  - A determination by the CO that the price is fair and reasonable;
  - A statement by the CO recommending payment;
  - Evidence of local legal review; and
  - A statement that funds are currently available.

DOCUMENTATION REVIEW

The OCM will:

- Forward any comments to CO for response/resolution;
- Obtain General Counsel's concurrence;
- Prepare a point paper to present to the Procurement Executive with a recommendation to either approve or not approve the ratification; and
- Send a response back to the CO.

ATTACHMENT G

SUBCONTRACT ACTIONS

DOCUMENTATION SUBMISSION

The following documentation and information should be provided:

- Name and telephone number of the cognizant Headquarters program official;
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Copy of the subcontract or modification;
- If sole source, a copy of the justification for a noncompetitive action;
- If competitive, a copy of the source selection criteria;
- Documentation supporting the technical evaluation;
- Documentation (including technical evaluation of costs) to support a pricing action; and
- Evidence of local independent review and approval, including legal review. This includes submission of comments and resolution thereof.

DOCUMENTATION REVIEW

The OCM review of the subcontract package will include:

- Acquisition strategy to include business and financial aspects;
- Regulatory and policy compliance;
- Verification that the clauses are appropriate for the type of contract and technical requirements;
- Review may include the following:
  - FOCI clauses;
  - If the solicitation contemplates a set-aside, the required small business or small disadvantaged business clauses;
  - Appropriate cost accounting standards clauses; and
  - Organizational Conflicts of Interest clauses specified by FAR Subpart 9.5 and DEAR Subpart 909.5.
- Review the documentation to ensure that it is internally consistent. For example, verify the following:
  - The evaluation criteria are clear and do not overlap;

- The evaluation criteria are appropriate for the acquisition including how cost/price will be evaluated;
- Past performance is evaluated; and
- Position descriptions are clear and appropriately written to meet requirements (that is, not overly restrictive or overly permissive).

▸ The prime contractor may be asked to provide an explanation and justification for any unusual solicitation language.