

## HEADQUARTERS BUSINESS CLEARANCE PROCESS



### *Guiding Principles*

- ✓ Timely acquisition planning is critical
- ✓ Effective oversight control systems are essential to ensuring the high quality/integrity of procurement transactions
- ✓ Collaboration and cooperation are required for timely, effective procurement processes

### **Overview**

This guide chapter provides guidance regarding the policies and procedures governing the Headquarters Business Clearance Review (BCR) process, the process by which certain procurement actions (solicitations, contracts, major contract changes, etc.) are reviewed and approved by the DOE Senior Procurement Executive (SPE) as a condition precedent to executing them. This section does not apply to the National Nuclear Security Administration (NNSA). Separate NNSA coverage is in BOP-003 and BOP-304.

### **Background**

#### A. The Flow of Procurement Authority within the Department of Energy (DOE)

The Secretary of Energy designated the Director, Office of Procurement and Assistance Management (OPAM) as the SPE for DOE. This designation includes delegations of authority for contracting and financial assistance. The SPE re-delegates specific contracting authority to a senior management official for each contracting activity, referred to under government-wide acquisition regulations as the Head of the Contracting Activity (HCA). HCAs in DOE have cognizance over one or more procurement offices. The general flow of contracting authority is depicted in Figure 1 below. The NNSA flow is also depicted for information purposes only. Each HCA's specific contracting authority is subject to both dollar thresholds and the requirements of the Federal Acquisition Regulation (FAR), the DOE Acquisition Regulation (DEAR), the DOE Financial Assistance Regulations, and DOE policies and procedures. It is used to manage a broad range of contract placement and administration activities and functions. Each HCA may delegate some, but not all, of his or her specific contracting authority. Acquisition Guide Chapter 1.2 addresses Delegable and Non-delegable HCA Functions and Responsibilities. As used throughout this guide topic, the term "Designee" means an individual who is designated in writing by the HCA to exercise the HCA's authority (both delegable and non-delegable) when the HCA is unable to do so.

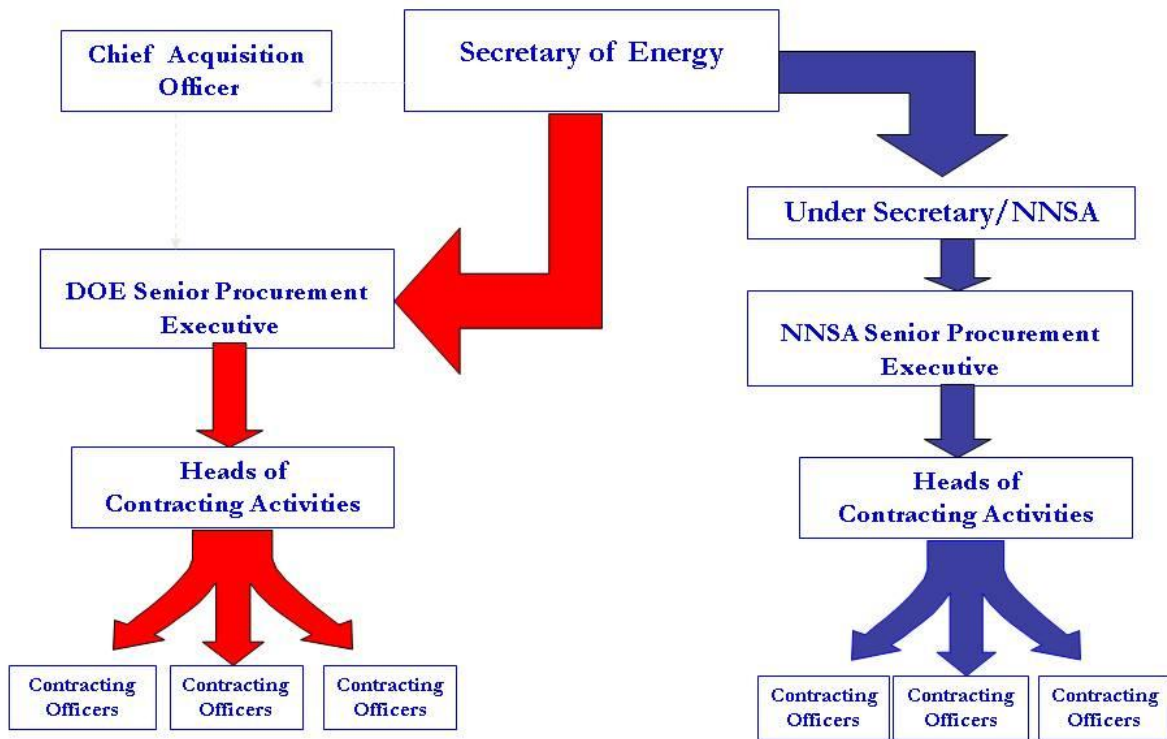


Figure 1

Under a long-standing, formal process known as the Business Clearance Review (BCR) process, certain procurement actions (solicitations, contracts, major contract changes, etc.) must be reviewed and approved by the DOE SPE before execution. These actions are “actions that are subject to the BCR process,” as addressed in the “Headquarters Business Clearance Review Process” section below.

**B. The Department’s Procurement System – SPE’s, HCA’s, and Procurement Director’s Responsibilities**

The DOE SPE is responsible for ensuring the efficacy and integrity of the Department’s procurement system and has established a number of interdependent processes to fulfill that responsibility. One of those processes, for example, is the Procurement Management Review (PMR) Program within Headquarters, which supplements other contracting activity performance assessment efforts and augments other corporate-level internal control processes. Dovetailing with these processes, integrating with them, and essential to the efficacy and integrity of the procurement system are contracting activities’ internal policy and oversight and control functions. These functions, among other things, are necessary to ensure the quality and consistency of all procurement actions.

The HCA and the Director of each procurement office share in the SPE's responsibility for ensuring the efficacy and integrity of the Department's procurement system. They must maintain effective policy and internal implementation and oversight processes, with appropriately staffed internal policy and oversight functions. These processes must formally require internal independent reviews of procurement actions and related documentation at the local procurement office level. For actions selected to be reviewed by Headquarters Business Clearance, local field office policy must require that packages being submitted to Headquarters include evidence of local independent review and coordination, including the formal concurrence of both the procurement office's legal counsel and the Procurement Director. In addition, local field office policy must require that all comments and comment resolution resulting from local independent review be included in the package being submitted.

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## **The Headquarters Business Clearance Review Process**

### A. The Acquisition Planning and Liaison Division (APLD), HCA Authority, and BCR Notification

The APLD within OPAM's Office of Contract Management (OCM) holds, among other functional duties, responsibility for the Department's BCR process. Additionally, the APLD assists Headquarters and field offices in planning and developing business strategies for acquisition, financial assistance, and other transactions (e.g., interagency agreements, major modifications). In accomplishing its mission, the APLD reviews acquisition plans, solicitations, source selection documents, contracts, and other relevant transactional documentation. APLD may be contacted for assistance on any action, regardless of dollar value. APLD is readily available to consult with Headquarters and field office personnel on any action, including those that are likely to provoke unusual public interest, are of a new and unusual nature, or raise questions of policy or procedural nature that come up in the course of planning, solicitation, evaluation, negotiation, award, and administration.

### B. The BCR Process

1. Prior to the beginning of each fiscal year, the APLD issues a request for each procurement office to provide a projection for the upcoming fiscal year of contract, financial assistance, and other actions (e.g., interagency agreements, subcontract consents) that exceed its HCA's procurement authority, thereby making the actions subject to the BCR process.
2. Each procurement office must also report to the APLD all actions that arise during the fiscal year that meet the criteria prescribed in paragraphs C. and D. below, but were not submitted in response to the annual APLD request for projected actions. HCAs should ensure that such notification is provided as soon as the requirement is known to ensure sufficient time to complete the potential BC review of the action.

3. Based on an analysis of the procurement office's submission, the APLD will select specific actions for Headquarters review and approval.
4. For each action selected, the APLD will notify the cognizant HCA and Procurement Director of the scope of the Headquarters review/approval. The APLD may select an action for "full" review (e.g., require that all documentation from acquisition planning through selection/award be reviewed/approved by Headquarters), or "limited" review (e.g., require review of only certain transaction-related documentation, such as the acquisition plan and/or solicitation). See attachments A through H of this guide for specific information of format and timing of the submittals.
5. The APLD shall review and approve, or coordinate for appropriate Headquarters review and approval (e.g., Secretary of Energy), the selected actions.
6. Actions that are not selected for APLD review and approval are deemed to have received a waiver from the BCR.

*Note: For program elements that have centralized HCA authority (Environmental Management (EM) and Science( SC)), the BCR process requirements apply individually to each procurement office under the HCA's cognizance.*

#### C. Actions Subject to the BCR Process - General

1. Actions for which authority is not delegated to the HCA pursuant to the HCA's written delegation of authority from the SPE.
2. Actions whose value exceeds the HCA's delegated authorities, including actions that exceed the transaction specific dollar thresholds (see paragraph D.).
3. Actions for which the approving authority is prescribed in law, regulation, or DOE policy as a specific senior DOE official (e.g., the Director, Office of Contract Management, the DOE SPE, the Secretary of Energy). Such actions include, but are not limited to: authority to use the M&O form of contract; ratifications; award of technology investment agreements; performance incentive plans for M&O and other major site and facility management contracts; and final indirect cost rate agreements.
4. Actions which, based on the judgment of the HCA and/or the SPE (regardless of the dollar value of the transaction), involve significant litigation or performance risk, or may generate unusual interest from the public, media, congress, or other governmental entity.

*Note: The SPE may, at any time, tailor all or individual HCA delegated authorities based on Government-wide procurement initiatives, Office of Federal Procurement Policy (OFPP) guidance, General Accountability Office (GAO) audits, Inspector General (IG) audits,*

*Procurement Management Reviews, and other relevant bases (e.g., changes to law or regulation).*

D. Actions Subject to the BCR Process - Transaction Specific

The requirements for transactions that are subject to the BCR process are generally the same for DOE's Non-Power Marketing Administration (PMA) procurement offices (Richland Operations Office, Environmental Management Consolidated Business Center, Savannah River Operations Office, Office of River Protection, Office of Civilian Radioactive Waste Management, Golden Field Office, Office of Headquarters Procurement Services, Idaho Operations Office, National Energy Technology Laboratory, Strategic Petroleum Reserves Project Management Office, Oak Ridge Operations Office, Chicago Operations Office) and for DOE's PMA procurement offices (Western Area Power Administration, Southwestern Power Administration, and Southeastern Power Administration).

However, based on the difference in the nature and the dollar value of transactions, the SPE established delegation thresholds are different for Non-PMA procurement offices and PMA procurement offices. Each HCA is delegated specific dollar authority in a memo signed by the SPE. The different thresholds determine who must review and approve actions.

For non-PMA procurement offices:

Actions that must be approved by the "HCA," include, at a minimum, the acquisition plan and final award. The review and approval of other supporting actions (e.g., solicitation) are at the discretion of the HCA.

The HCA must concur on all actions to be approved by APLD before they are submitted to OPAM and the Business Clearance Review (BCR) process begins at DOE Headquarters.

The HCA may redelegate authority for actions below \$25 Million for: competitive and non-competitive acquisitions, contract modifications, Interagency Agreements where DOE is the requesting agency, Financial Assistance and Subcontracts.

ALPD may select actions whose value is between \$25,000,001 and \$50,000,000 for BC review and approval. In those instances, the HCA does not have approval authority, but must concur on the action before it is submitted to OPAM and the BCR process begins at DOE Headquarters .

Each procurement office (PMA and Non-PMA) must participate in the annual BCR data call and submit information for transactions in each area listed below that exceed its HCA's threshold for consideration by APLD for BC review and approval. If the procurement office can not identify at least five actions in each area that exceed its HCA's threshold, the five highest dollar actions for that period must be submitted for consideration by ALPD for BCR and approval.

1. New Competitive Acquisitions:

Includes both competitive contracts and competitive task orders awarded under GSA Multiple Award Schedule (MAS) contracts, Government-wide Acquisition Contracts (GWACs), and DOE multiple-award, IDIQ contracts.

2. New non-competitive awards:

Includes both non-competitive contracts and non-competitive task orders awarded under GSA MAS contracts, GWACs, and DOE multiple-award, IDIQ contracts.

3. Contract Modifications:

- a. Administrative modifications and funding modifications are not subject to BCR.
- b. Any contract modification for which the estimated value exceeds both 20% of the original contract value and \$10 million is subject to BCR (for non-PMA procurement offices only).
- c. Any contract modification that increases the total contract value above the HCA's delegation threshold for new competitive acquisitions is subject to BCR.
- d. Any modification to a contract originally approved by Headquarters, regardless of the estimated value, that involves a significant restructuring of contract terms and conditions (e.g., contract type, deviations/modification of standard clauses) is subject to BCR.

4. Interagency Agreements:

As prescribed in FAR 17.503(c), if the servicing agency is not covered by the FAR, the SPE must approve the Determination and Findings (D&F). Interagency agreements subject to BCR are those valued in excess of the HCA's delegation threshold and that involve DOE as the requesting agency.

5. Subcontracts:

- a. Each procurement office must submit information on subcontracts that exceed its HCA's threshold, pursuant to the BCR data call, for consideration by APLD for BCR and approval.

6. Financial Assistance:

- a. Financial assistance actions that are subject to BCR include new awards (competitive and non-competitive), renewals, continuations, and supplemental amendments that increase the scope and value of an agreement.

- b. The total value of a financial assistance action is its total project cost, inclusive of non-federal cost share and Federally Funded Research and Development Center funding.
- c. Administrative amendments and funding amendments are not subject to BCR.

E. BCR Document Submission/Coordination Requirements

1. General:

- a. The HCA is responsible for ensuring the submission of a complete and high-quality package for actions that are selected for BC review and approval. Experience has shown that early and substantive collaboration between field office staffs and Headquarters functional counterparts streamlines the acquisition process by, among other things, eliminating repetitive reviews.
- b. Procurement offices must process all review and approval actions via the Strategic Integrated Procurement Enterprise System (STRIPES). If STRIPES has not been implemented, electronic submission of required documentation to APLD is preferred. If hard copies of documents/packages must be submitted, the number of copies required for hard copy submission shall be coordinated in advance with the procurement office's designated APLD Liaison.
- c. The attachments section of this Guide chapter prescribes the documents that are required for submission to APLD by action type and provides a summary of the general scope of APLD's review of those documents. The attachments address the most common actions that are subject to the BCR process. For actions that are not addressed in the attachments section, the Contracting Officer should consult the applicable regulation, policy, or the procurement office's designated APLD Liaison.
- d. The time required for complete Headquarters BCR and subsequent approval depends on the complexity of the procurement, the quality of the documents submitted for review, the nature and extent of the questions, comments, issues, and/or suggestions that must be resolved, and the time required by the HCA for resolution. Because of the complexity and significance of issues that are inherent to competitive major site and facility management contracts, these actions have historically taken a significant and difficult to predict amount of time to process from the acquisition planning phase through selection and award, including the time required for Headquarters BCR.

2. HCA Responsibilities:

- a. Consistent with the requirements and principles prescribed in Acquisition Guide Chapter 7, "Acquisition Planning," the HCA shall ensure early and substantive collaboration and coordination between his/her field office staff (e.g., Contracting Officer, Integrated Project Team (IPT) members, Source Evaluation Board (SEB)

members, procurement, legal, finance, safety, security, and industrial relations), and their Headquarters functional counterparts. Depending upon the nature of the action, such Headquarters functional counterparts typically include, but are not limited to: the Assistant General Counsel for Procurement and Financial Assistance (GC-61); the Office of Procurement and Assistance Policy (MA-61); the Office of Resource Management (MA-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 (OSDBU); the Office of Health, Safety, and Security; the Deputy General Counsel for the Environment and Nuclear Programs (GC-50); the Office of Legacy Management (LM-1); and the Office of Engineering and Construction Management (ME-90).

For actions that will be subject to Headquarters review and approval, the key to effective acquisition planning and to executing the planning is ensuring that all affected stakeholders are engaged at the earliest practicable stages of the planning process. Such collaboration and coordination can significantly streamline the acquisition process and related review processes by identifying and resolving issues at the earliest stages of the acquisition cycle.

- b. Through coordination with the procurement office's cognizant APLD Liaison, the HCA shall ensure that the acquisition plan milestone schedules factor in an appropriate amount of time for Headquarters BCR for selected actions. In the event that unforeseen circumstances require an expedited review to support program needs, the HCA should contact the procurement office's cognizant APLD Liaison as soon as practicable.
- c. The HCA shall concur in and forward all packages to be submitted to APLD.
- d. Prior to submission of a final package to APLD, the HCA shall:
  - (1) Ensure that the cognizant Procurement Director and local legal counsel have reviewed and concurred, in writing, with the package. Evidence of Procurement Director and legal counsel review and concurrence shall be included with the submission. Failure to provide this information may be cause for immediate rejection of a package by APLD.
  - (2) Obtain the cognizant Procurement Director's written affirmation of compliance with all statutory, regulatory (FAR, DEAR) and administrative (Acquisition Letters, Acquisition Guide, DOE Directives, etc.) requirements. This includes affirmation of compliance with all prescribed policies and procedures, inclusion of all prescribed provisions and clauses without deviation, and/or the specific identification of deviations from prescribed policies, procedures, provisions and clauses. The Procurement Director's written affirmation shall be included with



the submission. Failure to provide the affirmation of compliance may be cause for immediate rejection of a package by APLD.

- (3) Consistent with paragraph 2.a., ensure that all necessary prior collaboration and coordination by field office functional experts (e.g., IPT members, industrial relations specialist, legal counsel, safety/security officials, small business specialist) is conducted with appropriate Headquarters functional stakeholders (e.g., Headquarters Offices of Resource Management, General Counsel, Health, Safety and Security, OSDDBU) in advance of submission of the package to APLD.
- (4) Ensure that the cognizant Procurement Director or Contracting Officer consult with the designated APLD Liaison to schedule, if appropriate, an orientation briefing of the package to be conducted within 5 business days before or after submission of the package. If a briefing is held, participants should include all field office and Headquarters functional experts.
- (5) Ensure the effective management and timely resolution of issues resulting from Headquarters BCR, and the timely resubmission of amended packages for final review and approval by APLD.

### 3. APLD Responsibilities:

- a. Through coordination with the HCA and Procurement Director, the APLD will engage on actions either formally (e.g., as an advisor to IPTs), or informally (e.g., preliminary review/consultation of draft documents), to the extent required and/or appropriate, at the earliest practicable stages (e.g., acquisition strategy development) to expedite document development and streamline subsequent Headquarters BCR.
- b. To expedite the formal Headquarters BCR s, the HCA or other appropriate official (e.g., Procurement Director, Contracting Officer) may consult with the cognizant APLD Liaison for review/discussion of issues prior to submission of a final package. An advance review may be of value and can be performed on a less than complete package not subjected to complete internal field office local review.
- c. Following receipt of a complete and final package, the APLD shall conduct an initial review of the package to ensure compliance with the requirements prescribed in paragraph 2. The target milestone for APLD initial review is 10 business days from the date of receipt of a complete package.
- d. Based on the type of action, the APLD will coordinate the package for review and formal concurrence by the appropriate Headquarters program/staff offices, which (depending on the nature of the action) typically include, but are not limited to the following:
  - (1) Assistant General Counsel for Procurement and Financial Assistance (GC-

61);

- (2) The Office of Procurement and Assistance Policy (MA-61);
- (3) The Office of Resource Management (MA-63);
- (4) Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62);
- (5) The cognizant Headquarters program official;
- (6) The Office of Small and Disadvantaged Business Utilization (ED-3);
- (7) The Office of Health, Safety, and Security;
- (8) The Deputy General Counsel for the Environment and Nuclear Programs (GC-50);
- (9) The Office of Legacy Management (LM-1); and
- (10) The Office of Engineering and Construction Management (MA-50).

*Note: Certain regulations and DOE policies prescribe requirements for the coordination of packages with specific Headquarters offices for review and formal concurrence prior to submission to APLD for Headquarters Business Clearance review (e.g., coordination with ED-3 for Advance Planning Acquisition Team (APAT) review and small business set-aside determinations).*

- e. The APLD will review the package, manage the coordinated reviews addressed in paragraph E.3.d. and assist the HCA in reconciling comments resulting from these reviews.
- f. The APLD will coordinate and consolidate all comments/issues for consideration and/or resolution resulting from the Headquarters BCR process with the HCA or other appropriate official (e.g., the Procurement Director, Contracting Officer). The APLD will classify all comments/recommendations as either mandatory or optional and will identify, to the extent necessary, the rationale/basis for the comments/recommendations.
- g. Following the HCA's resolution of mandatory Headquarters BCR comments/issues, APLD will provide final approval of the action. To the extent practicable and deemed appropriate by the Director of APLD, APLD will provide approval of an action conditioned on the HCA's written agreement to address/resolve mandatory Headquarters BCR comments.

**F. Streamlined BCR Process for Pre-negotiation memoranda for Post Award Actions (e.g., Major Change Orders and Other Major Contract Modifications)**

### 1. General:

The streamlined BCR process establishes procedures for expedited reviews of pre-negotiation memoranda for certain past award actions. It does not relax any requirement for document submission. Application of this process must be agreed to by all parties and will be determined by APLD based upon the complexity of the particular action. Of critical importance for the use of a streamlined process is a properly submitted proposal by the contractor. All the steps in the process must be followed without deviation or the action will be processed in accordance with standard Business Clearance procedures. The quality, depth, and robustness of the information contained in the pre-negotiation memorandum and supporting documentation are critical for the process to work effectively.

### 2. Documentation Requirements:

This Guide Chapter contains information on the documents and information required to be submitted in the package to achieve business clearance approval. The pre-negotiation model and accompanying guidance are contained in Acquisition Guide Chapter 15.4-3, Negotiation Documentation: Pre-Negotiation Plan and Price Negotiation Memorandum.

### 3. Steps in the Process

#### a. Dry run briefing

The dry run briefing must be held at least two weeks prior to final package submission. At least two days prior to the briefing, the HCA shall provide briefing materials to APLD. The briefing shall be attended by all parties from the site responsible for the pre-negotiation memorandum development. The briefing shall thoroughly address the pre-negotiation objectives, areas of concern, and unique aspects of the contractor's proposal or DOE's objectives following the standard briefing template.

#### b. Use of Video Conferencing

Video conferencing is the preferred method for communicating among the various sites. If there are circumstances where videoconferencing is unavailable, teleconferencing may be used. When absolutely necessary, travel is an option.

#### c. Staggered Submission of Documents

To expedite the review process, a complete pre-negotiation package need not be submitted at the beginning of the process. Completed documents (e.g., technical evaluation of cost, audit reports, etc.) should be submitted as they become available.

#### d. Package Review in 3-5 business days.

- (1) The assigned APLD procurement analyst will serve as the Headquarters point of contact. All documents shall be submitted to APLD for concurrent review by MA and the Program. Comments will be consolidated by APLD.
- (2) If all documents required for the package are not received by the agreed upon dates, the review will be processed in accordance with standard Business Clearance procedures.

e. Decision Meeting

- (1) Within four working days of the field site receiving comments on its package, a Decision Meeting will be held by videoconference. The meeting shall be attended by all parties from the site responsible for the pre-negotiation memorandum development and all parties from Headquarters that provided comments. The objective will be to resolve comments and achieve either full or conditional approval.
- (2) If comments are resolved, verbal approval will be provided followed by a written approval memo. If comments remain unresolved, the action will be processed in accordance with standard Business Clearance procedures.

## ATTACHMENTS

Attachment A - Contract Solicitations

Attachment B - Competitive/Non-competitive Contracts/Contract Modifications

Attachment C - Negotiation Memorandum

Attachment D - Financial Assistance

Attachment E - Management and Operating Contracts/Site and Facility Management Contracts

Attachment F - Ratification Actions

Attachment G - Subcontract Actions

Attachment H – Interagency Agreements

## ATTACHMENT A — CONTRACT SOLICITATIONS (See note 1)

### DOCUMENTS SUBMISSION

#### Prior to Submission of the Draft Request for Proposal (RFP)/Invitation for Bid (IFB)

The following documents and information shall be submitted:

- Acquisition Plan (AP)(AP must include discussion of Site Utilization Management Planning (SUMP) per AL 2009-03);
- Name, telephone number and email address of the cognizant CO and contract specialist;
- Name and telephone number of the cognizant Headquarters program official; and
- Evidence of local independent review and approval, including legal review in accordance with local procedures. This includes submission of comments and comment resolution.

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

The following documents and information shall be submitted:

- 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 (if DOE Order 413.3 is applicable, include a copy of the Secretarial Acquisition Executive or Acquisition Executive approval, or, if a project Acquisition Strategy was developed, a copy of that approved Strategy);
- Justification for Other Than Full and Open Competition (JOFOC), if applicable;
- Rating Plan or Source Selection Plan, if applicable;
- A synopsis of the major areas to be addressed in the Contract Management Plan (CMP). Once the draft CMP is completed by the procurement representative to the SEB, it is to be submitted for review to the Contract Administration Division (ME-622). It is to be submitted as soon as it is completed but not later than 30 days after contract award. (See Chapters 7 and 42 for guidance on contract management planning and creating formal CMPs. If a CMP is required, the procurement representative to the SEB shall be responsible for preparation of

the synopsis/CMP.);

- Copies of any deviations being requested; and,
- Evidence of local independent review and approval including legal review. This includes submission of comments and comment resolution.

Note 1: By previous Secretarial direction, OPAM, through OCM, is responsible for the review and approval of solicitations and contracts for privatization projects funded by the Office of Environmental Management. Accordingly, acquisition plans, solicitations, and contracts for EM-funded privatization projects are to be submitted to OCM for review and approval. OCM will provide for the coordination of the review and approval process with other cognizant Headquarters organizations.

### Draft Invitation for Bid (IFB) (Including the Model Contract)

The following documents and information shall be submitted:

- 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 (if DOE Order 413.3 is applicable include a copy of the Secretarial Acquisition Executive (SAE) or Acquisition Executive approval, or if a separate Project Acquisition Plan was developed, a copy of that approved Plan); and
- Evidence of local independent review and approval including legal review. This includes submission of comments and comment resolution.

## DOCUMENTS REVIEW

### Acquisition Plan (AP)

The BC review of the AP will include:

- Verification of the appropriateness and adequacy of the acquisition strategy in meeting program requirements;
- Verification that the AP addresses Site Utilization Management and Planning (SUMP) in accordance with Acquisition Letter (AL) 2009-03 (if required), and
- Verification that the requirements of FAR Part 7.105, and DOE Acquisition Guide Chapter 7 were sufficiently addressed and specific emphasis on:
  - Capability or Performance (FAR 7.105(a)(4)). Are the required capabilities or performance standards consistent with the programmatic need?
  - Logistics Strategies (FAR 7.105(b)(13)). Is the acquisition consistent with Department of Energy (DOE) wide logistics strategies, if any? Does the logistics strategy make sound business sense?
  - Risks (FAR 7.105(a)(7)). Does the contract, and/or contract management plan address and or mitigate identified risks?

- Contract Type (FAR 7.105(b)(4)). Does the proposed contract type make sound business sense?
- Performance-Based Contracting. Does the proposed procurement/contract maximize the use of performance-based contracting techniques? If not, is there adequate rationale for not using a performance-based contract?
- Competition (FAR 7.105(b)(2)(i)). Is full and open competition sought to the maximum extent practicable? If competition is not being sought, is the proper authority cited and is the basis for not seeking full and open competition well documented?
- Socioeconomic Considerations. Is the proposed procurement consistent with DOE small businesses and/or other socioeconomic policies and strategies?
- Post-award Business Arrangements. Does the contract management plan address significant, unusual, or complex issues?

#### Draft RFP (Including the Model Contract)

The BC review of the solicitation package will include:

- Verification of the appropriateness and adequacy of the acquisition strategy;
- Review of the solicitation to ensure that it is internally consistent. For example, verify the following:
  - Sections I and L are consistent, e.g., any contract requiring the DEAR 52.204-2, Security clause, in Section I, would require the DEAR 970.204-73 Facility Clearance provision, in Section L;
  - 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 in section L and in section M.

The BC review of the model contract will include:

- Verification of regulatory and policy compliance;
- Verification that 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;
- Verification of the following, as appropriate:
  - Appropriate security clauses are included if access to restricted or classified data is anticipated;

- If the solicitation contemplates a set-aside, the required small business or small disadvantaged business clauses are included;
- Appropriate cost accounting standards clauses are included;
- Organizational Conflicts of Interest clauses specified by FAR Subpart 9.5 and Department of Energy Acquisition Regulation (DEAR) Subpart 909.5; are included
- 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.
- The RFP contains performance based elements.
- The Statement of Work (SOW) is written in terms of results/outcome vs. “how” the work is to be accomplished? Performance objectives are focused on the outcome and results rather than process or activities.
- Performance requirements define the work in measurable, mission-related terms.
- Performance standards (e.g., quality, timeliness, quantity, cost control) are tied to the performance requirements
- For capital asset acquisitions greater than \$5 million, DOE Order and Manual 413.3 must be followed, especially regarding Section H special provisions related to project management and Earned Value Management, and required deliverables (including as appropriate, requirements for submission of a Project Control System Definition, Project Control System Description, Project Schedule and Cost Baselines, and Project Risk Assessment, etc.)
- A Government quality assurance (QA) plan that describes how the contractor’s performance will be measured against the performance standards must be included.
- Positive and negative incentives tied to the Government QA plan measurements must be included.
- The performance objectives, measures and performance based incentives (PBIs) must be appropriate in scope, number, etc., and the 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.
- The SOW may not contain any inherently Governmental functions.
- The synopsis of the major areas to be addressed in the CMP includes:
  - Compliance with existing guidance on CMPs, and
  - Coverage of significant contract management concerns (risk areas, contract type, transition, etc.)

### Draft IFB

The BC review of the model contract will include:

- Verification of 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 of the following as appropriate:
  - Appropriate security clauses are included if access to restricted or classified data is anticipated;
  - If the solicitation contemplates a set-aside, the required small business or small disadvantaged business clauses are included;
  - Appropriate cost accounting standards clauses are included;
  - Organizational Conflicts of Interest clauses specified by FAR Subpart 9.5 and Department of Energy Acquisition Regulation (DEAR) Subpart 909.5 are addressed
  - The contract complies 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.
  - For capital asset acquisitions greater than \$5 million, DOE Order and Manual 413.3 must be followed, especially regarding Section H special provisions related to project management and Earned Value Management, and required deliverables (including as appropriate, requirements for submission of a Project Control System Definition, Project Control System Description, Project Schedule and Cost Baselines, and Project Risk Assessment, etc.)
  - The SOW does not contain any inherently Governmental functions.

## ATTACHMENT B — COMPETITIVE/NON-COMPETITIVE CONTRACTS AND CONTRACT MODIFICATIONS

### DOCUMENTS SUBMISSION

The following documents and information shall be submitted:

- 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;
- Evidence of local independent review and approval, including legal review in accordance with local procedures. This includes submission of comments and comment resolution; and
- Draft CMP. (See Chapters 7 and 42 for guidance on contract management planning and creating formal CMPs.)

### DOCUMENTS REVIEW

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

- Verification of the appropriateness and adequacy of the acquisition strategy;
- Verification of 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;
- For capital asset acquisitions greater than \$5 million, DOE Order and Manual 413.3 must be followed, especially regarding Section H special provisions related to project management and Earned Value Management, and required deliverables (including as appropriate, requirements for submission of a Project Control System Definition, Project Control System Description, Project Schedule and Cost Baselines, and Project Risk Assessment, etc.)
- Verification that release language, if appropriate, is included;
- Verification that the cost evaluation makes sound business sense and was accomplished using all appropriate resources (e.g. DCAA audit reports, government estimate, technical evaluation of costs, etc.);
- Verification that the contract/contract modification contains the required performance-based elements; and
- Verification that the CMP comports with existing guidance and addresses the significant administration/management concerns under the contract.

## ATTACHMENT C — NEGOTIATION MEMORANDUM

### DOCUMENTS SUBMISSION

The following documents and information shall be submitted to the APLD, 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 are required:

- 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 in accordance with local procedures. This includes submission of comments and comment resolution.

For IFBs, the following 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 clauses of the model contract, including new and significant issues that were not addressed in the pre-negotiation plan, the CO shall submit these revisions to the APLD for review and approval.

After Completing Negotiations but Prior to Award. One copy of the postnegotiation summary and negotiated contract shall be submitted for Headquarters Business Clearance review and approval. In the event all of the pre-negotiation objectives were substantially met, ALPD may elect to waive, or limit, its review of post-negotiation documents. In this event, the CO should provide ALPD with a copy for information purposes only..

### DOCUMENTS REVIEW

The BC review of the pre-negotiation package will:

- Ensure that the 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;
- Ensure that strengths and weaknesses cited in the TEC or SEB report are supportable and properly documented;
- Ensure that evaluation of offerors was in accordance with the rating/source selection plan;
- Ensure that the cost evaluation makes sound business sense and was accomplished using all appropriate resources (e.g., DCAA audit reports, government estimate, technical evaluation of costs, etc.);
- Ensure if discussions were held; they meaningful;
- Ensure that the Source Selection Statement (SSS) is consistent with the rating/source selection plan, applies sound business judgment, and is legally supportable; and
- Ensure that the SSS contains a sufficiently documented discussion of the rationale for cost vs. technical tradeoffs. Specifically, the SSS must document that any additional technical merit that will be delivered is worth the additional price premium that will be paid.

### IFBs

The BC 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, conforms to the provisions of the IFB.

## ATTACHMENT D — FINANCIAL ASSISTANCE

### DOCUMENTS SUBMISSION

Prior to the release of the funding opportunity announcement, the following documents and information shall be submitted:

- 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 in accordance with local procedures. This includes submission of comments and comment resolution; and
- The draft funding opportunity announcement, including merit review criteria, Program Policy Factors, and the Merit Review Plan.

Prior to the approval of a Determination of Non-Competitive Financial Assistance (DNFA), except for the public interest criterion in 10 CFR 600.6(c)(8), the following documents and information shall be submitted:

- The DNFA; and
- Supporting documentation such as a copy of the application and merit review documentation.

Prior to the award of a competitive or non-competitive financial assistance action, the following documents and information shall be submitted:

- The draft agreement;
- Supporting documentation such as a copy of the selected proposal, budget review documentation and technical evaluation (if applicable);
- A recommendation to the Source Selection Official and the SSS (if applicable);
- Evidence of local independent review and approval including legal review. This includes submission of comments and resolution thereof; and
- Renewal applications/awards. The CO shall notify APLD when the renewal will cause the financial assistance award to exceed the delegation authority of the contracting activity.

### DOCUMENTS REVIEW

The BC review of the financial assistance package prior to release of the announcement will include:

- Verification of the solicitation strategy to include technical, business and financial aspects;
- Verification of regulatory and policy compliance; and
- Verification that the announcement's provisions are appropriate (e.g. non-profit, universities, etc.).

The BC review of the DNFA package prior to approval will include:

- Verification that the DNFA is thorough and is a sound management decision; and
- Verification that the eligibility criteria are appropriate and concurrence and approval are at the appropriate level.

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

- Verification that the announcement's provisions are appropriate (e.g., non-profit, universities, etc.) if not previously reviewed;
- Verification that the budget review makes sound business sense and was accomplished using all appropriate resources (e.g. government estimate, technical evaluation of costs, etc.); and
- Verification that the selection documentation is consistent with the announcement's selection criteria and programmatic policy factors.

ATTACHMENT E — MANAGEMENT AND OPERATING CONTRACTS/SITE AND MAJOR FACILITY MANAGEMENT CONTRACTS

DOCUMENTS SUBMISSION

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

No later than **24** 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. The following documents must accompany the recommendation.

- An Acquisition Plan approved by the Deputy Secretary and prepared in accordance with FAR Part 7 and DOE Acquisition Guide Chapter 7.1. The acquisition plan must include:
  - A description of the incumbent’s performance history in areas such as program accomplishment, safety, health, environment, energy conservation, financial, and business management and socio-economic programs, including measurable results against established performance measures and criteria;
  - Identification of significant projects planned during the period of performance;
  - If the procurement calls for capital asset acquisitions greater than \$5 million, incorporation of DOE Order and Manual 413.3 in List B of DEAR 970.5204-2 Laws, Regulations and Directives (or depending on the nature of the contract through some other clause) in the contract is required;
  - Identification of principal issues, negotiation objectives, and/or significant changes to the current contract’s terms and conditions, including the extent to which performance based management provisions are or will be negotiated into the contract;
  - If the contract is for 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. Include a request for the authorization for a FFRDC as a separate attachment , to be signed by the Secretary;
  - 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;
  - Rationale that competition for the period of the extension is not in DOE’s best interest; and
  - Site Utilization and Management Planning Discussion
- After approval of the Acquisition Plan, a JOFOC (if extension is recommended) is prepared in accordance with FAR Part 6;
- The JOFOC must include a separate 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);

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

The following information shall be provided with the documents submitted to APLD for Headquarters Business Clearance review and approval prior to commencement of negotiations with an offeror, or in the case of existing contracts, the incumbent contractor:

- 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 comment resolution.

#### DOCUMENTS REVIEW

##### Extend/Compete Actions

The APLD will:

- Review the JOFOC and supporting documents;
- Prepare an Action Memo from Procurement Executive to ME-1;
- Prepare an Action Memo from ME-1 through the Undersecretary to the Secretary;
- Prepare a 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 a Statement authorizing the continued Use of an FFRDC Designation; and

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

The APLD will:

- Review supporting documents,
- Prepare letters notifying Congress of non-competitive extension as appropriate, and;
- Prepare an Action Memo for the Procurement Executive.

##### PBIs/Award Fee Plans (to include cost reduction/cost saving incentive programs)



The APLD 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 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

The Procurement Executive may waive review of PBI/Award Fee plans upon an affirmative demonstration by the HCA that internal processes are adequate to ensure that the performance measures and associated fee structures are properly developed and administered. Requests for such a waiver must demonstrate that an internal process exists which: (a) assesses all performance objectives, award fees, and specific incentives tied to discreet performance objectives to ensure they are well-defined, rational, appropriately integrated prior to their negotiation and inclusion in the contract, and (b) ensures that mechanisms exist as part of contract administration for the validation of contractor performance against objectives.

## ATTACHMENT F — RATIFICATION ACTIONS

### DOCUMENTS SUBMISSION

The following documents and information shall be submitted for ratification of an unauthorized commitment:

- All records and documents concerning the commitment;
- A written statement through the cognizant local supervising Program Office Director containing:
  - The name of the Government representative who entered into the unauthorized commitment;
  - A statement as to why authorized procurement procedures were not used;
  - The rationale for selection of the contractor;
  - A list of other sources considered;
  - A 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 approved 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.

### DOCUMENTS REVIEW

The APLD will:

- Forward any comments to CO for response/resolution;
- Obtain GC'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 response back to the CO.

## ATTACHMENT G — SUBCONTRACT ACTIONS

### DOCUMENTS SUBMISSION

The following documents and information shall be submitted to the APLD as appropriate for the procurement (i.e., sole source or competitive):

Prior to release of subcontract action. Prior to releasing the RFP or model subcontract 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;
- Acquisition Plan;
- Draft RFP/model subcontract;
- If sole source, a copy of the justification for a noncompetitive action;
- If competitive, a copy of the source selection criteria; and
- Evidence of local independent review and approval, including legal review by both the contractor and DOE Field/Site office. This includes submission of comments and comment resolution.

Prior to the subcontract award. If the subcontract action is competitive, the following documents shall be submitted for review:

- Documentation supporting the technical evaluation;
- Documentation (including technical evaluation of costs) to support a pricing action (including evaluation of fee or profit);
- Draft (unsigned) Source Selection Statement (if applicable); and
- Evidence of local independent review and approval, including legal review by both the contractor and DOE Field/Site office. This includes submission of comments and comment resolution.

Prior to the start of negotiations. If the subcontract action is non-competitive, the following documents shall be submitted for review:

- Documentation (including technical evaluation of costs) to support a pricing action (including evaluation of fee or profit);
- Evidence of local independent review and approval, including legal review by both the contractor and DOE Field/Site office. This includes submission of comments and comment resolution.

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 APLD for review and approval.

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

### DOCUMENTS REVIEW

The ALPD review of the subcontract package will include:

- Verification of the acquisition strategy to include business and financial aspects;
- Verification of regulatory and policy compliance;
- Verification that the clauses are appropriate for the type of contract and technical requirements;
- Review may also include the following:
  - Verification of appropriate security clauses are included if access to restricted or classified data is anticipated;
  - For capital asset acquisitions greater than \$5 million, verify application of DOE Order and Manual 413.3
  - If the solicitation contemplates a set-aside, verify inclusion of the required small business or small disadvantaged business clauses;
  - Verification of appropriate cost accounting standards clauses; and
  - Verification of the inclusion of 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 that:
  - 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;
  - Position descriptions are clear and appropriately written to meet requirements (that is, not overly restrictive or overly permissive). and
  - The prime contractor may be asked to provide an explanation and justification for any unusual solicitation language.

## ATTACHMENT H — INTERAGENCY AGREEMENTS

### DOCUMENTS SUBMISSION

The following documents and information shall be submitted:

- 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 SOW and other applicable contractual documents, should the servicing agency be using an existing contract;
- The Determination and Findings signed by the CO supporting the use of an interagency agreement (IA) ; and,
- Evidence of local independent review and approval, including legal review. This includes submission of comments and comment resolution.

### DOCUMENTS REVIEW

The BC review of the IA package will include:

- Verification of regulatory and policy compliance;
- Ensuring that the supplies or services requested under the IA are within the scope of the servicing agency's contract;
- Ensuring that the servicing agency's contract does not circumvent DOE policies with respect to competition, small business and performance based acquisition;
- Verification that any special DOE unique terms and conditions are appropriate for the type of contract requirements;
- Ensuring that the supplies or services being acquired are within the servicing agency's authority; and
- Verification that appropriate security clauses are included if access to restricted or classified data is anticipated.