



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

Subject: Implementation of Division B, Title I, Section 1101(a)(2) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10

References:

Full-Year Continuing Appropriations Act of 2011, Title I, Section 1101(a)(2)
Pub. L. No. Law 112-10

Energy and Water Development and Related Title III, sections 301, 305, and 501
Agencies Appropriations Act, 2010,
Public Law 111-85

When Is this Acquisition Letter (AL) Effective?

The statutory provisions addressed in this AL are a continuation of the provisions effective on the enactment date of the Energy and Water Development and Related Agencies Appropriations Act, 2010 enacted October 28, 2009.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who Is the Point of Contact?

Contact Barbara Binney of the Office of Procurement and Assistance Policy at (202) 287-1340 or at Barbara.binney@hq.doe.gov or Stephen Law, of the National Nuclear Security Administration at (202) 586-4321 or at stephen.law@nnsa.gov. For additional information on ALs and other issues, visit our website at http://www.management.energy.gov/policy_guidance/procurement_acquisition.htm.

What Is the Purpose of this AL?

The purpose of this AL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of Division B, Title I, Section 1101(a)(2) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, (hereinafter Full-Year Continuing Appropriations Act of 2011). Section 1101(a)(2) is a continuation of Sections 301, 305,

and 501 of the Energy and Water Development and Related Agencies Appropriations Act of 2010. Section 311 will be addressed in a separate AL.

What Is the Background?

This AL implements Section 1101(a)(2) of the Full-Year Continuing Appropriations Act of 2011, which is a continuation of the provisions contained in the Energy and Water Development and Related Agencies Appropriations Act of 2010.

Guidance Included in this Acquisition Letter

I. Section 301 Unfunded Requests for Proposals and Section 1418 2
II. Section 305 User Facilities..... 3
III. Section 501 Lobbying Restrictions..... 4

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I. Section 301 UNFUNDED REQUESTS FOR PROPOSALS and Section 1418

What is the law?

None of the funds appropriated by this Act may be used to initiate or resume any program, project or activity, or to initiate Requests for Proposals (RFPs) or similar arrangements (including request for quotations, requests for information and funding opportunity announcements) for a program, project or activity if the program, project or activity has not been funded by Congress.

What is the scope of this requirement?

Sections 1101(a)(2) and 1418 of the Full-Year Continuing Appropriations Act of 2011 and Section 301 of the Energy and Water Development Appropriations Act of 2010 requires that funds appropriated by the Act not be used to prepare or initiate RFPs or similar arrangements (including request for quotations, requests for information and funding opportunity announcements) for a program, project or activity if the program, project or activity has not been funded.

What procedures need to be followed to implement this requirement?

Before preparing or initiating a RFP or similar arrangements (including request for quotations, requests for information and funding opportunity announcements) in support of a program, project or activity, the Contracting Officer shall work with the program office and the program budget office officials to ensure the program or project is funded.

II. Section 305 USER FACILITIES.

What is the law?

When DOE makes a user facility available to universities or other potential users, or seeks input from universities or other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When DOE considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term “user facility” includes, but is not limited to: (1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2)); (2) a National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

What is the scope of this requirement?

There are three circumstances where Departmental processes are affected by Section 305:

- ❖ Where the Department or its Management and Operating (M&O) contractor makes a user facility available to universities and other potential users;
- ❖ Where the Department seeks advice or information from universities or other potential users on the significant characteristics or equipment to be used in a user facility or a proposed user facility; and
- ❖ Where the Department seeks to create a formal partnership with a university or other potential user for the establishment or operation of a user facility. This can occur by the Department or its M&O contractor responsible for a DOE user facility.

Note: Normally, neither DOE nor its M&O contractors enter into formal partnerships for the management or operation of a DOE user facility. Accordingly, it is not anticipated that this circumstance will arise.

What procedures need to be followed to implement this requirement?

DOE should assure broad participation by all potential scientific and technical users of the facility. Public notice is provided through publication in the Grants.gov and/or FedBizOpps, in addition to relevant scientific journals and on facility websites.

Any formal partnership between DOE, its M&O contractor, and a private party for the establishment or operation of a user facility must be accomplished through a competitive selection.

III. Section 501 Lobbying Restriction

What is the law?

None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

What is the scope of this requirement?

Section 1101(a)(2) of the Full-Year Continuing Appropriations Act of 2011 and Section 501 of the Energy and Water Development Appropriations Act of 2010 applies to all solicitations and awards of DOE contracts under which funds appropriated in the Act are obligated.

What procedures need to be followed to implement this requirement?

The following clause shall be incorporated into solicitations and awards of contracts where the expenditure of funds is made available under Section 1101(a)(2) of the Full-Year Continuing Appropriations Act of 2011 and the Energy and Water Development Appropriations Act of 2010:

Lobbying Restriction (Full-Year Continuing Appropriations Act, 2011)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)