



Department of Energy

Washington, DC 20585

May 23, 2011

MEMORANDUM FOR JOSEPH A. MCBREARTY

DEPUTY DIRECTOR FOR
FIELD OPERATIONS
OFFICE OF SCIENCE

FROM:


PATRICK M. FERRARO
ACTING DIRECTOR
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

SUBJECT:

Delegation of Authority/Designation as Head of
Contracting Activity (HCA) for the Office of Science

Department of Energy (DOE) Delegation of Authority Orders 00-022.00D and Re-delegation Order 00-011.02 set forth various authorities delegated to the Director, Office of Procurement and Assistance Management (herein referred to as the "Director"), and provides that these authorities may be further delegated in whole or in part as may be deemed appropriate. This memorandum serves to designate Joseph A. McBrearty, Deputy Director for Field Operations, Office of Science as the Head of the Contracting Activity (HCA) for the Office of Science in accordance with Federal Acquisition Regulation (FAR) 1.601. Except as expressly stated herein, you may not further delegate your HCA authority; however, HCA authority is conferred to individuals serving in your stead as Deputy Director for Field Operations, Office of Science, provided that such acting authority is designated in writing.

As the HCA, you are hereby delegated the following specific authorities, some of which you may further delegate as set forth below. The delegated authorities set forth below are conditioned upon your full conformance with applicable laws, the FAR, the DOE Acquisition Regulation (DEAR), DOE Directives and policies and procedures, including Acquisition Letters and the DOE Acquisition Guide, notably Chapter 71, which prescribes actions requiring Headquarters review and the process for their selection. In determining whether an action is within a delegated monetary authority, the determination must be based on the total value, including options, in-kind contributions and contractors/recipients cost share. Moreover, where actions involve a combination of additional work and deductive work, the total value shall be based on the absolute value of the work contemplated. The delegated authorities are set forth below:



1. ACQUISITION:

- (A)(i) Enter into, approve, administer, modify, close-out, terminate, and take such other actions as may be necessary and appropriate with respect to procurement transactions including competitive acquisitions, non-competitive acquisitions, contract modifications, interagency agreements, and consent to subcontracts that bind DOE to the obligation and expenditure of public funds up to \$50 million dollars. Any transaction involving more than \$50 million dollars, or that meets the requirements prescribed in Acquisition Guide Chapter 71, shall be subject to my prior approval. The acquisition authorities described in this paragraph may be delegated only to a Contracting Officer (CO) (in accordance with section 5, Contracting Officers) without the power of further delegation.
- (A)(ii) Approval of actions below \$25 million and that are not subject to business clearance, may be re-delegated at the discretion of the HCA to the Procurement Director(s). Administrative modifications, e.g. incremental funding modifications, are not subject to the limitation in the delegated monetary authority.
- (B) Designate a Competition Advocate, in accordance with DEAR 906.5, to perform those duties required by FAR 6.5. Such designation(s), if below the GM/GS-15 level, shall be approved by the Director. The authority to designate a Competition Advocate may not be further delegated.
- (C) Appoint a Contracting Activity Ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6) as authorized by DEAR 916.505(b)(6)(ii). The FAR requires that the person be a senior agency official who is independent from the CO and the DEAR requires that the person appointed be a senior manager. This authority may be delegated to the same person serving as Competition Advocate discussed in paragraph 1(B) above.
- (D) Waive the requirement for submission of cost or pricing data in accordance with FAR 15.403-1(c)(4), without power of further delegation. Prior to approving such a waiver, the HCA shall obtain written concurrence from the Director for all procurement actions over \$5 million in value.

- (E) Exercise all other authorities specifically granted to the HCA by the FAR and DEAR. In some cases, FAR specified authorities are modified by the DEAR. These HCA authorities may be further delegated unless expressly prohibited by either the FAR or DEAR.

2. ASSISTANCE

- (A)(i) Enter into, approve, administer, modify, close out, terminate, and take such other actions as may be necessary and appropriate with respect to financial assistance agreements including grants and cooperative agreements whether or not binding DOE to the obligation and expenditure of public funds. These assistance authorities may be delegated only to a CO (in accordance with section 5, Contracting Officers) without the power of further delegation.
- (A)(ii) Actions exceeding \$50 million shall have the prior approval, or waiver thereof, of the Director or designee. Additionally, any funding opportunity announcement which may result in financial assistance or incentive award or multiple awards with a collective value of \$50 million or more shall have prior approval, or waiver thereof, of the Director or designee.

Authority to approve actions below \$25 million that are not subject to business clearance is re-delegable at the discretion of the HCA.

- (B) Should the need arise, an addendum to this delegation of authority will be required for Technology Investment Agreements and transactions conducted under the "Other Transactions Authority" (42 U.S.C. 7256(g)).
- (C) Submit to Grants.gov for publication all notices of financial assistance funding opportunity announcements. This authority may be delegated to a CO (in accordance with section 5, Contracting Officers) without the power of further delegation.

3. SALES

Enter into, approve, administer, modify, close out, terminate, and take such other actions as may be necessary and appropriate, with respect to

agreements committing the Department to the sale of products and services, including funds-in interagency agreements and other agreements with non-DOE entities (authority for the disposal of personal property is provided in section 4, Personal Property). These authorities are contingent upon the existence of statutory, other legal, and regulatory authority for sale of products or to perform reimbursable work. Authorization by the designated official responsible for such work, and your full compliance with all applicable laws, executive orders, regulations, and directives governing policies and procedures is also required. These authorities may be delegated with power of further delegation to a CO (in accordance with section 5, Contracting Officers) or to another official who shall be no more than two levels below the HCA, without the power of further delegation.

4. PERSONAL PROPERTY

Receive, manage and dispose of all personal property held by DOE for official use by Departmental employees, contractors, and recipients, consistent with applicable laws, regulations, executive orders, directives, policies, and procedures. This authority may be delegated only to a professionally certified Organizational Property Management Officer in accordance with DOE Order 361.1B, Chapter II, without the power of further delegation.

5. CONTRACTING OFFICERS

Appoint COs for acquisition, assistance actions (excluding TIAs unless explicitly approved in advance by the Director), and sales (as described above), in accordance with DOE Order 541.1B, entitled, "Appointment of COs and Contracting Officer Representatives," and any subsequent revisions.

The monetary limitations prescribed in delegation paragraph 1(A)(ii), Acquisition, and 2(A)(ii), Assistance, do not preclude the issuance of CO warrants that provide for unlimited signatory authority provided that the warrants do not exceed the general scope of authority delegated to the HCA in paragraph 1(A)(i), Acquisition, and 2(A)(ii), Assistance, and that transactions above the delegated monetary limit have, in accordance with Acquisition Guide Chapter 71, been approved or waived by the Director, or designee. In designating COs, you shall consider the qualification standards set forth in the FAR, and such other applicable regulations and DOE Directives.

The following DOE organizations are designated Contracting Offices reporting to the HCA designated herein:

Chicago Office
Oak Ridge Office
Ames Site Office
Argonne Site Office
Berkeley Site Office
Brookhaven Site office
Fermi Site Office
Pacific Northwest Site Office
Princeton Site Office
Stanford Site Office
Thomas Jefferson Site Office

6. INDEMNIFICATION

Approve Office of Science Management and Operating (M&O) contractor's requests for approval of subcontractor and third party indemnity provisions pursuant to the DEAR clause 970-5244-1(1). This authority is limited to recurring or routine requests that present a very low risk of significant liability to the prime M&O contractor or that merely restate a negligence standard under which the contractor already operates and may include such activities as: participation in trade shows, access agreements, vehicle use agreements, leases of equipment (not real property), publishing (e.g., clearinghouses for publishers of research and analytical papers as well as copyright transfer agreements for publications or scientific and technical journals), software indemnifications (e.g., use of particular computer software or services), and other agreements of a routine nature with a very low risk of significant liability to the M&O contractor and the Department. Field Chief Counsel advice must be obtained prior to any approval. Indemnification for real property transactions subject to the limitations herein is authorized to the extent that such indemnification does not conflict with real property authorities, policies, and procedures.

The authority is further limited to contractor requests that meet all of the six following criteria: (1) the action or event necessitating the indemnity must present a very low risk of significant liability to the prime contractor; (2) participation in the event, requiring indemnification of a subcontract or third party, is required to promote the DOE's mission; (3) the prime M&O contractor must exhaust all reasonable possibilities to

avoid providing any indemnity, including, but not limited to, the use of insurance if economically reasonable in comparison to the risk; (4) the indemnity shall not indemnify the subcontractor or third party for any liability resulting from the subcontractor's or third party's own acts or omissions; (5) the indemnity provided must stipulate that the Government's liability to the prime M&O contractor under any indemnification of the subcontractor or third party is at all times subject to the availability of funds under the prime M&O contract. Nothing under the indemnification approval or the prime M&O contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies under the prime M&O contract; and (6) the indemnity must make prudent business sense.

This authority may be further delegated only to the Office of Science Manager, Oak Ridge Operations Office, and the Manager, Chicago Office.

7. SECTION 311 NOTICES

Pursuant to section 311 of title III of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (P.L. 111-85), notify the Committees on Appropriations of the Senate and House of Representatives at least three full business days in advance of making a grant allocation, discretionary grant award, discretionary contract award, Other Transaction Agreement, or issuing a letter of intent totaling in excess of \$1,000,000 or to announce publicly the intention to make such an award, including a contract covered by the Federal Acquisition Regulation.

This authority may be re-delegated to your Procurement Director(s), but may not be re-delegated below the Procurement Director.

Nothing in this delegation shall preclude the Director from exercising any of the Director's authority whenever, in the Director's judgment, the exercise of such authority is necessary or appropriate to administer the functions vested in that position.

This delegation is effective immediately, and supersedes all previous delegation memoranda issued to your office on the above authorities.