

DEPARTMENT OF ENERGY
REDESIGNATION AND REDELEGATION OF AUTHORITY
ORDER NO. SPE-DEL-FONTAINE-2023 TO JUSTON K. FONTAINE
AS HEAD OF CONTRACTING ACTIVITY (HCA)
FOR THE OFFICE OF SCIENCE

1. REDELEGATION AND REDESIGNATION. Department of Energy (DOE) Delegation of Authority Order 00-001.09 sets forth various authorities delegated to the Director, Office of Acquisition 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. As the Deputy Director for Field Operations, you are hereby designated 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, your HCA authority may be conferred to individuals who are designated, in writing, to act in your position as the Deputy Director for Field Operations. Such written designation shall specify the HCA authorities that are being conferred and shall stipulate that those authorities may not be further delegated. Your HCA delegated authorities are as follows:
 - 1.1 Designate Contracting Officers (48 C.F.R. 1.601, 48 C.F.R. 1.603-1, 48 C.F.R. 901.601).
 - 1.2 Designate a Contracting Activity Competition Advocate to perform the duties required by the Competition in Contracting Act of 1984, Public Law 98-369. This designation authority may not be redelegated (41 U.S.C. 1705, 48 C.F.R. 6.501, 48 C.F.R. 906.501).
 - 1.3 Enter into, approve, administer, modify, close-out, terminate, and take such other actions as may be necessary and appropriate with respect to any procurement transaction binding the Department to the obligation and expenditure of public funds.
 - 1.4 Enter into, approve, administer, modify, close-out, terminate and take such other actions as may be necessary and appropriate with respect to any financial assistance agreement or similar transaction, whether or not binding DOE to the obligation and expenditure of public funds. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority.

- 1.5 Enter into, approve, administer, modify, close-out, terminate and take such other actions as may be necessary and appropriate with respect to any sales contract, reimbursable orders, or similar transaction, whether or not binding DOE to the obligation and expenditure of public funds. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority. These authorities are contingent upon the existence of statutory, other legal, and regulatory authority for sale of products or to perform reimbursable work. Serve as Selection Authority (SA) or appoint another individual to serve as SA for a particular action or group of actions.
- 1.6 Designate a task and delivery order ombudsman to perform the duties required by the Federal Acquisition Streamlining Act of 1994 (title I, section 1054(a) of Public Law 103-355, as amended by Public Law 110-181, 41 U.S.C. 4106).
- 1.7 Enter into, administer, modify, closeout, terminate and take such other actions as may be necessary and appropriate with respect to any other transaction agreement, whether or not binding DOE to the obligation and expenditure of public funds. Such actions shall include the rendering of determinations and decisions, except those required by law or regulation to be made by other authority.
- 1.8 Pursuant to Section 301 of the Energy and Water Development and Related Agencies Appropriations Act, 2020, Division C, Title III (Public Law 116-94), or any similar provisions enacted in subsequent appropriations acts, 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 million or to announce publicly the intention to make such an award, including a contract covered by the FAR.

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

- 2. REDELEGATION OF REGULATORY AUTHORITIES. The delegated authorities set forth herein are conditioned upon your commitment to assuring compliance, to the maximum extent practicable, with the applicable laws, regulations, and policies and procedures that pertain to the authorities delegated herein.

These include the FAR, the DOE Acquisition Regulation (DEAR), DOE Directives, DOE 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 prescribed herein, the determination will be based on the total value of the action, 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 is the absolute value of the work contemplated. Your HCA delegated authorities are as follows:

2.1 ACQUISITION.

- A. (i) The procurement authorities described in paragraph 1.3 may be delegated only to a Contracting Officer without the power of further delegation.

(ii) Except for actions that exceed the following delegated monetary authorities, or that are otherwise subject to the prior approval, or waiver thereof, by the Director, or designee pursuant to the requirements prescribed in Acquisition Guide Chapter 71, approve actions that exceed \$50 million. This authority is non-delegable. Your authority to approve actions less than or equal to \$50 million that are not subject to the Headquarters review and approval requirements of Acquisition Guide Chapter 71, is re-delegable at your discretion.

Type of Acquisition	Delegated Monetary Authority
Competitive Acquisitions	\$100 million
Non-Competitive Acquisitions	\$100 million
Contract Modifications ¹	\$100 million
Interagency Acquisitions as defined in FAR 2.101, including assisted, direct, Economy Act, Non-Economy Act (Federal Supply Schedules, Government-wide Acquisition Contracts) ²	\$100 million
Subcontracts (solicitation, award, modification, and termination) ³	\$100 million

Notes 1, 2, and 3: Administrative modifications, e.g., funding modifications are not subject to the limitation in the delegated monetary authority.

(iii) For actions within your delegated authority, serve as the Source Selection Authority (SSA), or appoint another individual who you deem qualified to serve as SSA for a single acquisition or a class of acquisitions for all competitive acquisitions, including the following types of acquisitions: fixed-price, cost-reimbursement, incentive, time-and-materials, labor-hour, indefinite-delivery, letter contracts, Federal Supply Schedules, government-wide acquisition contracts, and blanket purchase agreements.

- B. Waive the requirement for submission of cost or pricing data, in accordance with FAR 15.403-1(c)(4), without power of further delegation.
- C. 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.

2.2 ASSISTANCE.

- A. The assistance authorities described in paragraph 1.4 may be delegated only to a Contracting Officer without the power of further delegation.
- B. Except for actions that exceed \$100 million, including funding opportunity announcements that may result in a financial assistance award with a total value of \$100 million or more (including cost share), and other financial assistance actions that are subject to the prior approval, or waiver thereof, by the Director, or designee pursuant to the requirements prescribed in Acquisition Guide Chapter 71, approve actions that exceed \$50 million. This authority is non-delegable. Your authority to approve actions less than or equal to \$50 million that are not subject to the Headquarters review and approval requirements of Acquisition Guide Chapter 71, is re-delegable at your discretion.
- C. For actions within your delegated authority, serve as the Selection Authority (SA) or appoint another individual who you deem qualified to serve as SA for a funding opportunity announcement.

- D. Exercise all authorities, regardless of dollar value, for the approval of the funding opportunity announcement, appointment of the Selection Authority, selection and other actions in (A)(ii) and (iii) above, for the Office of Science's Financial Assistance Programs Annual Funding Opportunity Announcement.

2.3 OTHER TRANSACTIONS.

- A. (i) The authority described in paragraph 1.7 may be delegated only to a Contracting Officer without the power of further delegation.
- (ii) Except for actions that exceed \$50 million and other actions that are subject to the prior approval, or waiver thereof, by the Director, or designee pursuant to the requirements prescribed in Acquisition Guide Chapter 71, approve actions that exceed \$25 million. This authority is non-delegable. Your authority to approve actions less than or equal to \$25 million that are not subject to the Headquarters review and approval requirements of Acquisition Guide Chapter 71, is re-delegable at your discretion.
- (iii) Serve as the Selection Authority (SA) or appoint another individual who you deem qualified to serve as SA for a particular other transaction or class of other transactions within the authorities delegated herein.

2.4 INDEMNIFICATION.

Approve 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(I). 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 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 subcontractor 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 Director, Office of Science, Office of Acquisition Management.

3. MISCELLANEOUS AUTHORITIES.

3.1 Pursuant to the attached Charter, as an HCA, you are a member of the Department of Energy Acquisition Council (DAC). The DAC is the principal forum for senior acquisition officials throughout the Department to exchange information about operational issues, initiate and pursue acquisition reform initiatives, and exchange ideas and successful practices in order to create a synergistic approach to continuously improving the Department's acquisition practices and operations. The DAC is the primary vehicle for coordination and sponsorship of department-wide acquisition initiatives.

3.2 COGNIZANT CONTRACTING ACTIVITIES. The following contracting activities are also within your cognizance as the HCA:

- Consolidated Service Center

- Ames Site Office
- Argonne Site Office
- Bay Area Site Office
- Brookhaven Site Office
- Fermi Site Office
- Pacific Northwest Site Office
- Princeton Site Office
- Thomas Jefferson Site Office
- Oak Ridge National Laboratory Site Office

4. RESCISSION. Delegation Order No. SPE-DEL-FONTAINE-2021 is hereby rescinded.

5. LIMITATION.

5.1 In exercising the authority delegated in this Order, a Delegate shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).

5.2 Nothing in this Order precludes the Secretary of Energy, the Deputy Secretary, or the Director, Office of Acquisition Management, from exercising any of the authority delegated by this Order.

5.3 Nothing in this Order shall be construed to supersede or otherwise interfere with the authorities provided to the Administrator for Nuclear Security by law or by delegation. Furthermore, nothing herein constitutes authority to exercise authority, direction, or control of an employee of the National Nuclear Security Administration or its contractors.

5.4 Any amendments to this Order shall be made in consultation with the Department of Energy General Counsel.

6. AUTHORITY TO REDELEGATE.

6.1 Except as expressly prohibited by law, regulation, or this Order, the Delegate may delegate this authority further, in whole or in part.

6.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management, which manages the Secretarial Delegations of Authority system.

7. DURATION AND EFFECTIVE DATE.

- 7.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified and remain in force as if taken under this Order, unless or until rescinded or amended.
- 7.2 This Order is effective 05.10.2023.

John R.
Bashista

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John R. Bashista
Date: 2023.05.10
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John R. Bashista, Director
Office of Acquisition
Management