Department of Energy
Washington, DC 20585

August 15, 2008

MEMORANDUM FOR DISTRIBUTION LIST

FROM: THOMAS E. BROWN, DIRECTOR
OFFICE OF CONTRACT MANAGEMENT
OFFICE OF PROCUREMENT AND ASSISTANCE MANAGEMENT

SUBJECT: FISCAL YEAR 2009 HEADQUARTERS CLEARANCE REVIEW PLAN

It is time to develop the Headquarters Clearance Review Plan for Fiscal Year (FY) 2009. Accordingly, you are asked to identify, to the extent possible, all FY 2009 actions exceeding your delegated level of authority as identified in the memorandum "Interim Implementation of Amended Head of Contracting Activity (HCA) Delegation/Business Clearance Review Thresholds" dated June 6, 2008, which is attached.

An "Individual Major Procurement/Assistance Actions for FY 2009 Worksheet" and "FY09 Business Clearance Submission Summary Worksheet" are attached to assist you in this effort. In completing the worksheets, you are to include actions for all contracting activities established by or responsible to the HCA. Please ensure that you coordinate with your respective program offices and other customers concerning potential procurement and assistance actions that may occur during the FY09 period. Each individual action should be identified on a separate Individual Major Procurement/Assistance Action worksheet and all actions should be listed on the Business Clearance Submission Summary Worksheet. If there are not at least five new competitive actions above the delegation threshold of the HCA to be indentified as part of the annual Business Clearance Review (BCR) data call, the procurement office shall provide the required information on its five highest dollar value competitive actions. The FY09 Business Clearance Submission Summary Worksheet will assist the Acquisition Planning and Liaison Division in planning/scheduling of workload in support of your office. You are requested to submit your worksheets by **September 12, 2008**. Please return the electronic submissions in Word© or Excel© compatible formats as provided. **The electronic mailbox used in previous years for electronic submission of your response should be used again this year. The address of the electronic mailbox is ME-62BizClearance@hq.doe.gov.** Please do not send your electronic submissions directly to your Headquarters "buddy."

We will use your input to develop the FY 2009 Business Clearance Review Plan for your Contracting Activity. Our intent will be to notify you by early October of those actions that have been selected for BCR. Any changes and/or deviations to the plan will be addressed as they arise throughout the year. In the event that a procurement or assistance action requiring BCR arises before a final review plan is established for your Contracting Activity, you or a member of your staff should contact the Acting Director, Acquisition Planning and Liaison Division (MA-621) to arrange for a review or waiver of the action.

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We will continue to place management emphasis and priority on increasing the level of small business participation in the Department of Energy's (DOE) contracting through the placement of prime contract awards to small businesses. Accordingly, you should continue to aggressively pursue new prime small businesses awards. We will again provide a copy of the completed worksheets received from each Contracting Activity to the Office of Small and Disadvantaged Business Utilization (OSDBU) to assist them in preparation of the DOE Annual Forecast. This action also will aid OSDBU in working with you on specific procurement actions in excess of $3 million that have not been set-aside for small business participation to ensure that all avenues toward meeting this goal are explored.

Worksheets should also be submitted for other actions that are subject to the BCR process which are not tied to the HCA delegation thresholds are as follows:

- Actions identified in last year's call as being subject to Headquarters Clearance Review but that have not yet been submitted;

- Actions in which the approving authority is prescribed in law, regulation, or DOE policy as the Director, Office of Contract Management, Office of Procurement and Assistance Management, the DOE Senior Procurement Executive (SPE), or other senior DOE official. Such actions include authority to use the Management & Operating (M&O) from of contract; ratifications; award of technology investment agreements; performance incentive plans for M&O and other major site and facility management contracts; final indirect cost rate agreements; acquisitions valued in excess of $3 million that will not be set-aside for small business and acquisitions which constitute "contract bundling".

- Actions that, based upon the judgment of the HCA and/or SPE, involve significant litigation or performance risk or that may generate unusual inertest from the public, media, congress, or other governmental entity (e.g., GAO, SBA). Examples include terminations, contracting officer final decisions, actions based on statute/congressional direction, etc.

We will continue our early involvement in the acquisition planning and solicitation/contract development stages of major procurement actions to ensure that these actions reflect "best practices," and that Headquarters issues, whether procurement, small business, safety and health, or legal, are addressed in a timely and integrated fashion.

On a related matter, it is very important that your office notify us at the earliest possible time of any actions that require Headquarters Clearance Review. We want to minimize instances where we receive notification of significant actions late in the procurement cycle, thereby causing disruptions to the schedules and resources of this office, the cognizant program office, OSDBU, and the Contracting Activity.

Finally, it should be noted that modifications/change orders, whether unpriced or priced, that exceed the contracting activity's delegated procurement authority listed in "Interim Implementation of Amended Head of Contracting Activity (HCA) Delegation/Business Clearance Review Thresholds" dated June 6, 2008, should be identified to MA-621 prior to being issued, for either waiver or review and approval. In addition, definitization of unpriced modifications/change orders, requests for equitable adjustment, and overruns that exceed the delegated procurement authority should be identified to MA-621 prior to commencing negotiations.

If you have any questions or need assistance, please call Mr. Ronald E. Cone at (202) 287-1336.

Attachments

Distribution List:

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INDIVIDUAL MAJOR PROCUREMENT/ASSISTANCE ACTIONS FOR FY 2009 WORKSHEET

1. Contracting activity and individual point to contact (including name/phone no.):

2. Method (competitive, sole source, sealed bid, negotiated, commercial item; GWAC/schedule, Interagency Agreement, other):

3. Type (contract type (i.e., CPFF, FFP), grant, cooperative agreement, loan, etc.):

4. Estimated dollar value (including options):

5. Title of action and description of work scope:

6. Percentage (in $) of requirement set-aside for SB, SDB, WOB, and/or HUBzone concerns:

7. NAICS Code: SIC Code:
   Size Criterion:

8. Is the action, or portion thereof, the result of a consolidation of previously separate requirements?

9. New award or modification/contract number:

10. Estimated month of solicitation issuance:

11. Estimated month of award:

12. Name of contractor, if known (incumbent and/or potential awardee):

13. Degree of confidence that action will be funded (High, Medium, Low):

14. Degree to which this procurement has been previously reviewed by the Office of Contract Management (Example: You are reporting a contract award resulting fro a solicitation has already been reviewed by Headquarters.)

15. Estimated dates for documents submittal to Business Clearance for review -

FY09 Business Clearance Submission Summary Worksheet

Description											
							Estimated Date to Business Clearance				
Procurement Office	09/Carryover 08	Submission/Action	Instrument Type	Est Value	Action Type	Est Award Date	Acq Pln	Solicitation	JOFOC	N Memo	Con Mod
HQ Procurement											
Sample	FY09	FE/Support Svcs	CPAF	$56M	New Award	2009 Aug	2008 Nov	2009 Jan			
	Carryover 08	EM/Paducah Clean up Svcs	CPIF	$61M	Mod	2009 Jul				2009 May	2009 Jun
	Carryover 08	SC/Princeton Plasma Physics Lab	CPAF	$320M	New Award	2009 May	2008 Aug	2008 Dec			
	FY09	FE/Clean Coal Power Ini. IV	COOP	$67M	New Award	2009 Jun		2009 Feb			

8/11/2008

Department of Energy
Washington, DC 20585

June 6, 2008

MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES

FROM: EDWARD R. SIMPSON
DIRECTOR
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

SUBJECT: Interim Implementation of Amended Head of Contracting Activity (HCA) Delegation/Business Clearance Review Thresholds

This is in reference to our May 8, 2008, teleconference and related prior coordination regarding the Office of Procurement and Assistance Management's (OPAM) Business Process Reengineering initiative to increase the subject thresholds. Effective immediately, the subject thresholds and associated requirements prescribed in the attached "Framework for Revisions of HCA Delegations/Business Clearance Review Requirements" are hereby implemented.

These amendments will be formally implemented via forthcoming revisions to DOE Acquisition Guide Chapter 71.1, and individual HCA delegations of authority. These revisions are expected to be finalized prior to the Fiscal Year 2009 Business Clearance Review data call. In the meantime, the revised delegations of authority and associated requirements are hereby effective and are conditioned upon compliance with the requirements prescribed in applicable law, regulation, DOE policy, and the attached.

Actions that have previously been selected for Headquarters business clearance review for Fiscal Year 2008 remain subject to Headquarters business clearance review unless otherwise waived by the Acting Director, Acquisition Planning and Liaison Division.

If you have any questions regarding this matter, please contact me or John Bashista at (202) 287-1310.

Attachment

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FRAMEWORK FOR REVISION OF HCA DELEGATIONS/ BUSINESS CLEARANCE REVIEW REQUIREMENTS

A. OBJECTIVE

Implement the recommendations of the "Report on Reengineering the Business Clearance Review Process" pertaining to increases in the Head of Contracting Activity (HCA) delegated authorities and Business Clearance Review (BCR) review and approval thresholds.

B. GENERAL

1. For the purposes of this framework, the term "BCR process" means:

   a. The identification of transactions by DOE procurement offices based on criteria established in HCA delegations, law, regulation, and DOE policy.

   b. DOE procurement office notification to the Acquisition Planning and Liaison Division (APLD) of identified actions.

   c. APLD consideration and selection of certain identified actions for Headquarters review/approval.

   d. APLD review and approval/coordination for appropriate approval of selected actions.

2. This framework prescribes standard HCA delegation thresholds and BCR notification thresholds for Non-Power Marketing Administration (PMA) procurement offices (RL, EM-CBC, SR, ORP, RW, GO, HQ, ID, NETL, SPRO, OR, CH) and for PMA procurement offices (WAPA, SWPA, SEPA).

3. Delegations of authority will be subject to FAR, DEAR, and DOE Policy, including the administrative procedures prescribed in the forthcoming revision of DOE Acquisition Guide Chapter 71.1 (AG 71.1).

4. For program elements that have centralized HCA authority (EM, SC), the BCR process requirements will apply individually to each procurement office under an HCA's cognizance.

5. The Senior Procurement Executive may, at any time, tailor all or individual HCA delegation thresholds based on Government-wide procurement initiatives, OFPP guidance, GAO audits, IG audits, Procurement Management Reviews, and other relevant bases (e.g., changes to law or regulation).

6. Generally, actions that will be subject to the BCR process are those in which the total dollar value will exceed the applicable HCA delegation threshold. Other actions that are subject to the BCR process that <u>are not</u> tied to the HCA delegation thresholds are as follows:

   a. Actions in which the approving authority is prescribed in law, regulation, or DOE policy as the Director, Office of Contract Management, Office of Procurement and Assistance Management, the DOE Senior Procurement Executive (SPE), or other senior DOE official. Such actions include 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; final indirect cost rate agreements; acquisitions valued in excess of $3 million that will not be set-aside for small business; acquisitions which constitute "contract bundling"; actions related to the purchase, transfer, utilization, disposal, or sale of personal property; and review and approval of contractor human resources actions (pension, benefits and compensation).

b. Actions that, based on the judgment of the HCA and/or the SPE, involve significant litigation or performance risk, or that may generate unusual interest from the public, media, congress, or other governmental entity (e.g., GAO, SBA). Examples include terminations, contracting officer final decisions, actions based on statute/congressional direction, etc.

7. To clarify BCR data submission requirements, the current HCA delegation category identified as "all other acquisitions including sole-source," which currently includes sole-source acquisitions, contract modifications and interagency agreements, will be revised to specifically list these actions as separate categories, i.e., non-competitive acquisitions, contract modifications, and interagency agreements.

8. The annual BCR data call will continue. Each DOE procurement office will still be required to identify actions prior to the start of each fiscal year as well as actions that arise during the fiscal year.

9 The administrative procedures in the soon to be revised AG 71.1 will prescribe that APLD may be consulted on any action regardless of dollar value.

C. NON-PMA PROCUREMENT OFFICES

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): Establish HCA delegation threshold at $50 million.

a. Pursuant to administrative procedures to be prescribed in revised AG 71.1, each procurement office shall annually submit information on all competitive actions above its HCA's delegation threshold pursuant to the BCR data call for consideration and potential selection by APLD for Headquarters review and approval.

b. If there are not at least five new competitive actions above the delegation threshold of the HCA to be identified as part of the annual BCR data call, the procurement office shall provide the required information on its five highest dollar value competitive actions for the BCR data call.

c. For competitive actions that arise during the fiscal year and that were not identified in the annual BCR data call, the procurement office must provide notification to APLD of only those actions that exceed the HCA's delegation threshold ($50 million) for consideration and potential selection by APLD for Headquarters review and approval.

d. The HCA must approve all new competitive awards valued in excess of $25 million that are not subject to the BCR process or that are not selected for Headquarters review and approval. This authority will be non-delegable.

2. New non-competitive awards, contract modifications, subcontracts, interagency agreements, and financial assistance: Establish HCA delegation threshold at $50 million for each category. Each procurement office will be required to provide information on actions that are valued above the HCA's delegation threshold for the annual BCR data call as well as during the fiscal year if the action was not previously identified in the annual BCR data call.

   a. 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.

      - Pursuant to FAR 6.304, the HCA or designee, shall approve all sole-source justifications for actions valued between $11.5 million and $57 million unless selected by APLD for Headquarters review and approval. Note: Per FAR 6.302-7(c)(1), Public Interest exceptions shall be approved by the Secretary.

   b. Contract Modifications

      - The administrative procedures in the forthcoming revision of AG 71.1 will prescribe the following pertaining to contract modifications:

        - Administrative modifications (e.g., funding mods) are not subject to the BCR process.
        - All modifications that exceed the HCA delegation threshold for contract modifications ($50 million) are subject to the BCR process.
        - Any contract modification, regardless of dollar value, for which the estimated value of the modification exceeds 20% of the original contract value, and $10 million, is subject to the BCR process.
        - Any contract modification, irrespective of the estimated value of the modification that will increase the total contract value above the HCA delegation threshold for competitive and non-competitive awards is subject to the BCR process.
        - Any contract modification, irrespective of the value of the original contract and the estimated value of the modification, to a contract that was originally approved by Headquarters which involves a significant restructuring of contract terms and conditions (e.g., contract type, deviations/modification of standard clauses) is subject to the BCR process.

      - The HCA must approve all contract modifications that are valued in excess of $25 million that are not subject to the BCR process or that are not selected for BCR review and approval. This authority will be non-delegable.

   c. Interagency Agreements

      - The administrative procedures in the forthcoming revision of AG 71.1 will prescribe that only interagency agreements and modifications that are valued in excess of HCA's delegation threshold in which DOE is the requesting agency and where the servicing agency will award or modify a contract on behalf of DOE will be subject to the BCR process.

      - Administrative modifications (e.g., funding mods) are not subject to the BCR process.

- The HCA must approve all interagency agreements that are valued in excess of $25 million that are not subject to the BCR process or that are not selected for BCR review and approval. This authority will be non-delegable.

d. Subcontracts

- Subcontract awards and modifications that are valued in excess of $50 million will be subject to the BCR process.
- Administrative modifications (e.g., funding mods) are not subject to the BCR process.
- The HCA, or designee, must approve all subcontracts that are valued in excess of $25 million that are not subject to the BCR process or that are not selected for BCR review and approval. This authority will be non-delegable.

e. Financial Assistance

- Financial assistance actions that are subject to the BCR process include new awards (competitive and non-competitive), renewals, continuations, and modifications which increase the scope and value of a financial assistance agreement.
- Financial Assistance actions that are valued in excess of $50 million will be subject to the BCR process.
- Administrative modifications (e.g., funding mods) are not subject to the BCR process.
- The total value of a financial assistance action is based on total project cost, inclusive of non-federal cost share.
- The HCA must approve all financial assistance awards that are valued in excess of $25 million that are not subject to the BCR process or that are not selected for BCR review and approval. This authority will be non-delegable.

D. PMA PROCUREMENT OFFICES

1. New Competitive Awards (includes both competitive contracts and competitive task orders awarded under GSA MAS contracts, GWACs, and DOE multiple-award, IDIQ contracts): Establish HCA delegation threshold at $10 million.

   a. Pursuant to administrative procedures to be prescribed in AG 71.1, each procurement office shall annually submit all competitive actions above its HCA's delegation threshold pursuant to the BCR data call for consideration and potential selection by APLD for Headquarters review and approval.

   b. If there are not at least five competitive actions above the HCA's delegation threshold to be identified as part of the annual BCR call, the procurement office shall provide the required information on its five highest dollar value competitive actions for the BCR data call.

   c. For competitive actions that arise during the fiscal year and that were not identified in the annual BCR data call, the procurement office must provide notification to APLD of only

those actions that exceed the HCA's delegation threshold ($10 million) for consideration and potential selection by APLD for Headquarters review and approval.

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), contract modifications, subcontracts, interagency agreements, and financial assistance. No change to current thresholds with the exception of SEPA. SEPA's thresholds will be increased to $1 million for each category.

   a. Each procurement office shall be required to submit actions that are valued in excess of its HCA's delegation authority for the annual BCR data call as well as during the fiscal year if the action was not previously identified in the annual BCR data call.

   b. The administrative procedures to be prescribed in soon to be revised AG 71.1 will prescribe that only interagency agreements that are valued in excess of the HCA's delegation authority in which DOE is the requesting agency and where the servicing agency will award a contract on behalf of DOE will be subject to the BCR process.

Proposed Delegated Authorities[1]

Organizations with HCA Delegations		Competitive Acquisitions	Non-competitive Acquisitions	Contract Modifications	Interagency Agreements	Subcontracts	Financial Assistance
Non-PMA	EM[2]	$50	$50	$50	$50	$50	$50
	Golden	$50	$50	$50	$50	$50	$50
	HQ Procurement	$50	$50	$50	$50	$50	$50
	Idaho	$50	$50	$50	$50	$50	$50
	NETL	$50	$50	$50	$50	$50	$50
	SPRMO	$50	$50	$50	$50	$50	$50
	SC[3]	$50	$50	$50	$50	$50	$50
	RW	$50	$50	$50	$50	$50	$50
PMA	S. E. Power	$10	$1	$1	$1	$1	$1
	S. W. Power	$10	$1	$1	$1	$1	$1
	Western Power	$10	$2.5	$2.5	$2.5	$10	$1

[1] Dollars are in millions. Delegated authorities are subject to Federal Acquisition Regulation, Department of Energy Acquisition Regulation, DOE policies (e.g., Acquisition Letters, DOE Directives), and the administrative procedures reflected in DOE Acquisition Guide Chapter 71.1 (summarized on pages 1-3).

[2] HCA delegation applies to the EM contracting activity; however, the BCR submission requirements apply individually to EM procurement offices at RL, ORP, CBC, and SR.

[3] HCA delegation applies to the SC contracting activity; however, the BCR submission requirements apply individually to SC procurement offices at CH and OR.