

Department of Energy (DOE) Policies on Responding to Competitive Solicitations of the U. S. Government or Other Activities

(Current as of October 04, 2010)

1. Competition Policy Restrictions on DOE Management and Operating (M&O) Contractors

1.1 Based on the Federal Acquisition Regulation (FAR) and other pertinent laws, regulations, and agreements (see references), it is DOE's policy that DOE M&O contractors will not be placed in the position of directly competing with the domestic U.S. private sector. Therefore, DOE M&O contractors are not permitted to respond to formal U.S. government procurement solicitations or other entities where specific costing information is required and that have a fixed statement of work. Generally, these solicitations are labeled as:

- 1.1.1 Requests for Proposal(s) - RFP
- 1.1.2 Invitations for Bids or Requests For Bid(s) –IFB or RFB
- 1.1.3 Request for Quotations - RFQ

1.2 This restriction includes any other acquisition document that is open for competitive solicitation and award (however designated), is announced in the Federal Business Opportunities, and has either a fixed statement of work and/or consists of routine services that are available in the US domestic sector.

1.3 DOE M&O contractors are not permitted to respond to non-U.S. government procurement solicitations in the categories of:

- 1.3.1 Any competitive solicitation from any U.S. state or local government entity where there will be head-to-head competition on a fixed statement of work.
- 1.3.2 Any U.S. private sector company (including for-profit companies, non-profit corporations, and universities) where there will be head-to-head competition on a fixed statement of work.
- 1.3.3 Where the solicitation specifically mentions that there will be only one awardee.
- 1.3.4 Any competitive solicitation from any foreign entity (government, state, local government entity, research facility, or commercial entity) where there will be head-to-head competition on a fixed statement of work.

2. Permissible Competition or Solicitation Categories

Under the authority of the Atomic Energy Act and other statutes, DOE is authorized to conduct research and development (R&D) through its own facilities for non-DOE sponsors when DOE finds that private facilities are inadequate for these purposes.

DOE has determined that performance of R&D activities, which utilize the special and unique

capabilities of DOE's M&O contractors, is not a form of competition when the private sector is unable to perform such activities. All responses to formal solicitations must receive an upfront DOE review and approval.

2.1 Broad Agency Announcements (BAA or equivalent)

The only type of federal procurement solicitations that a DOE M&O contractor can respond to are BAAs. A BAA is governed by the provisions of FAR Subpart 6.102(d)(2) and/or Subpart 35.016. In a BAA, a federal agency advertises its general research interest. Proposals presented in response to a BAA are not submitted in accordance with a common work statement proposed by the requesting federal agency. Each proposal is completely unique and the requesting federal agency may make multiple awards from one BAA. That is, the federal agency may award contracts, enter into interagency acquisitions, make grants, enter into cooperative agreements, etc., with multiple respondents with completely different statements of work from the same BAA.

The Energy Policy Act of 2005 (EPAct 2005) permits a DOE National Laboratory response to energy efficiency type of solicitations coming under EPAct 2005.

2.2 Federal Financial Assistance Solicitations (FAS)

FAS are not procurement-related instruments but come under a separate statute (31 USC 6301-6308) authorizing these activities. DOE will permit responses to federal agency financial assistance solicitations (e.g., grants), including DOE sponsors that are:

- 2.2.1 *research-oriented*
- 2.2.2 where there is no fixed statement of work
- 2.2.3 where there is no cost-sharing from DOE or the M&O contractor, and
- 2.2.4 when the federal agency, including DOE sponsors, permits such responses

2.3 Non-Federal Agency Solicitations Equivalent to a BAA

DOE will permit authorized responses to solicitations from U.S. State governments, commercial companies, universities, and non-profit organizations when these solicitations instruments are characterized by the following:

- 2.3.1 The instrument is a general research announcement that is being used for the acquisition of basic and/or applied research ideas to further advance scientific knowledge or understanding rather than focusing on a specific system or hardware solution.
- 2.3.2 Evaluations and selections are performed through a merit or peer review process based on pre-established general selection criteria.
- 2.3.3 The primary bases for selection are technical approach, importance to the agency, and funds availability.

3. Teaming Arrangements

3.1 Small Business Innovation Research (SBIR) Program

Under the same R&D criteria for BAA, DOE will approve an M&O contractor providing limited technical assistance to a U.S. Small Business under the federal government's SBIR program. Small business concerns include sole proprietorships, partnerships, corporations, joint ventures, associations, or cooperatives. A DOE M&O contractor is limited to doing 49 per cent or less of the work as a subcontractor to a small business in the SBIR. The program objectives are:

- 3.1.1 to increase private sector commercialization of technology developed through federal R&D;
- 3.1.2 to increase small business participation in federal R&D; and
- 3.1.3 to improve the federal government's dissemination of information to women-owned-, and economically-disadvantaged small business concerns.

SBIR funds are used to support an annual competition for Phase I awards of up to \$100,000 for about 6 months to explore the feasibility of innovative concepts. Only Phase I winners are eligible to compete for Phase II, which is the principal research or R&D phase. The maximum funding for Phase II projects is \$750,000 over a two-year period.

3.2 Small Business Technology Transfer (STTR) Program

STTR is similar to the SBIR program in that both programs seek to increase the participation of small businesses in federal R&D and to increase private sector commercialization of technology developed through federal R&D. Furthermore, in each program, a solicitation for grant applications is issued at least once per year, and the same program structure is used: Phase I to determine feasibility, Phase II to conduct the bulk of the R&D, and Phase III to pursue commercialization.

The purpose of Phase I is to conduct feasibility related experimental or theoretical research or R&D in order to determine the scientific or technical merit/feasibility of concepts/ideas as a prerequisite to further support under Phase II. Individuals receiving awards under Phase I will be eligible to compete for Phase II contracts. Those receiving Phase II awards are then eligible to compete for Phase III awards.

The unique feature of the STTR program is that, for both Phases I and Phase II projects, at least 40 per cent of the work must be performed by the small business and at least 30 per cent of the work must be performed by the non-profit research institution. Such institutions include federally-funded research and development centers (for example, DOE national laboratories), universities, and other non-profits.

3.3 BAA Partnerships

Under the same R&D criteria for BAA, DOE will approve an M&O contractor providing research or technical services **as a Work For Others (WFO) subcontractor** to a commercial business, university, or non-profit organization. As a rule of thumb, DOE desires that the national laboratory participation be kept in the range of 25 per cent of total expected cost. However, this is not a fixed percentage and DOE will evaluate each case separately. The BAA must:

- 3.3.1 *be research-oriented*
- 3.3.2 have no fixed statement of work
- 3.3.3 have no cost-sharing from DOE or the M&O contractor, and
- 3.3.4 not exclude national laboratory or Federally Funded Research and Development Center (FFRDC) participation

3.4 FAS Partnerships

The same criteria shown in 3.3 above apply where a DOE M&O contractor is approached to be a subcontractor participant in a financial award solicitation.

3.5 Teaming After Competitive Award

DOE will permit certain arrangements that occur after a federal solicitation or other solicitation is conducted and the award is made. There must be no active participation by any member of the DOE M&O contractor staff that would affect the initial contract award. In this case, a U.S. domestic sector organization (e.g., a commercial company, university, nonprofit institution, etc.) will request research or technical support in order to complete its work on the previously awarded contract(s). DOE will authorize a WFO subcontract arrangement between its M&O contractor and the other domestic sector organization or foreign entity. The WFO arrangement must follow existing DOE rules.

The above scenario frequently occurs where a domestic sector organization received a formal award based on a response to a commercial solicitation of the U.S. government or from another non-federal source. In evaluating the technical requirements needed to complete the contract, the organization with the award decides that it needs certain special expertise or unique technical skills that are available only in a DOE facility. The DOE M&O contractor must obtain DOE Oak Ridge Office (DOE-ORO) formal approval for the capabilities to be provided to the domestic sector organization. Approval will be done under DOE Order 481.1C procedures.

3.6 General Partnership Arrangements

DOE will permit certain arrangements with non-federal entities that are general in nature and are not tied to a specific solicitation. In this case, a U.S. domestic sector organization (e.g., a commercial company, university, nonprofit institution, etc.) will request research or technical support due to identifying research or technical weaknesses in its own

technological portfolio or strategic vision. The DOE M&O contractor will be used as an on-call research facility for the domestic sector organization to furnish only special expertise, knowledge, skills, or unique facilities that are not available in the routine commercial environment. DOE will authorize a WFO subcontract arrangement between its M&O contractor and the other domestic sector organization or foreign entity. The WFO arrangement must follow existing DOE rules.

4. Permissible Information Sharing on DOE Capabilities

DOE will permit information distribution of DOE capabilities or expertise to be shared with other federal agencies, private sector components, foreign entities, etc. *All information sharing and/or distribution are subject to normal DOE review policies associated with classified information, proprietary information, unclassified nuclear information, Privacy Act restrictions, etc.* Other than these normal parameters, this information sharing does not require advance DOE approval and may take the form of responding to or furnishing data for:

- 4.1 Requests for Information - RFI
- 4.2 Sources Sought Announcements - SSA
- 4.3 Statement of Capabilities - SOC
- 4.4 Requests for White Papers
- 4.5 Rough Order of Magnitude - ROM
- 4.6 Information Sought for Market Analysis (MA)
- 4.7 Sponsor-initiated contacts or information requests
- 4.8 Research Abstracts (RA)

5. DOE Approval Requirement

Therefore, it is DOE policy to allow the M&O contractors, under certain conditions and with advance DOE approval, to respond to certain competitive solicitations. The DOE intent is to make their special or unique capabilities available to other federal agencies and to non-federal entities. The following general procedures apply:

- 5.1 The work contemplated must consist of R&D essential to a national program or DOE's mission, or both, and involve an M&O contractor's special and unique capability developed in conjunction with an approved DOE mission and/or program.
- 5.2 All proposed responses will be prepared according to procedures outlined in DOE Order 481.1C. If a BAA, FAS, etc., is involved, the M&O contractor must specifically inform DOE-ORO that the proposed R&D work is in response to a BAA, FAS, or a commercial equivalent.
- 5.3 DOE Oak Ridge Office will be responsible for reviewing and approving the BAA/FAS or other competitive proposal and formally forwarding the authorized proposal to the proposed customer by the solicitation due date.

6. References

- 6.1 Atomic Energy Act of 1954 (42 USC 2011, et seq.)
- 6.2 Sections 3136 and 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public law 105-261)
- 6.3 Office of Federal Procurement Policy Letter 84-1, April 20, 1994, subject: Federally Funded Research and Development Centers (FFRDC)
- 6.4 Federal Acquisition Regulation (FAR) Part 6, Competition Requirements
- 6.5 FAR Section 6.102, Use of Competitive Procedures
- 6.6 FAR Section 17.500, Scope of Subpart Interagency Acquisitions
- 6.7 FAR Section 17.600, Management and Operating Contractors
- 6.8 FAR Section 35.016, Broad Agency Announcements
- 6.9 FAR Section 35.017, Using an FFRDC
- 6.10 DOE Order 481.1C, Work For Others (Non-Department of Energy Funded Work), dated 01/24/05
- 6.11 DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: Work For Others - Teaming With Industry
- 6.12 DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program
- 6.13 DOE Acquisition Regulation (DEAR) 970.5217-1 Work For Others Program (Non-DOE Funded Work) (Jan 2005) which is incorporated into the DOE contract DE-AC05-00OR22725 for Oak Ridge National Laboratory at Clause I.130.
- 6.14 Section 989 of the Energy Policy Act of 2005.
- 6.15 Section 9008(e)(5) of Farm Security, and Rural Investment Act of 2002 (FSRIA), as amended (7 U.S.C. 8108(e)(5)), for Biomass Research and Development Initiatives. Eligible entities are:
 - (A) an institution of higher education;

- (B) a National Laboratory;*
- (C) a Federal research agency;*
- (D) a State research agency;*
- (E) a private sector entity;*
- (F) a nonprofit organization; or*
- (G) a consortium of 2 or more entities described in (A) through (F) above.*

7. DOE Determination on Authority to Submit Proposals for BAA

- 7.1 Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201);
- 7.2 Section 644 of the Department of Energy Organization Act, Pub. Law (PL). 95-91 (42 U.S.C. 7254);
- 7.3 Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C.3710a);
- 7.4 Section 3132(b) of P. L. 101-189;
- 7.5 Sections 3134 and 3160 of P.L. 103-160, and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.);
- 7.6 Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182);
- 7.7 Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and
- 7.8 Executive Order 12591 of April 10, 1987.

For further information, contact Mr. David Bradford of the ORNL Work For Others Program Office at (865) 574-9798, fax (865) 576-7192, or Internet at bradforddw@ornl.gov.