

Reclamation Manual

Directives and Standards

Subject:	Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts
Purpose:	Outlines the basic requirements as to the form, content, and preparation of a basis of negotiation for a proposed water-related contract action. The benefit of this Directive and Standard (D&S) is that it helps to ensure that Bureau of Reclamation staff at all levels of the basis of negotiation process, as well as other involved parties, know the basic requirements, which enhances efficiency in the process and consistency and confidence in the document it produces.
Authority:	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto.
Approving Official:	Director, Policy and Administration
Contact:	Policy and Administration, Water and Environmental Resources Division, 84-55000

1. Introduction.

- A. This D&S sets forth requirements for the form, content, and preparation process for bases of negotiation (BON) in accordance with the general policy, requirements, and parameters stated in Reclamation Manual (RM) Policy, *Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts*, (PEC P06). It applies generally to all BONs, including those proposing new and amendatory water service, repayment, and related contracts. Its purpose is to ensure that the Reclamation staff who prepare BONs know the basic steps and content required. This helps, in turn, to ensure that those who evaluate and approve BONs and authorize contract negotiations have the information they need to do so, with adequate assurance that prospective contract actions adhere to the requirements and intentions of applicable laws and policies.
 - B. This D&S covers basic BON requirements, without purporting to address how special laws and circumstances may call for variations. Each contract proposal must be evaluated and each BON prepared in light of all applicable law and relevant circumstances. Significant variations from the basic requirements must be justified in the BON.
2. **Applicability.** This D&S applies to Reclamation staff and officials involved in the contracting process, as defined below.
 3. **Definitions.** The definition under Paragraph 3 of PEC P06 applies to this D&S.

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4. **Responsibilities.** The statement of responsibilities at Paragraph 4 of PEC P06 applies to this D&S.

5. **Requirements.**
 - A. **State the Purpose of the BON.** State that the BON's purpose is to request authority to negotiate, execute, and administer the proposed contract according to the given terms. All BONs are to be plainly marked "Internal Document – Not for Public Release." Executed contracts can be made available to the public upon request, as provided by law.

 - B. **State the Purpose of the Proposed Contract Action.** In the BON's introductory paragraph, state the objective that the United States and contractor wish to accomplish through the proposed contract action (e.g., sale or lease of water, use of facilities, etc.).

 - C. **State the Contractor's Identity, Financial Status, and Legal Authority to Enter the Contract.**
 - (1) State the contractor's name, location, and service area and the nature of the contractor's business.

 - (2) Assess the contractor's financial and organizational ability to perform its obligations under the proposed contract:
 - (a) Affirm that the contractor is legally authorized to enter into the proposed contract under state law and by its own controlling body (e.g., by its Board of Directors), if applicable.

 - (b) Specify the type of service to be performed or product to be delivered.

 - (c) Where appropriate, provide a copy of the contractor's latest available financial statement.

 - (d) For amendatory repayment contracts, describe the repayment history and current status of all of the contractor's outstanding repayment obligations to Reclamation.

 - D. **Briefly State the Contractor's Relevant Needs and Background.**
 - (1) Describe the contractor's need for the water supply to be provided under the contract (hereinafter "contract supply") and its intended use. Where applicable, specify whether it is to be a full or a supplemental supply.

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- (2) If the contractor draws water from other sources, identify them and explain their relationship to the contract supply.
- (3) State the basis for the amount of water to be supplied under the contract and identify the holder of the associated water rights.
- (4) State whether the contractor will have water conservation requirements under the contract, if executed.
- (5) Identify any existing contracts between the contractor and the United States and explain their relationship to the proposed contract. Describe how the proposed contract does or may affect the identified existing contract(s).
- (6) State who has operation and maintenance (O&M) responsibilities.

E. Identify the Relevant Legal Authority.

- (1) Specify the authority for the project and its operation, identifying any project-specific authorities or restrictions that do or may materially affect the terms of the contract.
- (2) Specify the legal authority for the contract and services to be provided.
- (3) Confirm that the intended use(s) to which the water will be put and place of use to which water will be delivered under the contract are allowed under the project's water rights, or specify the measures to be taken where use and/or place of use do not conform to the project's water rights.

F. Describe the Negotiating Strategy and Identify Issues Needing Resolution.

- (1) Distinguish between negotiable and nonnegotiable material terms of the proposed contract. The following are typically among the elements to be negotiated:
 - (a) the quantity and type of water supply to be fixed by the contract;
 - (b) payment amounts (water rate, repayment obligation, and/or other fees or charges), along with payment schedules and interest rates, where applicable;
 - (c) term of contract/repayment period;
 - (d) water use build-up period and/or development period, if applicable; and/or
 - (e) terms for the collection and maintenance of reserve funds and their allowable uses (i.e., O&M, repayment obligation, and environmental restoration).

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- (2) Outline a plan of action covering the elements of the contract that are to be negotiated, along with any other pertinent matters, such as those related to the renegotiation of existing contracts, water conservation issues, and compliance with applicable Federal laws.
- (3) Indicate a legally and practically acceptable range of potential outcomes for those elements of the proposed contract that are to be negotiated (for instance, a minimum price for water that Reclamation can accept and a maximum that the contractor can pay).
- (4) Identify the standard contract articles that are to be included in the contract. Justify any intended modifications to standard articles or the intended omission of any standard articles that would normally be included in the type of contract to be executed.
- (5) Briefly explain the anticipated language to be used in the water measurement article, where applicable. For the details of this requirement, see Reclamation Manual D&S, *Requirement of a Water Measurement Article in Contracts and Amendments*, PEC 05-04.
- (6) Affirm that the parties understand that the completion of the contracting process is contingent on satisfying, at the appropriate times, certain preliminary requirements, such as the environmental analyses required by the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended and supplemented, 42 USC § 4321, et seq.) (NEPA) and public participation requirements of section 9(f) of the Reclamation Project Act of 1939 (Pub. L. 76-260, as amended and supplemented, 43 U.S.C. § 485h(f)). State the character and legal source of each such requirement and how it will be handled during the contracting process.
- (7) Identify the positions of affected or interested third parties, if any, and how they may affect the contracting process and outcome.
- (8) Describe how public participation, environmental compliance, and potential third-party impacts, if any, will be handled. State the level of NEPA documentation anticipated.
- (9) Describe any problems or unique issues that will need to be addressed through the contracting process.
- (10) State any special circumstances, such as an emergency, that demand an expedited contracting process.

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- (11) For amended or renewed contracts, discuss any existing or potential conversions between water uses and how they will be addressed.

G. **Specify Rate Setting and/or Repayment Procedures.**

- (1) Explain the method to be used for determining water rates and/or ability to pay. Explain in detail how all reimbursable costs are to be paid and applied against the contractor's repayment obligation.
- (2) Explain the determination and allocation of the reimbursable project costs.
- (3) Describe the revenue sources the contractor will use to meet its obligations to the United States under the contract.
- (4) Identify any special incidental revenue credits and the effects they may have on repayment.

H. **Confirm Consistency with Relevant Reports and Legislation.** Affirm that the BON is consistent with the project preconstruction reports (definite plan report, feasibility report, or other), authorizing legislation, environmental requirements, and current contracting policy. Identify and explain any deviations from established law, policies, or procedures. Verify that the appropriate field/regional solicitor has concurred that the BON is legally sufficient.

6. **Commissioner's Approval and Delegations of Authority.** Regional directors have been delegated authority to approve some contract actions, meaning that the Commissioner's prior approval is not required. All contract actions, whether or not they require the Commissioner's specific approval, must be negotiated, executed, and administered in accordance with all applicable laws, rules and regulations, and Reclamation policies applicable at the time the contract is executed. Approval of these contracts must be supported by sufficient documentation to provide future contract administrators, auditors, or other interested parties information on and justification for the contract. The degree of documentation will be directly related to the significance of the contract. A copy of each such executed contract is to be sent to the Manager, Water and Environmental Resources Division, in Policy and Administration. If authority to proceed without the Commissioner's prior approval has not been clearly delegated or the BON requirement specifically excused, an approved BON is required.