



Department of Energy
Office of Science
Washington, DC 20585

August 17, 2012

MEMORANDUM FOR LARRY C. KELLY, MANAGER
OAK RIDGE OFFICE
OFFICE OF SCIENCE

ROXANNE E. PURUCKER, MANAGER
CHICAGO OFFICE
OFFICE OF SCIENCE

FROM: JOSEPH A. MCBREARTY
HEAD OF CONTRACTING ACTIVITY
OFFICE OF SCIENCE

A handwritten signature in blue ink, appearing to read "Joe McBrearty", written over the typed name and title.

SUBJECT: Re-delegation of Authority to Approve Routine Requests for
Approval of Subcontract Indemnification Provisions in
Accordance with the Department of Energy Acquisition
Regulation

On May 23, 2011, Patrick Ferraro, Acting Director of the Office of Procurement and Assistance Management, issued a revised Head of Contracting Activity (HCA) delegation of authority/designation to Joseph A. McBrearty, Deputy Director for Field Operations, the Office of Science (SC). This memorandum delegated authority to the SC HCA to approve SC management and operating (M&O) contractor requests for approval of subcontractor and third party indemnity provisions pursuant to the Department of Energy Acquisition Regulation (DEAR) clause 970.5244-1(l). This delegation from the Senior Procurement Executive (SPE) stated this authority may be further re-delegated only to the Integrated Support Center Managers of the Oak Ridge Office and the Chicago Office.

Accordingly, you are hereby re-delegated authority to approve SC M&O contractor requests for approval of subcontractor and third party indemnity provisions pursuant to DEAR clause 970.5244-1(l). 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. clearing houses for publishers of research and analytical papers as well as copyright transfer agreements for publications or scientific and technical journals), software indemnifications (for example, 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 concurrence 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 of funds under 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.

Indemnification requests covered under this delegation shall be handled in accordance with the following procedures. First, prior to considering a request for indemnification, the responsible DOE Contracting Officer (CO) shall require the contractor to document why the requested arrangement is in the best interests of the Government. Specifically, to obtain approval of an indemnification request, the contractor shall be required to provide a copy of the indemnification provision, and a legal analysis and discussion of the six criteria listed above.

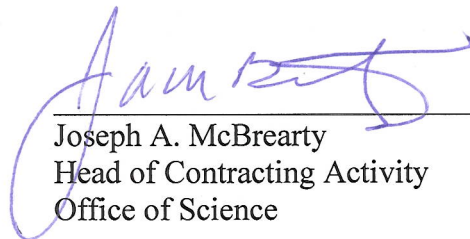
In addition, the responsible CO shall be required to perform a review and analysis of the contractor's request, including obtaining local field counsel review and concurrence, and concurrence from the Chief Counsel at the Oak Ridge Office or Chicago Office, as appropriate.

The contractor's request for approval of an indemnity provision shall be concurred on by the Chief Counsel from the Oak Ridge Office or Chicago Office before an indemnification is approved by the Oak Ridge Office or Chicago Office Manager, and it shall be processed in accordance with DOE, HCA, and local policies and procedures. Indemnification requests other than the routine matters as described shall continue to be submitted to the DOE SPE for approval.

The Oak Ridge Office or Chicago Office Manager's approval of the contractor's request shall include the following conditions: (1) any indemnity approval must specify that the Government's liability is to the prime contractor and DOE's obligation to reimburse the prime contractor for any liability arising out of the indemnity provision is at all times subject to the terms and conditions of the prime contract, in particular clause DEAR 970.5228-1 "Insurance-litigation and claims," and the availability of appropriated funds under the prime contract; (2) nothing in the Government's approval shall be construed as implying that Congress will, at a later date, appropriate funds sufficient to meet deficiencies under the prime contract with DOE; and (3) any Government approval shall stipulate that DOE is not party to the indemnification agreement; and therefore, DOE is not agreeing to indemnify the subcontractor.

The authorities re-delegated herein are in addition to, and not in limitation of, any other authority delegated or responsibilities assigned to you as the Manager, Oak Ridge Office, and Manager, Chicago Office, by any Departmental directive, regulation, or other issuance.

Nothing in this re-delegation shall preclude the HCA or SPE from directly exercising any authority whenever it is judged that the exercise of such authority is necessary or appropriate to administer the functions vested in those positions.



Joseph A. McBrearty
Head of Contracting Activity
Office of Science

8-17-12

Date

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