

## **Subchapter 3004.70 Review and Approval of Proposed Contract Actions**

### **3004.7000 Scope.**

(a) This subchapter establishes the review and approval requirements for the following contract actions when the value of the acquisition (inclusive of options) exceeds the simplified acquisition threshold as follows:

(1) Proposed solicitations, contracts, and contract modifications issued and awarded (including those awarded under a Basic Ordering Agreement (BOA)) pursuant to Federal Acquisition Regulation (FAR) Parts 12, 13.5, 14, 15 or 16;

(2) Proposed solicitations, orders, Blanket Purchase Agreements (BPAs), and modifications to such orders and BPAs issued and awarded pursuant to FAR Part 8.4, when using Statements of Work, Statements of Objectives, Performance Work Statements, or requiring licenses;

(3) Proposed solicitations, orders, BPA's, and modifications to such orders or BPA's, issued and awarded against a single award or a multiple award indefinite delivery or indefinite quantity contract or BPA pursuant to:

(i) Subpart 8.4 (when not covered by paragraph (2) above);

(ii) FAR Part 13; or

(iii) FAR Part 16.

(4) Letter contracts (of any dollar value) in accordance with HSAM Subchapter 3016.603;

(5) Pre-negotiation objectives and the documentation of negotiation (see FAR 15.406-3) for actions using FAR Part 15; and,

(6) Justifications and Approvals (J&As) for Other Than Full And Open Competition.

(b) Specific exceptions to the review and approval requirements are provided for in HSAM Subchapters 3004.7002 and 3004.7003.

(c) The approval requirements under this subchapter are in addition to other approval requirements prescribed by the FAR, HSAR, and HSAM (e.g., HSAM 3005.303, Announcement of contract awards, 3007.1, Acquisition Plans, etc.).

### **3004.7001 Definitions.**

The following definitions are only applicable to HSAM 3004.70:

(a) “Legally sufficient” means that the document has been reviewed by an attorney in the DHS Headquarters (HQ) or Component legal office, and determined to be in compliance with applicable statutes, regulations, policies, and procedures.

(b) “Level above Approval” means approval after a review of the action by a procurement professional at least one supervisory level above the contracting officer responsible for the action. Level above review must always be done at a supervisory level. In instances where the contracting officer is at a supervisory level and the COCO\DHCA\HCA would be the level above approval, then peer review and approval is acceptable. If a non-supervisor is acting in a supervisory capacity, the review and the file shall be documented accordingly.

(c) “Review” means to scrutinize the document before its release to ensure that the contracting officer has complied with acquisition statutes, regulations, policies and procedures; has followed sound business practices; and has ensured that the contents of the contract file are in accordance with FAR 4.803.

### **3004.7002 Component Internal review and approval procedures.**

(a) *Component review procedures.* HCAs shall establish procedures for conducting the internal reviews (e.g., level above approval, coordination with a contract review board, quality assurance personnel, operational users, etc.) to ensure the requirements of this subchapter are met. An action over \$500,000, but not greater than \$1 million, need not be reviewed at a level above the contracting officer at a remote contracting office when the contracting officer is the sole contracting official. The HCA is required to address review and level above approval requirements in their internal procedures for actions over \$1 million at remote contracting offices with limited contracting personnel.

(b) *Review and Approval Requirements.* Appendix C, Review and Approval Matrix lists the review and approval requirements for the actions listed in subchapter 3004.7000. All Component reviews, comments, approvals, and resolution of comments shall be documented in writing and maintained in the contract file. If the award approving official conditionally approves the award, the contracting officer must include in the contract file a written determination (signed and dated) indicating that all of the conditions (e.g., corrections, deletions, additions, changes, etc.) were satisfied prior to award.

(1) *Review comments.* Official review comments shall be designated as either “Mandatory Change/Actions” or “Recommendations.” The disposition of comments for the review and approval official and legal counsel are as follows:

(i) *Mandatory Changes/Actions.* These comments must be incorporated into the acquisition documentation in order for the action to be completed. Without these changes, the document or action would be considered either unacceptable or legally insufficient.

(ii) *Recommendations.* These comments are suggestions that the reviewer believes will improve the document. These comments can be accepted or rejected by the acquisition originator.

(c) *Cognizant technical/program review.* The contracting officer shall ensure that all proposed solicitations, awards, and modifications are coordinated as necessary with the cognizant technical/program office prior to issuance or award.

(d) *Exceptions.* Exceptions to the approval requirements specified above in subparagraph 3004.7002(b) include unilateral modifications that do not require a proposal from or negotiations with the contractor (or from the servicing agency for inter/intra-agency agreements.) For example, approval is not required for modifications to provide incremental funding, the exercise of options, and those actions listed in subparagraph 3004.7003(b).

### **3004.7003 Legal review.**

(a) *Basic Rule for Legal Review.* Legal counsel shall review the contract actions listed in subchapter 3004.7000(a)(1) through (4) expected to exceed \$500,000 (inclusive of optional amounts and periods) for legal sufficiency. Legal counsel shall review J&As for Other Than Full And Open Competition (3004.7000(a)(6)) expected to exceed the simplified acquisition threshold (also see DHS J&A Guide). The contract action submitted for review shall be accompanied by the contract file, which must contain all documentation necessary to support the proposed action, including documentation of all contracting office reviews, approvals, and resolution of all issues and comments (unless parallel reviews are authorized in accordance with the HSAM and HCA procedures). The HCA, with the concurrence of the Component's legal counsel, may adjust the \$500,000 threshold. For the DHS HQ Office of Procurement Operations (OPO), the HCA must obtain the concurrence of the DHS Headquarters Office of General Counsel.

(b) *Exception to Basic Rule for Legal Review.* When legal counsel has previously reviewed a contract, BPA, order, or inter/intra-agency agreement, legal review of certain modifications to those contractual instruments is not required. Such modifications include, but are not necessarily limited to: administrative modifications; modifications to add funding that do not increase scope; and, modifications to exercise options.

(c) *Documentation.* Incomplete documentation will not be reviewed until the complete file is submitted, and may be returned without review at the discretion of the legal counsel. For documentation to be complete, it must include all properly executed supporting documents, including those required by the FAR, the HSAM and applicable Department and Component directives necessary to support the contract action.

(d) *Additional Requirements for Legal Review.*

(1) Any contract action involving private sector financing, see HSAM 3032.702-71, regarding legal review and approval.

(2) Any contract action, including orders under indefinite quantity contracts or GSA FSS contracts, specifying cancellation or termination fees shall be reviewed by legal before execution. (Note: Provisions for cancellation or termination fees are commonly found in lease and licensing agreements.)

(3) Any contract action, including orders under indefinite delivery contracts and GSA FSS contracts, in which the Government agrees to indemnify the contractor. (Note: Provisions for indemnity are commonly found in contract provisions offered by contractors proposing terms consistent with “commercial practices.”)

(e) *Availability of Legal Counsel Review at any Dollar Value.* Some issues may warrant legal review regardless of the dollar value. Contracting officers may request legal review due to the complexity or sensitivity of issues of the acquisition, notwithstanding that the dollar threshold has not been reached. For example, contracting officers should feel free to request legal assistance and guidance at critical junctures in the acquisition life cycle, such as for: difficult down-select or competitive range determinations, the clearance of acquisition plans for important acquisitions, questions as to the scope of an existing contract, and the issuance of cure notices or show cause letters.

(f) *Documentation.* The documentation of legal comments received or a statement from legal counsel that the procurement document has been reviewed and found to be legally sufficient must be placed in the contract file. The contracting officer is responsible for assuring that all legal comments are responded to and documented in the contract file. Any disagreements between the contracting officer and the reviewing attorney shall be forwarded to the COCO for resolution. The COCO may delegate this function in accordance with Component procedures.

#### **3004.7004 Office of Chief Procurement Officer (OCPO) review and approval.**

(a) The OCPO may require review of any DHS contract action, including modifications to awarded actions, during the acquisition process to ensure that sound business practices are being used; actions are in compliance with applicable laws, executive orders, and acquisition regulations; and actions serve the Government’s best interest.

(1) *Specific actions requiring approval.*

(ii) Solicitation and contract actions selected by the CPO for review; and

(ii) In accordance with FAR 17.502-2(c)(2), HSAM 3017.502-170(c)(2), and HSAM 3017.502-171(g)(3), CPO/SPE approval is required prior to placing an order against another agency’s contract that is not subject to the FAR or prior to obtaining acquisition assistance from an agency not covered by the FAR.

(b) *Information required for OCPO review and approval.*

(1) *General.*

(i) Reviews required by HSAM Subchapters 3004.7002 and 3004.7003 shall be obtained prior to transmittal to OCPO, including evidence of review and resolution of Component comments. Unless otherwise specified, all documents requiring CPO or designee or higher-level approval shall be signed by the HCA as “Recommended for Approval” and transmitted to OCPO through the Reverse

HCA Scheduler and Tracker Reporting Tool (RHCAST) at <http://ocpo-sp.dhs.gov/sites/era/HCAST/Pages/RHCAST.aspx>.

(ii) Documents submitted must be sufficient to allow for a comprehensive review. Documents submitted for review which include proprietary information or source selection information shall be marked and protected in accordance with FAR 3.104-4 and HSAM Subchapter 3003.104-4.

(c) *Notifications and other submissions to OCPO.* Unless otherwise specified, Components shall submit all required notifications and document submissions (e.g., copies of delegations, individual deviations) through RHCAST at <http://ocpo-sp.dhs.gov/sites/era/HCAST/Pages/RHCAST.aspx>.

### **3004.7005 Periodic compliance reviews.**

Periodic oversight reviews (e.g., an established procurement management review program, review of selected procurement actions by Headquarters, etc.) of solicitations, pre-negotiation objectives, documentation of negotiations, contract awards, and contract modification awards must be conducted by Components. All reviews must be documented in writing.