



Homeland
Security

MEMORANDUM FOR: Heads of Contracting Activity
FROM: PAUL R COURTNEY
Paul Courtney COURTNEY
Senior Procurement Executive/Chief Procurement Officer
SUBJECT: HSAM Class Deviation 23-01, Work Performed by Department of Energy National Laboratories or Sites (HSAM 3017.502-172)

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Purpose. This class deviation provides DHS Contracting Officers interim policy and procedures when entering into interagency agreement for assisted acquisitions with the Department of Energy for access to its national laboratories or sites.

Effective Date. Upon issuance.

Background. Since inception, DHS has leveraged the unique expertise of the Department of Energy (DOE) national laboratories and sites in carrying out its mission pursuant to Section 309(a) of the Homeland Security Act of 2002 (6 U.S.C. 189). This work has traditionally been accomplished through interagency agreements signed by DHS contracting officers. However, from time to time my office received questions asking if DOE was providing acquisition assistance when DHS requested access to its national laboratories or sites. To help streamline the negotiation of such agreements, my office updated the Homeland Security Acquisition Manual (HSAM) to provide a blanket determination that interagency agreements for use of DOE's national laboratories and sites are assisted acquisitions (see HSAM 3017.502-172).

Recently, I have learned there are instances where some DOE Contracting Officers are not accepting interagency agreements as assisted acquisitions when DHS requests access to its national laboratories or sites. While OCPO maintains work performed by DOE contractor operated laboratories and sites are assisted acquisitions, we are working with the Office of General Counsel to resolve this issue. However, until this matter is resolved, this deviation removes from HSAM 3017.502-172 the blanket determination that interagency agreements with DOE for access to its national laboratories and sites are assisted acquisitions. Removing this blanket determination allows DHS Contracting Officers to enter into agreements that DOE identifies as other than assisted acquisitions.

Deviation. This HSAM Class deviation provides in attachment 1 revisions to HSAM 3017.502-172, Work performed by Department of Energy national laboratories and sites, to remove the blanket determination that interagency agreements with DOE for access to its national laboratories and sites are assisted acquisitions. As a result of removing the blanket determination, attachment 1 also provides other editorial changes to 3017.502-172.

Component Action. DHS Contracting Officers will continue to negotiate agreements with DOE, and to the extent feasible, DHS Contracting Officers should negotiate these agreements as assisted acquisitions. When negotiating agreements, DHS Contracting Officers may find it helpful to include in the terms and conditions a statement acknowledging that DOE provides limited acquisition assistance. For example, DHS Contracting Officers may consider including a statement such as, “DOE provides acquisition assistance by providing DHS access to their contractor operated national laboratories and sites. This is the extent of DOE’s acquisition assistance.”

If a DOE Contracting Officer refuses to accept an agreement where the assisted acquisition indicator is marked “Yes” on Bureau of the Fiscal Service Form 7600A, General Terms & Conditions (GT&C) (or in G-invoicing), DHS Contracting Officers are permitted to mark this box/field “No”. In cases when DOE insists an agreement is an Interagency Reimbursable Work Agreement (IRWA), DHS Contracting Officers may sign/approve these agreements (Bureau of the Fiscal Services Form 7600A, block 27). In cases such as these, DHS Contracting Officers shall ensure the contract/agreement file reflects that DOE would not accept the agreement as an assisted acquisition. Because OCPO’s position remains that DOE provides acquisition assistance when it grants access to its national laboratories or sites, DHS Contracting Officers shall continue to comply with HSAM 3017.502-172(b) through (h) before entering into agreements with DOE.

Expiration Date. Within six months of issuance unless rescinded sooner.

Attachment

**Attachment 1 – HSAM Deviation Text
(Deletions in strike-outs, additions in bold text)**

3017.502-172 Work performed by Department of Energy national laboratories and sites.

~~Section 309(a)(1)(A) of the Homeland Security Act of 2002 (6 U.S.C. 189) authorizes DHS to use the unique expertise of the DOE national laboratories and sites in carrying out its mission on a work for others basis. Transactions between DHS and DOE under this authority are governed by an overarching Memorandum of Agreement dated February 28, 2003. DHS has determined that access to DOE Laboratories and Sites on a work for others basis constitutes an interagency assisted acquisition covered by FAR Subpart 17.5. DOE provides acquisition assistance by providing DHS access to their contractor operated national laboratories and sites. This is the extent of DOE's acquisition assistance. For example, DOE does not conduct market research, develop acquisition plans, or award new contracts on behalf of DHS. Therefore, given this unique statutory authority and the limited acquisition assistance DOE provides to DHS, when entering into an interagency agreements with DOE for the use of a DOE laboratory or site the following applies in lieu of the procedures at HSAM 3017.502-171, except as otherwise stated:~~

Section 309(a)(1) of the Homeland Security Act of 2002 (6 U.S.C. 189) authorizes DHS to use the unique expertise of the Department of Energy's (DOE) national laboratories and sites in carrying out its mission. Transactions between DHS and DOE under this authority are governed by an overarching Memorandum of Agreement dated February 28, 2003. When a DOE contractor operated laboratory or site performs work for DHS, the acquisition assistance provided by DOE is limited to granting access to the laboratory or site (generally by a contract modification to add the work). For example, DOE does not conduct market research, develop acquisition plans, or award new contracts on behalf of DHS. Therefore, given DHS's unique statutory authority for using DOE laboratories and sites and the limited acquisition assistance DOE provides, when entering into agreements with DOE for use of a laboratory or site, the following applies in lieu of the procedures at HSAM 3017.502-171, except as otherwise stated:

(a) ~~Section 309(a)(1)(A)~~ of the Homeland Security Act of 2002 (6 U.S.C. 189) is the statutory authority for entering into agreements with DOE **for acquisition assistance**. Therefore, the requirements of FAR 17.502-2 and HSAM 3017.502-2 do not apply.

(b) Per DHS Directive 143-04, Establishing or Contracting with Federally Funded Research and Development Centers (FFRDC) and National laboratories, requiring/program offices shall ensure the Office of National Laboratories (ONL) within the Science and Technology Directorate reviews all statements of work directed to DOE laboratories or sites before submitting a procurement request package to the Component contracting office. Documentation of ONL's review shall be included in the procurement request package.

(c) Program offices shall submit the documentation required by HSAM 3004.7101 except as follows:

- (1) Market research is required only to confirm the work to be performed by a DOE Laboratory is not work that can be performed by the private sector. The results of this market research may also serve to document the contracting officer's rationale for obtaining acquisition assistance from another agency consistent with FAR 4.801(b).
 - (2) Acquisition plans are not required for interagency agreements with DOE national laboratories or sites. However, the Checklist for Sensitive Information, Appendix G, (see HSAM 3007.103(e)(4)) shall be completed.
 - (3) An Independent Government Cost Estimate is required using the contract rates of the applicable DOE laboratory or site.
 - (4) Evaluation criteria/factors are not required.
- (d) Per OCPO policy, DHS requiring offices and contracting officers are responsible for ensuring statements of work include no inherently governmental functions and for following the requirements of HSAM 3007.5, Inherently Governmental Functions (also see HSAM 3037.103 when obtaining acquisition assistance for contractor services).
- (e) A written interagency agreement is required and shall be signed by both parties before work commences. Agreements shall demonstrate a bona fide need and include the financial information required to authorize the transfer and obligation of funds. Sample terms and conditions and statement of work for work performed by DOE laboratories and sites are available at the Science and Technology's Office of National Laboratories website.
- (f) The review and approval requirements of HSAM 3017.502-171(g) apply to interagency agreements for work to be performed by DOE national laboratories and sites.
- (g) DHS files for assisted acquisitions shall contain the fully executed copy of the interagency agreement. If using a two-part form, both parts of the agreement are included in the file.
- (h) Congressional notification is required for interagency agreements with a total estimated value in excess of \$4 million (including options) or modifications that exceed \$4 million or cause an agreement to exceed \$4 million in value (including options). See HSAM 3005.303 and HSAM Appendix D for specific requirements.
- (i) Per OFPP's memo on Improving the Management and Use of Interagency Acquisitions dated June 6, 2008, agreements that exceed a year shall be reviewed annually to confirm the terms and conditions remain valid and that the parties are fulfilling its obligations. The contracting officer, in coordination with the requiring office, conducts the review and shall include a summary of the review in the IA file.