



**Department of Energy
Acquisition Regulation**

No. AL 2008-01
Date 11/07/07

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Corporate Governance Requirements for DOE Management and Operating (M&O) and Major Site Management Contracts

References:

FAR Subpart 17.6 Management and Operating Contracts
DEAR 909.104-3 Application of Standards
DEAR Subpart 917.6 Management and Operating Contracts
DEAR 970.0970 Performance guarantees
DEAR 970.5203-1 Management controls
DEAR 970.5209-1 Requirement for guarantee of performance
DOE Acquisition Guide Chapter 9.2, Performance Guarantees

When is this Acquisition Letter (AL) effective?

This AL is effective upon issuance.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom do you Contact for More Information?

Contact Helen Oxberger at helen.oxberger@hq.doe.gov or (202) 287-1332 in the Office of Procurement and Assistance Policy or for NNSA, Stephen Law at Stephen.law@nnsa.doe.gov or (202) 586-4321 in the Office of Acquisition and Supply Management (OASM).

Visit the website at

http://www.management.energy.gov/policy_guidance/procurement_acquisition.htm for additional information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to provide direction to contracting officers pertaining to the solicitation of corporate governance information from offerors. As used in this AL, reference to DOE includes NNSA sites. For NNSA sites, further guidance will be provided by the OASM to supplement the requirements of this AL.

What is the Background Information You Need to Know?

When performing source selections for management and operating (M&O) and major site management contracts, solicitations should include requests for the composition of offerors'

Boards of Directors (or functional equivalent to the organizational entity) and the contractual ties of those organizations ultimately selected for award. The Department's interest is in ensuring information is available to enable high level oversight and to establish expectations that contractors have sufficient and appropriate corporate management, resource commitment, and oversight over post-award performance.

What is the Guidance contained in this AL?

1. Contracting officers shall include the following clause in competitive M&O and major site management solicitations and contracts and consider the information obtained in support of a contractor responsibility determination.

CORPORATE GOVERNANCE

The offeror shall identify by name and affiliation each member of the Corporate Board of Directors (or functionally equivalent entity) that will have corporate oversight of the management operations of the proposed contractor organization and key personnel. If the offeror's proposed organization is a joint venture, newly-formed Limited Liability Company (LLC), or similar entity where more than one company is involved in a business relationship created for the purpose of performing under the resultant contract, the offeror shall provide the information required by this provision for that formal organizational element established to act in a manner that is functionally equivalent to a Corporate Board of Directors.

The offeror shall describe the role of the Board of Directors (or functionally equivalent entity) in providing corporate oversight, assurances, and resource commitments to ensure that the proposed organizational structure and key personnel effectively manage and accomplish the work contemplated under the contract.

[End of Provision]

2. Contracting officers shall insert the following clause in M&O and major site management solicitations and contracts. This clause is in addition to the requirements of DEAR 970.0970 and 909.104-3 for performance guarantees. A model Performance Guarantee Agreement is provided at Chapter 9.2 of the DOE Acquisition Guide.

RESPONSIBLE CORPORATE OFFICIAL

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in the Section J Attachment entitled, *Performance Guarantee Agreement*. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the Contractor regarding Contractor performance issues:

Name: _____
Position: _____
Company/Organization: _____
Address: _____
Phone: _____
Facsimile: _____
Email: _____

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

[End of Clause]