



LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL LB&I EMPLOYEES

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SUBJECT: Interim Guidance on the Outside Expert Program

This memorandum issues guidance on the Outside Expert Program until the new IRM is published. Please ensure that this information is distributed to all affected employees within your organization.

Purpose:

The following guidance will ensure accuracy and consistency between outside expert funding requests across practice areas. This guidance is effective upon issuance and applies to all LB&I outside expert funding requests.

Background/Source(s) of Authority:

Former IRM 4.46.3.8.11 dated 12/29/2009 and related exhibits provided guidance for the Outside Expert Program. This information is outdated due to the standup of LB&I's Future State.

Procedural Change:

The Outside Expert Program's guidance is updated to correspond with LB&I's Future State. Former references to LB&I industries were replaced with practice areas. The Budget Committee representation was updated to reflect LB&I's Future State structure. References to AWSS Procurement were replaced with Office of the Chief Procurement Officer. The quarterly status reports section was eliminated.

Effect on Other Documents:

This guidance will be incorporated into new IRM 4.46.10, *Outside Expert Program Process and Procedures* by June 2, 2018.

Effective Date:

June 2, 2016

Contact:

If you have any questions about this guidance or the attachment, you may contact the LB&I Outside Expert Program analyst, Tiffany Vertison-Cole at (901) 786-7328 or reference the [OEP Webpage](#).

Attachment

Distribution:

LB&I Employees

www.irs.gov

Outside Expert Program Process and Procedures

Overview

LB&I's Outside Expert Program (OEP) provides access to outside expert services at the examination and Appeals levels. The Outside Expert Budget Committee (Committee) provides outside expert funding to LB&I examination teams to assist in the development of significant issues and to supplement the work of in-house personnel. The Committee provides management level oversight and guidance and acts as liaison for the OEP.

The services of the outside experts are justified in special situations such as the following:

- Strategically managed issues
- Cases involving high impact precedent setting issues
- High dollar issues
- High impact compliance issues
- Significant issues where in-house expertise is limited or not available

When considering the use of an outside expert, the examination team management should discuss potential outside expert needs with team members and team management, including issue specialists and their management.

Some key factors that should be considered when requesting outside expert assistance include the following:

- Availability of in-house specialists
- Strategic initiatives and Campaigns impacted
- Compliance/precedence impact
- Tax revenue impact
- Significant emerging issues
- Counsel support for the legal foundation of the subject issue
- High potential for issue remaining unagreed and resulting in litigation

Management and Oversight of OEP

(1) The Committee is responsible for aligning expert funding with LB&I strategic initiatives and distributing funds in a fair and objective manner based on the merits of the requests. The Committee is typically composed of territory and program managers (or designated senior analysts). The Director, LB&I Program and Business Solutions, (Director) is responsible for providing executive oversight to the Committee and the OEP. Committee membership includes the Director and at least one representative from:

- Each technical and geographic practice area

- Assistant Deputy Commissioner Compliance Integration
- LB&I division (or practice area) counsel
- Economists
- Engineers
- Transfer Pricing specialist

(2) The Committee is responsible for allocating, monitoring and controlling funding of LB&I outside expert requisitions at the examination and Appeals levels. The Committee has authority to review and recommend approval or disapproval of any request for outside expert services funding. An analyst (OEP analyst) assigned to LB&I Program and Business Solutions acts as the Committee liaison.

(3) The Committee meets at least quarterly to review funding requests.

(4) Documentation of the representative's executive approval is required when a representative requests an ad hoc Committee review.

Strategically Managed Issues

(1) The use of outside expert assistance is highly encouraged and is often critical on strategically managed issues and projects. In addition to providing expert reports or consulting on case specific examination issues, outside experts may also be used to provide insight to and assist the IRS in understanding issues that apply to more than one case or practice area (e.g., consulting with the IRS on how to approach issues within their area of expertise that arise repeatedly in certain types of transactions or for similarly situated taxpayers).

Planning For Outside Expert Assistance

(1) Examination team management should discuss potential outside expert needs with team members and team management, including Specialists and their management, who have or should have a primary responsibility for examination of the issue. The issue team manager is typically the team manager assigned to the examination who has day-to-day substantive responsibility for the issue under examination.

(2) Requests for outside expert services are encouraged regardless of any currently reported budget constraints.

(3) Examination teams should strive to submit requests early enough in the year to facilitate forwarding of the requisition package to the Office of the Chief Procurement Officer (Procurement) before the end of the third quarter of the fiscal year.

(4) All key internal stakeholders directly associated with examination of the subject issue should be involved in the outside expert process throughout the life of the project, e.g., decision to request funding through closeout of the contract or case. The

issue team manager must provide preliminary notifications to the following individuals after the examination team identifies the potential need for outside expert assistance:

- Practice area territory manager primarily responsible for the issue
- Specialist team and territory managers with primary examination responsibility for the issue (e.g. the Transfer Pricing Practice (TPP) territory manager would be a key stakeholder for a Section 482 or Section 367 transfer pricing issue.)
- The practice area's Committee representative for the practice area with primary examination responsibility for the issue
- The Economist Committee representative if an economist issue
- The Engineer Committee representative if an engineer issue
- The Transfer Pricing specialist Committee representative if a transfer pricing issue

(5) Executives at the DFO and Director level should be made aware of funding requests and support the issue under development.

Preliminary Concurrences

(1) Specialist concurrences are required to facilitate strategic management of resources and to maximize the benefits from the OEP within budgetary constraints.

(2) The economist team manager must obtain preliminary concurrence, to request outside expert services, from their direct territory manager for economist issues.

(3) The engineer team manager must obtain preliminary concurrence, to request outside expert services, from their direct engineer territory manager for engineer issues.

(4) The TPP team manager must obtain preliminary concurrence, to request outside expert services, from their direct TPP territory manager for Section 482 or Section 367 transfer pricing issues.

(5) Requests for actuarial services must be approved by the Pass-Through Entities practice area prior to formal submission for funding to hire outside actuary experts.

(6) The issue team manager is responsible for providing documentation of all required concurrences when submitting a request for outside expert funding.

Contracting Officer's Representative (COR)

(1) The case manager or issue team manager should request the assignment of a COR to the project as soon as key issue stakeholders agree on the need for outside expert assistance.

(2) The engineer team manager or economist team manager responsible for providing engineer or economist support on the issue should be the first point of contact when seeking COR assistance. The OEP Analyst can provide assistance with COR assignments, if necessary.

(3) The COR is responsible for all liaison with the outside expert. It is the responsibility of all examination team members to coordinate with the COR prior to any communications with the outside expert. Adhering to this requirement will encourage team member and contractor understanding of the formal requirements and limitations of the contract and minimize the risk of unauthorized procurements.

(4) CORs should be the first point-of-contact for guidance and assistance with all requirements and processes associated with the outside expert project. CORs can provide process guidance, worksheets and templates for all required documentation associated with the requisition for outside expert services.

(5) COR and designated POC ("Point-of-Contact" below) time related to the procurement of and management of a case-specific outside expert contract is case related direct examination time. Time requirements associated with the processing and management of an outside expert requisition will vary from case to case and should be documented in the COR's and POC's case activity record, Form 9984, Examining Officer's Activity Record and charged to the issue in IMS and on the Form 4502 while the examination is open.

(6) Once the contract is awarded, the COR will work with the POC to verify the contractor's invoice charges. The POC will approve the charges on the invoice and timely notify the COR according to the Federal Acquisition Regulation (FAR) 32.9 and Procurement Policy and Procedures (P&P) 46.5. After receiving the approval from POC, the COR will promptly process contractor payments in IPS and maintain documentation in their COR administrative file.

(7) Contractors are prohibited from receiving materials containing any SBU or PII information until they have completed the background investigation process and received at least interim staff-like access approval. The COR should monitor the background investigation process and verify that the Contractor has been granted at least interim staff-like access prior to receipt of any SBU or PII information.

Designated "Point-of-Contact"

(1) The team manager who has primary responsibility for providing Specialist support on the examination of the subject issue should designate a "Point-of-Contact" (POC) if the COR does not have primary responsibility for providing specialist examination support on the subject case/issue.

(2) The POC serves as the primary resource person to guide and assist the team and COR with preparing the funding request and procurement requisition package. The

POC also provides direct assistance with the management and control of the outside expert services.

(3) The POC will be responsible for providing oversight to the examination team on all aspects of the OEP issue. This includes, but is not limited to, providing assistance with the following:

- Identification of the scope of work
- Identification of qualified experts
- Preparation of the statement of work
- Providing oversight of the outside expert's in-process work
- Participation in meetings with the outside expert and taxpayer
- Reviewing the outside expert's deliverables, including but not limited to draft and final report(s)
- Reviewing and approving contract invoices & timely notifying COR according to the requirements of FAR 32.9 and Procurement P&P 46.5

(4) The case and issue team managers are responsible for ensuring COR and POC involvement in all aspects of preparing the funding request package and the procurement requisition package.

Area Counsel and Technical Specialist Involvement

(1) Area counsel is available to assist in determining whether an outside expert is needed and can provide assistance with identifying an appropriate expert and with related "due diligence." Area counsel and technical specialist involvement are required when the estimated cost of an outside expert is \$75,000 or more. The issue team manager is responsible for obtaining written recommendations from area counsel and the technical specialist. Counsel's recommendations should include the following:

- Opinion and explanation as to whether counsel supports the legal foundation for the subject issue
- Opinion and explanation as to whether counsel perceives a significant potential for litigation
- Indication as to whether the subject issue is docketed for trial (with any taxpayer)
- Litigation history for the subject issue

(2) Counsel should clearly indicate and explain their concurrence with the need to hire the outside expert at the examination level. A similar written recommendation from the technical specialist is required.

(3) Counsel assistance and involvement with identifying potential outside experts and preparing the statement-of-work is highly recommended. The issue team manager should seek counsel concurrence with the selection of recommended expert(s) and statement-of-work.

Market Surveys

(1) At least one new, not previously used, potentially qualified outside expert should be contacted during the market survey process. Documentation of this contact is required. A written explanation is required if this cannot be accomplished.

(2) Due diligence is required during market research to identify potential outside experts. Examination teams should seek the assistance of area counsel when performing market research. At a minimum, prior to procurement's sending out formal solicitations for outside expert services, the examination team should perform the following actions related to all solicited outside experts:

- Check and verify all items on the expert's resume, including references
- Search the Internet for all material on the expert
- Research all cases in which the expert testified to determine if courts looked favorably on the expert
- Interview the expert – In addition to confirming substantive expertise in area, be sure to inquire about potential conflicts of interest and if there is anything in the expert's past that could be a problem
- Review any "Past Performance" reports maintained by procurement on the expert
- Secure a signed non-disclosure agreement from the contractor

Requesting Outside Expert Assistance

(1) The examination team should coordinate with the COR for current guidance and worksheets associated with a request for outside expert services.

(2) Requests for funding that require Committee review should be submitted to the OEP Analyst no later than fourteen (14) calendar days prior to a scheduled meeting of the Committee.

(3) All requests and associated documentation for funding for outside expert services on LB&I examinations must be submitted by secure e-mail.

(4) LB&I has two (2) worksheets that should be used to request outside expert program funds. The "Original Funding Worksheet" is used to request funds to initiate a new contract. The "Additional Funding Worksheet" is used to request funds for an existing contract. The two worksheets are referenced below as "funding request worksheets." The worksheets can be accessed on the [OEP webpage](#).

(5) Generally, funding request packages for submission to the outside expert budget committee should include the following:

- Completed "Original Funding Worksheet"

- Required management concurrences
- Requirements portion of the statement-of-work
- Counsel recommendation memorandum
- Technical specialist recommendation
- Market survey documentation
- Independent government cost estimate
- Justification for Other Than Full and Open Competition (JOFOC), if sole source
- Signed non-disclosure agreement from recommended potential expert

(6) Contracts should be broken down into logical phases to better control the contracted services. The phases must be clearly identified in the contract's statement-of-work and clearly identified as corresponding "Line Items" in the Service's "Integrated Procurement System" (IPS). Outside expert requisitions that do not clearly specify logical phases and corresponding IPS Line Items may be rejected.

(7) Requests should include the estimated cost for all phases of anticipated outside expert services excluding trial preparation and assistance (i.e., estimated total cost of assistance at the examination level and for Appeals assistance).

(8) Committee review is required for all funding requests when the total/cumulative cost for all expert services related to the examination at the examination and Appeals levels equals \$75,000 or more. The Committee has delegated approval authority to the following individuals where the total cost is less than \$75,000:

- Engineer territory managers
- Economist or Transfer Pricing territory managers
- Financial Products territory managers
- OEP analyst

(9) The Director and Committee retain ultimate authority over any recommended approvals for funding.

(10) All requests for LB&I outside expert funds, regardless of cost, require preparation of an funding worksheet which can be accessed on the [OEP webpage](#) or provided by the COR or OEP analyst.

(11) The issue team manager is responsible for obtaining and documenting all required management and executive level concurrences.

Requests for Additional Funding

(1) Generally, requests for additional funding on existing contracts should include the following:

- Completed "Additional Funding Worksheet"

- Required management concurrences
- Summary and status of outside expert services already received
- Explanation for and justification of why additional funding is required
- Independent government cost estimate and related documentation associated with the request for additional funding
- Revised copy of the statement-of-work, if applicable
- Complete, fully documented funding request package, including an "Original Funding Worksheet" if not previously provided, when the total cost is \$75,000 or more

(2) Requests for additional funding must be submitted to the Committee for review in these situations:

- When the additional funding request is \$75,000 or more
- When the new total cost for the contract (including the pending funding request) is \$75,000 or more and has not previously been approved by the Committee

Required Approvals for Funding Requests

- (1) All funding request approvals must be documented in writing on the funding request worksheets.
- (2) For all requests, the case manager, issue team manager and issue territory managers are required to sign the funding request worksheets.
- (3) Additional approvers of the funding request may be required depending upon the total cost of the funding request, see the [OEP webpage](#) for current funding request worksheets, which contain a complete list of required approvers.

Timely Processing – Funded Requisition Packages

- (1) The issue team manager is responsible for ensuring the timely submission of complete, fully documented outside expert requisition packages to procurement. Complete, fully documented requisition packages should be forwarded to procurement within thirty (30) calendar days after notification of the Committee's approval. If timely submission does not occur, the Committee may revoke its approval for funding.
- (2) The COR coordinates with procurement to provide guidance associated with the preparation and submission of a fully documented procurement requisition package.
- (3) Requisitions submitted to procurement are discouraged during the fourth quarter of the fiscal year. Due to procurement's limited resources and the processing times required to complete the award of a contract, requisitions forwarded to procurement in the fourth quarter are at risk for non-award. The COR should coordinate with procurement to ensure the award of the contract prior to the end of the fiscal year.

Contract Management and Control

(1) The issue team manager should engage all responsible team members including specialist team members and all associated team managers in the management and control of the contracted services to ensure that quality services are provided at a reasonable cost.

Post-award Conferences

(1) The issue team manager is responsible for ensuring that the COR conducts a “Post-award Conference” with the examination team and outside expert to explain and clarify the terms and limits of the contract and to explain roles and responsibilities and associated limits. The post-award conference must be held prior to authorizing any outside expert services under the contract. Teleconferences may be used to hold the post-award conference.

Contract Closing Reports

(1) The issue team manager must provide the OEP analyst with a contract closing report when the examination closes. The COR can provide detailed instructions and assistance. The closing report can be accessed on the [OEP webpage](#).