

# Reclamation Manual

## Policy

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<b>Subject:</b>	Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts
<b>Purpose:</b>	States the basic purpose of preparing bases of negotiation, basic bases of negotiation contents, and additional relevant points of policy. The benefit of this Policy is that it orients staff and contractors to the basic purpose of preparing a basis of negotiation and notifies them of important further policies related to the process.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto.
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Mission Assurance and Protection Organization, 84-55000

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1. **Introduction.** The objective of this Policy is to state the basic purpose of preparing bases of negotiation (BONs), to help orient Bureau of Reclamation staff and prospective contractors to that purpose during the BON process, and, more generally, to make this information accessible to both interested parties and the public.
2. **Applicability.** This Policy applies to Reclamation staff and officials involved in the contracting process, as defined below.
3. **Requirements.**
  - A. **Purpose.** A primary purpose of a BON is to set forth a proposed negotiating strategy and position and to provide background information and justification for them. When developing a proposed negotiating strategy, regional directors should, therefore, outline a plan of action identifying all contract elements to be negotiated and any other issues that should be addressed. At times, it may be advantageous for the regional director to seek approval for several proposed negotiating strategies, or a range of strategies, for use during the negotiations. In justifying its recommendation, a BON must define the contract action proposed, identify the legal authority for it, and describe the relevant surrounding circumstances.
  - B. **Technical Meetings Prior to Approval.** Meetings with potential contractors held prior to the approval of the formal negotiating position for purposes of gathering and exchanging factual information are generally termed “technical meetings.” Technical meetings will be clearly identified as such and conducted in a manner that will not prejudice the pending approval of the BON or the contract negotiations. That is, no

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commitments will be made until authority has been delegated to the regional director through an approval memorandum.

C. **Approval.** The Commissioner, or other deciding official, authorizes the proposed contract action by issuing an approval memorandum, delegating authority over and setting parameters for negotiation, execution, and administration of the proposed contract. The approval memorandum also creates a record of the legal and factual background and justification for Reclamation's negotiating position and strategy. Because the BON is the basis for the official decision and much of the resulting record, it must be thorough and accurate in its legal and factual representations before being submitted for approval.

D. **Public Participation.**

(1) Following issuance of the Commissioner's approval memorandum, contract negotiations will be in strict compliance with subsection 9(f) of the Reclamation Project Act of 1939 (Pub. L. 76-260, as amended by section 226 of the Reclamation Reform Act of 1982 (RRA), Pub. L. 97-293, Title II, 43 U.S.C. § 485h(f)), and with the applicable RRA rules and regulations (43 CFR 426.22). Negotiations will thus be conducted in a manner that provides opportunities for the public to observe and provide meaningful input.

(2) While post-approval contract negotiations are subject to certain public participation requirements, BONs and approval memoranda, as predecisional deliberative documents, are not meant for release to the public. All BONs are, therefore, to be plainly marked "Internal Document - Not for Public Release." Executed contracts can be made available to the public upon request, as provided by law.

E. **Timing.** For planning purposes, BONs should be submitted for consideration at least 2 months prior to anticipated negotiations. Actions requiring more in-depth reviews should allow additional time.

4. **Definition.**

A. **Basis of Negotiation.** A BON is a predecisional, deliberative document used to make and justify a recommendation to the Commissioner, or other deciding official, that a proposed contract action be authorized. A BON details the material terms of the proposed contract, identifying the negotiable terms, the parties' respective negotiating positions, and pertinent legal and practical boundaries (e.g., applicable legal and policy limits, relevant financial and climatic circumstances, etc.). See Reclamation Manual

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Directive and Standard, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Water-Related Contracts* PEC 06-01 for the basic requirements of BON preparation, form, and content.

5. **Review Period.** The originating office will review this release every 4 years.

## RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: \_\_\_\_\_

Release No. \_\_\_\_\_

Ensure all employees needing this information are provided a copy of this release.

### Reclamation Manual Release Number and Subject

### Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

### Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: \_\_\_\_\_

Date: \_\_\_\_\_