

Attachment I

Contractor Purchasing System Requirements

This Attachment, implementing the Article entitled Contractor Purchasing System, sets forth the requirements for DOE's approval under the prime contract for the operation of the National Renewable Energy Laboratory.

Subcontracts not binding on DOE

Subcontracts and purchase orders shall be made in the name of Alliance, shall not bind nor purport to bind the Government, shall not relieve the Alliance of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall contain such provisions as are required by this contract or as DOE may prescribe because of statutes, regulations or DOE policies as directed by the Contracting Officer.

As used herein, the term "subcontract" includes purchase orders, letter agreements, and similar contractual arrangements which will result in costs being properly charged to the prime contract with DOE.

1. All subcontracts in excess of ten percent of the small purchase schedule set forth in FAR Part 13, including those for services (except employment), material, supplies and equipment (or for their use) shall be reduced to writing.
2. Advance notification of certain subcontract actions must be provided in accordance with Department of Energy Acquisition Regulation 970.4401-3, Advance Notification. Notification should be forwarded to the Contracting Officer as soon as information is known and before solicitation. The Contracting Officer may at any time request additional information that must be furnished promptly and prior to award of the procurement.
3. Review of the Contractor's purchasing system shall include at a minimum requirements outlined in FAR 44.3, DEAR 970.5244-1, and DOE Acquisition Guide Chapters 70.44, 70.4402 and 70.4403.
4. Prior DOE review and written approval are required for subcontract actions which fall within any one of the following categories:
 - (a) Cost-type, time and material and labor hour subcontracts actions in excess of \$5,000,000 and fixed price subcontract actions in excess of \$10,000,000. This includes subcontracts for construction and architect-engineer services.
 - (b) For all types of subcontracts (including construction or architect-engineer), any modification that will increase the scope or value previously approved by DOE.

- (c) All subcontracts and purchase orders which involve the acquisition (purchase or lease) of motor vehicles, aircraft, and printing equipment.
- (d) All procurement of Special Items referenced in DEAR 970.5244-1(q) through channels or sources different from those specified in such regulation.
- (e) The furnishing of a foreign-made end product or component as defined in the article(s) I.56, 52.225-1 *Buy American Act- Supplies* and I.57, 52.225-9 *Buy American Act – Construction Materials* of the prime contract, except such supplies as are excepted from the operation of the Act(s). Determinations of non-availability may be made by the Contractor's subcontract administrators, and Group and Team Managers within the Acquisition Services Group for individual procurement actions not in excess of \$500,000.
- (f) Any subcontract which entails the payment of royalties or the purchase of a license.
- (g) Purchase of patents or patent license rights, including the payment of royalties, and permits or license fees except for license agreements for commercial software.
- (h) The recognition of proprietary rights, including the recognition of technical data as trade secrets.
- (i) Any restriction of DOE's use of the supplies or data procured under a subcontract.
- (j) The cancellation or termination of a subcontract or any part hereof which may result in termination or cancellation costs, or which results in a need to purchase the cancelled supplies or services from another supplier.
- (k) Intracompany transfers and Inter-Contractor Purchases (ICPs) in accordance with the DOE Financial Management Handbook.
- (l) All leases for property, plant, or equipment when the lease must be classified and accounted for as a capital lease under generally accepted accounting principles.
- (m) Leasing, purchasing, or otherwise acquiring real property, for the cost of which reimbursement will be claimed under the contract.
- (n) All acquisitions of integrated data processing equipment in excess of \$500,000.
- (o) All subcontracts or purchase orders which contain an "indemnification" or "hold harmless" provision in favor of the subcontractor.
- (p) All new, additions, modifications or deletions of Laboratory Acquisition Services Office policies shall be submitted to DOE for approval prior to implementation. DOE will receive notice of substantive changes to Acquisition Services Office procedures prior to implementation.

5. For Actions Requiring DOE Review and approval.
 - (a) DOE reviews of subcontracts will consider at a minimum the requirements listed in FAR 44.202-2 and 44.202-3.
 - (b) Unless otherwise directed by the Contracting Officer, the approval request for subcontracts shall contain all required elements identified I.76 52.244-2 – Subcontracts; and:
 - (1) Reasoning as to why the subcontract action is necessary for completion of the activity.
 - (2) If applicable, justification for sole source and actions taken to increase future competition.
 - (3) Justification for type of subcontract selected.
 - (4) Additional information as requested by the Contracting Officer.
 - (c) Unless otherwise identified, approval for actions under \$25 Million are reserved for the DOE Contracting Officer, between \$25 Million - \$50 Million are reserved for the Head of Contracting Activity (HCA), and above \$50 Million are reserved for the Senior Procurement Executive (SPE).
 - (d) All subcontract actions requiring approval must be reviewed and approved prior to solicitation and award of action. The approver reserves the right to waive review and approval prior to solicitation.