

### **PART III**

## **SECTION J – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

### **ATTACHMENT 10**

## **SUBCONTRACTS, PURCHASE ORDERS AND OTHER ACTIONS REQUIRING DOE REVIEW AND APPROVAL AND OTHER AGREEMENTS BETWEEN THE PARTIES**

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

Subcontracts not binding on DOE Subcontracts and purchase orders shall be made in the name of Midwest Research Institute, shall not bind nor purport to bind the Government, shall not relieve the Midwest Research Institute 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.

All subcontracts in excess of ten percent of the 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.

- I. Prior DOE review and written approval are required for subcontract actions which fall within any one of the following categories:
  1. Fixed-price subcontracts in excess of \$1,000,000 and cost-type, time and material and labor-hour subcontracts in excess of \$1,000,000.
  2. All subcontracts and purchase orders for construction and architect-engineer services in excess of \$500,000.
  3. Any modification of a construction or architect-engineer subcontract (as defined above) when such modification exceeds \$100,000. In addition, for all other types of subcontracts, any modification that will increase the initial award by 100 percent or more.
  4. Consulting services on forms approved by DOE will not require further review and approval; provided however, that any consultants fees must have the prior written approval of DOE when the daily rate is in excess of \$1,200; and/or when the total cost of the agreement exceeds \$25,000, or modifications to the agreement increases the total cost by more than \$25,000; or for employees of another Government or DOE organization, or former employees of NREL and their subcontractors.

5. All subcontracts and purchase orders which involve the acquisition (purchase or lease) of motor vehicles, aircraft, and printing equipment.
  6. All subcontracts and purchase orders which involve the acquisition of commercial printing in excess of \$2,500.
  7. All procurement of Special Items reference in DEAR 970.5244-1(q) through channels or sources different from those specified in such regulation.
  8. The furnishing of a foreign-made end product or component as defined in the article(s) I.41 52.225-1 "Buy American Act-Balance of Payments Program – Supplies (FEB 2000) and I.43 52.225-11 "Buy American Act – Balance of Payments Program – Construction Materials Under Trade Agreements (FEB 2000) 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 Business Team leader or Administrative Associates for individual procurement actions not in excess of \$100,000. The furnishing of a foreign-made end product will not require prior DOE approval unless another approval unless another approval threshold is exceeded.
  9. Any subcontract which entails the payment of royalties or the purchase of a license.
  10. Purchase of patents or patent license rights, including the payment of royalties, and permits or license fees except for license agreements for commercial software.
  11. The recognition of proprietary rights, including the recognition of technical data as trade secrets.
  12. Any restriction of DOE's use of the supplies or data procured under a subcontract.
  13. 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, require approval by DOE.
  14. Intracompany transfers.
  15. 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.
  16. Leasing, purchasing, or otherwise acquiring real property, for the cost of which reimbursement will be claimed under the contract.
  17. All acquisitions of integrated data processing equipment in excess of \$250,000.
  18. All subcontracts or purchase orders which contain an "indemnification" or "hold harmless" provision in favor of the subcontractor.
- II. Pursuant to Department of Energy Acquisition Regulation 970.4401-3, Advance Notification, advance notice to the DOE Contracting Officer of the proposed award of the following specified types of subcontracts:
- (1) Cost reimbursement type contracts of any award value.
  - (2) Fixed price type contracts which exceed \$25,000.
  - (3) Purchases from contractor-affiliated sources over a value established by the HCA.

Advance notification shall contain, at a minimum, the following:

- (1) Description of work
- (2) Estimated cost (and estimated fee, if any).
- (3) Type of contract or reimbursement provisions.
- (4) Anticipated period of performance. If modifying an existing subcontract, the previous performance periods and dollar values.
- (5) Proposed subcontractor or vendor, if known.
- (6) Extent of competition, or justification for a non-competitive procurement.
- (7) Subcontract Administrator, Program Manager, and telephone numbers.

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 prompt and prior to award of the procurement.

III. Unless otherwise directed by the Contracting Officer, the approval request for subcontracts required in I. above shall include:

1. A description of the supplies or services to be called for by the subcontract.
2. Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained.
3. The subcontractor's current, complete and accurate cost or pricing data and Certificate of Current Cost and pricing Data when such data and certificate required by other provisions of this contract are to be obtained from the subcontractor. Cost or Pricing data shall be obtained, in accordance with FAR 15.403 and 15.403-1 through 15.403-4.
4. Identification of the type of subcontract to be used.
5. A memorandum of negotiation which sets forth the principle elements of the contract price negotiations. A copy of this memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was or was not required, and if it was or was not required in accordance with FAR 15.403, and 15.403-1 through 15.403-4, a statement of the basis for the determination. If cost or pricing data was submitted and a certificate of current cost or pricing data was required, the memorandum shall reflect the extent to which this data was used by the Contractor in determining the total price cost objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result and the effect, if any, of such defective data in the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective the memorandum shall explain this difference.

IV. AGREEMENTS

NREL commits to become fully compliant with the requirements of the following six Management and Operating Contract clauses within 6 months after the rewritten prime contract is signed.

Clause	Title	Action Required for Full Compliance
I-23	Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting	<ul style="list-style-type: none"> <li><input type="checkbox"/> Rewrite Small Business Program Plan.</li> <li><input type="checkbox"/> Rewrite Reference Guide procedure.</li> <li><input type="checkbox"/> Modify Representations and Certifications.</li> <li><input type="checkbox"/> Modify Terms and Conditions.</li> </ul>
I-46	Utilization of Indian Organizations and Indian Owned Economic Enterprises	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requires design, development, and implementation of an Indian Organizations program. Most likely to be consolidated with Small Business Program Plan (Socio-economic Program Plan).</li> <li><input type="checkbox"/> Requires guidance and funding from DOE/GO regarding implementation.</li> <li><input type="checkbox"/> Write new Reference Guide procedure.</li> <li><input type="checkbox"/> Write new Reqs and Certs section.</li> <li><input type="checkbox"/> Modify Terms and Conditions.</li> </ul>
I-69	Submission of Commercial Transportation Bills to the General Services Administration for Audit	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requires design, development, and implementation of a program for identifying and reporting transportation bills to the GSA.</li> <li><input type="checkbox"/> Write new desk procedure.</li> <li><input type="checkbox"/> Develop report formats.</li> </ul>

I-88	Energy Policy Act subcontracting goals and Reporting Requirements	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requires design, development, and implementation of an EPAct Target Entities program. Most likely to be consolidated with rewrite Small Business Program Plan (Socio-economic Program Plan).</li> <li><input type="checkbox"/> Requires coordination and cooperation with NREL technical sponsors of subcontracted efforts.</li> <li><input type="checkbox"/> Write new CBS Reference Guide procedure.</li> <li><input type="checkbox"/> Write new Reqs and Certs section.</li> <li><input type="checkbox"/> Write new article for Subcontract Schedule.</li> <li><input type="checkbox"/> Modify Terms and Conditions.</li> </ul>
I-89	Displaced Employee Hiring Preference	<ul style="list-style-type: none"> <li><input type="checkbox"/> Requires design, development, and implementation of a plan to provide consideration for job applicants covered by this clause.</li> <li><input type="checkbox"/> Consult with HR professionals at DOE to achieve consistency across the complex.</li> <li><input type="checkbox"/> Modify HR procedures, as appropriate according to guidance received from DOE.</li> <li><input type="checkbox"/> Write new CBS Reference Guide procedure.</li> <li><input type="checkbox"/> Write new Reqs and Certs section.</li> <li><input type="checkbox"/> Write new article for Subcontract Schedule.</li> <li><input type="checkbox"/> Modify Terms and Conditions.</li> </ul>
I-107	Workplace Substance Abuse Act	<ul style="list-style-type: none"> <li><input type="checkbox"/> Flow-down is expected to be infrequent as the clause only applies to the following possible categories of NREL Subcontractors performing work at sites owned or controlled by DOE: <ul style="list-style-type: none"> <li>(a) Protective force personnel in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large.</li> <li>(b) Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.</li> </ul> </li> </ul> <p>Subcontract implementation will be considered case by case; will write new CBS Reference Guide procedure</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Requires design and development of an HR document describing the program in place.</li> </ul>