Procurement of Goods and Services

Brief

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BRIEF

Policy Summary

This policy defines the guidelines and requirements for acquiring goods and services at Berkeley Lab. The authority to make contractual commitments through procurement transactions has been specifically delegated to individuals primarily assigned to the Office of the Chief Financial Officer (OCFO)/Procurement & Property Management Department.

Who Should Read This Policy

All Berkeley Lab employees

To Read the Full Policy, Go To:

The POLICY tab on this wiki page

Contact Information

Procurement and Property Manager, OCFO

Policy

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POLICY

A. Purpose

This policy defines the guidelines and requirements for acquiring goods and services at the Lawrence Berkeley National Laboratory (Berkeley Lab).

B. Persons Affected

All Berkeley Lab employees

C. Exceptions

None
D. Policy Statement

D.1 General

1. The Procurement & Property Management Department is responsible for acquiring goods and services, as well as the management of Laboratory personal property assets that are necessary for the Laboratory to fulfill its scientific mission. In particular, the Laboratory has a responsibility to ensure that:
   a. Procurements are competed to the maximum extent possible, consistent with the Laboratory’s mission objectives and the nature of the goods and services to be procured.
   b. All subcontractors are treated fairly and impartially.
   c. Small-business concerns are provided a maximum practicable opportunity to compete for the Laboratory’s procurements.
   d. All procurement actions comply with applicable laws and regulations and the UC-DOE Prime Contract requirements.
   e. Costs paid by the Laboratory are fair, reasonable, and appropriate for expenditure of government funds.

2. The authority to make contractual commitments through procurement transactions has been specifically delegated to individuals primarily assigned to the Office of the Chief Financial Officer (OCFO)/Procurement & Property Management Department. Only these formally designated individuals may commit the Laboratory to the expenditure of funds. Purchases or commitments made by individuals without delegated procurement authority are considered unauthorized, and must undergo a ratification process to determine whether the unauthorized procurement would otherwise have been proper and in the best interests of the Laboratory. Individuals making commitments without delegated authority are subject to disciplinary action and may be responsible for payment of charges incurred.

3. Certain expenditures or commitments, such as petty-cash transactions, employee travel, and library purchases, are governed by established procedures issued by other Laboratory departments.

4. Personal Conflicts of Interest. It is University policy to separate an employee’s University and private interests and to safeguard the University and its employees against charges of favoritism and self-dealing in the purchase of goods and services. To avoid conflicts of interest in connection with purchases, employees are generally prohibited from making or participating in the making of a decision relating to award, negotiation, or administration of a subcontract if the employee has a financial interest with regard to the decision as described in the University of California Conflict of Interest Code. Additionally, there are special limitations and requirements contained in UC Business and Finance Bulletin BUS-43, Part 7, that cover the acquisition of goods and services when the transaction involves an employee-vendor relationship (i.e., purchases from a University employee, former employee, or the near relative of an employee).

5. Many laws have been enacted to curb the fraud, waste, and abuse associated with unethical procurement practices at the federal level, and some apply to the Laboratory as a DOE contractor. Further, state laws and University regulations also establish criteria for ethical conduct and penalties for violations. In some cases, Laboratory employees may be held personally and/or criminally liable for actions that are not consistent with the equitable treatment of contractors and the appropriate expenditure of government funds.

6. The information in this section is intended to provide general rules governing the procurement process; it is not intended to be an exhaustive guide to procurement requirements. Laboratory employees should refer to information available on the Procurement & Property Management Web site and direct specific questions to the appropriate Procurement personnel.

D.2 Overview

1. Starting the Procurement Process
   a. Generally, procurements at the Laboratory can be initiated using the following methods:
      i. Checking the Laboratory’s Excess Property for the item or material required
      ii. Online ordering through eBuy, the electronic commerce ordering system for low-value catalog items available to all Laboratory personnel with an LDAP account
      iii. Online or fax ordering through B2B Systems Contracts with designated suppliers
      iv. Requesting a Division PCard cardholder to purchase low-value, nonrestricted supplies
      v. Submitting an electronic eProcurement (ePro) requisition through the PeopleSoft/Oracle Financial Management System (FMS) for one-time purchases of unique items not available from eBuy or B2B
      vi. Placing a release against a pre-established blanket subcontract, if authorized
   b. Refer to the Make a Purchase Guidance on the Procurement Web site for detailed information on these procurement methods

2. Procurement Process Flowchart
   The following is a flowchart of the Laboratory’s overall procurement process:

   ![Procurement Process Flowchart]

3. Purchase Actions Placed by Procurement
   The following are some of the types of purchase actions placed by Procurement:
   • Architect and engineer (A&E) services
• Aviation services (special purchases)
• Blanket subcontracts for goods and/or services
• Books, periodicals, and other publications procured by the Information Technology Division library under blanket subcontracts established by Procurement
• Chemicals (special purchases)
• Computer or Automatic Data Processing (ADP) equipment (special purchases)
• Construction work
• Consultant agreements
• Contract labor (special purchases)
• Cost-type subcontracts (primarily for research and development)
• Environmental subcontracts
• Exchange/trade-in/upgrade of equipment or personal property
• Fabrications
• Firm-fixed-price or firm-fixed-price level of effort (LOE) subcontracts
• Industrial gases, e.g., helium (special purchases)
• Intra-University Transactions (IUTs) for work at University of California campuses
• Isotopes (special purchases)
• Leases and rentals of equipment and other personal property (special purchases)
• Leases for real estate rentals (special purchases) (For off-site space procedures, see Section D.4 of the Space Management Policy)
• Maintenance (some items)
• Personal service agreements
• Precious metals (special purchases)
• Repairs (some items, special purchases)
• Software licenses (special purchases)
• Subcontracts with other DOE laboratories, facilities, or contractors; these subcontracts are sometimes called DOE Contractor Orders
• Subcontracts with government agencies or organizations for special materials not commercially available — DOE approval is required (special purchases)
• Telecommunications (special purchases)
• Utility services (special purchases)

4. Transactions Not Permitted as a Procurement (prohibited or restricted by the UC-DOE Prime Contract)
• Advertising (except for specific or unique procurement actions like construction and Laboratory employment notices)
• Aircraft purchases
• Alcoholic beverages
• Business cards
• Contingent fees
• Contributions or donations
• Entertainment expenses
• Fines or penalties
• Lobbying costs
• Memberships in social, dining, or country clubs
• Motor vehicles
• Narcotics (illegal)
• Ornamental items (e.g., pictures, plants)
• Parking spaces on an individual basis
• Promotional items, memorabilia, models, gifts, and souvenirs

5. Borrowing
   a. Arrangements to borrow equipment or material from other government organizations are processed by Property Management. Employees must submit a Borrow Summary form to Property Management for authorization prior to delivery of any borrowed equipment or material on site.
   b. Arranging for property to be borrowed from a commercial vendor for testing in anticipation of acquiring the property is the sole responsibility of the division. The division is responsible for documenting the borrow arrangement in writing, adequately addressing the Laboratory's liability, and managing and controlling the asset until it is either returned to the vendor or formally acquired. All property coming on site, regardless of purpose, must be cleared by an Environment, Health, Safety, and Security (EHSS) safety officer. Borrowers should contact their Division Safety Liaison to facilitate clearance.

6. Special Treatment Items
   a. Special-treatment items, including hazardous, controlled, and special materials, require special internal approvals or safety measures. These items may only be purchased when the specified requirements are met. Certain items in this category may not be purchased using a PCard or a B2B Systems Contract, and must be requested with an ePro requisition. Special-treatment items allowed to be purchased through the eBuy application are automatically routed to the designated organizations for approval or review. EBu users must still comply with safety and other requirements associated with purchases of special-treatment items. Refer to the Special Treatment Items on the Restricted Items List.

7. Precious Metals
   a. Eight DOE-identified precious metals — gold, silver, platinum, rhodium, palladium, iridium, osmium, and ruthenium — are restricted-issue items. Purchases of precious metals must be requested by ePro requisitions authorized by career Laboratory employees, and must be made through Procurement's designated precious-metals procurement specialist.

8. Fabrications
   a. Equipment or materials unavailable from commercial sources may be fabricated at the Laboratory by job order or outside the Laboratory by a subcontract. The OCFO/Budget will determine whether a fabrication should be charged to an operations equipment account. Requests for such determinations should be accompanied by a statement indicating the need for the item, a description or drawing, the desired fabrication schedule, and a cost estimate for fabrication or installation.
9. Construction and Architect-Engineer (A&E) Subcontracts
   a. Subcontracts for architect-engineer services will be performed in accordance with the requirements of the LBNL Laboratory Procurement Standard Practices Manual. Selection of subcontractors will be based primarily on the offeror's professional qualifications, specific experience and competence, and past performance. Cost, price, or other factors may also be considered in the selection of A&E subcontractors. With the exception of design-and-build subcontracts, no subcontract for construction work will be awarded to the subcontractor that prepared the design, or its subsidiaries or affiliates, unless approved by DOE.
   b. Subcontracts for construction will be performed in accordance with the requirements of the Laboratory Procurement Standard Practices Manual and applicable laws and regulations. In the event of a conflict between state of California and federal requirements, federal requirements will be given precedence. Subcontracts for construction, alteration, or repair of Laboratory facilities are subject to the federal Davis-Bacon Act, which requires that laborers and mechanics receive no less than prevailing wages established by the Department of Labor.
10. Blanket Subcontracts
   a. Blanket subcontracts are used when a recurring need for goods or services is anticipated. They enable quantity discounts to be obtained and Laboratory stocks to be maintained at minimum levels, and help avoid the administrative cost of issuing multiple subcontracts.
   b. Product analysis, market analysis, and/or prior purchasing history are used to determine whether a blanket subcontract is advantageous to the Laboratory. Consideration is also given to socioeconomic subcontracting goals. Blanket subcontracts are often placed by Procurement for Laboratory-wide requirements. Any product or service requested by an authorized technical coordinator under a blanket subcontract is called an "order." Most blanket subcontracts have a listing of Laboratory personnel authorized to place orders and their level of authority.
11. Acquisition of Excess Property
   a. The Laboratory is authorized to obtain used equipment or materials from government excess-material lists. The EHSS Division must be consulted when such an acquisition involves a potential hazard. Requirements for equipment or sensitive property must be coordinated with the OCFO/Property Management Group after or concurrent with these consultations. Requests for procurement of excess property are processed by Procurement.
12. Emergency Circumstances
   a. In the event of emergency circumstances outside of normal working hours, when normal procurement methods are not available, employees are permitted to purchase low-value items by using a Laboratory travel charge card, when on travel status, or a personal credit card or cash when in the local area.
   b. An emergency circumstance is any circumstance requiring that a procurement be made in order to avoid, eliminate, or reduce imminently hazardous or destructive situations involving persons or property, including the potential loss of important experimental data or hardware.
   c. Travel Charge Card. When on travel status, employees are allowed to use their Laboratory travel charge card for the purchase of low-value items needed in the course of their work during the travel. The limit on miscellaneous business expenses while on travel is determined by the traveler's division/department based on business need. Reimbursement requires submittal of a travel expense report approved by the original approver of the trip. Pre-trip approval is required. The required documentation (receipts, etc.) and limits are governed by the Laboratory travel policies contained in the Travel Policy.
   d. Personal Credit Card or Cash. Purchases made under emergency circumstances using a personal credit card or cash are reimbursable by filling out a Request for Issuance of Check (RFIC) form, which must be approved by an authorized signer on the Laboratory's Signature Authorization System. The RFIC form requires the employee to certify that the expense is allowable and represents official Laboratory business. Although prior approval is not required, the form must be signed by the employee's supervisor or a higher-level official. Original receipts are required.
   e. Request for Issuance of Check. The RFIC process is used by on-site Laboratory locations when other means of procurement are not possible. Requests for reimbursement to Laboratory employees or third parties for allowable goods and services are processed using the RFIC form. The request is submitted to the OCFO/Accounts Payable for approval and processing. See Financial Policies and Procedures-RFIC.
   f. To receive reimbursement, the purchase must satisfy the following conditions:
      i. The item or service is not available through one of the methods in the Make a Purchase Guidance.
      ii. The item or service is not on the Restricted Items List, except for properly authorized employee safety shoes.
      iii. The vendor is not on Procurement's Employee-Vendor List (potential conflict of interest) or the GSA Excluded Parties List System (EPLS) database.
      iv. The purchase is supported by a cash receipt or other appropriate proof of payment.
   g. When the purchase is made in California, the vendor must be advised that the Laboratory holds California state sales permit SR CH 21-835970 (also known as a Resale Certificate) and California state sales tax does not apply.
13. Lead Times
   a. For the procurement process to work most efficiently, the following procurement lead times should be considered:
      i. The requisition lead time (i.e., the time it takes the requester to prepare and submit a complete and approved requisition package to Procurement)
      ii. The lead time that Procurement needs to obtain and evaluate offers, conduct negotiations as necessary, and award a subcontract for the requirement. Refer to the Procurement Award Lead Time Chart for typical processing times.
      iii. The subcontractor's performance lead time necessary to deliver the required goods or services
   b. If the requirement is urgent, explain the emergency to the procurement specialist as soon as possible. If accelerated performance from a subcontractor is required, the requesting organization may have to pay for premium time, and costs may substantially increase.
   c. Additionally, requesters must notify Procurement of planned acquisitions of $500,000 or more as far in advance as is reasonably possible, but at least 30 days prior to submitting a requisition. See D.3.1.d, below.
   d. The Procurement Award Lead Time Chart does not include all approvals and other determinations that may be required before a particular subcontract may be awarded. When any other factors exist, they should be addressed in the requisition, with the appropriate checkboxes marked, comments added in designated sections, and the necessary attachments or documentation included, to ensure more efficient processing of the procurement.
   e. A procurement specialist knowledgeable in the specific type of procurement requirement and the associated industry can be consulted to obtain an estimate of the subcontractor's performance time before submitting the requisition to Procurement. See
14. **Subcontractor Safety**
   a. The Laboratory is required to ensure that subcontractor personnel who perform work at Laboratory facilities do so in a safe manner in compliance with applicable regulations (PUB-3000, Chapter 31, Nonconstruction Safety Assurance for Subcontractors, Vendors, and Guests). Before subcontractors can perform "hands-on work" (see PUB-3000, Section 31.5.3) at Laboratory facilities, a Subcontractor Job Hazards Analysis and Work Authorization (SJHAWA) for Non-Construction Activities form must be completed and reviewed by EHSS. Typically, the requester obtains and fills in the first part of the SJHAWA form. This is then sent to Procurement as part of the ePro requisition. Upon award of the subcontract, Procurement provides a Web link for the SJHAWA to the subcontractor for completion. The subcontractor identifies safety risks involved for the work on the SJHAWA. Further information about subcontractor safety requirements is available on the EHSS Subcontractor Job Hazards Analysis and Work Authorization Web site.

D.3 Procurement Process

1. **Procurement Planning**
   a. The procurement process starts with advance planning. The level of procurement planning is dependent on the dollar value and complexity of the proposed subcontract.
   b. Procurement planning is an essential tool for both requisitioning organizations and Procurement because it provides a method for early notification of intended requirements and an understanding of the entire procurement process from inception through completion. The information gathered at this stage can also be used for budgeting and scheduling purposes. Procurement uses such information for:
      i. Planning and estimating the work and workload requirements
      ii. Identifying opportunities for awards to small-business concerns
      iii. Identifying opportunities for competition
      iv. Consolidating similar requirements on an institution-wide basis
      v. Notifying DOE of actions that may require its approval
   c. Procurement planning also enables procurement specialists to become involved in the procurement process as early as possible. This early involvement helps ensure that the work meets the mission or program needs.
   d. Procurement requires at least 30 days’ advance notice of planned acquisitions of $500,000 or more. The Advance Acquisition Alert (AAA) form may be used by requesters to provide this notification to the Small Business Office (SBO) of the Small Business Supplier and Strategic Sourcing Management Group. A procurement specialist will be assigned to consult with the requester to plan for the acquisition and appropriately document the acquisition planning decisions. The SBO and the procurement specialist will work with the requester to develop source lists and ensure small-business concerns are provided the maximum practical opportunity to participate in the procurement.

2. **Requisition Submittal**
   a. Requisitions must be created electronically in ePro, the PeopleSoft/Oracle Purchasing System. Requisition preparers should ensure that requisitions are filled out correctly and items are appropriately categorized and not on the Restricted Items List.

3. **Defining the Requirement**
   a. Purchase requisitions should (1) describe the supplies or services in a manner designed to promote competition; (2) state the Laboratory's minimum requirements; and (3) to the fullest extent practicable, not favor one brand or trade-name article, manufacturer, or supplier over others.
   b. Adequately describing the purchase requirement helps ensure timely requisition processing. Purchase requirements must be clearly defined on the requisition or an attached specification, scope of work, or statement of work, which identifies deliverables and acceptance or testing criteria.
   c. Items should be identified by a generic noun (e.g., "personal computer"), defining adjective, and any other useful description. Items specified by a brand name (such as a model number and manufacturer) will be processed as "brand name or equal" to allow for fair and effective competition if another brand of equal capability can be accepted. The Laboratory's minimum requirements must be described in detail to fairly evaluate any offers received for that product or service.
   d. The Laboratory is committed to sustainable environmental stewardship. "Green" Environmentally Preferable Products (EPPs) should be specified when purchasing items for the Laboratory. An EPP can often meet the requirement at a lower cost. When ordering items on eBay, look for green alternatives by following the "recycled" links or searching for "remanufactured" products. EPPs are available in a variety of categories, including office supplies, construction materials, and computer equipment. Links to EPP resources are on the "Green Resources" section of the Procurement Helpful Links Web page.

4. **Requisition Changes**
   a. Any changes modifying the quantity, funding, project number, terms, or specifications of a requisition already submitted may require either resubmission of the requisition or, minimally, a supporting memo or e-mail explaining the change.
   b. Changes to existing or expiring subcontracts may also be initiated by an ePro requisition. When submitting a change/modification to a requisition:
      i. Indicate "CHANGE" or "MODIFICATION" on the requisition.
      ii. Refer to the original requisition number, subcontract number, and/or procurement specialist's name.
      iii. Fully explain in the description field what the change/modification covers and, if applicable, provide a new scope or statement of work.
      iv. If there is a change in price, supply the Project ID.
      v. In the "Unit price" field of the requisition, write the amount of the change only. In the "Comments" field, indicate the original requisition amount before the change, the increase or decrease of the proposed change, and the new total.
      vi. The authorized signer must have authority for the dollar amount of the change.

5. **Requisition Approvals**
   a. Beyond Laboratory procurement, the purchase of many commodities and services may also require approval by various organizations (e.g., OCFO/Budget, EHSS). EPro automatically routes these requisitions to the appropriate approval organization based on the value of the requisition and the selected category code. If an incorrect category code is chosen, the requisition may...
be returned to the requester for rerouting.

6. In-House Cost/Price Estimates
   a. Before solicitation, the Laboratory should have an estimate of the proper price level or value of the supplies or services to be purchased, i.e., the estimated price of the subcontract. It is generally the requester's responsibility to develop the estimate. The estimate can range from a simple budgetary estimate to a complex estimate based on the requester's assessment of the labor, materials, and other quantitative elements of performance. A detailed, independent cost estimate must be prepared for all construction work to be subcontracted.

7. Quality Assurance
   a. The requester must identify any specific quality requirements for the subcontract on the purchase requisition specification or Statement of Work. The need for, type of, and extent of quality requirements depend on the particular circumstances, and may range from inspection at the time of acceptance to a requirement for a subcontractor's implementation of a comprehensive quality assurance program.
   b. In identifying quality requirements, the requester should consider:
      i. The degree to which failure of the product or service could cause undue risks to employees or public health and safety
      ii. The degree to which failure of the product or services would cause degradation of required performance or reliability to operations, data acquisition, or other deliverables
      iii. For further information or assistance in assessing how to treat quality-assurance requirements in Statements of Work and/or specifications, see the Quality Assurance Policy.

8. Property
   a. Government-furnished property (GFP) is property owned by the government (almost everything at the Laboratory is government property) and made available to a subcontractor for its use during performance of work under a specific subcontract with the Laboratory. The term includes government-furnished equipment and government-furnished supplies. Subcontractor-acquired property (SAP) is property that a subcontractor acquires under a subcontract and furnishes to the Laboratory as a reimbursable direct item of cost.
   b. If GFP/SAP will be involved in performance of the desired work, it must be identified in the purchase request. If the specific property can be identified at the beginning of the procurement process, the requester must provide:
      i. A detailed item description
      ii. The government/Laboratory property identification number
      iii. The approximate acquisition value
   c. Because the Laboratory is responsible to DOE for managing all government property in its possession, procurement actions involving GFP/SAP must be coordinated with the Property Management Group throughout the process, from requisition to subcontract closeout.

9. Organizational Conflict of Interest
   a. An organizational conflict of interest (OCI) means that a relationship or situation exists in which an offeror has past, present, or currently planned interests that relate to the work to be performed under a Laboratory subcontract and that the conflict may reasonably:
      i. Diminish the offeror's capacity to give impartial, technically sound, and/or objective assistance or advice
      ii. Result in the offeror's being given an unfair competitive advantage
   b. Requisitions and Statements of Work will be reviewed by Procurement to determine whether the work falls within the definition of "advisory and assistance services." If the answer is "yes," the requester may be required to fill out an OCI Pre-Procurement Fact Sheet, which can be obtained from the Procurement Web site under the Forms link, to aid in evaluating the potential for an OCI, and the solicitation must include an OCI clause and require the offerors to disclose their various interests related to the procurement.
   c. Procurement will review and evaluate all relevant facts to determine if an actual or significant potential for an OCI with respect to a particular offer exists. If so, steps must be taken to avoid, neutralize, or mitigate it. If appropriate actions are taken to satisfactorily avoid or neutralize an OCI, the subcontract can be awarded. If an actual or potential OCI can only be mitigated, a mitigation plan must be prepared. If a mitigation plan is made, or if the award will be made notwithstanding the OCI, approval must be obtained from the Procurement Manager, Laboratory Counsel, and DOE.

10. Solicitations
    a. General
      i. Procurement conducts most of its competitive solicitations for required goods and services through a process known as "negotiation," involving the issuance of a solicitation to potential sources determined by the procurement specialist, and the receipt and evaluation of proposals. This process permits discussions and negotiations with suppliers regarding all the terms and conditions of the subcontract and, in some cases, allows an offeror the opportunity to revise its offer before a decision is made regarding subcontract award. Elements to be negotiated may be limited to price, but often extend to other factors, including delivery period, payment schedule, specifications or statement of work, and patent and technical data rights.
      ii. In some cases, notably in construction, the Laboratory may instead utilize a "sealed" bidding process, in which the lowest-priced, responsive, and responsible offer is selected without discussions or negotiations. The "sealed" bidding process could also include a public bid opening.
      iii. Only Procurement personnel and other individuals with delegated procurement authority can solicit offers/proposals from suppliers that may result in the negotiation and award of subcontracts.
    b. Supplier Information Obtained by Others
      i. Any information obtained by other Laboratory personnel from a supplier on price, availability, or other product or service-related information is treated as just that: information. Because the information probably did not take into account the terms and conditions or other requirements that might affect the purchase, Procurement must communicate directly with potential suppliers to ensure that all the Laboratory's requirements are considered in awarding a subcontract.
    c. Best Value Source Selection (BVSS) Solicitations
      i. When a subcontract will be selected based on other factors (e.g., technical excellence, methodology, proposed personnel) and cost/price is not the predominant factor, it is considered a Best Value Source Selection (BVSS). For BVSS solicitations, Procurement will establish a buying team consisting of the requester and other subject matter
Technical reviews are performed by the requester or technical coordinator to evaluate a technical analysis. Technical analyses are performed by the requester or technical coordinator for offers/proposals.

The following are examples of situations that could result in a protest:

- A specification or Statement of Work that unnecessarily restricts competition
- Program/technical divisions negotiating on their own with an offeror or promising to purchase something from an offeror (a potential unauthorized procurement)
- Information provided to one potential subcontractor that is not available to competing offerors/subcontractors
- Proposal information disclosed to a competing offeror/subcontractor
- A potential subcontract discussed with anyone not directly involved with the process

When there is doubt about the propriety or consequences of an action during the procurement process, contact the procurement specialist for advice.

A procurement is noncompetitive when an offer/proposal is solicited from and a procurement award is made to only one source/subcontractor. The Laboratory uses the terms "sole source" and "noncompetitive" synonymously in describing the procurement process. Generally, a noncompetitive action may be justified for the following reasons:

- Unique capability, expertise, facilities, or equipment that no other source can provide
- Standardization of parts and/or compatibility with existing equipment
- Follow-on work for continued development or enhancement of a specialized system or equipment or services necessary to avoid substantial duplication of costs that would not be recoverable, and/or significant, unacceptable delays in fulfilling

Lawrence Berkeley National Laboratory. The official or current version is located in the online LBNL Requirements and Policies Manual. Printed or exported versions are not official. Users are responsible for working with the latest approved revision.
D.4 Other Important Requirements of Laboratory Subcontracts

1. Environment, Safety, and Health
   a. Subcontractors performing work at a Laboratory site are subject to the DOE Worker Safety and Health Program regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and are required to take all reasonable precautions at Laboratory sites to protect the environment, safety, and health (ES&H) of all persons involved, and to comply with all applicable ES&H regulations and requirements of the Laboratory and DOE. The Laboratory may stop the particular work anytime a subcontractor fails to comply. Also see RPM Section 11.38(B)(13), Subcontractor Safety.

2. Insurance and Indemnification
   a. The Laboratory may require subcontractors to maintain liability insurance when:
      i. The work is performed on Laboratory, government, or third-party premises; or
      ii. Government-furnished property is provided to a subcontractor; and
      iii. The nature of the work poses a significant potential risk to the University and the government
   b. No subcontractor may be indemnified unless prior approval is obtained from DOE-HQ and The Regents of the University of California. Laboratory Counsel should be consulted on any request by a subcontractor for indemnification.

3. Patents, Data, and Copyrights
   a. Under the UC-DOE Prime Contract, the Laboratory is required to protect the government's interests in inventions and technical data by including the appropriate, related clauses in its subcontracts. These clauses basically concern such matters as patent rights, rights to data (including copyrights), and patent and copyright infringement.
   b. Requesters/technical coordinators are expected to ensure that the subcontractor's obligations in these matters (e.g., reporting inventions, reporting notices or claims of infringement, and securing required DOE approvals) are properly fulfilled. If the subcontractor does not fulfill these obligations, the requester or technical coordinator, if aware, is expected to notify Procurement immediately so that appropriate and timely action may be taken. See Software Disclosure and Distribution policy, Patents – Publication Clearance Policy, and Patents – Record of Invention Policy.

4. Subcontracts with Foreign Travel
   a. The Laboratory must obtain DOE approval for each request for foreign travel by a subcontractor before the travel occurs. "Foreign travel" means any travel outside the United States and its territories and possessions.

5. Sales Tax
   a. The Laboratory generally does not pay California sales tax because most of its purchases are considered to be "for resale" to the government, and therefore the Laboratory has been granted California State Resale Permit No. SR CHA 21-835970, also known as a Resale Certificate. This resale permit does not apply to leases/rentals, materials, and fixtures used to make improvements to real property, or property that will not be owned by DOE.

6. Buy American Act
   a. Under the federal Buy American Act and similar laws, most materials and products that the Laboratory procures must be manufactured, mined, or produced in the United States, unless a specific exception applies.

7. Davis-Bacon Act and Service Contract Act
   a. The Davis-Bacon Act requires that construction laborers and mechanics employed directly at the work site be paid not less than the prevailing wage rates as determined by the Department of Labor (DOL) in a Wage Determination. The Act's requirements and the applicable Wage Determinations must be included in the Laboratory's construction subcontracts.
   b. The Service Contract Act requires that service employees (as defined) under a service subcontract be paid not less than the minimum wages and fringe benefits determined by DOL in a Wage Determination. The Act's requirements and the applicable Wage Determination must be included in the Laboratory's service subcontracts.

8. Employment Eligibility Verification
   a. Federal contractors and subcontractors are required to enroll in the government's employment eligibility verification program (E-Verify) and to use it to verify the employment eligibility of their employees assigned to the contract or subcontract and of all new hires working in the United States. The Laboratory includes this requirement in its service subcontracts as applicable, and verifies the subcontractors' enrollment in the E-Verify program.

9. Aviation Services
   a. All charter and lease agreements between aviation service subcontractors and the Laboratory must adhere to the safety policies and procedures of DOE Order 440.2B (Aviation Management and Safety) or its successor order.
D.5 Subcontract Administration

1. Administration
   a. Subcontract administration encompasses all activities and relationships between the Laboratory and the subcontractor that arise out of subcontract performance. Subcontract administration covers all dealings between the parties from the time the subcontract is awarded until the work has been completed, received, and accepted; payment has been made; disputes, if any, have been resolved; and the subcontract is closed.
   b. Monitoring performance is a common responsibility of the procurement specialist and the requester. Performance must be monitored for delays, schedule slippages, quality deficiencies, financial status, etc. The program/technical divisions must advise the assigned procurement specialist of any indication that performance is not what the Laboratory expected.
   c. The Laboratory should develop a complete record of all actions taken by the Laboratory and the subcontractor. Documentation assists in the resolution of problems and provides information to evaluate similar projects or problems in the future. Problems should be identified and resolved before legal issues become unavoidable.

2. Changes
   a. Only the procurement specialist may modify the terms of a subcontract or take any action to enter into a change order or other contractual commitment on the part of the Laboratory, except as authorized by Procurement. Although under some subcontracts it is normal for the requester to have ongoing technical interaction with the subcontractor during performance, no alteration of subcontract or statement of work requirements may be authorized during these discussions.

3. Invoice Certification
   a. A certifier is a Laboratory employee designated to verify that goods and/or services are rendered as required by the subcontract before a subcontractor’s invoice can be processed for payment by Accounts Payable. The certification must be performed in a timely manner using the online certification system to ensure that the subcontractor is paid within the payment terms of the subcontract. Failure to provide timely certification may result in a late payment, which could affect the Laboratory’s ability to comply with the terms of the subcontract and/or DOE requirements.

4. Subcontract Closeout
   5. When the subcontractor has provided the required deliverables or services, the Laboratory has accepted these items, and the term of the subcontract has ended, the subcontract is considered to be "physically complete." At that time, the Purchase Order (PO) Closeout Process is initiated. This frees excess PO liens on Laboratory projects, enabling more accurate financial reporting of purchases.
   6. The PO Closeout Process also ensures that contractual obligations between the Laboratory and the subcontractor are met and that the Laboratory has taken care of its UC-DOE Prime Contract requirements. These requirements may include the disposition of government property located with the subcontractor, the issuance of scientific reports, and the certification of patents created under the subcontract.
   7. Divisions have a key role in the closeout process. They must respond to subcontract renewal notices sent to technical representatives and requesters. By responding to these notices, Laboratory divisions let Procurement know whether the subcontract work should continue or whether the PO Closeout Process should begin. Divisions may also be asked to complete a Subcontract Closeout Memorandum and other closeout-related forms.
   8. Procurement's PO Closeout Web site has further information about the closeout process and division responsibilities.

E. Roles and Responsibilities

None

F. Definitions/Acronyms

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<th>Definition</th>
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<tr>
<td>B2B</td>
<td>Electronic commerce allowing direct purchasing via a catalog through a designated Web site, filling in an online order form, or by sending the supplier a standard fax form without going through the Procurement Department</td>
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<tr>
<td>PCard</td>
<td>Credit card issued to designated Berkeley Lab personnel for purchasing goods and services</td>
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G. Recordkeeping Requirements

None

H. Implementing Documents

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<thead>
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I. Contact Information

Procurement and Property Manager, OCFO

J. Revision History

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<th>By whom</th>
<th>Revision Description</th>
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Document Information

**DOCUMENT INFORMATION**

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Source Requirements Documents

Dear 970.5244-1 Contractor Purchasing System (May 2006), Clause I.114(a)

Implementing Documents

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