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 Lawrence Berkeley National Laboratory (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
Office of the Chief Financial Officer

Policy

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POLICY

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A. Purpose

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

B. Persons Affected

All Berkeley Lab employees

C. Exceptions

None

D. Policy Statement

D.1 Overview

1. General Information

The Procurement & Property Management Department is responsible for acquiring goods and services as well as the management of Berkeley Lab personal property assets necessary for the Lab to fulfill its scientific mission. Berkeley Lab has a purchasing system approved by the Department of Energy (DOE) that establishes its procurement authority. Non-compliance with procurement policies and procedures, which are a part of the overall purchasing system, could result in decreased procurement authority to Berkeley Lab or DOE's disapproval of Berkeley Lab's purchasing system. In particular, Berkeley Lab has a responsibility to ensure that:

1. We act as stewards of public funds, and ensure any item that is purchased is essential for Berkeley Lab business and is not above what is absolutely necessary to accomplish Berkeley Lab's mission.
2. Purchases are made using established procurement channels, including eBuy, PCard, ePro, and the software download page. For additional information on established procurement channels, see the Procurement & Property Management Make a Purchase web page.
3. Procurements are subject to competition to the maximum extent possible, and are consistent with Berkeley Lab's mission and objectives.
4. All subcontractors are treated fairly and impartially.
5. Small-business concerns are provided a maximum practicable opportunity to compete for Berkeley Lab's procurements.
6. All procurement actions comply with applicable laws and regulations and the UC-DOE Prime Contract requirements, as well as procurement policies and procedures.
7. Costs paid by Berkeley Lab are fair, reasonable, and appropriate for expenditure of federal government funds.

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 Berkeley Lab to the expenditure of funds. Purchases or commitments made by individuals without delegated procurement authority are considered unauthorized, and undergo a ratification process to determine whether the unauthorized procurement would otherwise have been proper and in the best interests of Berkeley Lab. Individuals making commitments without delegated authority are subject to corrective and/or disciplinary action and may be responsible for payment of charges incurred. See information on unauthorized commitments in Section D.1.6., Unauthorized Commitments and the Ratification Process, and on the Procurement & Property Management website.

In addition, Laboratory employees may be held personally or criminally liable for actions that are not consistent with the equitable treatment of subcontractors and the appropriate expenditures of federal government funds.

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. Berkeley Lab employees should refer to information available on the Procurement & Property Management website and direct specific questions to the appropriate Procurement personnel. Inquiries regarding procurements can be emailed to help@lbl.gov, or by calling (510) 486-6400 to reach Procurement's Help Desk.

2. Restricted Purchases

1. Under the terms of the UC-DOE Prime Contract, certain types of purchases are prohibited and other types of purchases may be made only after obtaining special approvals. Examples are provided in the Cost Allowability Policy and are specifically addressed in the Restricted Items List. The Restricted Items List includes both prohibited items and special treatment items. In addition, items purchased must be essential for Berkeley Lab business and not above what is absolutely necessary to accomplish Berkeley Lab's mission.

2. Special treatment items require special internal approvals or safety measures. These items may be purchased only when the specified requirements are met. Certain items in this category may not be purchased using a division PCard, 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. eBuy purchasers must still comply with safety and other requirements associated with purchases of special treatment items.

3. Organizational Conflict of Interest (OCI)

a. It is Berkeley Lab's policy to identify and to avoid, neutralize, or mitigate OCIs before:
   i. Entering into subcontracts or agreements (herein after referred to as a subcontract) for advisory and assistance services, or
   ii. Purchasing goods or services that are the direct result of subcontractor recommendations from advisory and assistance services.

b. If an OCI cannot be avoided, neutralized, or mitigated, Berkeley Lab will either disqualify the supplier or obtain DOE approval prior to entering into a subcontract.

c. An 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 Berkeley Lab 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.

3) Advisory and assistance services can mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Laboratory management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training, and the day-to-day aid of support personnel needed for the successful performance of ongoing Berkeley Lab operations.

d. Advisory and assistance services are classified in one of the following definitional subdivisions:
   i. Engineering or technical services.
   ii. Management support or professional services.
   iii. Studies, analyses, and evaluations.

4. Personal Conflict of Interest

a. 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.

b. 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 the 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.

c. California state law prohibits University employees from engaging in outside activities that are funded through a University contract.

d. Certain restrictions apply to:
5. Emergency Circumstances

a. 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.

b. 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. If an emergency circumstance arises during normal working hours, employees must contact Procurement or utilize a division PCard to obtain emergency related materials or services.

c. Payments for emergency circumstances outside of normal working hours may be completed by either method:
   i. Travel Charge Card. When on pre-approved travel status, employees are allowed to use their Berkeley Lab travel charge card for the purchase of low-value items needed in the course of their work under emergency circumstances. 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. The required documentation (receipts, etc.) and limits are governed by Berkeley Lab travel policies contained in the Travel Policy.
   ii. Personal Credit Card or Cash. Purchases made for business-related goods or services under emergency circumstances using a personal credit card or cash may be reimbursable by filling out an electronic Request for Issuance of Check (eRFIC), which must be approved by an authorized signer on the Laboratory’s Signature Authorization System (SAS). The eRFIC 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. See the Request for Issuance of Check (RFIC) Policy for more information.

d. The individual responsible for making an emergency commitment must notify Procurement no later than the first business day after the occurrence, and provide the following items the same day as the notification to Procurement:
   i. An approved ePro requisition.
   ii. A written justification for the emergency purchase.

e. Legitimate emergency commitments made outside of normal working hours will not be processed as unauthorized commitments as long as appropriate requisitions, approvals, and written emergency justification are provided on the first business day following the occurrence.

f. Generally, when the purchase is made in California, the supplier must be advised that Berkeley Lab holds a California state seller's permit, also known as a Resale Certificate, and California state sales tax does not apply. See the Sales and Use Tax (STX) Guidelines document on the **Tax Services** portion of the OCFO Controller's Office web page for specific information on when taxes would apply.

6. Unauthorized Commitments and the Ratification Process

a. Entering into purchase commitments, subcontracts, modifying subcontracts, or terminating subcontracts by individuals without delegated procurement authority are considered unauthorized commitments and must undergo a ratification process through Procurement. For more information on the process and what constitutes an unauthorized commitment, see the **Know Before You Buy** web page on the Procurement website. Some examples of unauthorized commitments include, but are not limited to:
   i. Committing the expenditure of Berkeley Lab funds by an individual with no delegated procurement authority.
   ii. Requesting or accepting goods or services from a supplier when a subcontract has not been awarded (note: requisitions are not subcontracts).
   iii. Authorizing a supplier to perform work or deliver goods without written, delegated procurement authority.
   iv. Authorizing work that exceeds the total allowable expenditures or that extends beyond the current term of a subcontract.
   v. Ordering goods or services that are outside of the scope of the subcontract.
   vi. Authorizing an order under a blanket subcontract or master agreement without formal designation in the subcontract or master agreement as having authority to issue orders.
   vii. Improper use of a Berkeley Lab procurement credit card.
   viii. Directing another person to do any of the above, whether intentionally or unintentionally.

b. If you suspect an unauthorized commitment has been made, contact the Procurement Help Desk so that Procurement can inform the supplier, notify the responsible individual, and initiate a ratification process. If the commitment is ratified, the procurement specialist will issue a subcontract to the supplier so that work or shipments can commence or continue and the supplier can be paid.

D.2 Procurement Planning

Procurement has established channels for purchasing goods and services, including eBuy, PCard, ePro, and the software download page (software.lbl.gov). Certain expenditures or commitments, such as employee travel, library purchases, and legal services, are governed by established policies and procedures managed by other Berkeley Lab departments.

Before initiating a goods purchase, check the Berkeley Lab's Excess Property list on the **Property Management** website for the item or material.
If a purchase is necessary, refer to the *Make a Purchase* section of the Procurement website for general information on available procurement channels. Review the *Purchasing Guide* on the Procurement website for detailed information on the recommended procurement channel for the intended purchase. In addition, divisions may have additional purchasing related requirements.

### 1. Advance 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. The Advance Acquisition Alert form, available on the Procurement Forms webpage, shall be used by requesters to 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. A procurement specialist will be assigned to consult with the requester to plan for the acquisition and appropriately document the acquisition planning decisions. The Small Business Office 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. 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 Procurement needs to obtain and evaluate offers; conduct negotiations of pricing and other terms as necessary; obtain insurance coverage if required; and award a subcontract for the requirement.
   iii. The subcontractor’s performance lead time necessary to deliver the required goods or services.

b. If the requirement is urgent, the requester should explain the urgency 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. Requesters shall use the *Advanced Acquisition Alert* form, available on the *Procurement Forms* web page, to provide at least 30 days advance notice to Procurement of planned acquisitions of $500,000 or more.

d. Additional approvals, including DOE approvals, and other determinations 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.

### 3. Defining the Requirement

a. Purchase requisitions should:
   i. Describe the goods or services required in a general manner to foster competition.
   ii. State Berkeley Lab’s minimum requirements.
   iii. To the fullest extent practicable, not favor one brand or trade-name article, manufacturer, or supplier over others.
   iv. Include the contact information for any suggested suppliers.
   v. Include or attach any required sponsor terms and conditions that must be included in the resulting subcontract.
   vi. Use the appropriate *item category codes* to ensure the requisition is routed for required approvals and receives the appropriate burdens.
   vii. Indicate if any services will be performed on-site.
   viii. Indicate if the work will include hands-on work, requiring a Subcontractor Job Hazard Analysis (sJHA), or no hands-on work, which will not require a sJHA.
   ix. Indicate the desired service begin and end dates or requested due dates for goods.
   x. Indicate if there are any specific quality requirements or acceptance criteria (see Section D.3.4, Quality Assurance (QA), for more information).
   xi. Be submitted with any known required documents (for example, a statement of work, a sole source justification, or a technical review memorandum).

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, that identifies deliverables and specific quality requirements or acceptance 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. Berkeley Lab’s minimum requirements must be described in detail to fairly evaluate any offers received for that product or service.

4. Unique Purchases

a. Construction and Architect-Engineer (A&E) Subcontracts
   i. Subcontracts for architect-engineer services will be executed in accordance with Procurement policies and procedures. 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.
   ii. Subcontracts for construction will be executed in accordance with Procurement policies and procedures, 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 Berkeley Lab 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.

b. Fabrications: Equipment or materials unavailable from commercial sources may be fabricated at Berkeley Lab by job order request to Engineering or outside Berkeley Lab through a subcontract. The Budget Office will determine whether a fabrication should be charged to an operations equipment account. Requests for such determinations should be accompanied by a statement explaining the need for the item, a description or drawing, the desired fabrication schedule, and a cost estimate for fabrication or installation.

c. Precious Metals: Eight DOE-identified precious metals — gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, and silver — are special treatment items. Purchases of precious metals must be requested by ePro requisitions authorized by Berkeley Lab career employees.

d. Acquisition of Excess Property from Other DOE/Federal Entities: Berkeley Lab is authorized to obtain used equipment or materials from federal government excess-material lists. Requests for procurement of excess property are processed by Property Management and require DOE approval. Requirements for equipment or sensitive property must be coordinated with Property Management after, or concurrent with, these consultations. Requesters should contact their division safety liaison to facilitate clearance. All excess property coming on-site, regardless of purpose, must be cleared by an EH&S Division safety officer prior to use.

e. Borrowing and Equipment Loan Agreements
   i. Under limited circumstances, Berkeley Lab may be able to obtain equipment for temporary use through the following agreements:

   1. Berkeley Lab may borrow personal property from other DOE facilities, other federal agencies, or private sector organizations (e.g., educational, research, or non-profit), but not suppliers (see Property Management Services website — Borrow for Use section for additional information). Property Management utilizes the lending organization's documentation (lending agreement) to establish the borrow file.

   2. Arranging for property to be borrowed from a supplier must be handled by utilizing the Equipment Loan Agreement in accordance with the Equipment Loan Process document available on the Procurement website.

      • When the standard Equipment Loan Agreement will be accepted by the supplier without adjustments to terms, the Equipment Loan Agreement may be processed by the division in coordination with Property Management and does not require Procurement involvement.

      • When the standard Equipment Loan Agreement will not be accepted by the supplier without adjustments to terms, Procurement is responsible for documenting the loan agreement in writing and signing the loan agreement for Berkeley Lab.

   ii. All borrowed property must be reviewed and approved by an EH&S Division safety officer prior to its use on-site. Electrical property that has not been listed or accepted by a Nationally Recognized Testing Laboratory (NRTL) may not be used until it has been inspected by the authority having jurisdiction. (AHJ). Borrowers of property should contact their division safety liaison to facilitate clearance.

   iii. The division borrower is responsible for managing and controlling the asset until it is formally acquired or returned to the borrowing DOE facility, federal agency, private sector organization, or supplier.

D.3 Laboratory Requirements Affecting Procurements

1. In-House Cost/Price Estimates

Before solicitation, Berkeley Lab should have a cost/price estimate for the goods 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 price estimate to a complex cost 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.

2. Environment, Safety, and Health

Subcontractors performing work at a Berkeley Lab 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). They are required to take all reasonable precautions at Berkeley Lab 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 Berkeley Lab.
Lab and the DOE. Berkeley Lab may stop the particular work anytime a subcontractor fails to comply.

3. Subcontractor Safety

Berkeley Lab is required to ensure that subcontractor personnel who perform work at Berkeley Lab facilities do so in a safe manner in compliance with applicable regulations (see “sJHA Process — Subcontractor Job Hazards Analysis” in the ES&H Manual). Before subcontractors can perform “hands-on work” (see the ES&H Manual (formerly PUB 3000), Section 31.6) at Berkeley Lab facilities, a Subcontractor Job Hazards Analysis (sJHA) for Non-Construction Activities form must be completed and reviewed. Specific information on the sJHA process, contacts, guidance by role, and access to the form are available at the EH&S sJHA and Work Authorization website. Typically, the requester obtains and fills in Section 1 (Identification) of the online sJHA form. The requisition preparer will obtain the sJHA form link from the requester and enter it into the ePro requisition. Upon award of the subcontract, Procurement provides the subcontractor with this unique link to complete the sJHA, or instructs the subcontractor that the requester will provide the link once the on-site portion of the work will be required. The subcontractor identifies safety risks involved for the work and the methods that will be used to control them on the sJHA.

4. Quality Assurance (QA)

a. The requester must identify any specific quality requirements or acceptance criteria for the subcontract on the purchase requisition, or an attached 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 conjunction with the Office of Institutional Assurance and Integrity QA Program Manager, the requestor will identify the QA requirements that apply to a subcontract, in accordance with the Laboratory’s Institutional Quality Assurance Program Description (QAPD) (LBNL/PUB-3111). Additional information can be found on the Office of Contractor Assurance (OCA) webpage on quality assurance. OCA will be involved in developing QA requirements for solicitations and subcontracts under all capital asset projects.

c. 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 could degrade the required performance or reliability of operations, data acquisition, or other deliverables.

d. When the requestor identifies potential or actual suspect and/or counterfeit items during inspection and/or acceptance activities, the requestor must contact the Office of Institutional Assurance and Integrity. An individual in this office will determine whether the item is suspect and/or counterfeit. The requestor is responsible for obtaining a documented technical justification by a Laboratory technical expert (e.g., authority having jurisdiction, building code official, or professional engineer) prior to using a nonconforming item and providing a copy to the Office of Institutional Assurance and Integrity.

e. The requisition must clearly identify where any required acceptance testing will be performed and Berkeley Lab’s role in the testing and/or required reports of testing results.

f. All purchased non-commercial goods must be new/unused. Procurement must obtain DOE Contracting Officer approval to purchase of used, reconditioned, or remanufactured non-commercial goods. Procurement can purchase such items if they meet the federal government definition of commercial items.

g. An appropriate technical staff member or engineer must also approve, and document the approval for, the use of reconditioned or remanufactured item(s) in accordance with the Laboratory’s Institutional Quality Assurance Program Description (QAPD) (LBNL/PUB-3111).

h. For subcontracts on Capital Asset Projects, the Office of Institutional Assurance and Integrity, or its designee, will assist in identifying the subcontractor QA requirements for solicitations and, prior to notices to proceed being issued, review the subcontractor’s quality capability and program. A list of capital asset projects may be found on the Laboratory Project Management Office website.

5. Organizational Conflict of Interest (OCI) Planning Requirements

a. 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 it is determined that the work is advisory and assistance services, the requester may be required to fill out an OCI Pre-Procurement Fact Sheet (see the Procurement Forms webpage to download the sheet) to aid in evaluating the potential for an OCI. The solicitation must include an OCI clause and require the offerors to disclose their various interests related to the procurement.

b. Procurement will review and evaluate all relevant facts to determine whether an actual or potential significant exists for an OCI with respect to a particular offer. This applies to initial award and any proposed follow-on work for continued subcontracting with the same supplier. If the potential exists, 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 the DOE.

5. Organizational Conflict of Interest (OCI) Planning Requirements

a. 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 it is determined that the work is advisory and assistance services, the requester may be required to fill out an OCI Pre-Procurement Fact Sheet (see the Procurement Forms webpage to download the sheet) to aid in evaluating the potential for an OCI. The solicitation must include an OCI clause and require the offerors to disclose their various interests related to the procurement.

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c. Refer to the Conflict of Interest Policy for additional information.

6. Insurance and Indemnification

a. Berkeley Lab may require subcontractors to maintain liability insurance when:
   i. The work is performed on Berkeley Lab, federal government, or third-party premises; or
Government-furnished property is provided to a subcontractor; or
iii. The nature of the work poses a significant potential risk to the University and the federal government.

b. No subcontractor may be indemnified unless prior approval is obtained from DOE Headquarters. The procurement specialist will consult with Laboratory Counsel on any request by a subcontractor for indemnification.

c. Prior to commencing work that requires insurance, the procurement specialist will:
   i. Ensure an acceptable insurance certificate and required endorsements are received, if required by the subcontract, and
   ii. Issue a notice to proceed, should one be required.

7. Patents, Data, and Copyrights

Under the UC-DOE Prime Contract, Berkeley Lab is required to protect the federal 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 (see the Software Disclosure and Distribution Policy, Patents — Publication Clearance Policy, Patents — Record of Invention Policy, and Post-Award Subcontract Administration policy for requester/technical representative responsibilities related to this subject). Identification by the requester of any potential intellectual property issues will be done by the requester during the technical analysis portion of the procurement. The requester may directly consult with the Intellectual Property Office (IPO) to discuss potential intellectual property issues.

8. Foreign Travel

A Berkeley Lab division must obtain DOE approval for each request for foreign travel by a subcontractor before the travel occurs. Specific information regarding this process, including what is considered foreign travel, is provided on the Travel Services Foreign Travel Information Center website. The traveler must receive final DOE approval in the Foreign Travel Management System (FTMS) prior to traveling. Travel arrangements authorized without DOE approval and not recorded within FTMS are at the risk of the traveler and may not be reimbursable.

9. Sales Tax

In most cases, Berkeley Lab does not pay California sales tax because most of its purchases are considered to be “for resale” to the federal government, and therefore Berkeley Lab has been granted a California state reseller’s permit, also known as a Resale Certificate. This reseller’s permit does not apply to leases/rentals, materials and fixtures used to make improvements to real property, items to be drop-shipped outside of California, or property that will not be owned by DOE.

10. Buy American Act

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

11. 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 Berkeley Lab’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 the DOL in a wage determination. The act’s requirements and the applicable wage determination must be included in the Berkeley Lab’s service subcontracts.

12. Employment Eligibility Verification

Federal contractors, subcontractors, and second-tier subcontractors are required to enroll in the federal 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. Berkeley Lab includes this requirement in its service subcontracts as applicable, and verifies the subcontractor’s enrollment in the E-Verify program.

13. Aviation Services

All charter and lease agreements between aviation service subcontractors and Berkeley Lab must adhere to the safety policies and procedures of DOE Order 440.2B (Aviation Management and Safety) or its successor order.

14. Human Subjects Research
No research involving human subjects may be initiated without both a project assurance and approval by the cognizant Institutional Review Board (IRB). At Berkeley Lab, the IRB is the Human Subjects Committee. The requester or technical representative must coordinate any potential subcontracts with human subjects research well in advance with the Human and Animal Research Committees (HARC) Office at the Berkeley Lab. Procurement-related responsibilities of the requester or technical representative are detailed in the Customer Guide Human Subjects Related Procurements located on the Procurement Customer Guide web page.

15. System for Award Management

a. Enrollment: Subcontractors are required to enroll, and maintain annual registration, in the federal government's System for Award Management (SAM) database within 30 days of subcontract award. Failing to register or maintain registration is considered a breach of subcontract, and may result in contract termination.

b. Debarment: The Berkeley Lab is not permitted to do business with a supplier that has been debarred, suspended, or proposed for debarment, unless pre-approved by the DOE. The SAM database tracks suppliers who have been debarred by the federal government.

16. Sustainable Products and EPEAT®

a. Berkeley Lab is committed to sustainable environmental stewardship. “Green” Environmentally Preferable Products (EPPs) should be specified when purchasing items for Berkeley Lab. When ordering items on eBuy, look for green alternatives by following the “recycled” links or searching for “remanufactured” products. Links to EPP resources are provided on the Sustainable Procurement web page of the Procurement website. Any non-EPEAT® item must be purchased through an ePro requisition with an explanation for approval.

b. EPEAT®-registered certification is required for specific electronic equipment. A product search is available on the EPEAT® website. Any non-EPEAT® item must be purchased through an ePro requisition with an explanation for approval.

17. Property

a. The majority of property at Berkeley Lab is federal government owned. Government-furnished property (GFP) is property owned by the federal government and made available to a subcontractor for its use during performance of work under a specific subcontract with Berkeley Lab. The term includes government-furnished equipment and government-furnished supplies. Subcontractor-acquired property (SAP) is property that a subcontractor acquires as a directly reimbursable item of cost for use in the performance of the subcontract.

b. Berkeley Lab is responsible to DOE for managing all federal government property in its possession. If GFP and/or SAP will be used by the subcontractor in the performance of the subcontract, the requester should inform Procurement at the beginning of the procurement process so that the specific property can be identified in the subcontract. The only exceptions are GFP that will be:
   i. Incorporated in the final deliverable, for example, providing copper to be used by subcontractor for a fabrication; or
   ii. Consumed during the performance of the subcontract.

c. If the specific property can be identified at the beginning of the procurement process, the requester must provide:
   i. A detailed item description(s) (make/model).
   ii. Quantity of items.
   iii. The federal government/Berkeley Lab property identification number(s).
   iv. The approximate acquisition value(s).

d. Because Berkeley Lab is responsible to DOE for managing all federal government property in its possession, procurement actions involving GFP and/or SAP must be coordinated with Procurement and Property Management throughout the process, from requisition to subcontract closeout.

D.4 Solicitations

1. General

a. Procurement acquires the majority of goods and services through competitive solicitations. Procurement’s involvement in the solicitation process ensures responsive, reasonable, and fair offers. It also 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.

b. The requester should ensure Procurement is involved early in the procurement planning process to ensure solicitations are processed as required.

c. Laboratory Procurement personnel will communicate directly with potential suppliers to ensure Berkeley Lab takes into account the terms and conditions or other requirements that might affect the purchase and resulting subcontract.

d. As described in Section D.1. Overview, 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. Any solicitations performed by non-Procurement personnel may require another solicitation be performed by Procurement to ensure responsive, reasonable, and fair offers, thereby delaying the subcontract award. Any information obtained by non-Procurement personnel from a supplier on price, availability, or other product or service-related information is treated strictly as information.
e. Two different types of solicitations are used at Berkeley Lab to solicit offers for evaluation with the intent of entering into a subcontract: Lowest Price Technically Acceptable (LPTA) solicitations and Best Value Source Selection (BVSS) solicitations.
   i. LPTA solicitations are used when the requirement is clearly definable and cost/price is a predominant factor in source selection.
   ii. BVSS solicitations are used when a subcontractor will be selected based on other factors (e.g., technical excellence, methodology, or proposed personnel) and cost/price is not the predominant factor. Performance features and supplier attributes are developed that Berkeley Lab believes are desirable in meeting its objectives for the procurement. These features and attributes will serve as the basis for the preparation and the evaluation of the offers.

f. Evaluation Teams
   i. For all BVSS solicitations and some LPTA solicitations, Procurement will establish an evaluation team consisting of the requester and other subject matter experts. Evaluation teams are small (normally not exceeding five voting members) and usually have an odd number of voting members, including the procurement specialist chairperson, to provide a tie-breaker if needed during the evaluation process.
   ii. The procurement specialist discusses the issue of conflicts of interest with the evaluation team members and reviews the list of offerors for possible conflicts of interest. Non-Procurement evaluation team members are required to sign a Confidentiality and Conflict of Interest Acknowledgment.

D.5 Evaluation

1. General

   a. Evaluation of offers/proposals may be as simple as determining the low price on a commercial item or may involve a very detailed analysis of technical, management, and cost/price criteria. For many procurements, the offers/proposals are evaluated by the procurement specialist and the requester. For more complex procurements competed using the solicitation process, an evaluation team will perform the evaluation of offers/proposals in accordance with the criteria set forth in the solicitation.
   b. Although the procurement specialist is responsible for conducting the evaluation, the requester has an important role in evaluating technical proposals, analyzing quantitative elements, and otherwise advising on Berkeley Lab's negotiation position. Depending on what is being purchased, the procurement specialist may request the assistance of the requester in performing a technical review or a technical analysis of the elements of offers/proposals other than cost/price, as required.
      i. Technical reviews are performed by the requester to evaluate a technical offer/proposal to determine whether it meets the requirements of the solicitation.
      ii. Technical analyses are performed by the requester for offers/proposals that are more complex or require a cost analysis and involve a more in-depth analysis of the quantitative and qualitative elements of a technical offer/proposal, and potential intellectual property issues. This in-depth analysis is required to determine the need for and reasonableness of the resources proposed in an offer/proposal, assuming reasonable economy and efficiency.

2. Cost or Price Analysis

Using the technical evaluation information provided, along with information from other sources, the procurement specialist will analyze the proposed cost or price to determine if it is reasonable as proposed, or whether further negotiations are warranted.

3. Conducting Negotiations

   a. The procurement specialist is responsible for conducting all negotiations with offerors. The requester's support may be required to analyze new information or responses provided by the offeror during the course of the negotiations. Working as a team, the procurement specialist and requester seek to obtain the required goods and services at reasonable prices and under reasonable terms.
   b. Discussions with offerors are particularly sensitive during solicitation, evaluation of offers, and negotiation. Requesters shall not have separate discussions or negotiations with offerors without the involvement of the procurement specialist.

D.6 Noncompetitive Procurements

A procurement is noncompetitive when an offer/proposal is solicited from and a procurement award is made to only one source/subcontractor. Berkeley Lab uses the terms "sole source" and "noncompetitive" synonymously in describing the procurement process followed in such cases.

Berkeley Lab must ensure that it competes its procurements to the maximum extent possible, consistent with efficient performance of the program mission and the nature of supplies and services being purchased. Consequently, noncompetitive (sole-source) procurements should be used only...
1. Sole Source Justification

a. The requester must provide a formal sole source justification for certain types of noncompetitive procurements. See the Procurement Sole Sourcing web page for guidance on when a sole source justification is required. The Sole Source Justification Form must be used for providing these justifications. See the Procurement Forms web page to download the form.

b. Generally, a noncompetitive action may be justified for the following reasons:
   i. Unique capability, expertise, facilities, or equipment that no other source can provide to satisfy Berkeley Lab's requirements.
   ii. Compatibility with existing equipment and/or standardization of parts.
   iii. Follow-on work for continued development or enhancement of a specialized system, equipment, or services when it is likely that an award to a source other than the incumbent subcontractor would result in substantial duplication of costs (relative to overall costs) that would not be recovered or would cause unacceptable delays in fulfilling the program needs.
   iv. The identified source is acknowledged to be the leader in its field of expertise as demonstrated in reputable and valid literature, symposia presentations, etc. While normally not appropriate for commercial goods and services, this identification may be appropriate in subcontracting for research and development services.
   v. An unusual or compelling urgency exists that would cause an adverse or programmatic impact (generally related to schedule, security, regulatory issues, or environmental, safety, or health issues) of such nature and magnitude that a sole-source justification is merited if there is a delay in award.
   vi. Required to establish or maintain a source for industrial mobilization or an essential engineering, development, or research capability.
   vii. Authorized or required by statute or international agreement.
   viii. National security or public interest reasons.
   ix. Unique bonding, insurance, or indemnification requirements (appropriate only if subcontractor is a large business).
   x. Services of an expert or neutral person for any current or anticipated litigation or dispute.

c. The requester and the buyer must work together to assure that the justification is appropriate and defensible. The written sole source justification must address the following information, as applicable:
   i. A description of the items or services to be procured (including any important/unique features and minimum requirements).
   ii. The reason(s) for the request with a narrative explanation of why the subcontractor, University of California (UC) campus, or DOE Facility Contractor is the only qualified source, based on the identified reason(s), including a description of any unique capabilities, experience, expertise, facilities, or equipment.
   iii. Separate analysis, including any market research that may have been performed to support the conclusion. Documentation could include proposals received, email correspondence, etc. If market research was performed, a list showing the requirements, each prospective supplier identified/contacted, and all suppliers who did not meet the requirements (and which requirement each failed to meet) is helpful.
   iv. Whether there is potential for follow-up purchase(s) that would have to be from the same source.

d. An informal justification may be requested by the procurement specialist, and if requested, must be provided for noncompetitive (sole-source) procurements under the thresholds listed above.

D.7 Requisition Submittal

Requisitions must be created electronically by a trained requisition preparer (see the Procurement Training & Resources website) in the ePro Purchasing Module of the Financial Management System. Requisition preparers should ensure that requisitions are filled out correctly including assigning the correct item category code and do not include Prohibited Items as shown on the Restricted Items List. See Section D.1.2, Restricted Purchases, for more detail. Requisitions and changes to requisitions are to be completed using the guidance provided in the ePro 9.2 User Guide.

The purchase of many commodities and services may also require approval by division approvers and various organizations such as EH&S. ePro automatically routes these requisitions to the appropriate individual or organization based on the value of the requisition and the selected item category code.

Any changes to increase or decrease the funding on a submitted requisition will require resubmission of the requisition.

D.8 Awards

The procurement specialist will determine the type of subcontract that best meets the needs of Berkeley Lab and the federal government.

Procurement personnel with delegated procurement authority will make a subcontract award to the selected supplier(s). In certain cases, multiple awards may be made when not all goods and services can be purchased from one supplier due to supplier capability, pricing, delivery, etc., or when necessary to maintain two or more essential sources of supply. In certain cases, the procurement personnel may choose not to make an award if all offers were deemed unresponsive or not responsible or if the successful offer exceeds available funding.

For modification to awarded subcontracts, see the Post-Award Subcontract Administration policy.

D.9 Protests
Berkeley Lab is required to treat all potential subcontractors fairly and equitably. An offeror or subcontractor who believes it not been so treated has the option of filing a protest directly with Procurement. A protest can suspend work on a subcontract that has already been awarded, or it can delay any further action on a subcontract that is under negotiation but has not yet been awarded.

1. The following are examples of situations that could result in a protest:
   a. A specification or statement of work that unnecessarily restricts competition.
   b. Program/technical divisions negotiating on their own with an offeror or promising to purchase something from an offeror (a potential unauthorized procurement).
   c. Information provided to one potential subcontractor that is not available to competing offerors/subcontractors.
   d. Proposal information from one offeror disclosed to a competing offeror/subcontractor.
   e. A potential subcontract discussed with anyone not directly involved with the process.
2. All communications should be through the procurement specialist and Laboratory Counsel during the course of an active protest.

### E. Roles and Responsibilities

**Note:** See the Post-Award Subcontract Administration Policy for post-award roles and responsibilities.

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
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</thead>
</table>
| Procurement Specialist| - Manages the administrative aspects of the subcontract up to the point the subcontract is awarded (e.g., source selection, price reasonableness determination, subcontract preparation, and award).  
|                       | - Maintains all contractual documentation related to the subcontract award.  
|                       | - Consults with the requester to plan for the acquisition and appropriately document the acquisition planning decisions.  
|                       | - Performs technical review or analysis of offers/proposals and submits offers for皇子 procurements when required.  
|                       | - Conducts all negotiations with offerors.  
|                       | - Determines the type of subcontract that best meets the needs of Berkeley Lab and the government.  
|                       | - Consults with Laboratory Counsel for all requests by a subcontractor for indemnification.  
|                       | - Issues notices to proceed, should one be required, for work to commence once required documentation has been received and accepted by the procurement specialist. |
| Requester             | - Works with the procurement specialist in acquisition planning, including notification to Procurement of planned acquisitions of $500,000.  
|                       | - Assigns a technical representative when required.  
|                       | - Initiates the procurement process using approved procurement channels.  
|                       | - Defines the subcontract technical requirements and prepares a statement of work or a scope of work that identifies deliverables, schedule, and milestones if required.  
|                       | - Defines specifications or drawings when required.  
|                       | - Identifies quality requirements and acceptance criteria when required.  
|                       | - Prepares a sole source justification for noncompetitive procurements when required.  
|                       | - Completes a sJHA form and coordinates with the subcontractor to complete and submit.  
|                       | - Works with the requisition preparer to provide information and documentation needed to complete/support the requisition (e.g., proper item category codes and project/activity).  
|                       | - Performs technical review or analysis of offers/proposals other than cost/price as requested by the procurement specialist.  
|                       | - Participates as requested on a source selection team.  
|                       | - Works with the procurement specialist to obtain the required goods and services at reasonable prices and under reasonable terms.  
|                       | - Informs Procurement at the beginning of the procurement process if GFP and/or SAP will be used by the subcontractor in the performance of the work.  
|                       | - Is responsible for ensuring that borrowed equipment and excess property obtained from other federal agencies is evaluated by the Berkeley Lab EH&S Division.  
|                       | - Consults with the Intellectual Property Office as needed to discuss potential intellectual property issues. |
| Requisition Preparer   | - Completes required Requisition Preparer training.  
|                       | - Ensures the requested item is not a Prohibited Item on the Restricted Item List.  
|                       | - Works with the requester to complete and issue a procurement requisition for submission to Procurement.  
|                       | - Ensures that correct item category codes are entered on the requisition, consulting with the requester as necessary.
### F. Definitions/Acronyms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Agreement</td>
<td>An agreement is an understanding or arrangement issued under the DOE-UC Prime Contract between the University of California Regents (as managing operator of the Berkeley Lab) and a third party that contains the essential terms and conditions under which goods or services will be furnished to Berkeley Lab. An Intra-University Transaction (IUT), a DOE Contractor Order, a National Institute of Health (NIH) agreement, or a Master Agreement constitutes an agreement.</td>
</tr>
<tr>
<td>eBuy</td>
<td>Electronic ordering system that enables Berkeley Lab employees to directly access supplier eCatalogs for purchasing low-value commercial off-the-shelf goods at pre-negotiated contract prices.</td>
</tr>
<tr>
<td>PCard</td>
<td>Credit card issued to designated and trained Berkeley Lab personnel in divisions and in Procurement for purchasing goods and services.</td>
</tr>
<tr>
<td>Procurement Specialist</td>
<td>An employee in the Berkeley Lab Procurement and Property Management Department who is responsible for the solicitation, negotiation, award, administration, and closure of subcontracts. Also referred to as the buyer.</td>
</tr>
<tr>
<td>Requester</td>
<td>An individual in a Berkeley Lab division who requests a good and/or service for purchase.</td>
</tr>
<tr>
<td>Requisition Preparer</td>
<td>A trained employee who prepares the procurement requisition for submission to Procurement to solicit, negotiate, and award a subcontract.</td>
</tr>
<tr>
<td>Subcontract</td>
<td>A subcontract is a legally binding contract that is subordinate to the UC-DOE Prime Contract. The subcontract, which is between the University of California Regents (as managing operator of the Berkeley Lab) and a third party, contains the essential terms and conditions under which goods or services will be furnished to Berkeley Lab. A purchase order or order constitutes a subcontract.</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>A subcontractor is the party to whom Berkeley Lab, on behalf of the University of California Regents, issues a subcontract under the UC-DOE Prime Contract for goods or services for Berkeley Lab.</td>
</tr>
<tr>
<td>UC-DOE Prime Contract (Contract 31)</td>
<td>This refers to Contract No. DE-AC02-05CH11231, the contract between the DOE and the University of California (UC) describing the terms for UC to manage Berkeley Lab. The contract includes a statement of work (SOW) for the science missions, and details the requirements for managing the operations and business of Berkeley Lab.</td>
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### G. Recordkeeping Requirements

None

### H. Implementing Documents

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<td>Procurement &amp; Property Management</td>
<td>Website</td>
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### I. Contact Information

**Procurement and Property Manager**  
Office of the Chief Financial Officer

### J. Revision History

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<th>By whom</th>
<th>Revision description</th>
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<td>1/2/2012</td>
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<td>M. Mock</td>
<td>Reformat for wiki</td>
<td>All</td>
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<td>7/12/2012</td>
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<td>D.4.3.b</td>
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<td>4/30/2018</td>
<td>2</td>
<td>E. Annis</td>
<td>Split Post Award Administration into its own policy and make clarifications to existing policy</td>
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<td>Major</td>
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**Document Information**

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**Source Requirements Documents**

- Contract 31, Clause I.114, DEAR 970.5244-1 Contractor Purchasing System (August 2009)
- University of California Conflict of Interest Code

**Implementing Documents**

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**Other References**

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