CHAPTER 10
SUBCONTRACT MANAGEMENT

(Revised May 7, 2002)

WHAT ARE THE BASIC PRINCIPLES AND OBJECTIVES OF SUBCONTRACT MANAGEMENT?

1. To ensure contractors establish, document, and maintain adequate purchasing systems.

2. To ensure Make-or-buy plans provide the lowest overall cost and technical risk to the Government.

3. To ensure contractors flow down contract requirements to subcontractors.

WHY IS SUBCONTRACT MANAGEMENT IMPORTANT?

In many Department prime contracts a significant portion of the obligated dollars is spent on subcontract work. Due to the absence of a direct contractual relationship with the subcontractor, the Department must rely on the prime contractor to manage subcontract work. Subcontractors perform significant work efforts at sites and are an integral part of the site's success. Prime contractors are fully reimbursed (consistent with reimbursement rules) for subcontracted work and compensated through profit or fee to manage their subcontract effort. Therefore, the Department of Energy (DOE) must ensure that the prime contractor exercises adequate controls over subcontractors. Problems at the subcontract level can have a significant impact on the prime contractor's ability to meet its contractual obligations. This chapter deals with subcontract management activities, roles, and relationships of the prime contractor and DOE.

WHAT IS A GENERAL DESCRIPTION OF THE PROCESSES UNDER SUBCONTRACT MANAGEMENT?

There are several aspects to subcontract/ subcontractor management which are addressed in this chapter. These are aimed at the prime contractor's responsibilities to:

- Establish, document, and maintain a purchasing system and develop a self-assessment program to ensure adequate controls;

- Develop, obtain approval of, and administer a make-or-buy plan;

- Acquire quality products at fair and reasonable prices, using best in class commercial purchasing practices and procedures and ensure fair and open competition;

- Flowdown contract requirements to subcontractors and audit subcontracts as needed;

- For DOE, requirements that relate to the prime contract include:
- Review and periodic appraisal of the contractor's purchasing system and its self-assessment reports;

- Review of individual purchasing actions which meet certain criteria and/or exceed certain limits; and

- Guidance to the contractor on criteria used in make-or-buy plans and review and approve plan implementation;

Additionally, DOE has contract administration responsibility to ensure the prime contractor is obtaining satisfactory technical and/or project performance from subcontractors. The larger the dollar value or complexity of the project, the more significant this role becomes.

A. Contractor Purchasing System, Contractor Self-Assessment Program and Purchasing System Reviews

What is the purpose of the contractor's purchasing system?

Contractors procure products and services for DOE through their purchasing systems. Very briefly, those systems are intended to ensure that:

- Quality products and services are acquired at fair and reasonable prices,

- Capable and reliable subcontractors are used,

- Acquisition lead-times and administrative costs are minimized,

- Effective competitive techniques are used,

- Performance risks are minimized,

- The highest professional and ethical standards are maintained, and

- Appropriate file documentation is maintained.

The prime contractor must develop, implement, and maintain formal policies, practices, and procedures used in the award of subcontracts consistent with Department of Energy Acquisition Regulation (DEAR) 970.5244-1. The prime contractor's system and methods must be documented and consistently applied, and acceptable to DOE. The prime contractor also is required to develop and manage a Self-Assessment Program, and submit to the Contracting Officer (CO) copies of their self-assessment reports in accordance with written direction and guidance provided by the CO.

Who has responsibility for oversight of the contractors' purchasing systems?

DEAR 970.4401-1 states that the overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of the Contracting Activity (HCA). Additionally, it is the CO's responsibility:

- To ensure the contractor's conformance with DEAR 970.4401 and their contracts, and

- To determine whether those purchasing systems provide timely and effective support to DOE programs.

Does DOE tell a contractor how to ensure that its purchasing system is maintained in accordance with the terms of its contract?

No! DOE does not tell a contractor specifically **how** it is supposed to ensure that it has an acceptable purchasing system. The "Contractor Purchasing System" clause (DEAR 970.5244-1) states **what** is required of the purchasing system but not how to accomplish it.

What happens if the contractor does not maintain its purchasing system in accordance with its contract?

The "Contractor Purchasing System" clause gives DOE the right to review and approve the contractor's purchasing system in accordance with FAR subpart 44.3 and implementing DOE policy and guidance. This clause also gives DOE the right to require **at any time** that the contractor submit for approval any or all purchases under the contract. If the contractor's purchasing system does not meet the contract's requirements, DOE can scrutinize any or all of the contractor's purchases. Certainly, neither the contractor nor DOE would want to unnecessarily review contractor purchases as that would be an inefficient allocation of resources.

Does DOE provide any guidance on acceptable methods for the contractor's Self-Assessment Program for purchasing systems?

Yes! The Department has been promoting the Balanced Scorecard Performance Measurement and Performance Management Program as its primary method for continuous improvement of its Federal procurement and contractor purchasing systems. The document describing this program is entitled "Balanced Scorecard Performance Measurement and Performance Management Program" and it is available on our website at http://professionals.pr.doe.gov. This document is also contained in DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program," and it provides guidance to all Departmental and contractor personnel on assessing Federal procurement and contractor purchasing systems. It also states that for those contractor purchasing systems covered by DEAR 970.4402, the Heads of Contracting Activities are to promote acceptance of the Balanced Scorecard assessment methodology.

What is the document entitled "Major Site and Facility Management Contractor Purchasing Self-Assessment Contractor Compliance Review Objectives?"

The Balanced Scorecard program description mentioned above refers to a document entitled "Major Site and Facility Management Contractor Purchasing Self-Assessment Compliance Review Objectives." This document is provided to assist contractors in conducting the compliance review portion of their self-

assessment. You may access this document on our internet homepage previously mentioned.

The Balanced Scorecard program requires that Federal procurement and contractor purchasing offices conduct a compliance review of their activities at least once every three years. Contractor purchasing offices may do a single review of their entire purchasing system once every three years, or they may do periodic reviews such that, within a three year period, a complete compliance review of their entire purchasing system is accomplished.

Is this "Major Site and Facility Management Contractor Purchasing Self-Assessment Contractor Compliance Review Objectives" non-mandatory guidance?

Not entirely. Although much of this document is non-mandatory, it does provide a short set of "Contractor Compliance Review Objectives" which are required for those contractors participating in the Balanced Scorecard program. These objectives are top level requirements for the contractor's purchasing system review and deal with:

- Policies and Procedures,
- Internal Management Controls,
- Subcontract Clauses,
- Management of Purchasing,
- Purchase Requirements,
- Source Selection,
- Pricing, and
- Subcontract Award and Administration.

This document also provides a non-mandatory list of suggested potential self-assessment areas for contractors to consider when doing their compliance reviews.

Does the CO have any input into the areas which the contractor will review during its Balanced Scorecard purchasing system compliance review?

Yes! Part 7 of the Balanced Scorecard program description document at Subpart 4, "Administrative Issues Specific to Compliance," states that contractors are to use whatever compliance review criteria system has been approved for use between the contractor and the cognizant CO. COs must ensure that the "compliance review criteria system" to be used by each contractor is sufficient to ensure successful accomplishment of each of the previously mentioned "Contractor Compliance Review Objectives."

Additionally, the CO should ensure that the contractor's compliance review criteria system employs the appropriate self-assessment criteria to ensure compliance with these Contractor Compliance Review Objectives. A list of suggested Potential Self-Assessment Areas is included in the document "Major Site and Facility Management Contractor Purchasing Self-Assessment Contractor Compliance Review Objectives."

Do these "Major Site and Facility Management Contractor Purchasing Self-Assessment Contractor Compliance Review Objectives" change any of the Balanced Scorecard procedures?

Absolutely not! It simply provides guidance and instruction to the contractors in conducting the compliance review portion of the Balanced Scorecard self-assessment process.

When does the CO make the initial determination regarding the acceptability of the contractor's purchasing system?

DEAR 970.4401-1 states that the HCA is to require the contractor to submit, upon award or extension of the contract, its entire written purchasing system description to the CO for review and acceptance. The CO should perform a review of the written purchasing system as soon as possible after its delivery by the contractor.

How shall the CO determine if the written purchasing system description is acceptable?

The CO shall determine if the written purchasing system comports with DEAR 970.5244-1 and 970.4402.

What happens if the contractor's purchasing system is determined to be acceptable and <u>not</u> at risk?

Unless the CO determines that the contractor's purchasing system is at risk, then the CO may offer the contractor an opportunity to engage in DOE's Balanced Scorecard Performance Measurement and Performance Management Program.

What must the CO do if the purchasing system is determined to be at risk?

If the CO determines that the system is at risk, the CO shall conduct a CPSR in accordance with FAR 44.3. The CO may use the "Potential Self-Assessment Areas" contained in the "Major Site and Facility Management Contractor Purchasing Self-Assessment Contractor Compliance Review Objectives" as a guide in determining what areas to review during the CPSR.

How often must the CO determine the necessity for conducting a CPSR?

As set forth at FAR 44.302, the CO shall determine the need for a CPSR not less than once every 3 years. If the CO determines that there is no need for a CPSR, then none should be conducted.

OK! You've said that the CO must conduct a CPSR if the purchasing system is at risk. How does the CO determine risk?

The CO may determine that the contractor's system is at risk based on:

1. Failure of the purchasing system to reflect purchasing system requirements contained at DEAR 970.5244-1 and 970.4402,

2. A determination that:

    a. Actual practice does not conform to the policies and procedures that define the system and which were reviewed in the original purchasing system approval, or

    b. That the purchasing system is not meeting performance objectives contained in DOE's Balanced Scorecard Performance Measurement and Performance Management Program, or

3. The contractor is not participating in DOE's Balanced Scorecard Performance Measurement and Performance Management Program. Chapter 1 of the the DOE Acquisition Guide indicates that the Balanced Scorecard is the most acceptable alternative to the Contractor Purchasing System Reviews discussed by FAR 44.3.

If a CPSR is determined to be needed, is the entire contractor purchasing system reviewed?

Not necessarily! The Department has limited resources and those resources should be used only where they are needed. If it is determined that a CPSR is necessary, then a second assessment should be conducted to determine the overall scope of the CPSR. It is conceivable that a CPSR could be determined to be needed on only one aspect of the contractor's entire purchasing system if there are no other areas of risk. For example, the CPSR could be limited to an area of weakness/deficiency identified in a GAO or IG report.

If a CPSR is determined to be needed, who will serve on the CPSR team?

The CO will determine the size of the CPSR team and the types of expertise needed on the team based on the overall scope determined to be necessary for the CPSR.

How do other Agencies determine the need for a CPSR?

Just as an example, the system used by the Department of Defense's Defense Contract Management Command assigns a level of risk based on the guidelines contained in Appendix C. The timing of a CPSR would depend on the level of risk assigned (High, Moderate, or Low) according to the following schedule:

- High Risk - When a contractor's purchasing system receives a rating of High Risk, it must be scheduled for a CPSR with the next six months.

- Moderate Risk - When a contractor's purchasing system receives a rating of Moderate Risk, the contractor will be notified of the risks identified, and will receive a follow-up risk assessment in six months.

- Low Risk - When a contractor's purchasing system receives an overall rating of Low Risk, the CO will not normally request a CPSR.

B. Make-or-Buy Plans

What is a Make-or-Buy Plan?

FAR 15.407-2 states that the prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. In order to ensure that the contractor is doing exactly that, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure:

- Negotiation of reasonable contract prices,
- Satisfactory performance, or
- Implementation of socioeconomic policies.

The formalization of a contractor's Make-or-Buy program into a written document is called the Make-or-Buy Plan.

The February 1994 Report of the Contract Reform Team indicated that DOE and its management contractors should make more rational decisions concerning whether management contractors "make" or "buy" the services required by a project or program. The policy at DEAR 970.1504-4-2 indicates that COs must require PBMC contractors to develop and implement make-or-buy plans that establish a preference for providing supplies or services on a least-cost basis, subject to program specific make-or-buy criteria.

How are Make-or-Buy Plans evaluated?

The CO considers the following DEAR 970.1504-4-3(d) factors when evaluating a contractor's make-or-buy plan:

- Program-specific make-or-buy criteria;
- Impact of make-or-buy decision on cost, schedule, performance and risk;
- Impact on future mission requirements;
- Past experience at facility or site regarding decision for same or similar effort;
- Consistency with contractor's small business plan;
- Local market conditions;
- Where construction is required, whether the cost is in the Government's best interest when compared to subcontracting or privatization alternatives; and
- Whether: (1) all relevant requirements and costs of performing the work (by the contractor and through subcontracting) have been considered, and (2) any different requirements for the same work are reconciled.

The emphasis in make-or-buy plans is to eliminate bias for in-house performance where an activity may be performed at less cost or otherwise more effectively through subcontracting. DOE program offices responsible for the work conducted at the facility or site develop and provide specific make-or-buy criteria to the PBMC contractor. Guidance from DOE program

managers is required in scientific/technical areas. Plans are supposed to be comprehensive in nature, examining supplies or services estimated to cost one percent or more of the estimated total operating cost for a year or $1 million or over for the same year are to be included.

To the extent practicable, competitive solicitations should:

- Identify programs, projects, work areas, functions or services that the Department intends for the successful offeror to include in any make-or-buy program;
- Require submission of a preliminary make-or-buy plan for the period of performance of the contract.

Specific incentives are not applicable to contractor make-or buy plans, nor are performance measures or incentives developed on the determinations themselves. As a general matter, direct incentives for administrative plan development and implementation are inappropriate. Understanding the importance of a sound, well-implemented make or buy program, the DOE may wish to assess projects or the contractor's purchasing system with regard to performance through the performance evaluation management plan.

How are Make-or-Buy Plans approved?

Contractors' make-or-buy plans are submitted for final approval within 180 days after contract award consistent with requirements of DEAR 970.5215-2(c). The CO evaluates the plan considering criteria outlined in DEAR 970.1504-4-3(d).

Once approved, the plan remains effective for the term of the contract (up to a period of 5 years) unless circumstances warrant a change or significant new work is added to the contract.

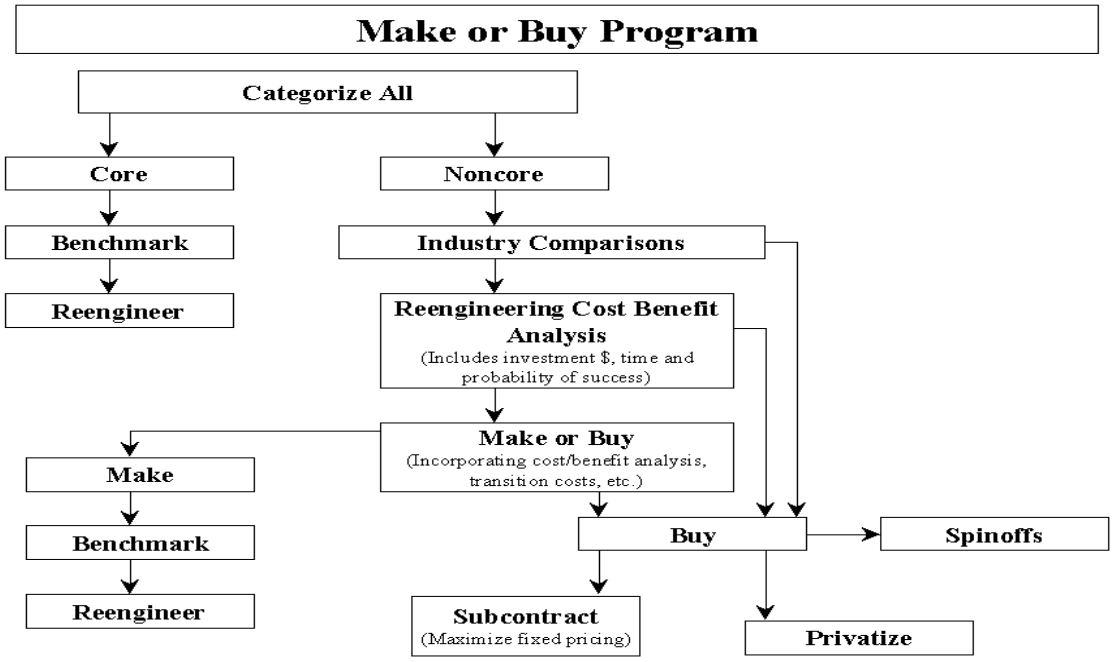
The contractor reviews its plan to ensure that it reflects current conditions. The contractor's performance against the approved make-or buy plan is to be monitored by DOE. It is suggested that Operations/Field Offices develop an oversight and review program for administering the contractor's make-or-buy program. The contractor's performance is monitored consistent with DEAR 970.1504-4-3(f) to ensure:

- Compliance with the plan,
- Deferral decisions are addressed in a timely manner, and
- That the contractor updates the plan in response to changed circumstances or significant new work.

What is an example of a DOE contractor Make-or-Buy Program?

An example of a make-or-buy analysis performed by one of the Departments PBMC contractors is the Westinghouse Savannah River program displayed in Figure 13-1. Westinghouse identified all work scope into "core" and "non-core" activities, performed industry comparisons, re-engineering cost/benefit analyses, and then performed a formal make-or-buy analysis (buy or re-engineer).

Figure 13-1 Westinghouse Savannah River



Where can I find more detailed information on the types of decisions made in a Make-or-Buy analysis?

The Westinghouse Make-or-Buy analysis was derived from the decision tree contained in DOE report "Harnessing the Market: Opportunities and Challenges of Privatization." Appendix B of the report, "Make-or-Buy Decision Tree," sets forth an excellent step-by-step set of questions which will lead one through the decisions needed to determine whether a product or service should be made by the prime contractor or bought from a subcontractor. This report may be viewed at the following web site which is also listed in Appendix B of this book:

http://www.osti.gov/privatization/report/

Additionally, the Office of Science has issued Make-or-Buy guidance in a memorandum of December 17, 1999. A copy of that memorandum may be obtained through the Office of Laboratory Policy (SC-7), Office of Science.

How are Privatization, Contracting Out and Make-or-Buy related?

Privatization serves two primary purposes as a management tool.

- First, at a strategic level, it helps an organization (the Department and/or management contractor) focus on those work activities that represent its core expertise, skill, or value-added offering. For example, by contracting out non-core functions, the organization can better focus its management attention on critical matters and at the same time bring world-class performance to peripheral functions.

- Second, at a tactical level, privatization is a means of reducing costs by ensuring that work activities are performed by the most productive, cost-effective means.

The decision to privatize comes from a policy determination that the Government no longer needs particular assets or no longer needs to be in control of all the means by which products or services are obtained or delivered. Privatization initiatives at the Department are three major types:

- Divestiture of functions,
- Asset transfers, and
- Contracting out.

Divestiture of functions involves eliminating from the Department those functions for which a Federal role is no longer required. In a divestiture, the Government transfers to private-sector control an entire ongoing enterprise, such as the Elk Hills Petroleum Reserve. Asset transfers involve the sale or other transfer of real property or personal property, such as the sale of precious metals in DOE's inventory.

The majority of DOE's privatization efforts to date have involved contracting out activities. In the DOE context, contracting out can involve management contractors subcontracting out specific tasks or the Department directly contracting for services previously provided by Federal employees or management contractors. The Department's contracting out occurs through three distinct approaches:

- The Government contracts directly with the private sector for work that was done previously by Federal employees - for example, the privatization of the Department's technical library in the 1980s.

- The Government withdraws portions of work that were previously performed under a cost reimbursement arrangement under one of the Department's large facility management contracts. The Department then selects a contractor which will assume significantly more responsibility for performance of the work including, when applicable, providing financing for the project. Most contracts of this type are done under a fixed price arrangement. An example of this is the privatization contract for the Hanford Tank Waste Remediation System.

- The management contractor subcontracts a portion of its contract work pursuant to a DOE-approved make-or-buy plan.

Further discussion of the Department's privatization initiatives with case studies are contained in the previously mentioned report "Harnessing the Market: The Opportunities and Challenges of Privatization." You can access the report at the aforementioned web site which is also mentioned in Appendix B, "Related Internet Web Sites."

C. Review of Individual Purchasing Actions/Flowdown of Contract Requirements to Subcontractors

For individual purchasing actions which are of certain contract types or exceed the stated

dollar threshold (as set forth in the Contractor's approved system), the CO must review and provide consent to subcontract. The intent of the review is to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

In the review of an individual purchasing action, the reviewing CO should consider:

1. FAR 44.202, "Contracting Officer's Evaluation": This FAR section provides a description of the CO's responsibilities and a list of 13 considerations which should be addressed in all reviews for consent. Particular attention to these considerations is necessary when:

- the prime contractor's purchasing system or performance is inadequate;
- close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;
- subcontracts are proposed for award on a noncompetitive basis or at a price that appears unreasonable;
- subcontracts are proposed on a cost-reimbursement, time-and-material, or labor-hour basis.

2. For those subcontracts requiring CO consent, the CO should review the proposed subcontract to assure it meets all the requirements of the Contractor's approved purchasing system.

3. The CO also reviews subcontracts to assure they meet any applicable standard operating procedures or other internal office procedures.

In establishing the appropriate thresholds for review of subcontract actions, the HCA should consider the requirements set forth at DEAR 970.4401-2. In addition to establishing requirements relating to review thresholds, this DEAR section provides guidance relating to the roles and responsibilities of the HCA and the CO.

D. Contract and Subcontract Administration

As described on page 10-1, DOE has no privity of contract on subcontracts. The site contractor is responsible for the performance of subcontractors. All DOE actions are with the prime contractor. DOE should require the prime contractor to perform all contract and project management activities necessary to assure subcontractor performance. When appropriate, the CO and the Contracting Officer's Representative (COR) or program officer may review subcontracts to assure they contain appropriate language. The prime contractor should enforce the subcontract if it receives variance reports, and report recovery actions to DOE. Management of the subcontract should be rewarded or penalized through the performance evaluation fee process discussed in Chapter 5, "Performance Measurement and Assessment," of this Reference Book.

E. Requirements of Other Related Clauses

Other clauses pertinent to subcontracts include those which:

- Restrict subcontractor sales to the government and to certain foreign purchasers,
- Allow use of government supply sources,
- Specify requirements related to use of consultant or other comparable employment services, and
- Contain requirements of priorities and allocations related to military and atomic energy construction or operations, where programs have been authorized pursuant to the Atomic Energy Act of 1954.

These clauses are listed in the References section, with roles and responsibilities delineated on the following pages.

WHAT ARE MY MAJOR ROLES AND RESPONSIBILITIES IN THE AREA OF SUBCONTRACT MANAGEMENT?

On the following pages are the major roles and responsibilities of members of the contract administration team. Key sections of documents have been summarized for ease of reference. Please bear in mind that the referenced documents themselves are controlling and should be consulted for a complete discussion of the various roles, responsibilities and requirements. Additionally, other documents, not listed here, may contain other roles and responsibilities.

Note: Various responsibilities on the following pages are marked with an asterisk (*). This signifies that the responsibility is not specifically assigned to this individual by a clause, regulation, or procedure. It is suggested because:

(1) The responsibility is necessary to perform Government contract administration responsibilities; and is either commonly performed by this individual or reflects "good business practice."

(2) The responsibility is stated in the reference as a DOE/Government responsibility; and is either commonly performed by this individual or reflects "good business practice."

Local guidance may determine who specifically is obligated to perform the responsibility.

PROGRAM OFFICE

Develop and provide specific make-or-buy criteria to the prime PBMC contractor responsible for the work conducted at the facility or site. Plans are to be comprehensive in nature, examining supplies or services estimated to cost one percent or more of the estimated total operating cost for a year or $1 million or over in the same year are to be included.
[DEAR 970.1504-4-3]

HEAD OF CONTRACTING ACTIVITY

Provide oversight of the performance of PBMC contractors, including their purchasing activities.
[DEAR 970.4401-1(a)]

Require PBMC contractors to maintain written descriptions of their individual purchasing systems and methods.
[DEAR 970.4401-1(b)]

* Ensure the contractor maintains a written description of its business systems if Cognizant DOE Office, which must be accepted by the CO.
* Accepts substantive changes to a contractor's business systems in writing.
[DOE Acquisition Guide, Chapter 1, Attachment 2, "Balanced Scorecard Assessment Program"]

Require that changes to the site contractor's written purchasing description having any substantial impact on that system and methods be submitted to the CO for review and acceptance prior to issuance.
[DEAR 970.4401-1(b)(2)]

Ensure review of individual purchasing actions of certain types or above stated dollar levels by the CO pursuant to FAR 44.2, "Consent to Subcontracts" or as set forth in the contractor's approved system and methods.
[DEAR 970.4401-1(b)(3)]

Ensure that periodic appraisals (e.g., Contractor Purchasing System Review and Surveillance Review) of the contractor's management of all facets of the purchasing function are performed by the CO in conformance with established policies or in accordance with the Balanced Scorecard..
[DEAR 970.4401-1(b)(4)]

Assure CO's determine that the contractor's written systems are consistent with 970.4401-1 and contract provisions, in performing reviews required by DEAR 970.4401-1(b)(1)(2) and (b)(4).
[DEAR 970.4401-1(c)]

Establish thresholds by subcontract type and dollar level for review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance.
[DEAR 970.4401-2]

* Issue determination approving, conditional approving, or disapproving of contractors' purchasing systems, and forward the determination to DOE HQ.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]

Ensure the assessment program described in DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program" is implemented. Promote acceptance of the Balanced Score Card assessment methodology by contractors whose purchasing systems are covered by DEAR 970.4402-2.
[DOE Acquisition Guide, Chapter 1, Attachment 2-10]

Ensure periodic self assessments are performed by the contractor in accordance with the terms and conditions of the contract and the Balanced Scorecard assessment methodology.
[DOE Acquisition Guide, Chapter 1, Attachment 2]

Assure the contracting activities establish and maintain files of documents associated with the review and approval of subcontract actions subject to DOE review and approval.
[DEAR 970.4401-2]

Take action as required to insure compliance with the procedure for purchasing from contractor affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract, may require DOE approval.
[DEAR 970.4401-2]

SUBJECT MATTER EXPERTS FROM COGNIZANT PROGRAM AND HUMAN RESOURCES AREAS

Subject matter experts from cognizant program, legal, human resources, and small business disciplines provide advice and counsel to the CO in reviewing and evaluating the adequacy of the contractor's make-or-buy plan.
[DOE Acquisition Guide, Chapter 70]

COUNSEL

* Provide advice and counsel on legal issues.

CONTRACTING OFFICER

Assure PBMC contractors conform to DEAR 970.4401-1 and their contracts, and determine whether those purchasing activities provide timely and effective support to DOE programs.
[DEAR 970.4401-1]

* Establish thresholds by subcontract type and dollar level for the review and approval of proposed subcontracting actions by each PBMC contractor under their cognizance.
[DEAR 970.4401-2]

Assure PBMC contractors establish and maintain adequate subcontract files and documentation that document purchases in writing.
[DEAR 970.4401-2]

Review the contractor's Balanced Scorecard development and implementation and ensure conformance with DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program".
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]

Evaluate and validate the contractor's assessment methodology for their purchasing system, and monitor the contractor's assessment activities. Collect and analyze contractor assessment results, and advise the HCA.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]

Ensure that no later than 60 days from the effective date, the contractor's approved procurement system provides adequate management control and oversight relating to the use of Inter-Contractor Purchases.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]

* Require contractor development and administration of Make-or-Buy Plans, evaluate and approve plans and revisions, and assure plans are monitored using DEAR 970.1504-4-3(d) criteria.
[DEAR 970.1504-4-3(a), (d), (e), (f)]

May issue to the contractor an authorization to use Government supply sources in the performance of this contract.
[FAR 52.251-1]

ADMINISTRATIVE CONTRACTING OFFICER (At DOE this is the Contracting Officer)

Maintain a sufficient level of surveillance to ensure the contractor is sufficiently managing its purchasing systems.
[FAR 44.304(a)]

Develop a plan and conduct surveillances of the contractor's purchasing system and pertinent operations affecting the contractor's purchasing and subcontracting, with the assistance of subcontracting audit, pricing, and other technical specialists.
[FAR 44.304(b)]

Consent to subcontracts under his/her purview in accordance with considerations described in FAR 44.202-2. Review contractor's notification and supporting data to ensure the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound judgment.
[FAR 44.202]

CONTRACTOR

Fully document and consistently apply a purchasing system and methods which are acceptable to DOE in accordance with DEAR 970.4401-1.
[DEAR 970.5244-1; DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]
Establish and maintain business systems and processes which meet Department requirements. Conduct credible, documented assessments of the business processes.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program", Part II, Section 3, D]

Submit to the cognizant DOE Office an annual assessment plan to the contracting purchasing office to allow review, comment, and submission to DOE HQ by August 15 each year for the coming fiscal year.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program", Part 7, Section 4]

Periodically assess the adequacy of its control system in monitoring Inter-Contractor Purchases, subject to validation by DOE operations offices.
[DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"]

Submit an initial make-or-buy plan for approval to the CO within 180 days after contract award, consistent with DEAR 970.5215-2(c), .
Submit a make-or-buy plan for review and approval at least 90 days prior to commencement of negotiations for the extension, if an existing contract is to be extended.
[DEAR 970.5215-2]

Review the approved make-or-buy plan, at least annually, to ensure it reflects current conditions. Submit changes in advance of the effective date of the proposed change in sufficient time to permit evaluation and review.
[DEAR 970.5215-2]

Select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
[FAR 52.244-5]

Seek prior approval for subcontracting of any work a contractor is obligated to perform under a contract entered into under Section 41, Production of Special Nuclear Material of the Atomic Energy Act of 1954, as amended.
[DEAR 970.4401-2]

Follow the rules and procedures of the Defense Priorities and Allocations System regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for contract performance.
[DEAR 952.211-71]

Procure by subcontract, upon request of the CO and acceptance by the contractor, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into shall be subject to the written approval of the CO and contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.
[DEAR 970.970.5236-1]

Disclose to the CO in writing before entering into a subcontract if a subcontractor is debarred, suspended or proposed for debarment for each proposed first tier subcontractor whose subcontract will exceed $25,000.
[FAR 52.209-6]

Insert in any subcontracts in excess of $2,000 for construction within the United States the clauses entitled:

- Davis-Bacon Act,
- Contract Work Hours and Safety Standards Act--Overtime Compensation,
- Apprentices and Trainees, Payrolls and Basic Records,
- Compliance with Copeland Act Requirements,
- Withholding of Funds,
- Subcontracts (Labor Standards),
- Contract Termination--Debarment, Disputes Concerning Labor Standards,
- Compliance with Davis-Bacon and Related Act Regulations, and
- Certification of Eligibility,

and such other clauses as the CO may require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts.
Responsible for the compliance of all subcontractors.
[FAR 52.222-11]

Incorporate, to the maximum extent practicable, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under the contract.
[FAR 52.244-6]

Shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under the contract or under any follow-on production contract.
FAR 52.203-6

WHERE CAN I GO FOR MORE DETAILED INFORMATION ON SUBCONTRACT MANAGEMENT?

On Contractor Purchasing Systems, Self Assessments, and Purchasing

1. DEAR 970.5244-1, "Contractor Purchasing System"
2. DEAR 970.4401-1, "Management and Operating Contractor Purchasing"
3. DEAR 970.4402-2, "Contractor Purchasing System
4. DOE Acquisition Guide, Chapter 1, Attachment (2), "Balanced Scorecard Assessment Program"
5. FAR 44.304(b), "Surveillance"

On Make-or-Buy Plans

6. Office of Laboratory Policy (SC-7), Office of Science Memorandum of December 17, 1999.
7. DEAR 970.1504-4-1, "Make-or-Buy Plans"
8. DEAR 970.5215-2, "Make-or-Buy Plan"
9. DOE Acquisition Guide, Chapter 70, "DOE Management and Operating Contracts"

On Review of Individual Procurement Actions/Flowdown of Contract Requirements to Subcontractors

10. DEAR 970.4401-2, "Review and approval"
11. DOE Acquisition Letter 95-14, "Subcontracts Under New Independent States Program"
12. FAR 44.202, "Contracting Officer's evaluation"
13. FAR 52.222-11, "Subcontracts (Labor Standards)"
14. FAR 52.244-5, "Competition in Subcontracting"
15. FAR 52.244-6, "Subcontracting for Commercial Items and Components"

On Other Related Clauses?

16. DEAR 952.211-71, "Priorities and Allocations"
17. DEAR 970-5236-1, "Government Facility Subcontract Approval"
18. FAR 52.203-6, "Restrictions on Subcontractor Sales to the Government"
19. FAR 52.209-6, "Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment"
20. FAR 52.251-1, "Government Supply Sources"

DO YOU HAVE ANY COMMENTS OR SUGGESTIONS FOR IMPROVING THIS CHAPTER OR THE BOOK? IF SO, PLEASE CONTACT US AT:

editor@pr.doe.gov

CHAPTER REVISIONS

Date	Subject of Revision
May 7, 2002	1. Revised DEAR citations affected by DEAR 970 Rule (Dec. 2000) 2. Revised Section "Contractor Purchasing System, Contractor Self-Assessment Program and Purchasing System Reviews" to incorporate new guidance 3. Deleted Acquisition Letters (AL) no longer in effect (AL 2002-01)