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Procurement Operations Manual (POM)

Procurement Operational Manual Revisions			
REV. NO.	DATE ISSUED	APPROVED BY	DESCRIPTION
0	5/7/2007	M. Waite	<ul style="list-style-type: none"> • Original Issue of POM
1	7/2/2007	M. Waite	<ul style="list-style-type: none"> • Add Part 14 PCard Procedures
2	9/18/2007	M. Waite	<ul style="list-style-type: none"> • Add sections 11.5 11.6; Part 44 Procurement Training Plan; and Part 48 Value Engineering
3	9/30/2007	M. Waite	<ul style="list-style-type: none"> • Update Part 23, WSH&Q
4	4/25/2008	J. Scarcello	<ul style="list-style-type: none"> • Revise Part 1 paragraph 1.1(b) to require BOM approval for POM revisions • Update Property Sections 45.1 and 45.3
5	3/22/2011	J. Scarcello	<ul style="list-style-type: none"> • Revise Part 2 Definitions for Conflict of Interest, Organizational Conflict of Interest, and Simplified Acquisition Threshold • Revise Part 3.2 General to clarify the Laboratory's position on Conflict of Interest and Organizational Conflict of Interest • Revise Section 4.10 Quality Reviews to change the threshold for required checklists and quality reviews • Added Section 4.13 (e.) Guidance for using counterintelligence clauses and (f.) guidance for E-Verify • Added Section 16.3 Guidance for Use of Special Clauses • Added Section 17.3 additional guidance for use of award terms • Revised/updated Technology Transfer Sections 18.5-18.8 • Add section 19.4 10% Hub Zone Price evaluation factor • Add section 19.5 Utilization of Indian Organizations and Indian-Owned Economic Enterprises • Revised 25.6 Duty Free Entry consistent with DOE Contract Modification 104 • Added Green Purchasing under 26.3 • Part 28-Revise Performance and Payment Bonds consistent with FAR 28.102 • Updated CAS exemptions under 30.2 and guidance under 30.5 and 30.6 • Add section 36.14 Additional labor requirements • Add section 39.4 purchasing laptop and desktop computers and 39.5 Information Technology • Revise section 42.1 to define applicability for SOTR responsibilities and update close out process under 42.7 • Update Part 45.1 and 45.3 Providing Guidance for Government Property • Update Part 46.2 Purchasing Quality Significant Items
6	4/6/2012	J. Scarcello	<ul style="list-style-type: none"> • Globally replace "Procurement Director" with "Procurement Manager" • Update definitions Part 2 to include Construction and Supplies, update dollar threshold for Certificate of Current Cost or Pricing Data, and add definition for Inter-Entity Work Orders (IWO) • 3.4 Updated "Gratuities" to reference JLab Administrative Manual • 3.9 Inserted paragraph to expand guidance on Organizational Conflicts of Interest (OCI) • 4.10 (c.)(3) Increase review threshold from \$25,000 to \$50,000

Procurement Operational Manual Revisions (continued)			
REV. NO.	DATE ISSUED	APPROVED BY	DESCRIPTION
			<ul style="list-style-type: none"> • 4.14 Inserted to provide added guidance on award requirements and conditions permitting a notice for notice of award and notice to proceed • 6.5 (b.) Changed to require supervisor's approval for actions >\$50,000 and updated section • 9.1(b) Increase threshold from \$25,000 to \$30,000 and increase requirement for Buyer to annotate EPLS check above the Simplified Acquisition Threshold • Part 12 Commercial Items updated • Part 14.2 was added to reference PCard Policy and Procedures documents • 15.15 Revised to allow acceptance of proposals after a competitive range determination under certain mistake conditions • 18.3 and 18.4 Updated sections on Inter-Entity Work Orders (IWO's) and CRADA's respectively • 19.1(b) Change buyer authority for dissolving a small business set-aside from \$25,000 to \$50,000 • 19.3- Revise section part (a) to remove dollar ceiling for awards to Mentor Protégés • 19.4 Delete small disadvantaged business price evaluation adjustment • 25.1(b) Increase buyer/subcontracting officer approval threshold for DOE Buy American "non availability" determinations to \$50,000 • 42.1 (b)(3) increase value to \$150,000 • 42.7 Update Closeout checklist • 42.8 Update Closeout procedures and guidance
7	5/17/2012	J. Scarcello	<ul style="list-style-type: none"> • 40.4 Delete "A list of existing agreement is contained in both the Buyer and Department Emergency Kits."
8	11/14/2012	J. Scarcello	<ul style="list-style-type: none"> • 5.2 FED BIZ OPS – Removed section © in its entirety • 6.4 Removed GSA schedule contract • 6.5 Sole Source Actions under section © changed \$25,000 to \$50,000 • 18.5 (5) (vii) added sections (A,B,C) • 18.5 (6) (vi) added section (A) • 18.7 (c)(4)(vi) added sections (A,B,C) • 18.87 (d)(3) added section (i) • 18.8 (a) (6) added section (I, ii) • 42.6 Revised second sentence to state "The Subcontracting Officer shall notify the SOTF of his/her duties as soon as possible after being assigned and prior to any site visit" • 18.5 (5) (i) revised first sentence to include "a Procurement official within his/her limits of authority" • 18.5 (6) (ii); 18.7 © (4) (ii); 18.7 (d) (2) (ii) added "by the Laboratory Director, designated representative or a Procurement official within his/her limits of authority"

Procurement Operational Manual Revisions (continued)			
REV. NO.	DATE ISSUED	APPROVED BY	DESCRIPTION
9	1/30/2014	J. Scarcello	<ul style="list-style-type: none"> • 2. Definitions - Conceptual Design and Tier I thru III Services (Added) • 9.5 - (Added) Reporting Executive Compensation And First-Tier Subcontract Awards (Jul 2010), FAR 52.204-10 • 10 Market Research - Deleted (Reserved) • 18.7(c) 1. - revised procedures for WFO • 25.1 (a) – DEAR 970.2570, 25.1 (b) - \$500k or less added – 25.2 (c) substituted the word “use” for the word “deliver”. • 26.3 modified to include EPEAT Silver Requirement for PC’s • 32.4 (b) (1) (i); 32.4 (b) (2) (ii) Subcontract Funding – changed Far Subpart 52.232.19 to JSA Clause 119.
10	7/15/2015	J. Scarcello	<ul style="list-style-type: none"> • Section 18.5 (g) Revised process for JSA officials involved in CRADA formation will individually submit in writing a declaration of no conflict of interest, at the initiation of negotiations of CRADAs. • Section 18.5 (g) - Revise Process for CRADAs to include submission of to JSA Legal Counsel a proposed statement of work / proposal for CRADA with foreign partners. JSA Legal Counsel will advance the statement of work / proposal for CRADA with foreign partners to the DOE Office of International Cooperative Activities (IA-31) for DOE Headquarters coordination and approval. • Section 18.7 (c) Prior to WFO negotiations with a foreign sponsor, submit to JSA Legal Counsel a proposed statement of work / proposal for WFO with foreign partners. JSA Legal Counsel will advance the statement of work / proposal for WFO with foreign partners to the DOE Office of International Cooperative Activities (IA-31) for DOE Headquarters coordination and approval • Section 22.1 (a) Walsh Healey name and threshold change • Section 22.1 Davis Bacon name change • Added Part 52 - Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements • Added Section 37.5 - Nondisplacement of Qualified Workers Clauses
11	12/15/2015	J. Scarcello	<ul style="list-style-type: none"> • Section 9. 4 - Executive Compensation, FAR 52.204-10 , threshold updated • Section 30 - COST ACCOUNTING STANDARDS, subsection 1, 2, & 5
12	06/20/2016	J. Scarcello	<ul style="list-style-type: none"> • Part 2 Definitions: Micro Purchase threshold increased to \$3,500 • Part 3, section 4: SPP reference added and the CRADA or SPP Certification title updated. • Part 4, section 7 (d) & (e); section 11(a) (6) updated with SPP and micro purchase threshold • Part 4: Electronic Signatures added • Part 12, section 1: update to acquisition of commercial supplies > SAP. • Part 13, section 6: Electronic Filing added • Part 18 title updated to: TECHNOLOGY TRANSFER AND OTHER AGREEMENTS • Part 18: MOU section used to Part 16.1 • Part 18 & Attachment: COI Certification Title Changed and SPP references added

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SUBCHAPTER A. GENERAL REQUIREMENTS (PARTS 1-4)

Part 1 JSA ACQUISITION SYSTEM

1. General

- a. This Procurement Operations Manual (hereinafter referred to as the "POM") provides guidance to Jefferson Lab Procurement staff to assist implementation of Jefferson Science Associates' (JSA) Acquisition Policy Manual (APM) approved by DOE. The terms "JLab", "Laboratory" and "Jefferson Lab", refer to the Thomas Jefferson National Accelerator Facility and are used throughout this POM to indicate the JSA personnel and facilities responsible for execution of the procedures contained herein. The term "Department" wherever referenced in this POM shall mean the JSA Procurement Department.
- b. A controlled copy of this POM will be maintained on the Procurement Department Website signed by the Procurement Manager. Only POM revisions issued by the Procurement Manager and approved by the Business Operations Manager are authorized for use.
- c. In the event of inconsistency between the Acquisition Policy Manual (APM) and this POM- the APM shall have precedence. Department staff shall advise the Procurement Manager of any inconsistency between to the APM and POM.

2. Performance Standards

The principal purpose of the Department's acquisition system is to:

- a. Deliver on a timely basis the best value product or service to the customer by:
 1. Maximizing the use of commercial products and services
 2. Using subcontractors who have a track record of successful past performance
 3. Promoting competition to the maximum extent practicable
- b. Conduct business with integrity, fairness, and openness
- c. Minimize administrative operating costs
- d. Effectively manage risk
- e. Fulfill the Laboratory's policy objectives, such as:
 1. Providing opportunities for small and small disadvantaged business
 2. Protecting the environment through the purchase of energy efficient and recycled products
 3. Making purchases consistent with the Laboratory's mission
 4. Using Performance Based Service Contracts to realize improved subcontractor performance and cost savings.

3. Price and Cost Reasonableness

The buyer/subcontracting officer shall determine that prices (or costs) are fair and reasonable for every procurement action.

- a. Price reasonableness is based on whether the item's price is "fair" and justified based upon competitive market conditions, similar purchases, delivery schedule, and other relevant factors.
- b. Buyer/subcontracting officers shall document the file, establishing the basis for this determination for actions exceeding the micro-purchase threshold.

4. Responsible Contractors

Purchases shall be made from and subcontracts shall be awarded to responsible prospective subcontractors only.

Part 2 DEFINITIONS OF WORDS AND TERMS

ADDENDUM - a revision to the technical specification or statement of work normally prepared by technical personnel which is incorporated into solicitations, purchase orders or contracts by procurement personnel.

ADVANCE PAYMENTS- advances of money made to a supplier prior to, in anticipation of, and for the purpose of complete performance under a subcontract or purchase order. Since they are not measured by performance, they differ from partial, progress, or other payments measured and made on the basis of performance. Advance payments are the least desired method of supplier financing due to the potential risk to the laboratory.

AFFIRMATIVE PROCUREMENT- the acquisition of products determined to be environmentally friendly. This includes products that have recycled content or are bio-based products.

AMENDMENT- a written revision to a request for proposal (RFP), or request for quotation (RFQ)

ARCHITECT-ENGINEER SERVICES - licensed professional services associated with research, development, design and construction alteration or repair of real property as well as incidental services that members of these professions and those in their employ, may logically or justifiably perform. These include studies, investigations, surveys, evaluations, consultations, planning,

ASSIGNMENT OF CLAIMS - the transfer by the supplier to a bank, trust company or other financial institution, of the supplier's right to be paid by the laboratory for subcontract performance, subject to setoffs and laboratory approval.

AUDIT- a systematic examination of a supplier's or prospective supplier's accounting records and documents by a professional subcontract cost auditor.

AUTOMATED DATA PROCESSING EQUIPMENT (ADPE) means any equipment or interconnected system or subsystems of equipment that is used in the automated acquisition, storage, manipulation, management, movement, control, display, switching interchange, transmission, or reception, of data or information. Such term includes computers; ancillary equipment; software, firmware, and similar procedures; services, including support services; and related networking resources involved with computer and data communications. The term does not include any of the above hardware, software, or services that are embedded in any non-ADPE system or component (also see information resources management).

AWARD DOCUMENT - a purchase order, JSA first-tier purchase orders and subcontracts, agreement, task order, work order or any other written document used to record the agreements between the laboratory and suppliers.

BASIC ORDERING AGREEMENTS - a bilateral procurement document with negotiated terms and conditions to be applied to future work by the issuance of purchase orders, task orders or work orders to be signed by both parties. Basic agreements include basic ordering agreements, blanket purchase agreements or similar type arrangements that do not obligate funds with the original agreement.

BEST VALUE SOURCE SELECTION TECHNICAL CRITERIA - the criteria laboratory personnel incorporate into a solicitation and use to evaluate appropriate technical and management capabilities of potential suppliers.

BIO-BASED PRODUCT- a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, or marine) or forestry materials

BEST VALUE SOURCE SELECTION PROCESS - a negotiation process whereby a tradeoff or analysis between the technical and management differences of suppliers, and their respective prices, are made by the source selection official to determine if these differences justify paying the cost differential, if any, between potential suppliers.

BUSINESS SENSITIVE INFORMATION - the designation for information that pertains to any procurement activity where if inadvertently released could compromise the procurement process or cause harm to a JSA vendor. The Procurement Department may request that technical evaluators and members of technical evaluation teams certify that they will restrict their use of information contained in any supplier proposal for evaluation

purposes; refrain from making photocopies, or otherwise recording information contained in a proposal, refrain from discussing a proposal outside of the evaluation proceedings with anyone, including the originator of the proposal, without prior written approval of the procurement department, return all proposal materials to the procurement department and exercise reasonable caution in the handling of proposals to prevent inadvertent access by others.

CAPITAL (FINANCIAL) LEASE (EQUIPMENT) - any lease in which the Lessor expects to recoup his investment, plus profit during the term of the subcontract. The components that make up the monthly payment on a financial lease include, the cost of money (interest), depreciation rate (determined by the length of lease), and the Lessor's fee. Also, any lease in which the total payments during the term of the lease exceed 90% of the purchase price, or in which the total term of the lease exceeds 75% of the projected useful life of the equipment is considered a capital lease. Prior DOE approval is required prior to the issuance of a solicitation for a lease which is determined to be a "capital" lease.

CERTIFICATE OF COMMERCIAL PRICING - a form signed by the supplier that certifies that to the best of its knowledge that the prices offered to the laboratory under its offer/proposal for those items of supply or services are no higher than any other price charged to any customer, including any governmental instrumentality, during the preceding ninety (90) days.

CERTIFICATE OF CURRENT COST OR PRICING DATA - a form signed by the supplier that certifies that to the best of its knowledge and belief, the cost or pricing data submitted in a proposal was accurate, complete, and current as of the date of agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price. Certification by the supplier is required for procurement actions pursuant with the dollar threshold established in FAR 15.403-4.

CHANGE ORDER - a unilateral or bilateral revision to an existing purchase order or subcontract prepared by procurement personnel.

COMMERCIAL ITEM - see Definitions at FAR 2.101

COMPETITION - effective competition exists when it is expected that two or more responsive and responsible suppliers will submit independently prepared offers in response to a solicitation. When only one response is received the award is still considered competitive if price analysis alone supports price reasonableness on the one proposal received.

COMPETITIVE RANGE - the post evaluation, pre award phase of a negotiated procurement where one or more suppliers are identified for continued negotiations

COMPLEX ITEMS - any item with quality characteristics, not wholly visible in the end item, for which contractual conformance must be established through precise measurements, tests and controls during purchasing, manufacturing, assembly, and functional operations, either as an individual item or in conjunction with other items.

CONCEPTUAL DESIGN - In System Development an early phase of the System Engineering process in which requirements and other factors are considered in order to produce a system concept, which usually consists of schematic diagrams, sketches, mathematical and physical models, and study reports. Also referred to as "synthesis".

CONFLICT OF INTEREST - when a laboratory employee's personal interest conflicts with, or gives the appearance of conflicting with the interest of the laboratory, or the government and may influence a procurement decision to be made on behalf of the laboratory. Such occurrence should be brought to the attention of procurement management. A conflict of interest exists even if no improper act results from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization. For example, a purchasing manager of an organization has a duty to perform their work with loyalty to that employer, thus choosing sellers who offer the best products at the lowest prices, but might be tempted to have the organization buy, from the manager's sibling, products that are not as good or as cheap.

CONSTRUCTION- "Construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property (except that for use in subpart 22.5, see the definition at 22.502).

CONSULTANT - services made available by private individuals, acting in their own behalf that provide expert advisory services of a technical or professional nature on a fee or per diem basis. These individuals are usually exceptionally qualified, by education or experience, in a particular field.

COST ANALYSIS - a method used by procurement to determine that the suppliers proposed offer is fair and reasonable. Procurement evaluates the individual elements of cost in the offer, i.e., material, labor, indirect costs, and profit/fee. This analysis includes an appropriate verification of the cost or pricing data and the projections based on the data to determine the effect on price factors such as cost necessity, allowance for contingencies, and the basis used for allocation of indirect costs.

COST REIMBURSEMENT - a category of subcontract types that allows for the reimbursement of allowable, allocable, and reasonable costs incurred in accordance with the subcontract scope of work.

COST PLUS FIXED FEE - subcontract type whereby the supplier is reimbursed for the actual costs incurred and a fixed-fee based on the original award estimate.

COST ACCOUNTING STANDARDS (CAS) - federal standards designed to provide consistency and coherence in supplier accounting systems.

COST OR PRICING DATA - all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on price negotiations. Cost and pricing data must be factual, and therefore verifiable. Such data does not reflect on the accuracy of the supplier's or prospective supplier's judgment about estimated costs or projections, but rather on the data upon which the judgments are based.

CURE NOTICE - a warning letter sent to a supplier to remedy a purchase order or subcontract deficiency within a stated period of time.

DAVIS-BACON ACT - a federal statute that requires all laborers and mechanics employed on federally funded construction, alteration or repair contracts in excess of \$2,000 to be paid the prevailing local wage rates and fringe benefits.

DEBARRED LIST - a federal government listing of suppliers prohibited from receiving awards from the laboratory unless prior approval is obtained from DOE (see EPLS).

DEBRIEFING - an explanation given by the procurement department to a supplier on the relative strengths and weakness of their unsuccessful proposal.

DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) (48 CFR Ch. 9) implements and supplements the FAR for the Department Energy's unique needs

DISCUSSIONS- negotiations that are conducted in a competitive acquisition that take place after establishment of the competitive range.

ECONOMIC PRICE ADJUSTMENT - an upward or downward adjustment to a subcontract price based on a predetermined price index as defined in the subcontract.

ENGINEERING CHANGE PROPOSAL (ECP) - a request issued by Plant Facilities and Services (PFS) or Environmental Management Operations (EMO) which must be submitted to Procurement to initiate a change to

an existing construction subcontract. This form must be complete, accurate and include appropriate funding and required approvals.

EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLIANCE REVIEW - a pre-award review performed by the federal government on suppliers who are candidates for awards estimated (including options) to be \$10,000,000 or more for non-construction requirements.

EVALUATION CRITERIA - those factors identified by the technical requisitioner or procurement personnel to be included in a solicitation and consistently applied to supplier proposals to determine the relative ranking of suppliers in the best value procurement. Criteria should be listed in descending order of importance and shall include cost/price factors.

EXCLUDED PARTIES LIST SYSTEM (EPLS) - The General Services Administration (GSA) website maintained for the purpose of disseminating information on parties that are excluded from receiving Federal contracts, and JSA subcontracts.

EXPEDITING - processing of rush orders that are needed in less than normal lead time; the follow-up activity for orders that are overdue. Checking on orders to determine status and progress, even though those orders may not be scheduled to ship for some time.

FEDERAL ACQUISITION REGULATION (FAR) is a single, uniform regulation that applies to most executive agencies, including the Department of Energy; see FAR Subpart 2.1 for a full list of procurement definitions.

FIXED PRICE AWARD - a type of purchase order or subcontract that establishes one, all-inclusive price for the performance of a definitively described service or supply.

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) CLEARANCE PROCESS- prior to entering into any subcontract subject to access authorization requirements, an affirmative FOCI determination must be obtained from DOE. The DOE determination assesses the degree of ownership, control, or influence over a supplier by a foreign interest such that a compromise of classified information or special nuclear material may result.

FEDERAL SUPPLY SCHEDULE (FSS) - schedule established by the federal government with suppliers which contains commercial pricing for supplies or services.

GENERAL AND ADMINISTRATIVE EXPENSE (G&A) - any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

GOVERNMENT FURNISHED PROPERTY (GFP) - any property furnished to the supplier or acquired by the supplier which is utilized in the performance of a purchase order or subcontract.

GOVERNMENT SUPPLY SOURCE (GSS) - means the General Services Administration (GSA), Federal Supply Schedule (FSS) contracts, Bureau of Mines, the Veterans Administration (VA), and other sources as authorized by the DOE contracting officer administering the laboratory's prime subcontract with DOE.

INCREMENTAL FUNDING - additional funding added to a purchase order or subcontract in cases where the funds obligated at the time of the original award were less than the total estimated cost or price listed in the purchase order or subcontract.

INDIRECT RATE AGREEMENT - negotiated overhead rate schedules issued by a conscious government audit agency used to support cost/price analysis of supplier's proposals.

INHERENTLY GOVERNMENTAL FUNCTIONS- An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or developing value judgments in decision-making for the Government.

INTEGRATED SAFETY MANAGEMENT (ISM) - an approach where safety accountability and performance are woven into all aspects of work planning, design, and conduct.

INTELLECTUAL PROPERTY PROVISIONS - JSA terms and conditions incorporated in purchase orders and contracts which define JSA and supplier rights related to technical data, licensing, patents, royalties, copyright, title or other specific rights to data under a purchase order or subcontract.

INTER-ENTITY WORK ORDERS (IWO'S) (formerly MPO) - Agreements between DOE Cost-type contractors (e.g. National Lab to National Lab) defined in Chapter 12, "Inter-Entity Transactions" of the DOE Accounting Handbook

JUSTIFICATION FOR NON-COMPETITIVE PROCUREMENT (Sole Source) - documentation included with a purchase requisition which supports the solicitation of only one source.

LABOR HOUR TIME-AND-MATERIAL SUBCONTRACT - a cost-type subcontract that reimburses the supplier for various costs as follows:

- Direct labor on a fixed hourly rate that includes all overheads and profit, if applicable;
- Computer and other time that is reimbursed on a fixed hourly rate that includes all overheads and profit; and
- Other direct material costs related to the work, which are reimbursed based on actual costs plus handling charges, if any.
- This type of subcontract is normally used when it is not possible to estimate schedule and costs at the time of subcontract award.

LEAD TIME - the length of time procurement department personnel take to award a laboratory requirement. Lead times start with the receipt of a complete requisition package and end with an award.

LETTER CONTRACT - a written, contractual instrument with a cost ceiling which authorizes immediate commencement of, manufacture of supplies or performance of services including but not limited to, preproduction planning and procurement of necessary materials. Letter contracts require definitization.

LOWER-TIER SUBCONTRACTORS- all additional subcontractors performing work on site for and under the direction of a business that is under a direct subcontract with Jefferson Lab.

MEMORANDUM PURCHASE ORDERS (MPO'S) – Now called Inter-Entity Work Orders (IWO)

MAXIMO- JSA's electronic purchase requisition and management information system

MICRO-PURCHASE is any purchase of supplies, or services that does not exceed \$3,500, or a construction requirement that does not exceed \$2,000, or services not exceeding \$2,500 that is subject to the Service Contract Act. FAR 2.101

MILESTONE PAYMENT SCHEDULE - incremental payments to a supplier linked directly to the completion of a designated element of work over the life of a subcontract. A milestone payment schedule identifies milestones and payments paid to a supplier based on a comparable amount commensurate with the value of work completed and accepted.

MISTAKE IN OFFER (BID) - those circumstances where a supplier asserts that the originally quoted price was in error and requests permission to withdraw or correct its offer bid.

MODIFICATION - a written revision to a subcontract, purchase order, or agreement by means of a change order or supplemental agreement.

NEGOTIATION - the process by which the buyer/subcontract specialist and the supplier reach agreement on terms and conditions, cost and/or price.

NON-COMMERCIAL ITEMS - such items normally include:

- Research and development contracts of any type, including fixed-price;
- Services procured on an hourly basis without a definite task; and/or
- Awards made under cost-reimbursement, labor hour, not-to-exceed and time-and-materials-type contracts.

NON-COMPETITIVE PROCUREMENT -a procurement which is awarded on the basis of a supplier being the only known source capable of performing the required scope of work, or providing the required supplies or services; or the only known source capable of performance or delivery within the required time frame and at a fair and reasonable price.

NON-DEVELOPMENTAL ITEM - means:

- Any previously developed item of supply used exclusively for governmental purposes by a federal agency, a state or local government, or a foreign government;
- Any item described in paragraph 1 of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
- Any item of supply being produced that does not meet the requirements of paragraph 1 or 2 solely because the item is not yet in use.

NONPERSONAL SERVICES SUBCONTRACT- means a subcontract under which the personnel rendering the services are not subject, either by the subcontract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between JSA and its employees.

NOTICE TO PROCEED - a required start work notice issued to suppliers by the procurement department which directs the supplier to start work on a construction subcontract.

OPTIONS - a unilateral right of the laboratory included in a subcontract or purchase order which the procurement department may, at its sole discretion, exercise to purchase additional quantities of a supply or service as described in the original subcontract.

ORGANIZATIONAL CONFLICT OF INTEREST (OCI) - An organizational conflict of interest, or OCI, may exist in the same way as a personal conflict of interest, in the realm of the private sector providing services to the Government, where a corporation provides two types of services to the Government that have conflicting interest or appear objectionable (i.e.: manufacturing parts and then participating on a selection committee comparing parts manufacturers). Corporations may develop simple or complex systems to mitigate the risk or perceived risk of a Conflict of Interest. These risks are typically evaluated by the JLab Procurement Office to determine whether the risks pose a substantial advantage to the private organization over the competition or will decrease the overall competitiveness in the bidding process.

If a relationship or situation exists whereby an offeror or a contractor, (including chief executives and directors, to the extent that they will or do become involved in the performance of the subcontract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that relate to the work to be performed under a laboratory subcontract and such interest or interests, may reasonably (1) diminish an offeror's or contractor's capacity to give impartial, technically sound, objective assistance and advice, or (2) result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the subcontract.

OVERHEAD - an element of cost in a supplier's proposal. This cost is normally made up of indirect expenses that are necessary to operate a business that cannot be allocated to one specific job performed by a supplier. Typical overhead cost elements are rent, mortgage, utilities, building maintenance and capital equipment.

PERSONAL SERVICES- a personal services subcontract is characterized by the employer-employee relationship it creates between JSA and the contractor's personnel. JSA is normally required to obtain its employees by direct hire under competitive appointment or other applicable Laboratory procedures.

An employer-employee relationship under a service subcontract occurs when, as a result of (i) the subcontract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of JSA personnel. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a JSA employee.

Each subcontract arrangement must be judged in the light of its own facts and circumstances, the key question always being: will JSA exercise relatively continuous supervision and control over the contractor personnel performing the subcontract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous JSA supervision of a substantial number of contractor employees would have to be taken strongly into account. See additional description of these services at FAR 37.104.

PRECIOUS METALS AND RARE MATERIALS - materials which are found in commercial markets but have a very high monetary value in relation to volume and weight.

PRICE ANALYSIS - a method used by procurement to determine the reasonableness of a supplier's proposed price. Forms of price analysis include a comparison of proposed prices received in response to a solicitation, comparison of a proposed price to prior subcontract prices for similar or like items, rough yardsticks, published price lists or published market prices, or comparisons to independently prepared JSA estimates.

PRICE REASONABLENESS- the process of determining a price fair and reasonable by either price or cost analysis techniques.

PROCUREMENT OFFICIAL - Any JLab employee authorized to commit funds on behalf of the Laboratory, including P-card users.

PROFIT - the basic motive of commercial business; the net proceeds of selling a product or service when costs are subtracted from revenues. Profit margins are usually related to the risk of the work.

PROGRESS PAYMENTS - payments made periodically throughout the lead time of a purchased product or service. Payments made prior to completion for specific reasons. As examples, a progress payment might be made on costs incurred, or made at specific intervals during a construction project as parts of the project are completed.

PROPRIETARY INFORMATION - any data submitted to the Procurement Department by a supplier that is clearly marked as such and is not publicly available. This information may only be used by JSA in a manner authorized by the supplier.

PURCHASE ORDER generally means a unilaterally executed purchase action that normally does not exceed the Simplified Acquisition Threshold pursuant to FAR. However, in some cases, commercial acquisitions exceeding the Simplified Acquisition Threshold are placed via purchase orders.

QUALITY ASSURANCE PROVISIONS - quality assurance requirements established by the requisitioner commensurate with the complexity significance and function of the requirement and consistent with federal regulations

QUALITY ASSURANCE REPRESENTATIVE (QAR) - laboratory personnel responsible for helping the requisitioner determine appropriate quality requirements, as well as approving quality assurance provisions forwarded to the procurement department for inclusion in appropriate contracts. QAR are normally located in division offices throughout the laboratory.

RATIFICATION means the act of approving unauthorized agreements (purchase commitments) with vendors (or other parties) made by JSA personnel without delegated authority to make such agreements/commitments. The JLab Procurement Manager (or designee) is the only JLab individual with authority to ratify actions.

RECYCLED PRODUCTS - new products which are produced by using materials that were extracted from other than virgin materials or waste. Some examples are: paper, paper products, refined lubricating oils, concrete containing coal fly ash and toner cartridges.

REPRESENTATIONS AND CERTIFICATIONS - a document completed by the prospective subcontractor that describes the supplier's size, socioeconomic status and also certifications on various Government regulations and business practices.

REQUEST FOR INFORMATION (RFI) - a written request issued by the Procurement Department to obtain technical and/or budgetary information for planning purposes only.

REQUEST FOR PROPOSAL (RFP) - a written request issued by the procurement department to prospective suppliers to obtain a proposal for supplies or services. Responses to an RFP generally include a technical proposal in addition to cost or pricing information which form the basis for evaluation and subcontract award or further negotiation.

REQUEST FOR QUOTATION (RFQ) -oral or written request issued by the procurement department to prospective suppliers to obtain price, delivery, and payment terms in accordance with the stated JSA terms and conditions.

REQUISITION - forms completed by authorized laboratory requisitioners describing the material or service requested which contains funding approvals and any other authorization required for the purchase.

RESPONSIBLE SUPPLIER - a supplier with the financial resources, personnel, facilities, integrity and overall capability to fulfill the requirements of the proposed purchase order or subcontract.

RESPONSIVE - a supplier whose quotation, bid or proposal meets the requirements of the solicitation.

RIGHT OF SETOFF - the laboratory's right to reduce payments to liquidate any indebtedness of a supplier to the laboratory.

SAFETY PLAN- an official, binding document prepared by a subcontractor, bearing the signature of a responsible manager of the subcontractor that defines the ESH&Q practices and responsibilities necessary to conduct operations on Jefferson Lab property in a safe and environmentally sound manner. Safety plans must be augmented by specific activity hazard analyses where required.

SEALED BID- the method of procurement which involves solicitation of bids (IFB) from suppliers. Upon receipt of the bids a public bid opening takes place and award is made to the lowest price responsive, responsible supplier. JSA does not utilize a "sealed bid" process.

SENSITIVE ITEMS - A Property Term describing an item that is susceptible to theft because it is attractive for personal use or can be readily sold. Examples: balances (electronic), binoculars, cameras, copiers, disk drives, laptop computers, lawn mowers, lenses, microwave ovens, power tools, printers, projectors, telephone answering devices, TV sets, typewriters (See JLab Property Manual).

SERVICE SUBCONTRACT- means a subcontract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service subcontract may be either a non-personal or personal subcontract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- Routine recurring maintenance of real property.
- Housekeeping and base services.
- Advisory and assistance services
- Operation of Government-owned equipment facilities, and systems.

- Communications services.
- Architect-Engineering
- Transportation and related services
- Research and development

SERVICE CONTRACT ACT - a federal law that establishes minimum compensation rates and working conditions for all service contracts performed at a federal facility in excess of \$2,500, not otherwise exempt.

SET-ASIDE - the act of reserving the entire amount or a portion of Procurement for the exclusive participation of a small, small disadvantaged or women-owned small business concern.

SIMPLIFIED ACQUISITION THRESHOLD- means \$150,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 428a), the term means:

- \$300,000 for any subcontract to be awarded and performed, or purchase to be made, inside the United States; and
- \$1 million for any subcontract to be awarded and performed, or purchase to be made, outside the United States.

SMALL BUSINESS CONCERN - a concern, including its affiliates, not dominant in the field of operation in which it is bidding on laboratory contracts, and qualified as a small business under the criteria and size standards as established by the government.

SMALL DISADVANTAGED BUSINESS CONCERN - a small business concern that:

- a. Is at least fifty-one percent (51 %) unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least fifty-one percent (51 %) of its stock unconditionally owned by one or more socially and economically disadvantaged individuals; and
- b. Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least fifty-one percent (51 %) unconditionally owned by an economically disadvantaged Indian tribe or native Hawaiian organization, or a publicly owned business having at least fifty -one percent (51 %) of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or native Hawaiian organization.

SOCIOECONOMIC STATUS - a self-certification by a supplier that identifies the supplier as a small business, small disadvantaged and/or women-owned small business usually obtained on JSA representation and certification forms.

SOLE SOURCE is any procurement action other than "Micro-purchases" or change within the scope of work of the subcontract ("Changes" clause), that was contemplated to be awarded (or was awarded) without obtaining competitive quotations, bids or proposals. Normally this is the only known source capable of performing the required scope of work or providing the required supplies or services.

SOLICITATION - the method used by the procurement department to request quotations, bids or proposals from prospective suppliers. Solicitations are made in one of three forms: invitation for bid (IFB), request for quotation (RFQ) or request for proposal (RFP).

SOURCE SELECTION OFFICIAL (SSO) - the individual who makes the final selection decision for awarding applicable best value or any other appropriate procurement that require a source selection official.

SPECIAL NUCLEAR MATERIAL (SNM) - plutonium, uranium-223, or uranium enriched in the isotope 235, and any other material, which, pursuant to the provisions of section 51 of the atomic energy act of 1954, as amended, has been determined to be special nuclear material, but which does not include source material; or it also includes any material artificially enriched by any of the foregoing, not including source material.

STANDING ORDERS - agreements awarded by procurement department personnel for a specific class or group of suppliers or services in which certain non-procurement laboratory personnel are authorized to use to order laboratory requirements.

STATEMENT OF WORK (SOW) - a document that provides an accurate and complete description, specification or drawing identifying all work to be performed. The SOW should contain a precise statement of what, where, how, and when it is to be accomplished and delivered. The SOW is prepared by the JSA technical representative and approved for use by the Procurement department. A performance-oriented statement of work is the preferred method of describing laboratory requirements.

SUBCONTRACT generally means a bilaterally executed contractual instrument JSA/JLab uses to meet its procurement responsibilities under the DOE/JSA Contract; except that the term does not include Memorandum Agreements, Cooperative Research and Development Agreements, User Facility Agreements, Work for Others Agreements or Memorandums of Understanding.

SUBCONTRACTOR- a business entity under a subcontract with Jefferson Lab to perform specified operations or services.

SUBCONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (SOTR) - an individual responsible for ensuring that the technical aspects (form, fit, function etc.) of Procurement meet the needs of the laboratory. technical representative responsibilities include, but are not limited to, evaluating "or equals" proposed by suppliers, inspecting and accepting supplies or services, performing technical evaluation team functions; maintaining records documenting functions; supplier non-compliance issues, and reporting substantial or deficient supplier performance to procurement personnel. The SOTR also ensures conformance with ESH&Q requirements.

SUPPLEMENTAL AGREEMENT - a bilateral document to an existing subcontract signed by the procurement department and by the supplier. Scope, time, funding, and other changes to the subcontract are made under this process.

SUPPLIER - a term used to refer to any vendor, contractor, firm, offeror, bidder, individual or other legal entity doing business with the laboratory.

SUPPLIES- supplies means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

SUSPECT/COUNTERFEIT ITEMS (S/CI) are products represented as meeting specified requirements when, in fact, they may not. Key elements of the acquisition process that can prevent the introduction of S/CI are identifying technical and quality assurance requirements in acquisition documents, i.e., procurement specifications; inspecting acquired items and accepting only those that comply with requirements in acquisition documents. Such inspection includes review of supporting documentation (certificates) and test results. Engineering involvement is generally warranted to support acquisition of items, particularly when items are known to have been previously counterfeited.

SUSPECT/COUNTERFEIT PARTS PROGRAM The Laboratory's Quality Assurance & Continuous Improvement Manager is responsible for implementation of the Laboratory's S/CI Program. The S/CI Program is a systematic, lab-wide approach for prevention, identification, disposition, and reporting of S/CI. The function of the S/CI Program is to control the introduction and use of S/CI through design, procurement, and inspection/maintenance processes. S/CI shall not be intentionally introduced to JLab. A supplier certification is included in the laboratory

representations and certifications forms and a suspect/counterfeit parts clause and head-mark list are included in all procurement standard terms and conditions of purchase.

TECHNICAL DATA - recorded information, regardless of the form or media on which it may be recorded. This includes scientific or technical information as well as computer software.

TECHNICAL EVALUATION - a review of a supplier's proposal or quotation by the JSA technical representative or Technical Evaluation Team (TET) to judge how well the proposal meets the technical requirements of the solicitation.

TECHNICAL EVALUATION TEAM (TET) - two or more laboratory representatives that conduct formal technical evaluations of responses to an RFP or RFQ. The TET advises the SSO as to which offer(s) will most likely be successful in meeting the technical requirements, and providing supplies or services in accordance with the criteria listed in the solicitation (see POM part 15.11).

TECHNICAL SPECIFICATION - a document that provides a detailed description of items which will be fabricated, or accepted by the laboratory based on performance characteristics. Details are usually presented in the form of a drawing or specification. Technical specifications are prepared by JSA technical representatives.

TECHNICAL STOCKROOM ITEMS - items used in quantity by various requisitioners and inventoried by the Laboratory. Certain spare parts are also carried as stores items.

TERMINATION - an action taken by the Procurement department, in accordance with the terms of the subcontract, to end all or part of the work under a subcontract or purchase order.

TITLE I SERVICES-This includes field surveys and investigations to obtain design data and preparing contract plans, specifications, cost estimates, and estimate periods of performance.

TITLE II SERVICES -This includes services related to a specific project and consists of supervision and inspection of the construction project.

TITLE III SERVICES -These are the services performed by the Architect/Engineer firm during construction, i.e., reviewing and approving submittals, responding to Requests for Information, specific inspections during the construction project, final inspection, etc.

UNAUTHORIZED COMMITMENT, means an agreement that is not binding solely because the Laboratory representative who made it lacked the authority to enter into that agreement on behalf of JSA

UN-LIQUIDATED PROGRESS PAYMENTS - that portion of progress payments made which has not yet been liquidated through the delivery of work or materials required by the subcontract.

VALUE ENGINEERING - A formal technique by which subcontractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to JSA methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs. Refer to Far Subpart 48.101 for guidance.

VIRGIN MATERIAL - a raw material used in manufacturing that has been mined or harvested and has not yet become a product.

WEIGHTED GUIDELINES METHOD - the technique used to establish a profit/fee negotiation objective which insures consideration of the relative value of appropriate profit factors.

Part 3 IMPROPER BUSINESS PRACTICES AND CONFLICT OF INTEREST

1. Policy

See JLab APM Section Part I. and Admin Manual Section [Part 208 Employee Standards and Conduct](#) for JLab Policy regarding standards of conduct.

2. General

JSA business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of JSA's public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in JSA and/or Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of JSA/Government personnel, their official conduct must be such that they would have no reluctance to make a full public disclosure of their actions.

The buyer/subcontracting officer shall immediately notify the Procurement Manager if a personal conflict of interest or OCI exists or the potential for a conflict of interest exists on any action or activity involving the Procurement Department's mission. Also see definitions for conflict of interest and organizational conflict of interest.

3. Prohibited Conduct

- a. Prohibited conduct for all personnel involved with a procurement action includes:
 1. Disclosing subcontractor/vendor proposal information or source selection information to unauthorized persons
 2. Taking bribes or soliciting or accepting certain gratuities (see paragraph 3.4 below)
 3. Discussing future employment or business opportunities with a bidder or offeror without promptly reporting the contact in writing to the Procurement Manager or JLab Legal Counsel
 4. Using an official position or non-public information to advance private or personal interests
 5. Participating in specific matters in which the employee; spouse; minor children; general partner; or organization in which the employee serves as an officer, director, trustee, general partner, or in which the employee has a financial interest. (Procurement Officials are expected to disclose to the Procurement Manager or Legal Counsel any incompatibilities between duties performed for JSA under the DOE Contract and their private interests. Any undecided questions should be referred to the Procurement Manager or Legal Counsel.)
 6. Conspiring to defraud the Laboratory and/or Government
 7. Making false statements
 8. Having a financial interest in a potential offeror if the employee substantially participates in a procurement or serves as a member of a technical evaluation committee, source evaluation board, or a source selection official
 9. Contracting with Government employees or members of Congress
 10. Seeking or engaging in outside employment or activities with a contractor or other person whose financial interests may be affected by or conflict with the performance of your official duties
 11. Engaging in certain post-employment representations to the Laboratory and/or Government and, under certain circumstances, receiving compensation from a [sub] contractor as an employee, officer, director or consultant of the contractor
- b. Employees who engage in prohibited conduct may be subject to administrative sanctions, civil penalties, criminal fines, and/or incarceration. In addition, such conduct may result in the cancellation of the procurement or rescission of a subcontract, causing delays and interrupted procurements for goods and services.
- c. Procurement information including subcontractor bid or proposal information or source selection information may not be disclosed before subcontract award, except as authorized in writing by the Procurement Manager or JLab Legal Counsel. Source selection information includes:
 - Source selection plans

- Proposals and proposal information
- Evaluation proceedings or results
- Rankings of offers and offerors
- Any other data marked "Business Sensitive" or "Source Selection Information"

4. The Department's Procurement Officials are responsible to maintain a high standard of conduct in all interactions involving DOE and the Laboratory.

- a. Procurement Officials will secure from JSA officials involved in CRADA or SPP formation, a written declaration of no conflict of interest, at the initiation of negotiations of CRADAs or SPPs. This declaration will be in the form as set forth in Attachment - Conflict of Interest Certification for CRADA or SPP #, which will be available from Procurement.
- b. Procurement will obtain these Certifications from JSA officials, review and approve / reject them upon execution and maintain them in the respective CRADA or SPP files. JSA will provide completed Certifications upon request to the Contracting Officer. These certification forms will be secured in addition to the Certifications as is set forth in the Joint Work Statement (JWS). Rejected certifications will be referred to JSA Legal Counsel for further consideration.

5. Gratuities

As a rule a JSA Procurement Official may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (i) has or is seeking to obtain JSA or Government business with the employee's agency, (ii) conducts activities that are regulated by the employee's agency, or (iii) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. See JSA Policy set forth in Administration Manual section 208.03 paragraph C.6, Conflicts of Interest for values considered de minimis and not subject to paragraph (a.) above.

6. Contingent Fees

Are prohibited, See FAR Part 3.402.

7. Improper Contractual Relationships

The following subcontract relationships should be avoided unless approved by the Procurement Manager:

- a. A subcontract or combination of subcontracts for architect-engineer (A-E) and construction services on the same construction project. However, this shall not preclude the award of a single subcontract for the delivery of a discrete facility, turnkey subcontract, so long as the subcontractor assumes all liability for defects in design and construction and consequential damages; or
- b. Both a cost-reimbursement subcontract and fixed price subcontract for different projects if any portion of the work will be performed concurrently in the same location.
- c. Cost-plus percentage-of-cost type subcontracts shall not be used.

8. Other Improper Business Practices

See FAR guidance concerning other Improper Business Practices: Buying-in FAR 3.501 and Subcontractor Kickbacks FAR 3.502

9. Violations or Possible Violations

- a. A subcontracting officer who receives or obtains information of a violation or possible violation of the Procurement Integrity Act (see FAR 3.104-2 and 3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the subcontractor.
 1. If the subcontracting officer concludes that there is no impact on the procurement, the subcontracting officer must forward the information concerning the violation or possible violation and

- documentation supporting a determination that there is no impact on the procurement to the Procurement Manager for approval to proceed with the procurement.
2. If the subcontracting officer concludes that the violation or possible violation impacts the procurement, the subcontracting officer must promptly forward the information to the Procurement Manager.
- b. The Procurement Manager must review all information available and, in accordance with JSA procedures, take appropriate action, such as—
 1. Advise the subcontracting officer to continue with the procurement;
 2. Conclude that a violation occurred;
 3. Begin an investigation; or
 4. Refer the information disclosed to JSA Legal Counsel;
 - c. If the Procurement Manager concludes that Procurement Integrity Act has been violated, the Procurement Manager may direct the subcontracting officer to—
 1. If a subcontract has not been awarded—
 - i. Cancel the procurement;
 - ii. Disqualify an offeror; or
 - iii. Take any other appropriate actions in the interests of JSA and the Government, such as notification to JSA Legal Counsel and DOE.
 2. If a subcontract has been awarded or rescinded effect available remedy(s) pursuant to FAR 52.203-10, including recovery of the amount expended under the subcontract;
 3. If the Procurement Manager has determined, based upon a preponderance of the evidence, that the subcontractor or someone acting for the subcontractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; refer the matter to the JSA Legal Counsel and/or the Department of Energy.
 - d. The Procurement Manager should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.
 - e. If the Procurement Manager determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the JSA and Government, the Procurement Manager may authorize the subcontracting officer to award the subcontract or execute the subcontract modification after providing notification to JSA Legal Counsel.

10. Organizational and Consultant Conflicts of Interest (OCI)

An organizational conflict of interest is considered to exist when a subcontractor has past, present, or currently planned interests, that, either directly or indirectly through a client relationship, relate to the work to be performed under a JSA/JLAB subcontract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in being given an unfair competitive advantage. Refer to DEAR 909.5 and FAR subpart 9.5 for additional guidance.

- a. JSA shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site unless authorized by the Procurement Mgr.
- b. The following categories of procurement actions have been identified as having a higher probability of potential for organizational conflict of interest, and thus must be scrutinized even more carefully:
 1. Management Support Services
 2. Consultant or other professional services
 3. Contractor performance of or assistance in technical evaluations, or
 4. Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production
- c. The buyer/subcontracting officer shall thoroughly review each procurement action for a possible organizational conflict of interest. Procurement solicitations shall contain organizational conflict of interest provisions where needed.
- d. The buyer/subcontracting officer shall:

1. Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and
2. Avoid, neutralize, or mitigate significant potential conflicts of interest before subcontract award
 - i. Obtain advice of counsel and assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and sub- contract clauses
 - ii. Provide a summary briefing to the Procurement Mgr. of findings and proposed mitigation(s)

Part 4 ADMINISTRATIVE CONTROLS

1. General

This part prescribes requirements relating to the administrative and security aspects of subcontract execution, subcontractor-submitted paper documents, distribution, reporting, retention, and files

2. Procurement Authority

Buyer/subcontracting officers may only execute purchase orders and subcontracts on behalf of the JSA up to the limit of authority delegated by the Procurement Manager. The buyer/subcontracting officer's name and official title shall be typed, stamped, or printed on the subcontract/ purchase order.

3. Use of Standard Formats

The Procurement Manager has approved standard formats for use with specific types of procurement actions that incorporate required DOE Contract flow down requirements. Additionally, the buyer/subcontracting officer may include other terms and conditions established by the Department to satisfy ESH&Q, security and business requirements of the Laboratory.

- a. Standard formats are controlled on the Department's Q Drive.
- b. The buyer/subcontracting officer shall only use standard formats established for the type of purchase order/subcontract issued, e.g., use TC-1 format for commercial supplies.
- c. Alteration or deletion of an approved format that materially changes the terms and conditions for a specific procurement action requires approval of the Procurement Manager.
- d. The Procurement Manager will review Department formats as needed to ensure consistency with DOE Contract requirements (also see paragraph 4.5 below)

4. Purchase Requisitions (PR's)

An approved purchase requisition (PR) is required to initiate a procurement action by the Procurement Department. See Part 11 for requirements and controls governing process of Lab PR's

5. Prime Contract Requirements Affecting Procurement

The Procurement Manager reviews all Prime Subcontract Modifications to determine if any changes are required to be made to the APM, POM, and/or the Department's standard formats (also see paragraph 4.3 above).

6. ESH&Q Manual Changes Affecting Procurement

The Procurement Manager reviews all changes to the ESH&Q Manual to determine if any changes are required to the APM and/or POM. The result of each review is maintained in the Department files.

7. Numbering Procurement Instruments:

- a. Purchase Requisition numbers are generated automatically through the MAXIMO Requisition system and are not reset at the beginning of each fiscal year.
- b. All solicitations, agreements, subcontracts, purchase orders, and amendments, modifications and changes thereto, shall begin with the word "JSA"
- c. Solicitation numbers are based on the fiscal year and purchase requisition number that they support i.e.
 1. RFQ's are number 12 Qxxxxxx
 2. RFP's are numbered 12 Rxxxxxx
 3. RFI's are numbered 12-Ixxxxxx
- d. All PO's and subcontracts will be sequentially numbered beginning with the number of the fiscal year (e.g., 08-P0001, 09-P0001). CRADA's and Strategic Partnership Project (SPP) agreements, although sequentially numbered, do not follow the same numbering system for PO's and subcontracts.
 1. 1st and 2nd positions are the last two digits of the fiscal year in which the PII is assigned, e.g. "08" for FY 2008

2. 3rd and 4th positions shall be a dash and the capital letter assigned to indicate the type of instrument utilized.
 3. 5th through the 8th positions shall be the basic serial number of the instrument (the first instrument numbered "0001" for each fiscal year).
 4. 9th through 11th positions are reserved for amendments to solicitations, or changes, modifications and releases to the purchase orders, subcontracts, or agreements
- e. Identification Codes for Numbering Procurement Instruments are listed below:
- A** Agreements (Basic Ordering Agreements; Lease Agreements; Consultant Agreements, Preventative Maintenance Agreements, Etc.).
 - C** Subcontracts (Procurements exceeding the Simplified Acquisition Threshold for Construction, A&E, Services, Supplies and other such bilateral subcontracts).
 - D** Purchase orders ("P") (not "C" subcontracts or "M" micros) will be indicated with the designation of a "D" instead of a "P" when either the user and/or procurement needs to sign off on any invoices against that particular order. (i.e. instead of 16-P1001, it should read 16-D1001).
 - F** Inter-Entity Work Orders (IWO) formerly Inter contractor Memorandum Purchase Orders (Funds Out).
 - IA** Interagency Agreement
 - I** Request For Information (RFI- utilized to solicit information on costs or availability preceding a formal solicitation request)
 - M** Micro Purchase Order (Supply Actions < \$3,500; Services < \$2,500; and Construction < \$2,000)
 - P** Purchase Orders (unilateral actions normally consistent with the Simplified Acquisition Threshold).
 - Q** Request for Quotation (RFQ- normally utilized to request price quotations for various simplified and micro purchases).
 - R** Request for Proposals (RFP- utilized to solicit proposals/offers for moderate to complex services, construction and supply requirements).
 - S** Cooperative Research and Development Agreements (CRADA's)
 - T** User Facility Agreements (Funds In).
 - V** Commonwealth of Virginia Funded PO's and Subcontracts.
 - W** Strategic Partnership Project (SPP) (issued by JSA).

8. Signing Business Instruments

The buyer/subcontracting officer normally signs the subcontract after it has been signed by the subcontractor. The buyer/subcontracting officer shall ensure that the signer(s) has authority to bind the subcontractor (see guidance under FAR 4.102). Electronic signatures are acceptable.

9. Ratification of Unauthorized Commitments

- a. Ratification of an unauthorized action may only be exercised when:
 1. Supplies or services have been provided to and accepted by JSA, or JSA otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
 2. The resulting subcontract would otherwise have been proper if made by an appropriate buyer/subcontracting officer;
 3. The buyer/subcontracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
 4. The buyer/subcontracting officer recommends payment for the supplies or services rendered;
 5. Funds are available and were available at the time the unauthorized commitment was made; and

6. The ratification is in accordance with any other limitations prescribed under JSA policy and procedures
- b. Buyer/subcontracting officers shall determine whether the unauthorized procurement can be ratified.
 1. Complete Procurement form PD 29 Ratification Form and forward it to the person that committed the unauthorized procurement.
 2. Provide a final determination to either ratify or not ratify to the Procurement Manager.
- c. Only the Procurement Manager or his/her designee is authorized to ratify actions under this subsection.
- d. The Procurement Manager will maintain a file of all ratified (and unratified) actions that will be reviewed at least annually to determine if further corrective action(s) are needed based on a trend of ratified actions or other observed variance from JLab policy (e.g., repeat offenders will be brought to the attention of senior management).

10. Quality Reviews

- a. Validating Data Entry for Purchases
 1. The Buyer/Subcontracting Officer shall submit completed order entry form PD 2A or PD 2B within two (2) working days following award of the procurement action.
 2. Data entry for all purchases exceeding \$50,000 (including change orders and modifications) shall be coordinated with the Accounting Department to validate entry of the appropriate account split.
 3. The cognizant buyer/subcontracting officer is responsible for the accuracy of the purchasing information entered into the Costpoint system. Accordingly, prior to release to the vendor, the buyer/subcontracting officer shall review completed purchase documents for accuracy.
 - i. If the buyer/subcontracting officer performs the data entry function, the purchase document shall be validated by someone other than the buyer/subcontracting officer that entered the data.
- b. Review Checklists
 1. Department checklists are designed to cover the major elements of most types of procurements but they do not cover every eventuality of a procurement action, and therefore, Buyer/subcontracting officers should refer to additional resources such as other Department staff, Procurement Policy, training materials, FAR, etc. when processing unfamiliar or complex requirements
 2. Buyer/subcontracting officers shall complete a file checklist for solicitations exceeding \$150,000, and for all award actions exceeding the micro-purchase threshold including modifications but excluding funding actions. The following forms should be used for the type of action indicated:
 - i. Solicitations > \$150,000- Use Solicitation Checklist PD 7A
 - ii. New award actions < \$150,000- May use File Folder Form PD 2A
 - iii. New award actions > \$150,000- Use Subcontract Award Checklist PD 7B
 3. Modifications/change orders > \$25,000- Use Modification/Change Order Checklist PD 7C)
 - i. PD 7C is not required for modifications that are only issued to increase available funding
- c. Required Group Manager Quality Reviews
 1. All solicitations > \$150,000
 - i. Use PD 8A (attach additional pages as needed)
 2. All new Award Actions > \$50,000- or the authority of the buyer/subcontracting officer, whichever is less
 - i. Actions within the Simplified Purchase Threshold the Group Manager annotates the file folder (PD2A) to validate the review
 - ii. Use PD 8A/8B as needed to document comments and findings for actions using form PD7B
 3. Modifications > \$25,000- Use PD 7C
 4. A senior Subcontracting Officer (SAIII or above) may serve as the Group Manager reviewer when it is impractical or imprudent (the Group Manager processed the action) for the Group Manager to conduct the review
- d. Required Independent Quality Reviews
 1. A review is considered "independent" when accomplished by a senior buyer/subcontracting officer (SAIII or above) outside the span of control of the Group for which the action is being reviewed,

2. An independent quality review is required for all sole source and cost type actions exceeding \$750,000
 3. An independent quality review is required for all competitive, actions exceeding \$1,500,000 and all non-competitive actions > \$750,000 e.g. regardless of how they are coded in the system, e.g., modifications resulting from a directed change in the subcontract scope of work.
 4. Independent quality reviews should include an ESH&Q representation for high risk items and services.
- e. Resolution of Findings and Comments
- It is the buyer/subcontracting officer's responsibility to satisfactorily complete all reviewer comments/findings in a timely manner.

11. Legal Review and Legal Services

- a. Legal review shall be obtained as needed to ensure the integrity, propriety and quality of the procurement process. Legal review should be considered when:
 1. Contemplating termination of a subcontract/purchase order
 2. Resolving a mistake when the amount of the mistake exceeds \$25,000
 3. Denying a claim when the claim exceeds \$25,000
 4. Submitting a complex procurement action for DOE approval
 5. When subcontract/purchase order includes additional terms and conditions from the vendor, and/or when changes to the Laboratory's standard terms and conditions are requested/required
 6. Considering the award of Cooperative Research and Development Agreements, SPP (formerly Work for Others) agreements, User Facility Agreements and similar business mechanisms
- b. Legal reviews should be coordinated with the Procurement Manager
- c. See Acquisition Policy Manual section Part VII for requirements pertaining to Legal Services.

12. Balanced Scorecard (BSC) Compliance Reviews

The Procurement Manager is responsible to ensure that periodic BSC reviews are conducted that evaluate the efficacy of the quality review process. Results of these ongoing BSC reviews will be compiled and scored annually pursuant with the Department's Balanced Score Card Plan.

- a. The Procurement Manager will assign responsibility for BSC reviews to assure independence from the quality review process.
- b. The following forms should be used when conducting BSC reviews for the Department:
 1. Balanced Score Card Compliance Review Sheet for New Award Actions, PD 9A 2.
 2. Balanced Score Card Compliance Review Sheet for Subcontract Administration, PD 9B

13. Security

- a. Physical Security
 1. All Department staff members are responsible to ensure their annual security awareness training Security GEN 034 is current.
 2. Procurement staff shall protect business sensitive information (e.g., vendor proposal submissions, source selection plans, bid documents, vendor evaluations, etc.) to prevent unauthorized access to vendors and others that could unfairly benefit from such information, or cause harm to the Laboratory or companies doing business with Laboratory.
 3. The following precautions should be taken to protect business sensitive information:
 - i. Lock out computers (password-protect) when you leave your work area.
 - ii. Secure business sensitive files in locked filing cabinets, desks or other secure containers when not in use,
 - iii. Lock your office at the end of the workday
 - iv. Periodically review inactive information and destroy or remove as appropriate.
 4. Allow 24-hour advance notice to arrange for unescorted access for visiting vendors and subcontractors.

b. Hosting Meetings at JLab

Procurement Department staff should be familiar with the Laboratory's policy and requirements concerning Unclassified Foreign Visits & Assignments to JLab. Section 301.05 of this Policy can be accessed at JLab Security

1. When hosting meetings which involve foreign nationals, the subcontracting officer shall provide a completed sign-in log (PD 104) to the JLab Security Officer following conclusion of the meeting.
2. When interacting with vendors and subcontractors that potentially involve meetings or visits to JLab with foreign nationals, Department staff shall notify the vendor or subcontractor as far in advance as reasonably possible of JLab's requirements governing visits by foreign nationals. The excerpt from JLab's website may be used to communicate this important issue.

"International Visitor Registration

The U.S. Department of Energy requires all non-U.S. citizens to provide passport, visa, and U.S. Citizenship and Immigration Services information before entry to Jefferson Lab. In addition, DOE headquarters approval is required before entry of persons whose country of origin is Cuba, Iran, Libya, North Korea, Sudan, or Syria. All non-U.S. citizens must bring and present government issued picture identification, i.e. passport or green card, and current USCIS documents for review. Entry to Jefferson Lab may be denied if identification and current immigration status cannot be verified. JLab Registration/International Services can assist in your visit preparations by calling 757-269-6380 or 757-269-7687. JLab Registration/International Services is located at VARC building 28 on the Jefferson Lab campus."

3. Solicitation and subcontracts documents that require visits/work at the JLab site should include the above information in the solicitation and/or subcontract.

c. Protecting Business Sensitive Information by Subcontractors

1. To the extent that the work under the subcontract requires that the subcontractor be given access to confidential or proprietary business, technical, or financial information belonging to JSA/JLab/Laboratory or other companies, the subcontractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Buyer/subcontracting officer in writing. The foregoing obligations, however, shall not apply to:
 - i. Information which, at the time of receipt by the subcontractor, is in public domain;
 - ii. Information which is published after receipt thereof by the subcontractor or otherwise
 - iii. becomes part of the public domain through no fault of the subcontractor;
 - iv. Information which was in the subcontractor's possession at the time of receipt thereof
 - v. and was not acquired directly or indirectly from the JSA/JLab, or the Laboratory or
 - vi. other companies;
 - vii. Information which was received by the subcontractor from a third party who did not re-
 - viii. quire the subcontractor to hold it in confidence.
2. The subcontractor shall obtain the written agreement, in a form satisfactory to the Buyer/subcontracting officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within JSA/JLab, DOE or the subcontractor's organization directly concerned with the performance of the subcontract.
3. The subcontractor agrees, if requested by JSA/JLab, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the subcontractor under this subcontract, and to supply a copy of such agreement to the Buyer/subcontracting officer. From time to time upon request of the Buyer/subcontracting officer, the subcontractor shall supply JSA/JLab with reports itemizing information received as confidential

- or proprietary and setting forth the company or companies from which the subcontractor received such information.
4. The subcontractor agrees that upon request by JSA/JLab, it will execute a JSA/JLab approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Subcontractor personnel.
 5. The subcontractor shall obtain written permission of the Buyer/subcontracting officer before proprietary business, technical or financial information of private sector organizations is utilized in the subcontract.
 6. The subcontractor shall insure that any technical data which qualifies as limited rights data or restricted computer software as defined in the RIGHTS IN DATA clause are subject to the provisions of the RIGHTS IN DATA clause.
- d. Retention and Disposal of Records
1. Subcontract files will be processed in accordance with the CIO records policy.
 2. JSA/JLab shall maintain subcontract files that present an accurate and adequate record of all purchasing transactions. All documentation generated for Federal Laboratory funded purchase orders and subcontracts are considered official Laboratory records.
 3. Buyer/subcontracting officers are responsible for the integrity and safekeeping of assigned subcontract/PO files and all related documentation until such time as they are no longer required by the Procurement Department.
- e. Counterintelligence Clauses Applicable to JSA Requirements-
- The following solicitation provisions and contract clauses should be used with DEAR 904.404 and are found at DEAR 952.204, they are:
1. Security, 952.204-2. This clause is required in subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. (Note- DOE utilizes the National Industrial Security Program but DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204-2 rather than the clause at FAR 52.204-2.)
 2. Classification/Declassification, 952.204-70. This clause is to be used in all subcontracts which involve classified information.
 3. Sensitive foreign nation controls, 952.204-71. This clause is required in unclassified research subcontracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. Note: - the Subcontractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3 or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)
 4. Disclosure of information, 952.204-72. This clause may be used in place of the clauses entitled "Security" and "Classification" in subcontracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information
 5. *Facility Clearance*, 952.204-73. This solicitation provision should be used in solicitations expected to result in subcontracts that require employees to possess access authorizations.
 6. Except as prescribed in 970.1504-5(b), the contracting officer shall insert the clause at 952.204-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain the clause at 48 CFR 952.204-2, Security, but that do not contain the clause at 952.250- 70, Nuclear Hazards Indemnity Agreement.
 7. Computer Security, 952.204-77. This clause is required in subcontracts in which the subcontractor may have access to computers owned, leased or operated on behalf of the Department of Energy.
- f. Guidance for Use of E-verify

Insert the clause at 52.222-54, Employment Eligibility Verification, in all solicitations and subcontracts that exceed the simplified acquisition threshold, except those that—

1. Are only for work that will be performed outside the United States;
2. Are for a period of performance of less than 120 days; or
3. Are only for—
 - i. Commercially available off-the-shelf items;
 - ii. Items that would be COTS items, but for minor modifications (as defined at paragraph (3) (ii) of the definition of "commercial item" at 2.101);
 - iii. Items that would be COTS items if they were not bulk cargo; or
 - iv. Commercial services that are—
 - Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
 - Performed by the COTS provider; and
 - Are normally provided for that COTS item.

14. Awarding PO's and Subcontracts

- a. The buyer/subcontracting officer shall ensure that all reviews, approvals and required documentation has been satisfactorily completed and signatures obtained (if required) prior to awarding a purchase order/subcontract.
- b. Buyers/subcontracting officers shall not exceed their delegated purchase authority when awarding purchase orders/subcontracts
- c. A notice of award or notice to proceed may be used prior to formal award of the subcontract when necessary to expedite the commencement of work, e.g., enable subcontractors to secure bonding for a construction project. The notice of award shall be in writing and contain the following:
 1. Identify the solicitation;
 2. Identify the subcontractor's bid;
 3. State the award price;
 4. Advise the subcontractor that any required payment and performance bonds must be promptly executed and returned to the buyer/subcontracting officer.
 5. Specify the date of commencement of work.
- d. When a notice of award or notice to proceed is issued, the awarded amount/price shall be entered into the procurement system and shall be followed as soon as possible by a formal award.
- e. A "notice" under (a) above shall only be issued after the following conditions are met:
 1. There is an urgent need to provide the award notice as soon as possible
 2. All internal quality and legal reviews have been satisfactorily completed and comments resolved (reference paragraphs 4.10 and 4.11) respectively
 3. All applicable management and DOE approvals have been obtained
 4. Funds are approved via Purchase Requisition to meet the award obligation(s)
 5. The buyer/subcontracting officer issuing the Notice of Award or Notice to Proceed has delegated signature authority to make the award commitment

SUBCHAPTER B. COMPETITION AND ACQUISITION PLANNING (PARTS 5-12)

Part 5 Publicizing Subcontract Actions

1. JLab Solicitation Bulletin Board

- a. All competitive solicitations exceeding the Simplified Acquisition Threshold (including amendments) shall be posted on the Department's solicitation bulletin board until the time for receipt of offers has expired (see Solicitation Bulletin Board). In addition, one or more of the following methods may be used:
 1. Assisting local trade associations in disseminating information to their members
 2. Making brief announcements of proposed subcontracts to newspapers, trade journals, magazines, or other mass communication media for publication, or
 3. Placing paid advertisements in newspapers or other communications media.
- b. Buyers/subcontracting Officers should consider posting solicitation requirements over the Micropurchase threshold to increase competition, broaden industry participation in meeting laboratory requirements, and support the laboratory's socioeconomic purchasing policies.

2. Fed Biz Opps

- a. Buyers/subcontracting officers may publicize actions on FED BIZ OPPS, whenever deemed in the best interest of the Laboratory
- b. There is no requirement to solicit requirements on Fed Biz Ops
- c. One Procurement representative and an alternate shall be designated to post requirements on <http://www.fedbizopps.gov/>.

Part 6 COMPETITION REQUIREMENTS

1. General

Sources shall be selected on a competitive basis to the maximum extent practicable except for certain classes of small business set-asides and micro-purchase actions. Micro-purchase actions may be awarded non-competitively when the price is deemed to be reasonable.

2. Criteria for Price Competition

Whether adequate price competition exists for a given procurement is a matter of the buyer or subcontracting officer's judgment of the circumstances of the procurement. Generally, a proposed price is deemed to be based on adequate price competition in the following three instances:

- a. Where two or more responsible offerors, competing independently, submit priced offers responsive to the requirement and award will be made to an offeror whose proposal offers either:
 1. The greatest value, and price is a substantial factor in source selection; or
 2. The lowest evaluated price. In this instance, there must be no finding that the price of the otherwise successful offeror is unreasonable;
- b. Where there was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received, provided that the buyer/subcontracting officer can reasonably conclude that the offer received was submitted with the expectation of competition.
- c. Where price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions, under subcontracts that resulted from adequate price competition.

3. Small Business Set-asides

Services and supply procurement actions above the Micro purchase threshold but not exceeding the Simplified Acquisition Threshold, and construction procurement actions not exceeding \$3,000,000, shall be set aside for small business as provided in Part 19. No separate justification or determination and findings are required.

4. Sole Source Actions

Subcontracts that meet one or more of the following conditions may be awarded without competition. In such cases, it is the Buyer's responsibility to ensure that prices/costs paid by the Laboratory are fair and reasonable.

a. Only One Responsible Source

This exception applies when the supplies or services required by the Laboratory are available from only one responsible source, and no other type of supplies or services will satisfy agency requirements, e.g.,

1. Unique capability: Award to another source would result in substantial duplication of costs that are not expected to be recovered through competition, or unacceptable delays in fulfilling the Laboratory's requirement.
 2. Proprietary Information: Limited rights in data, patent rights, copyrights, or secret processes (however, the mere existence of these rights does not in itself justify this exception).
 3. Standardization: When the customer has determined in accordance with the Laboratory's standardization needs that only the specified item(s) will satisfy the Laboratory's needs for additional units or replacement items, and only one source is available.
- b. Unusual and Compelling Urgency

This exception applies when the Laboratory's need for the supplies or services is of such an unusual and compelling urgency that the Laboratory/Government would incur serious financial or other injury if multiple sources were solicited.

- c. Certain Small Business Classifications
 1. All NAICS (North American Industry Classification System) requirements under manufacturing that do not exceed \$5,000,000, or other than manufacturing that do not exceed \$3,000,000, awarded to the following business classifications:
 - i. Small Business Administration certified 8(a) Small Business Firm
 - ii. HUB Zone (Historically Underutilized Business) see part 19.3(d) for sole source criteria
 2. When the total procurement action (including options and follow-on work) is not expected to exceed the Simplified Acquisition Threshold and there is only one known small business firm that can satisfy the requirement.
 3. When the award is made to a bona fide DOE Mentor Protégé without dollar limitation even if the agreement was issued by another DOE subcontractor.
- d. A Sole Source award is permitted when it results from a competitive action issued by another DOE Laboratory or Federal agency, such as a GSA schedule contract or leveraged purchase subcontract made available to the Laboratory (single source) leveraged purchase subcontract made available to the Laboratory. No further determination of price reasonableness is required; however, buyers/subcontracting officers may negotiate additional price discounts from the vendor.
- e. Other exceptions to competitive sourcing:
 1. Actions estimated not to exceed \$50,000, when the administrative cost and time of obtaining competition is not justified based on the anticipated price reasonableness and known quality and responsibility of the sole source.
 2. Industrial Mobilization, Engineering Development or Research Capability (see FAR 6.302- 3).
Examples include:
 - i. Keeping vital facilities open in the event of a national emergency or to achieve industrial mobilization.
 - ii. Establishing or maintaining an essential engineering, research, or development capability by an educational or other nonprofit institution or a federally funded research and development center (FFRDC).
 3. International Agreement (FAR 6.302-4)

This exception applies when competition is precluded by the terms of an international agreement or treaty between the United States and a foreign government or international organization, or when the acquisition is directed in writing and reimbursed by a foreign country.
 4. Authorized or Required by Statute (FAR 6.302-5)

An exception is permitted when a statute expressly authorizes or requires that the acquisition be made from a specified source, such as the Government Printing Office, Federal Prison Industries or Qualified Nonprofit Agencies for the Blind or other Severely Disabled.
 5. National Security (FAR 6.302-6)

An exception applies when disclosure of the Laboratory's needs would compromise National security.
 6. Public Interest (FAR 6.302-7)

The DOE Agency Head determines that the public interest precludes full and open competition.

5. Documenting Sole Source Actions

The buyer/subcontracting officer shall ensure that actions greater than \$3,000 are properly documented when competitive techniques are not used to process a procurement action. This justification shall be based on one or more of the exceptions described in Part 6.4 above.

- a. The dollar threshold for establishing sole source documentation requirements is based on the single action and is not cumulative
- b. The buyer/subcontracting officer's immediate supervisor shall approve the justification when the requirement exceeds \$50,000.
 - 1. A PD 14 form shall be completed for sole source actions > \$50,000
- c. Sole Source Actions < \$50,000 based on POM 6.4(e)1 do not require written justification
- d. Procurement Manager Approval is required for Sole Source Justifications supporting DOE Advance Notification and DOE Advance Approval Requirements
 - 1. DOE Advance Notification and Approval requirements are listed in the APM's Appendix

Part 7 ACQUISITION PLANNING

1. General

- a. Acquisition planning should begin as soon as the procurement need is identified. Issuing requirements on an urgent basis or with unrealistic delivery or performance schedules should be avoided, since it often restricts competition and increases prices.
- b. Procurement staff should work closely with customers in planning the acquisition.
- c. Establishing a formal evaluation team appointed by the Procurement Manager shall be considered when the procurement is estimated to exceed \$500,000 and award will be based on evaluation and scoring/rating of the technical and management aspects of offers (see POM part 15.11).

2. Planning Considerations

The amount and type of planning will vary depending on the nature, circumstances and stage of the acquisition. A written Acquisition Plan should be prepared for non-commercial procurements over \$1,000,000. The key procurement items listed below should be considered when planning for a specific procurement requirement. Also see FAR 7.105.

- a. Statement of need
 1. Consider the technical and contractual history of the acquisition. Consider feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.
 2. Consider any required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need. Consider required characteristics vs. desired characteristics.
- b. Significant conditions
 1. Identify any known cost, schedule and capability or performance constraints.
 2. Discuss first article/prototype requirements vs. production requirements, and any follow-on requirements that may be contemplated.
 3. Indicate any property or information to be furnished to subcontractors, such as material, equipment, facilities, manuals, drawings or test data.
 4. Consider any requirements for subcontractor data or intellectual property and data/intellectual property rights, and the use to be made of them.
 5. Discuss all applicable environmental and energy conservation objectives associated with the acquisition, the applicability of an environmental assessment or environmental impact statement, the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.
 6. Consider how JSA information security and site access requirements will be met. Discuss how any subcontractor personal identity information will be safeguarded.
- c. Subcontract administration

Describe how the subcontract will be administered. In subcontracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be accomplished.
- d. Cost

Describe the budget and cost goals for the acquisition and the rationale supporting them. Discuss the budget estimates and how they were derived, and the availability of funds for initial award and any option items.

 1. Consider the applicability of the Service Contract Act or Davis-Bacon Act and its impact on the estimated cost.
 2. Perform life cycle cost-benefit, lease-buy, design-to-cost and other analyses as appropriate.
- e. Risks and Trade-offs

Discuss technical, cost, and schedule risks and ways to reduce these risks. Consider the consequences of failure to achieve goals and trade-offs among the various goals for cost, capability or performance, and schedule. Determine the relative importance of the goals.

f. Sources

Indicate the prospective sources of supplies or services that can meet the need.

1. Consider required sources of supplies or services (see FAR Part 8) and sources identifiable through databases, including the JLab Vendor portal and such as the Government's Central Contractor Registration (CCR) database.
2. Consider small business sources, veteran-owned small business, service-disabled veteran- owned small business, HUB Zone small business, small disadvantaged business, and women-owned small business concerns. Discuss the impact of any bundling that might affect their participation in the acquisition.
3. Discuss how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, discuss why full and open competition cannot be obtained.
4. If the source list includes foreign vendors, consider the implications of the Buy American Act.

g. Type of Subcontract

Discuss the type of subcontract to be used (see POM Part 16). Consider the following: the use of multi-year contracting and options; the type of written document (e.g., purchase order or subcontract) and the need for subcontractor acceptance of the award.

h. Source-selection procedures

Discuss the source-selection procedures for the acquisition and the composition of the technical evaluation team. See POM Part 15A.

i. Timeline and Milestones for the acquisition cycle

Consider the following:

1. Completion of Statement of Work or Specifications and EHS&Q checklist if applicable
2. Procurement receipt of approved Purchase Requisition
3. Pre-solicitation determinations and findings, such as wage determinations, small business determinations, and justification and approval for other than full and open competition
4. Solicitation preparation, review and clearance
5. Issuance of solicitation
6. Receipt of proposals
7. Interviews and evaluation of proposals, including any audits and field reports
8. Beginning and completion of negotiations
9. Technical Evaluation Team report and recommendation
10. DOE Advance Notification/Advance Approval, if required.
11. Subcontract preparation, review, and clearance
12. Subcontract award

3. Additional Requirements for Acquisitions Involving Bundling

Bundling (consolidating two or more requirements into a single requirement that is likely to be unsuitable for award to a small business) may provide substantial benefits to the Laboratory. However, because of the potential impact on small business participation, the Small Business Program Manager must approve the acquisition. The buyer/subcontracting officer must justify bundling in acquisition strategy documentation.

4. Requests for Information (RFI)

When issuing Requests for Information (RFI), the buyer/subcontracting officer should include a statement on the front page of the request that notifies potential vendors that this information is for planning purposes only and that JSA/JLab will not make an award as a result of responses to this request.

Example: "This RFI is issued for budgeting or planning purposes only. JSA/JLab will not make an award based on responses to this RFI, and JSA/JLab will not reimburse subcontractors for any costs related to providing the information requested."

5. Partnerships

Partnering with a vendor or vendors may be necessary and advantageous to JSA/JLab to ensure an exchange of information vital to planning and initiating a procurement requirement. In such cases, vendors (or potential vendors) may be requested to provide business sensitive information regarding technological innovations and capability, and JSA/JLab may likewise share information strategic to a particular procurement requirement.

If a partnership is contemplated, the buyer/subcontracting officer shall obtain the approval of the Procurement Manager who shall coordinate with the DOE Buyer/subcontracting officer prior to initiating any partnering arrangement.

6. Planning for the Purchase of Supplies in Economic Quantities

- a. The Procurement Department is responsible to procure supplies in such quantity as—
 1. Will result in the total cost and unit cost most advantageous to JSA/Laboratory, where practicable; and
 2. Does not exceed the quantity reasonably expected to be required by the customer.
- b. Each solicitation for a subcontract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation—
 1. To state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Laboratory; and
 2. If applicable, to recommend a quantity or quantities which would be more economically advantageous to the Laboratory. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.
- c. See FAR Part 7.2 for additional guidance.

7. Lease (including Lease-purchase) and Rental Considerations

- a. General

Lease and rental agreements are the responsibility of the Procurement Group. The difference between rental and lease agreements is generally duration and complexity. Lease agreements are normally for one year or longer and may involve penalties for early termination.
- b. Lease-Purchase Requirements
 1. JSA shall determine whether required equipment should be purchased or leased. Such determinations shall be made:
 - i. At time of original acquisition;
 - ii. When lease renewals are being considered; and
 - iii. At other times as circumstances warrant
 2. A lease/purchase analysis should be performed for acquisitions in excess of \$500,000 of commercial equipment that is available for lease. The requisitioner is responsible for preparing a lease/purchase analysis. Buyer/subcontracting officers should provide guidance in preparing the analysis (see FAR Part 7.401).
 3. Procurement personnel will evaluate the available information and take action as appropriate.
 - i. Ensure that lease with option to purchase awards clearly state the purchase price at any time during the performance period, or provides a formula to calculate the purchase price, and
 - ii. Conduct an analysis of the cost-price factors that supports the final lease-purchase approach.
 - iii. Coordinate DOE advance approval

Part 8 REQUIRED SOURCES OF SUPPLIES AND SERVICES

See JSA APM Part V for additional required sources of supplies and services.

1. Federal Supply Schedules

The Laboratory is authorized to purchase through the Federal Supply Schedule program, also known as the GSA Schedules Program. (See FAR Part 8.4.)

- a. GSA Schedule pricing does not guarantee the lowest available price. Buyers and subcontracting officers should obtain more than one price or seek additional discounts before placing an order.
- b. GSA Schedules may be accessed on the GSA Advantage Web site, <http://www.gsa.gov/schedules>.

2. Sources Authorized or Required by Statute

Federal law or statute requires the use of designated sources (See FAR Part 8.002). Specified sources may include:

- a. Federal Prison Industries (see FAR Part 8.6);
- b. Qualified Nonprofit Agencies for the Blind or other Severely Disabled (see FAR Part 8.7);
- c. Government Printing and Binding (see FAR Part 8.8);
- d. Sole source awards under the Small Business Administration 8(a) Program;
- e. Robert T. Stafford Disaster Relief and Emergency Assistance Act (see FAR Part 26.2);
- f. Sole source awards under the HUB Zone Act of 1997 (see FAR Part 19.1306).

Part 9 SUBCONTRACTOR QUALIFICATIONS

1. Standards of Responsibility

Purchases shall be made from and subcontracts shall be awarded to responsible prospective subcontractors only.

- a. By signing the purchase order/subcontract award document the buyer/subcontracting officer affirms that relevant aspects of items affecting the vendor's responsibility, listed under (b) below, have been considered in the award decision to the maximum extent practicable.
 1. It is the buyers/subcontracting officer's discretion to the extent that each of the elements indicated in (b) below are considered in the responsibility decision, e.g., adequacy of financial and labor resources.
 2. The extent of the risk to the Laboratory will dictate how detailed and comprehensive the responsibility determination should be. Typically lower dollar (< \$150,000) firm fixed price commercial requirements will not require extensive evaluation with the exception of checking the EPLS website required under (b)3.i below.
 3. Consistent with JSA Acquisition Policy, all responsibility determinations shall be documented in the file for award actions exceeding the Simplified Acquisition Threshold.
- b. To be determined responsible, a prospective subcontractor must:
 1. Have adequate financial and labor resources to perform the subcontract, or the ability to obtain them (see FAR 9.104-3(a));
 2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
 3. Have a satisfactory performance record (see FAR 9.104-3(b) and 42.15).
 - i. A prospective subcontractor shall not be listed on the GSA Excluded Parties List System (EPLS). For actions > \$30,000 the prospective subcontractor shall certify that they are not listed on the Laboratory EPLS. The buyer/subcontracting officer shall annotate the file that the EPLS website check was completed for actions exceeding the Simplified Acquisition Threshold.
 - ii. A determination of responsibility or non-responsibility shall not generally be made solely on the basis of a lack of relevant performance history (see FAR Part 9.104-2).
 - iii. A prospective subcontractor shall have a satisfactory record of EHS&Q performance.
 4. Have a satisfactory record of integrity and business ethics.
 5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective subcontractor and subcontractors). (See FAR 9.104-3(a).)
 6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see FAR 9.104-3(a)); and
 7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. Determination of Non-responsibility

- a. In the absence of information clearly indicating that the prospective subcontractor is responsible, the buyer/subcontracting officer shall prepare a written determination of non-responsibility that shall state the basis of the determination.
- b. The non-responsibility determination shall be approved by the appropriate acquisition group manager and the Procurement Manager. Documentation used to support the determination shall be maintained in the subcontract file.

3. Pre-award Survey

- a. A pre-award survey is normally required only when the information on hand or readily available to the buyer/subcontracting officer, including information from commercial sources and EPLS, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated subcontract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items, the buyer/subcontracting officer should not request a pre-award survey unless circumstances justify its cost.
- b. When a pre-award survey is deemed to be in the best interests of JSA and DOE, the buyer/subcontracting officer should cover the following criteria as appropriate for the determination:
 1. Technical Capability;
 2. Production Capability;
 3. Plant Facilities and Equipment;
 4. Accounting Procedures;
 5. Financial Capability;
 6. Quality Assurance;
 7. Safety and Security Capabilities;
 8. Labor Resources,
 9. Performance Record and Ability To Meet Schedule, And
 10. Any Other Special Performance Requirements Anticipated In A Prospective Subcontract Award.

4. EEO Clearance

Other than construction awards, JSA/JLab shall not enter into a covered first tier subcontract for an amount (estimated or actual) of \$10,000,000 or more without obtaining in writing from the DOE, a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

Reporting Executive Compensation And First-Tier Subcontract Awards (Oct2015), FAR 52.204-10, Clause I.10.B. Reporting: Executive compensation of the first-tier subcontractor.

- a. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the buyer/subcontracting officer shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <https://www.fsr.gov> , if-
 1. In the subcontractor's preceding fiscal year, the subcontractor received—
 - (i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; **and**
 - (ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements and other forms of Federal financial assistance; **and**
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm> .)
- b. First-tier subcontract awards shall not be split or broken down to a value less than \$30,000 to avoid the re- porting requirements as per Prime Contract Clause I.10 B.

First-tier Subcontractor Information:

- c. The buyer/subcontracting officer is required to report information on a first-tier subcontract, per prime contract clause I.10.B, when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract.
 1. Unless otherwise directed by the contracting officer, or as provided in the prime contract, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first tier subcontract. (The Contractor shall follow the instruction at <http://www.fsrs.gov> to report the data.)
 - i. Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
 - ii. Name of the subcontractor.
 - iii. Amount of the subcontract award.
 - iv. Date of the subcontract award.
 - v. A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
 - vi. Subcontract number (the subcontract number assigned by the Contractor).
 - vii. Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
 - viii. Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
 - ix. The prime contract number, and order number if applicable.
 - x. Awarding agency name and code.
 - xi. Funding agency name and code.
 - xii. Government contracting office code.
 - xiii. Treasury account symbol (TAS) as reported in FPDS.
 - xiv. The applicable North American Industry Classification System code (NAICS).
 2. Further reports are not required after the first-tier subcontract expires.
- d. If the subcontractor, in the previous tax year, had gross income, from all sources, under \$300,000, the buyer/subcontracts officer is exempt from the requirement to report subcontractor award.

Part 10 RESERVED

- a. Buyers and subcontracting officers should consider conducting market research to arrive at the most suitable approach to acquiring supplies and services.

Part 11 PURCHASE REQUISITIONS

1. General

- a. The PR shall fully describe the item(s) to be acquired, the quantity required, the date required, the Project-Org-Account code funding authority, and the estimated cost.
- b. A new PR is required when the change to an existing PO or subcontract increases the price/cost of a numbered line item in the PO or subcontract.
- c. All Purchase Requisitions (PR's) received by Procurement shall be reviewed by the Purchasing Manager or Group Manager prior to assignment to a Buyer or subcontracting officer
 1. The Group Manager or Purchasing Manager review should refer to the Purchase Requisition Review Guide (PD Form 32) when reviewing PR's for assignment. At a minimum the review should consider:
 - i. Consistency with DOE Contract requirements and Laboratory Policy
 - ii. Consistency with the Laboratory's mission needs
 - iii. Opportunities to consolidate requirements that will enhance purchasing efficiency, and
 - iv. Maximizing opportunities for small business concerns
 - v. Account codes correctly reflect the item or service being requisitioned
 2. The Purchasing Manager shall advise the Group Manager when a PR review required directly above was not accomplished
 3. The Group Manager shall identify all discrepancies prior to (or at the time of) assignment to the buyer/subcontracting officer. All discrepancies shall be resolved prior to awarding the purchase order or subcontract

2. Buyer/Subcontracting Officer Responsibility

- a. Ensure the amount of funds specified is sufficient to perform the intended work
- b. Prior to soliciting offer(s) or directing a change pursuant with the changes clause, buyers and subcontracting officers should obtain or confirm the estimated price/cost of the supplies, services or construction from the originator of the requirement.
 1. For purchases of most commercial supplies and services the amount on the purchase requisition may serve as the cost estimate
 2. It is the requisitioner's responsibility to process a PR Letter of Increase when the anticipated award amount is more than \$100.00 or 10% higher than the approved PR funding limitation; whichever is greater. (While approval of additional funds is not necessary if the award amount is within the 10% of the amount stated on the purchase requisition, the buyer should coordinate with the requisitioner when the award amount increases by more than \$100.00.)
- c. Determine if required dates are reasonably attainable without incurring additional premium delivery costs. Buyers and subcontracting officers shall coordinate and document agreement with the requester when:
 1. The delivery period cannot be met or unnecessarily restricts competition, or
 2. The delivery period can only be achieved by addition of a cost premium.
- d. Requisitions with similar or like requirements should be consolidated into a single procurement action to the extent practical and economically feasible. Requirements should not be consolidated if urgent delivery requirements are delayed.

3. Processing Laboratory Priorities

- a. The Maximo Requisition system provides for User input of procurement priorities. The buyer/subcontracting officer should coordinate with customers when a purchase action cannot meet the conditions of the priority requirement, this is particularly important when processing emergency and other critical requirements for customers.
- b. Group managers shall review subordinate's working requisitions on a regular basis to ensure prompt processing of priority requirements

4. Canceling Purchase Requisition Requirements

Purchase requisitions may be canceled at any time prior to award with reasonable justification. Buyers and subcontracting officers should annotate the basis for the cancellation to include coordination with the requester.

5. Coordinating Purchase Requisition (PR) Changes with Customers

The Buyer/subcontracting officers shall coordinate and document all PR changes with the requesting customer. This includes but is not limited to the following:

- a. Adding or deleting to the list of recommended vendors when the item is not readily identifiable by a standard commercial part number
- b. Changes to the required delivery date in the procurement document (solicitation, PO, and subcontract)
- c. Changes/substitutions of user specified items, e.g., part numbers, colors, quantities, etc.
- d. Any other change that materially changes the content of the PR (excluding corrections to transaction codes)

6. Purchase Requisition Status

APPR – Approved
C – Normal
CAN – Canceled
Close – Closed
D – Deltek
E – Credit Card
F – Awaiting Funding
G – Returned from assigned Buyer
H – Hard copy
I – Incomplete
J – Rejected to History
L – Letter of Increase
M – Funding
N – New Req
O – Ordered
P – Procurement – All signatures Complete
R – Returned by Signer/approver
S – Sent to E-Commerce

7. Requirements Subject to DOE Notification under DEAR 970.5223-4, Workplace Substance Abuse Programs

- a. This section pertains to work to be performed at a DOE Site.
 1. The subcontracting officer shall notify the Procurement Manager of any potential subcontract > \$25,000 that he/she believes will involve any of the following:
 - i. Access to or handling of classified information or special nuclear materials;
 - ii. High risk of danger to life, the environment, public health and safety, or national security; or [see paragraph (b) below]
 - iii. Transportation of hazardous materials to or from a DOE Site
 2. The subcontracting officer shall ensure that the DOE Contracting Officer receives notification reasonably in advance of, but not later than 30 days prior to, the award of any subcontract covered in paragraph 1 above
 3. The subcontracting officer shall include the clause at DEAR 970.5223-4 Workplace Substance Abuse Programs in solicitations and subcontracts where the DOE Contracting Officer has determined the clause to be applicable (see paragraph 2 above)

4. All substance abuse plans submitted under this section 11.6 shall be forwarded to the HR Director and ESH&Q Office for approval and implementation (also see JLab APM coverage of substance abuse requirements).
- b. Pursuant to see 10 CFR Part 707.7 [b], the following designated positions are normally subject to requirements of a drug testing program:
 1. Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR Part 710. PSAP employees will be subject to the drug testing standards of this part and any additional requirements of the PSAP rule.
 2. Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the drug testing standards of this part and any additional requirements of the PAP program.
 3. Positions identified by Jefferson Laboratory staff and/or the DOE Contracting Officer which entail duties where failure of an employee to adequately discharge his or her position could significantly harm the environment, public health or safety, or national security, such as:
 - i. Pilots;
 - ii. Firefighters;
 - iii. Protective force personnel, exclusive of those covered in paragraphs (b)1 or (b)2 of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;
 - iv. Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or
 - v. Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient
 - vi. To cause significant harm to the environment or public health and safety.
 4. Other positions determined by the DOE, after consultation with Jefferson Laboratory staff to have the potential to significantly affect the environment, public health and safety, or national security

Part 12 ACQUISITION OF COMMERCIAL ITEMS

1. This part shall be used for the acquisition of supplies or services that meet the definition of commercial items as defined in FAR 2.101.

Buyers\subcontracting officers should use the procedures for solicitation, evaluation and award prescribed in Part 13 Simplified Acquisition Procedures for actions that do not exceed the Simplified Acquisition Threshold defined in FAR 2.101.

Buyers/Subcontracting Officers should use the simplified procedures for acquisition of Commercial Items above the Simplified Acquisition Threshold but not exceeding \$7 million dollars defined in FAR 13.5.

- a. The Laboratory encourages the acquisition of commercial or non-developmental supplies and services to the maximum practicable extent.
- b. When practicable, buyers and subcontracting officers should encourage offerors to propose more than one product that will meet the Laboratory's need in response to solicitations for commercial items. The buyer or subcontracting officer should evaluate each product as a separate offer.
- c. Past performance must be included and should be an important element in every evaluation and subcontract award for commercial items.

2. Type of Subcontract

- a. Buyers and subcontracting officers shall use firm-fixed-price purchase order/subcontracts or fixed-price subcontracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery subcontracts (see FAR Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment.
- b. Use of any other subcontract type to acquire commercial items must be approved by the JLab Procurement Manager prior to issuance of the solicitation. The following types of subcontracts are generally not authorized to be purchased utilizing "Commercial Procedures":
 1. Services procured on an hourly basis without a definite task;
 2. Cost-reimbursement, labor-hour, or any other type of contract that is other than a fixed-price or fixed-price with economic price adjustment provisions;
 3. Construction,
 4. Research and Development work.
 5. Architect - Engineering Services

3. Pricing

- a. While the buyer/subcontracting officer must establish price reasonableness in accordance with JLab procurement policy, the buyer/subcontracting officer should be aware of customary commercial terms and conditions when pricing commercial items.
- b. Catalog or Market Prices
A catalog or market price of an item sold to the general public is a price included in a catalog, price list, schedule, or other form that: (1) is regularly maintained by the manufacturer or suppliers; (2) is either published or otherwise available for inspection by customers; and (3) states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or vendor.

4. Intellectual Property

- a. Technical Data
Except as provided by DOE specific statutes, the Laboratory shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The buyer/subcontracting officer shall presume that data delivered under a subcontract for commercial items was developed exclusively at private expense. When a subcontract for commercial items requires the delivery of technical data, the buyer/subcontracting officer shall include appropriate provisions and

clauses delineating the rights in the technical data in addenda to the solicitation and subcontract (see additional FAR guidance under FAR Part 27 or DEAR supplement)

b. Software Licenses

1. Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Laboratory's needs. Generally, offerors and subcontractors shall not be required to:
 - i. Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or
 - ii. Relinquish to, or otherwise provide, the Laboratory rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.
2. With regard to commercial computer software and commercial computer software documentation, the Laboratory shall have only those rights specified in the license contained in any addendum to the subcontract.

5. Use of Commercial Terms and Conditions

- a. It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. Solicitation provisions and subcontract clauses for the acquisition of commercial items are included in the Laboratory's standard for mats. Buyers and subcontracting officers shall use the following solicitation/subcontract forms for commercial requirements. These terms and conditions seek to balance the interests of both the Laboratory and the seller.
 1. TC-1 SUP for commercial supplies
 2. TC-3 SVC for commercial services
- b. The buyer/subcontracting officer may include other FAR provisions and clauses in solicitations and subcontracts when their use is consistent with the limitations contained in FAR 12.302, tailoring of provisions and clauses for the acquisition of commercial items.
- c. Legal Review should be considered when a prospective subcontractor modifies or takes exception to any JSA terms and conditions, or proposes additional terms and conditions.

6. Inspection, Testing and Acceptance

a. Inspection and Testing

Subcontracts for commercial items shall rely on subcontractors' existing quality assurance systems as a substitute for JLab inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Laboratory shall be conducted in a manner consistent with commercial practice.

b. Acceptance

1. When acquiring non-complex commercial items, the Laboratory will rely on the subcontractor's assurances that the commercial item tendered for acceptance conforms to the subcontract requirements.
2. JLab inspection of commercial items will not prejudice its other rights under the Laboratory's acceptance provision.
3. JLab always has the right to refuse acceptance of nonconforming items.
4. Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the buyer or subcontracting officer may include alternative inspection procedure(s) and ensure these procedures and the post award remedies adequately protect the interests of JLab.
5. The acquisition of commercial items under other circumstances such as on an "as is" basis may also require different acceptance procedures. The buyer/subcontracting officer should consider the effect the specific circumstances will have on the acceptance clause.

7. Warranties

a. Implied warranties

The Laboratory's post award rights contained in FAR Part 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

1. The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used.
2. The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Laboratory will use the items. The Laboratory can rely upon an implied warranty of fitness for a particular purpose when—
 - i. The seller knows the particular purpose for which the Laboratory intends to use the item; and
3. The Laboratory relied upon the subcontractor's skill and judgment that the item would be appropriate for that particular purpose. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Laboratory's intended use of the item.
4. Any express warranty the Laboratory intends to rely upon must meet the needs of the Laboratory. The buyer/subcontracting officer should analyze any commercial warranty to determine if—
 - i. The warranty is adequate to protect the needs of the Laboratory, e.g., items covered by the warranty and length of warranty;
 - ii. The terms allow the Laboratory effective post award administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the subcontractor for repair or replacement, and collection of product performance information; and
 - iii. The warranty is cost-effective.
5. It may be customary commercial practice for subcontractors to exclude or limit the implied warranties contained in FAR 52.212-4 in the provisions of an express warranty. In such cases, the buyer/subcontracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

SUBCHAPTER C. CONTRACTING METHODS AND SUBCONTRACT TYPES (PARTS 13-18)

Part 13 SIMPLIFIED ACQUISITION PROCEDURES

1. General

Simplified acquisition procedures may be used for actions that fall within the dollar threshold defined by FAR 2.101 "Simplified Acquisition Threshold".

- a. Supplies and services falling within the Simplified Acquisition Threshold should be processed using the Maximo online Request for Quotations (RFQ) form to the maximum extent practicable, or PD Form 6A based on the circumstances of the procurement action.
- b. The Buyer/subcontracting officer should not use the RFQ form when "Best Value" selection criteria is part of the award process (see POM subpart 15.1) or the action exceeds the Simplified Threshold.
- c. Electronic solicitations and quotations (e.g., via a computer network such as "Internet") are the preferred means of processing simplified acquisitions.
 1. Buyers/subcontracting officers may use facsimiles as a secondary means of communication
 2. Transmission of hard copy PO's via the US Postal Service, FED EX, UPS, etc. should only be used when electronic means are not prudent because of special processing needs/conditions of the procurement action
- d. Completion of the JSA Representations and Certifications form is required for all purchases >\$10,000.
 1. Representations and certifications less than one (1) year old may be used for the purchase of other similar items from the same supplier during this period.
 2. Representations and certifications obtained for an initial award are acceptable for exercising all options under the original contract, or any subsequent incremental funding actions provided additional OCI, FOCI, or intellectual property considerations do not apply.
- e. For Simplified Acquisitions, the Buyer/subcontracting officer shall obtain written verification of the vendor's business size, socioeconomic status and if the goods/services supplied are of domestic or foreign origin.
- f. The Buyer may conduct negotiations or seek clarification, amplification, or correction of a quotation as appropriate to promote competition and enhance the understanding of all parties involved;
- g. Quotes may be evaluated based on price alone or price and other factors such as past performance and/or quality. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required.

2. Contractor Acceptance of RFQ's

- a. A quotation in response to a RFQ is not an offer and, consequently, cannot be accepted by the JSA to form a binding contract. Therefore, issuance by JLab of an order in response to a supplier's quotation does not establish a purchase order/subcontract. The order is an offer by the Laboratory to the supplier to buy certain supplies or services upon specified terms and conditions. A subcontract is established when the supplier accepts the offer.
- b. When appropriate, the buyer/subcontracting officer may ask the supplier to indicate acceptance of an order by notification to the Laboratory, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.
- c. If the Laboratory issues an order resulting from a quotation, JLab may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See FAR 13.302-4 for additional guidance).

3. File Documentation

The file documentation shall be the minimum necessary to support the purchase. Normally the Buyer/subcontracting officer will utilize PD Form 2A (PO Folder) to document and maintain the file record

for Simplified Acquisitions; however, in some cases such as construction requirements where greater documentation and administration is anticipated, a "red folder" file will be established utilizing form PD 1A.

- a. Indicate how the price was determined to be reasonable. Comparison of quotes, comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, and advertisements, similar items in related industry, value analysis, the Buyer's personal knowledge, or any other reasonable basis. Evaluations shall consider transportation charges.
- b. When other than price related factors are considered in selecting the subcontractor, the Buyer shall document the file to support the final award decision.
- c. Informal records or notes of oral price quotations should be included in the file to reflect clearly the propriety of placing the order at the price to be paid with the supplier concerned. Normally, this will merely include names of the suppliers contacted and prices and other terms and conditions quoted by each.
- d. Records may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.
- e. Written determination of responsibility is not required for simplified actions. Signature of the subcontracting officer on the subcontract/purchase order is sufficient.

4. Purchase Order Record

- a. Simplified acquisition purchases are normally processed and transmitted electronically via email.
- b. Orders issued in response to a subcontractor's quotation resulting from a Request for Quotation (RFQ) are legally considered an offer and are not binding until accepted by the subcontractor.
- c. Subcontractor acceptance of Jefferson Lab Purchase Orders may be conveyed by simply undertake performance on the awarded Purchase Order or electronically signing and returning the Jefferson Lab signed (awarded) Purchase Order document.
- d. In the event the final price exceeds the Simplified Acquisition Threshold, the resulting Purchase Order shall include the applicable requirements established under Negotiated Subcontracts terms and conditions.

5. Micro-purchases

- a. See POM Definitions for a description of a Micro-purchase
- b. The following conditions apply to micro-purchase actions:
 1. Micro-purchases may be made without competition but see parts 1.3 and 1.4.
 2. Quotations may be solicited orally.
 3. Micro-purchases are exempt from the Buy American Act and Small Business Act.
- c. The following award information should be documented in the PO file: item pricing, FOB point and shipping method, invoice terms, and delivery date

6 Electronic Filing

Procurement files should be initiated, maintained, administered, closed, and stored electronically. Files will be initiated and maintained in the PROCUREMENT ELECTRONIC FILES folder on the "P" Drive. The subfolders include but are not limited to:

- Agreements_Subcontracts Closed
- Archived Micros_Purchase Orders
- Blanket Order Agreements
- Consultant Agreements
- CRADA_SPP_IAAs
- Wage Rate Requirements (formerly Davis-Bacon) documentation
- Forms_Templates
- FYXX ESH Professional Review
- FYXX Micropurchase Orders
- FYXX Purchase Orders
- GSS E-Commerce
- Inter-Entity Work Orders
- Procurement Databases

- Subcontracts
- Training_Professional Development
- Universities

The Procurement Manager, with recommendation from Group Managers, determines the addition or deletion of a subfolder and acceptable content to be filed in each file folder and sub-folder.

Part 14 PCARD PROCEDURES

1. General

Pursuant with Acquisition Policy Manual (Part XIII, JSA Purchase Cards) the JSA PCard Administrator shall perform the following:

- a. Conduct monthly transaction reviews of all PCard purchases to ensure compliance with PCard policy and Lab requirements.
- b. Provide a written summary report (see 1-5 below) to the Procurement Manager regarding the results of the 100% PCard transaction review accomplished each month. The report should be submitted no later than the end of the following month in which the transactions were reviewed. As a minimum the report should list:
 1. Number of Total Actions
 2. Amount of Total Actions
 3. Number of findings of nonconformance, violations, etc. of PCard Policy
 4. Total Dollars in (3) above
 5. Brief description of each finding and proposed/actual resolution
- c. Provide a monthly reconciliation report to the Procurement Manager regarding the number, dollar amount and status of disputed items on the PCard monthly bank statement. Additionally, separately list each disputed item outstanding more than 90 days and the nature of the dispute
- d. Conduct a review of individual PCard holder transactions every six months to identify and recommend necessary changes in authority based on PCard usage (e.g., areas where PCard limits should be increased, decreased, or removed because of increased or decreased activity).
- e. Conduct an annual review of PCard policies, procedures and training regimen to ensure consistency and currency with Lab policy and requirements. Make recommendations as appropriate to the Procurement Manager
- f. Prior to authorizing payment of a PCard Holder statement, ensure that the PCard Holder's online reconciliation with the Bank's invoice (list of charges) has been approved by the PCard Holder's Approving Official
- g. Ensure that all communications with the Bank/PCard Holder regarding disputed amounts or discrepancy pertaining to a particular Bank charge are documented in writing either through email or letter.
- h. Conduct an annual self-assessment of the Lab's PCard program using the PCard Self-Assessment Checklist (PD Form 33) at the conclusion of each fiscal year. The result of the annual self- assessment shall be reported to the Procurement Manager no later than October 31.

2. Governing PCard Policy and Procedures

- a. JSA Policy governing PCards is contained in Part XIII of the Procurement Acquisition Manual
- b. The JSA Purchase Card Handbook, included in the POM Attachments hereto (see Part 54), provides guidance and requirements to be followed when using the JLab PCard.

Part 15 CONTRACTING BY NEGOTIATION

SUBPART 15A SOURCE SELECTION PROCESSES AND TECHNIQUES

1. Best value Continuum

The Laboratory can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful subcontract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

2. Tradeoff Process

- a. A tradeoff process is appropriate when it may be in the best interest of the Laboratory to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. When using a tradeoff process, the following apply:
 1. All evaluation factors and significant sub factors that will affect subcontract award and their relative importance shall be clearly stated in the solicitation; and
 2. The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.
- b. This process permits tradeoffs among cost or price and non-cost factors and allows the Laboratory to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs should be documented in the file.

3. Lowest Price Technically Acceptable Source Selection Process

- a. The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
- b. When using the lowest price technically acceptable process, the following apply:
 1. The evaluation factors and significant sub factors that establish the requirements of acceptability shall be set forth in the solicitation.
 2. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.
 3. Tradeoffs are not permitted.
 4. Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.
 5. Limited exchanges may occur (see FAR 15.306 for guidance)

4. Oral Presentations

- a. Oral presentations by offerors as requested by the Laboratory may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see FAR 15.208 for guidance) and content (see FAR 15.306). Oral presentations provide an opportunity for dialogue among the parties.
- b. If oral presentations are contemplated, see FAR Part 15.102 for guidance
- c. Interviews are an alternative method of oral presentations that may be used.

SUBPART 15B SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

This subpart prescribes policies and procedures for:

- a. Exchanging information with industry prior to receipt of proposals;
- b. Preparing and issuing requests for proposals (RFP's) and requests for information (RFI's); and

- c. Receiving proposals and information

5. Exchanges With Industry Before Receipt of Proposals

- a. Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see POM Part 3 for guidance). Interested parties include potential offerors, end users, Laboratory staff, Laboratory personnel, and others involved in the conduct or outcome of the acquisition.

6. Requests for Proposals

- a. Requests for proposals (RFP's) are used in negotiated acquisitions to communicate the Laboratory's requirements to prospective subcontractors and to solicit proposals. RFP's for competitive acquisitions shall, at a minimum, describe the—
 - 1. Laboratory's requirement;
 - 2. Anticipated terms and conditions that will apply to the subcontract:
 - i. The solicitation may authorize offerors to propose alternative terms and conditions, including the subcontract line item number, structure; and
 - ii. When alternative structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements)
 - 3. Information required to be in the offeror's proposal; and
 - 4. Factors and significant sub factors that will be used to evaluate the proposal and their relative importance
- b. Buyers/subcontracting officers may issue RFP's and/or authorize receipt of proposals, modifications, or revisions by electronic processes (facsimiles, email, electronic bulletin boards, etc).
 - 1. In deciding whether or not to use electronic processes, the buyer/subcontracting officer should consider factors such as—
 - i. Anticipated proposal size and volume;
 - ii. Urgency of the requirement;
 - iii. Availability and suitability of electronic process methods; and
 - iv. Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location
 - 2. If electronic proposals are authorized, buyer/subcontracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

7. Subcontract File Organization (See POM Part 13.6)

The solicitation/subcontract should follow this basic organization:

- a. Solicitation/RFP/Purchase Order/Subcontract Form
- b. Schedule of Supplies or Services and Prices/Costs
- c. Instructions to Offerors
- d. Evaluation Factors
- e. Description/Specifications/SOW/PWS
- f. Terms and Conditions including Terms and Conditions Certification
- g. Representations and Certifications Wage
- h. Determination if applicable

8. Amending the Solicitation

- a. When the Laboratory changes its requirements, or terms and conditions, the subcontracting officer shall amend the solicitation (either before or after receipt of proposals),
- b. Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

- c. Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.
- d. At a minimum, the following information should be included in each amendment:
 - 1. Name and address of issuing activity,
 - 2. Solicitation number and date,
 - 3. Amendment number and date,
 - 4. Number of pages,
 - 5. Description of the change being made,
 - 6. Laboratory point of contact and phone number (and electronic or facsimile address, if appropriate), and
 - 7. Revision to solicitation closing date, if applicable

9. Handling Proposals and Information

- a. Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See POM Part 3). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure
- b. If any portion of a proposal received by the subcontracting officer electronically or by facsimile is unreadable, handle in accordance with FAR 15.207(c).

10. Submission, Modification, Revision, and Withdrawal Of Proposals

- a. Offerors are responsible for submitting proposals, and any revisions, and modifications, so as to reach the Laboratory office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (i.e., regular mail, electronic processes). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., EST/EDT, on the date that proposals are due.
- b. Any proposal, modification, or revision, that is received at the designated Laboratory office after the exact time specified for receipt of proposals is "late" and will not be considered unless
 - 1. It is received before award is made, the subcontracting officer determines that accepting the late proposal would not unduly delay the acquisition; and:
 - 2. It was transmitted through an electronic process method authorized by the solicitation, it was received at the initial point of entry to the Laboratory infrastructure not later than 4 hours prior to the time specified for receipt of proposals; or
 - 3. There is acceptable evidence to establish that it was received at the Laboratory and was under the Laboratory's control prior to the time set for receipt of proposals; or
 - 4. It was the only proposal received.
- c. However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Laboratory, will be considered at any time it is received and may be accepted.
- d. Acceptable evidence to establish the time of receipt at the Laboratory includes the time/date stamp on the proposal wrapper, other documentary evidence of receipt maintained by the Laboratory, or oral testimony or statements of Laboratory personnel.
- e. If an emergency or unanticipated event interrupts normal Laboratory processes so that proposals cannot be received at the Laboratory office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Laboratory requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Laboratory processes resume.
- f. Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The subcontracting officer must document the contract file when oral withdrawals are made.
- g. The subcontracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless subcontract award is imminent and a post award notice will suffice.

- h. Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.
- i. If available, the following must be included in the subcontracting office files for each late proposal, modification, revision, or withdrawal:
- j. The date and hour of receipt
 - 1. A statement regarding whether the proposal was considered for award, with supporting rationale
 - 2. The envelope, wrapper, or other evidence of date of receipt

SUBPART 15C—SOURCE SELECTION

This subpart prescribes the procedures for selection of a source or sources. The objective is to select the offeror(s) who represent the best value

11. Responsibilities

- a. The subcontracting officer is designated as the source selection official, unless the Procurement Manager appoints another individual for a particular acquisition or group of acquisitions.
- b. The source selection official shall—
 - 1. Establish an evaluation team (see item 2 below) if required, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;
 - 2. Evaluation teams may be called Source Evaluation Board (SEB), Source Selection Evaluation Board (SSEB), Technical Evaluation Board (TEB), Technical Evaluation Team (TET) and similarly named evaluation and advisory panels.
 - 3. Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;
 - 4. Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and sub factors, solicitation provisions or contract clauses, and data requirements;
 - 5. Ensure that proposals are evaluated based solely on the factors and sub factors contained in the solicitation;
 - 6. Consider the recommendations of source evaluation boards (SEB) (if any); and
 - 7. Select the source or sources whose proposal is the best value to the Laboratory
- c. The subcontracting officer shall—
 - 1. After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;
 - 2. After receipt of proposals, control exchanges with offerors in accordance with FAR Part 15.306; and
 - 3. Award the subcontract(s).

12. Evaluation Factors and Significant Sub factors

- a. The award decision is based on evaluation factors and significant sub factors that are tailored to the acquisition. All factors and significant sub factors that will affect subcontract award and their relative importance shall be stated clearly in the solicitation. However, the rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.
- b. Evaluation factors and significant sub factors must —
 - 1. Represent the key areas of importance and emphasis to be considered in the source selection decision; and
 - 2. Support meaningful comparison and discrimination between and among competing proposals.
- c. The evaluation factors and significant sub factors that apply to an acquisition and their relative importance are within the broad discretion of Laboratory acquisition officials, subject to the following requirements:
 - 1. Price or cost to the Laboratory shall be evaluated in every source selection;

2. The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience; and
 3. Except as set forth in paragraph (c) 4 of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold
 4. Past performance need not be evaluated if the subcontracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.
- d. The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—
1. Significantly more important than cost or price;
 2. Approximately equal to cost or price; or
 3. Significantly less important than cost or price

13. Proposal Evaluation

Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective subcontract successfully. The Laboratory shall evaluate competitive proposals and then assess their relative qualities solely on the factors and sub factors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file. The source selection official may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Laboratory.

a. Cost or price evaluation

Normally, competition establishes price reasonableness. Therefore, when subcontracting on a firm fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. When subcontracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis (See FAR 15.305(a) (1) for guidance).

b. Past performance evaluation

1. Past performance information is one indicator of an offeror's ability to perform the subcontract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in subcontractor's performance shall be considered.
2. The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.
3. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

c. Technical evaluation

1. When tradeoffs are performed the source selection records shall include:
 - i. An assessment of each offeror's ability to accomplish the technical requirements; and
 - ii. A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

- d. Cost information may be provided to members of the source evaluation board if required to make a determination of performance realism or an offeror understanding of the requirements.

14. Exchanges with Offerors after Receipt of Proposals

a. Clarifications and award without discussions (negotiations)

1. Clarifications are limited exchanges, between the Laboratory and offerors that may occur when

- award without discussions is contemplated.
2. If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.
 3. Award may be made without discussions if the solicitation states that the Laboratory intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Laboratory determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the subcontract file.
- b. Communications with offerors before establishment of the competitive range
- Communications are exchanges, between the Laboratory and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established and a proposal has ambiguities or other concerns (e.g., perceived deficiencies, weaknesses, omissions, mistakes or past performance issues) that must be explored to determine whether a proposal should be placed in the competitive range, communications may be held with only those offerors whose exclusion from or inclusion in the competitive range is uncertain. Such communications shall not provide an opportunity for the offeror to revise their proposal.
- c. Competitive range
1. If discussions (see Definitions) are to be conducted, establish a competitive range. Based on the ratings of each proposal against all evaluation criteria, the subcontracting officer shall establish a competitive range comprised of all of the most highly rated proposals.
 2. Offerors excluded or otherwise eliminated from the competitive range shall be notified in writing and may request a debriefing.
- d. Exchanges with offerors after establishment of the competitive range (Discussions)
1. The primary objective of discussions is to maximize the Laboratory's ability to obtain the best value from offerors by allowing each offeror in the "competitive range" to revise their offer. The extent of discussions is a matter of the subcontracting officer's judgment.
 - i. Discussions are tailored to each offeror's proposal, and must be conducted with each offeror in the competitive range.
 - ii. Discussions should address the proposal's material weaknesses based on the evaluation factors set forth in the solicitation.
 - iii. The subcontracting officer may also discuss any aspect of the offeror's proposal that, in the opinion of the subcontracting officer, could improve the offeror's potential for award.
 2. In discussing other aspects of the proposal, the Laboratory may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Laboratory may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.
 3. If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision.
- e. Limits on exchanges
- Laboratory personnel involved in the acquisition shall not engage in conduct that:
1. Favors one offeror over another;
 2. Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
 3. Reveals an offeror's price without that offeror's permission; however, the subcontracting officer may inform an offeror that its price is considered by the Laboratory to be too high, or too low, and reveal

the results of the analysis supporting that conclusion. It is also permissible, at the Laboratory's discretion, to indicate to all offerors the cost or price that the Laboratory's price analysis, market research, and other reviews have identified as reasonable.

4. Reveals the names of individuals providing reference information about an offeror's past performance; or
5. Knowingly furnishes source selection information in violation of FAR 3.104.

15. Proposal Revisions

- a. If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal will normally be accepted or considered. However, in the event the offeror's price contained a mistake pursuant with paragraph 15.28 Mistakes, the Subcontracting Officer may (at his/her discretion based on the specific circumstances of the action) allow the offeror to be placed back in the competitive range. The subcontracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The subcontracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Laboratory intends to make award without obtaining further revisions.

16. Source Selection Official's Decision

The source selection official's (SSO) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSO may use reports and analyses prepared by others, the source selection decision shall represent the SSO's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSO, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

SUBPART 15D—SUBCONTRACT PRICING

17. Required Pricing Information

In establishing the reasonableness of offered prices, the buyer/subcontracting officer must not obtain more information than is necessary.

18. Exceptions to Cost or Pricing Data

No additional information from the offeror is required if;

- a. The price is based on adequate price competition unless there is concern the pricing is unreasonable. Adequate price competition exists if;
 1. Two or more responsible offerors, competing independently, submit priced offers that satisfy the Laboratory's expressed requirement.
 2. There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror.
- b. The acquisition is of commercial items
- c. The acquisition is at or below the simplified acquisition threshold.
- d. The price is set by law or regulation.

19. Cost or Pricing Data

The subcontracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data.

- a. Cost or pricing data shall not be required if an exception under paragraph 15.18 exists.
- b. If cost or pricing data is required see FAR Subpart 15.4 for complete guidance.

20. Requiring Information Other Than Cost or Pricing Data

- a. The subcontracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism, but the subcontracting officer should not obtain more information than is necessary. If the subcontracting officer cannot obtain adequate information from sources other than the offeror, the subcontracting officer must require submission of information other than cost or pricing data from the offeror that is adequate to determine a fair and reasonable price. The subcontracting officer should require that the information submitted by the offeror include, at minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.
- b. When adequate price competition exists, generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the subcontracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the subcontracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

21. Proposal Analysis Techniques

- a. General

The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

- 1. The subcontracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.
 - 2. Price analysis shall be used when cost or pricing data are not required.
 - 3. Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.
 - 4. Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.
 - 5. The subcontracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.
- b. Price analysis
 - 1. Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
 - 2. The Laboratory may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:
 - i. Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness.
 - ii. Comparison of previously proposed prices and previous Laboratory and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.
 - iii. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
 - iv. Comparison of proposed prices with independent Laboratory cost estimates.
 - v. Comparison of proposed prices with prices obtained through market research for the same or similar items.
 - vi. Analysis of pricing information provided by the offeror
 - 3. The first two techniques at (b) of this section are the preferred techniques. However, if the

subcontracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the subcontracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

- c. Cost analysis.
 - 1. Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or subcontractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the subcontract should be, assuming reasonable economy and efficiency.
 - 2. If a cost analysis is required, see DEAR for cost components.
- d. Cost realism analysis.
 - 1. Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.
 - 2. Cost realism analyses shall be performed on cost-reimbursement subcontracts to determine the probable cost of performance for each offeror.
 - 3. If a cost realism analysis is required, see FAR Part 15.404-1(d) for complete guidance.
- e. Technical analysis
 - 1. The subcontracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.
 - 2. At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.
- f. Unbalanced pricing
 - 1. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more subcontract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—
 - i. Startup work, mobilization, first articles, or first article testing are separate line items;
 - ii. Base quantities and option quantities are separate line items; or
 - iii. The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery subcontract.
 - 2. All offers with separately priced line items or sub line items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the subcontracting officer shall—
 - i. Consider the risks to the Laboratory associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
 - ii. Consider whether award of the subcontract will result in paying unreasonably high prices for subcontract performance.
 - 3. An offer may be rejected if the subcontracting officer determines that the lack of balance poses an unacceptable risk to the Laboratory.

22. Price Negotiation

- a. The purpose of performing cost or price analysis is to develop a negotiation position that permits the subcontracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the subcontracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the subcontractor's purchasing system, the subcontracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the subcontracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.
- b. The subcontracting officer's primary concern is the overall price the Laboratory will actually pay. The subcontracting officer's objective is to negotiate a subcontract of a type and with a price providing the subcontractor the greatest incentive for efficient and economical performance. The negotiation of a subcontract type and a price are related and should be considered together with the issues of risk and uncertainty to the subcontractor and the Laboratory. Therefore, the subcontracting officer should not become preoccupied with any single element and should balance the subcontract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Laboratory and the subcontractor.

The Laboratory's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the subcontracting officer shall not agree on profit or fee without concurrent agreement on cost and type of subcontract.

23. Pre-negotiation Objectives

- a. The pre-negotiation objectives establish the Laboratory's initial negotiation position. They assist in the subcontracting officer's determination of fair and reasonable price. They should be based on the results of the subcontracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information.
- b. The subcontracting officer shall establish pre-negotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the subcontracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

24. Documenting the Negotiation

- a. The subcontracting officer shall document in the subcontract file the principal elements of the negotiated agreement. The documentation (e.g., price negotiation memorandum (PNM)) should include the following:
 1. The purpose of the negotiation
 2. A description of the acquisition, including appropriate identifying numbers
 3. The name, position, and organization of each person representing the subcontractor and the Laboratory in the negotiation
 4. The current status of any subcontractor systems (e.g., purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation
- b. If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it
- c. If cost or pricing data were required, the extent to which the subcontracting officer—
 1. Relied on the cost or pricing data submitted and used them in negotiating the price;
 2. Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the subcontracting officer and the subcontractor as a result; and the effect of the defective data on the price negotiated; or
 3. Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data
- d. A summary of the subcontractor's proposal, any pricing assistance recommendations, including the

reasons for any pertinent variances from them, the Laboratory's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination

- e. The most significant facts or considerations controlling the establishment of the pre-negotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions
- f. The basis for the profit or fee pre-negotiation objective and the profit or fee negotiated.
- g. Documentation of fair and reasonable pricing
- h. Whenever pricing assistance has been obtained, the subcontracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance

SUBPART 15E—NOTIFICATIONS, MISTAKES AND COMPLAINTS

25. Notification to Unsuccessful Offerors

Notifications shall be issued to each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award.

- a. In the event that the procurement action is subject to DOE approval, notification to unsuccessful offeror(s) should not be given until JSA/JLab's recommended awardee is approved by the DOE.
- b. Post award notices to unsuccessful offerors (including firms selected under A-E procedures) shall at least provide the name and address of the successful offeror and the total amount of the award. Additional information, such as the number of offerors solicited, number of proposals received, unit pricing, and the reason why the offeror's proposal was not accepted, may be provided at the discretion of the buyer/subcontracting officer. All other information shall be kept confidential unless explicitly allowed to be released by the Procurement Manager.
- c. Post-award notices shall not divulge commercial or financial information, trade secrets, manufacturing processes and techniques, or other confidential or business sensitive information.

26. Award to Successful Offeror

- a. The subcontracting officer shall award a subcontract to the successful offeror by furnishing the executed subcontract or other notice of the award to that offeror.
- b. If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the subcontracting officer shall sign the subcontract award.
- c. When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Laboratory may make subsequent awards on those additional items within the proposal acceptance period.

27. Debriefing Unsuccessful Offerors

- a. The buyer/subcontracting officer shall debrief unsuccessful offeror(s) within a reasonable time period (normally 15 working days) after the selection announcement, if requested by the offeror.
- b. Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.
- c. The subcontracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.
- d. At a minimum, the debriefing information shall include—
 1. The Laboratory's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
 2. The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
 3. A summary of the rationale for award;
 4. For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
 5. Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- e. The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure including—
 1. Trade secrets;
 2. Privileged or confidential manufacturing processes and techniques;
 3. Commercial and financial information that is privileged or confidential, including cost breakdowns,

- profit, indirect cost rates, and similar information; and
- 4. The names of individuals providing reference information about an offeror's past performance.
- f. An official summary of the debriefing shall be included in the subcontract file.

28. Mistakes

- a. General
After the closing time for submission of proposals, subcontracting officers shall examine all proposals for mistakes. In cases of apparent mistakes and in cases where the subcontracting officer has reason to believe that a mistake may have been made, the subcontracting officer shall proceed as described in this section.
- b. Apparent clerical mistakes
 - 1. Any clerical mistake may be corrected by the subcontracting officer before award. The subcontracting officer first shall obtain from the offeror a verification of the proposal. Examples of apparent mistakes are—
 - i. Obvious misplacement of a decimal point;
 - ii. Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);
 - iii. Obvious reversal of the price F.O.B. Destination and price F.O.B. Origin; and
 - iv. Obvious mistake in designation of unit
 - 2. Correction of the proposal shall be effected by attaching the verification to the original proposal. Correction shall be documented in the subcontract file.
- c. Other mistakes disclosed before award.
Other mistakes discovered before award shall be identified and corrected through communications to determine exclusion from or inclusion in the competitive range or, if selected to the competitive range, through discussions.
- d. Mistakes after award
 - 1. When a mistake in a contractor's proposal is not discovered until after award, the mistake may be corrected by subcontract modification if correcting the mistake would be favorable to the Laboratory without changing the essential requirements of the specifications.
 - 2. In addition to the cases contemplated in paragraph (1) of this section or as otherwise authorized by law, the Laboratory is authorized to make a determination—
 - i. To rescind a subcontract;
 - ii. To (1) reform a subcontract to delete the items involved in the mistake; or (2) increase the price if the subcontract price, as corrected, does not exceed that of the next lowest acceptable proposal under the original request for proposals; or
 - iii. That no change shall be made in the subcontract as awarded, if the evidence does not warrant a determination under this section.
 - 3. Determinations under this section may be made only on the basis of clear and convincing evidence that a mistake in the proposal was made.
- e. Complaints
If a complaint cannot be resolved at the subcontracting officer level, refer to the Procurement Manager for disposition.

Part 16 SELECTING AGREEMENTS, TYPES OF PURCHASE ORDERS AND SUBCONTRACTS

16.1 Memorandums of Understanding (MOU's)

A MOU is a written agreement broadly stating basic understandings and describing a mechanism for coordinating activities to be engaged in by JSA/JLab and other signatory authorities. A memorandum of understanding is not to be used to embody enforceable agreements; nor shall it be used to obligate or commit funds or as the basis for the transfer of funds from one party to another. If a commitment, obligation, or transfer of funds is required, a specific contractual agreement, or other reimbursable arrangement shall be developed between JSA/JLab and the participating organization to provide specific funding, obligation, and billing data.

16.2—SELECTING SUBCONTRACT TYPES

1. General

- a. The subcontract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The specific subcontract types range from firm-fixed-price, in which the subcontractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the subcontractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts in which the subcontractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in subcontract's performance.
- b. A firm-fixed-price subcontract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. Firm fixed price subcontracts are best suited for acquiring commercial items and services.
- c. Other subcontract types should be considered when a reasonable basis for firm pricing does not exist. Negotiations should be used to select a subcontract type (or combination of types) that will appropriately tie profit to contractor performance. The objective of negotiations is to select a subcontract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.
- d. When a firm-fixed price subcontract is not used, the subcontract file shall include documentation to show why the particular subcontract type was selected.
- e. There are many factors that the contracting officer should consider in selecting and negotiating the subcontract type. (Refer to FAR 16.104 for guidance). Factors include the following: price competition, price analysis, cost analysis, type and complexity of the requirement, urgency of the requirement, period of performance or length of production run, subcontractor's technical capability and financial responsibility, adequacy of the subcontractor's accounting system, concurrent subcontracts, extent and nature of proposed subcontracting, and acquisition history.

2. Types of Subcontracts

- a. Fixed Price - (Refer to FAR subpart 16.2 for additional guidance)
 1. Fixed-price type subcontracts provide for a firm price or in appropriate cases an adjustable price. Fixed-price subcontracts providing an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise stated in the subcontract, the ceiling price or target price is subject to adjustment through an economic price adjustment clause, or other subcontract clauses providing for equitable adjustment.
 2. A fixed price subcontract with economic price adjustment may be used to protect the subcontractor or the Laboratory when
 - i. There is serious doubt concerning the stability of market or labor conditions that will exist during the period of subcontract performance, and

- ii. Contingencies that would otherwise be included in the subcontract price can be identified and covered separately in the subcontract.
- b. Cost Reimbursement - Refer to FAR subpart 16.3 for guidance
Cost Reimbursement subcontracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed- price subcontract.
- c. Incentive - Refer to FAR subpart 16.4 for guidance.
This type of subcontract provides for positive and negative performance incentives in connection with specific product characteristics, performance of measurable tasks or other specific elements of the subcontractor's performance. Incentives can be considered in connection with such performance related areas as Environment, Safety and Health (ESH&Q) performance, cost control, technical performance, quality of service and delivery. Also, the Laboratory may use award term incentives that reward subcontractors for excellent performance by extending the term of the subcontract (See Part 17.)
- d. Indefinite Delivery - Refer to FAR subpart 16.5 for guidance.
An Indefinite Delivery subcontract may be used for procurements where JSA/JLab's precise delivery requirements are not known at the time of contracting, although it is known that there will be a need for the product or service during the period covered by the subcontract. A release is issued to order supplies or services against an indefinite delivery subcontract. Variations to this subcontract type are described below:
 - 1. Definite quantity subcontract:
The quantity of the product or scope of the service to be furnished during the subcontract period is definite, with deliveries or performance to be arranged by the issuance of releases against the order. Where this type of subcontract is for inventory items, it permits stocks to be maintained at minimum levels. Since there is a definite commitment on the part of JSA/JLab to order a specified quantity of supplies or services, funds are committed when the subcontract is placed.
 - 2. Indefinite quantity subcontract:
This type of subcontract provides for furnishing an indefinite quantity, within stated minimum and maximum limits, of specific supplies or services, during a specified period of time, with deliveries scheduled by the placement of releases against the subcontract. This type of subcontract may be used where it is impossible to determine in advance the precise quantities that will be needed during a specified period of time. Advantages of this type of subcontract are that flexibility is provided with respect to both quantities and delivery scheduling, property or services need not be ordered until actual needs have materialized, and stocks can be maintained at minimum levels. Funds are committed for the minimum quantity specified at the time the subcontract is placed.
 - 3. Requirements Subcontracts:
A requirements subcontract provides for filling all actual purchase requirements of designated JSA/JLab activities for specific supplies or services during a specified subcontract period, with deliveries to be scheduled by placing orders with the subcontractor. A requirements subcontract may be used when JSA/JLab anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that JSA/JLab will need during a definite period.
 - i. The requirements subcontract shall have a ceiling price
- e. Time and Materials - Refer to FAR subpart 16.601 for guidance.
A time-and-materials subcontract may only be used when it is not possible at the time of placing the subcontract to estimate accurately the extent or duration of the work, or to anticipate costs with any reasonable degree of confidence. This type of subcontract provides for acquiring supplies or services on the basis of:
 - 1. Direct labor hours as specified fixed hourly rates that include wages, overhead, G&A expenses, and profit; and
 - 2. Materials at cost, including if appropriate, material handling costs as part of material costs.
- f. Labor-hour Subcontract - Refer to FAR subpart 16.602 for guidance.
A labor-hour subcontract is a variation of the time and materials type, differing only in that materials are not supplied by the subcontractor.

- g. Letter [sub]Contracts - (Also see FAR subpart 16.603 for guidance).
A letter subcontract is a written preliminary contractual instrument that authorizes immediate commencement of work. A letter subcontract may be utilized when there is a potential schedule or cost impact as a result of completing a fully definitive subcontract. Use of a letter subcontract must be approved by the Procurement Manager.
- h. Basic Agreements - Refer to FAR subpart 16.702 for guidance.
A basic agreement is a written instrument of understanding between JSA/JLab and a subcontractor which sets forth the subcontract clauses which will be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of a basic agreement contemplates the coverage of each particular procurement by the execution of a formal contractual document which will provide for the scope of work, price, delivery, and any additional matters peculiar to the requirement of the specific procurement involved and which will incorporate by reference the subcontract clauses agreed upon in the basic agreement.
 - 1. Basic agreements are appropriate when past experience and future plans indicate that a substantial number of separate subcontracts will be entered into with the same firm during the term of the basic agreement or when substantial recurring negotiating problems exist with a particular subcontractor.
 - 2. Basic agreements cannot be modified or superseded by individual subcontracts or purchase orders. They are to be modified only by an amendment to the basic agreement itself. The wording of any such amendment must be definite as to its applicability to existing sub- contracts which incorporate the basic agreement by reference.
 - 3. Basic agreements do not commit funds; nor can they imply any agreement on the part of JSA/JLab to place any future orders or subcontracts with the subcontractor involved.
 - 4. Basic agreements must be reviewed and revised to conform to current requirements no less frequently than when they are being renewed.
 - i. Basic Ordering Agreements, (Also See FAR subpart 16.703 for guidance)
 - 1. A basic ordering agreement is similar to a basic agreement except that it also includes a description, as specific as practicable, of the supplies to be furnished or services to be performed when ordered, and it either specifies the prices or includes a description of the method for determination of the prices to be paid to the subcontractor for such supplies or services. Likewise, either the specific terms and conditions of delivery or a description for the method of their determination are set forth in the basic ordering agreement. Basic ordering agreements are not used to commit funds.
 - 2. The basic ordering agreement may be used where specific items, quantities, and/or prices are not known at the time of execution of the agreement, but where past experience or future plans indicate that a substantial number of requirements for items or services of the type covered by the basic ordering agreement will result in procurements from the subcontractor during the term of the agreement.
 - 3. Basic ordering agreements that include Service Contract Act or Davis-Bacon Act wage determinations, or include provisions for periodic re-pricing, shall be reviewed annually using the Basic Ordering Agreement Annual Review Checklist. Additionally, all basic ordering agreements shall be reviewed and revised as necessary to conform to changes in JSA's DOE contract requirements and changes to JSA policies and procedures that are applicable to JSA subcontractors.
 - 4. Each order (release) issued under a basic ordering agreement is subject to the same reviews, signatures, approvals, determinations, findings, etc., as would be applicable if the order were a new procurement entered into apart from the basic ordering agreement.
 - 5. Prices, persons, or items to be supplied, delivery period, and other details must be established prior to authorizing a subcontractor to perform work under a basic ordering agreement, and no individual order issued there under shall modify or supersede the basic order ing agreement. As in the case of basic agreements, conditions of basic ordering agreements shall also be reviewed and revised to conform with current requirements at such time as they are being renewed. All amendments shall be specific as to their applicability to open orders that were issued under the basic ordering agreement.

3 Guidance for Use of Special Clauses

PD 1C JSA Clause Worksheet provides guidance for applicability and use of certain JSA and FAR clauses.

Part 17 SPECIAL SUBCONTRACTING METHODS

1. Multi-year Subcontracts

- a. A multi-year subcontract means a subcontract covering performance for more than one (1) year. Normally multi-year subcontracts will not exceed five (5) years. Total subcontract quantities and annual quantities are planned for a particular level and type of funding. Each Program Year is budgeted and/or funded based on the funds necessary for performance for that program year, although additional funding may be included based on program needs.
- b. The multi-year subcontracting method may be used for the acquisition of commercial and non-commercial services or supplies, including, but not limited to systems, subsystems, major equipment, components, parts, materials, and the advanced acquisition thereof,.
- c. Pursuant with best business practice, insert the substance of the FAR clauses Limitation Of Price and Subcontractor Obligations, and Cancellation of Items, in solicitations and subcontracts when a multi-year requirement is contemplated.
- d. If funds are not available to support the succeeding years' requirements, JSA/JLab will cancel the subcontract. Multi-year subcontracts may contain a subcontract term allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items to protect the subcontractor against loss resulting from cancellation.
- e. Use of multi-year subcontracting is encouraged to take advantage of one or more of the following:
 1. Lower costs
 2. Enhancement of standardization
 3. Reduction of administrative burden in the placement and administration of subcontracts
 4. Substantial continuity of production or performance, thus avoiding annual start-up costs, pre-production testing costs, make-ready expenses, and phase-out costs
 5. Avoidance of the need for establishing and proving out quality control techniques and procedures for a new subcontractor each year
 6. Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high start-up costs
 7. Providing incentives to subcontractors to improve productivity through investment in capital facilities, equipment, and advanced technology

2. Use of Options

- a. As used herein, an option clause is a provision in a purchase order or a subcontract under which, for a specified time, JSA/JLab may elect to purchase additional quantities of the supplies or services called for by the order, or may elect to extend the period of performance thereof.
- b. The exercise of an option by JSA/JLab requires written notification to the subcontractor within the time period specified in the subcontract/order.
- c. Options should be exercised only if it is determined, through coordination with the SOTR, that:
 1. Funds are available;
 2. The requirement covered by the option fulfills an existing need of JSA/JLab; and
 3. The exercise of the option is most advantageous to JSA/JLab, price and other factors, such as quality, cooperation, and timeliness in performing subcontract requirements are considered.
- d. See FAR Subpart Subpart 17.2—Options for additional guidance.

3. Use of Award Term Incentives

Award term incentives can be used to motivate subcontractor excellence, and facilitate long-term business relationships which can benefit both contracting parties.

- a. Performance periods for award term subcontracts may be structured to meet unique characteristics and requirements of each subcontract.
 1. Multiple performance periods may be used in a single subcontract, e.g., a base year, one or more option years, and one or more award term years.

2. Multi-year terms may be used for the base term, options, and one or more award terms.
- b. If a buyer/subcontracting officer plans to use award term incentives in a subcontract, the proposed award term provisions must be approved by the Procurement Manager prior to issuing the solicitation. The subcontract shall include the JSA award term clause that has been modified for the specific acquisition.
- c. An award term plan shall be prepared that addresses components that will be considered in evaluating the subcontractor's performance, names the members of the award term board and names the term determining official. The plan shall be approved by the Subcontracting Officer, SOTR and the subcontractor prior to implementation.
- d. Once a term extension has been awarded in accordance with the subcontract's award term provision, the awarded extension can only be cancelled in the event of specified contingencies such as –
 1. JSA no longer has a continuing need for the services/supplies
 2. Availability of funds
 3. Reasonableness of subcontractor's proposed price for the extension
 4. JSA's determination that the subcontractor is no longer responsible
 5. DOE approval
- e. Subcontracts that provide for earning award terms beyond the current term of the JSA Prime Contract should specifically state that JSA shall have no contractual obligation or financial responsibility to the Subcontractor in the event the JSA Prime Contract is not extended or the Prime Contract is terminated by the DOE.

Part 18 TECHNOLOGY TRANSFER AND OTHER AGREEMENTS

1. General

Procurement Services supports the JSA/JLab Technology Transfer Manager in the overall accomplishment of the Laboratory's technology transfer mission to include but not limited to: development, submission, administration, and coordination of instruments used to support the JSA/Technology Transfer Mission, outreach activities, attendance at various technology transfer related workshops and conferences, and intellectual property.

2. RESERVED

3. Inter-Entity Work Orders (IWO)

An Inter-Entity Work Order (formerly Memorandum Purchase Orders) is a special method for obtaining supplies and services from DOE cost type contractors (primarily from DOE National Laboratories) as described in the DOE Accounting Handbook (Chapter 12).

- a. IWO's are a means of financing and accounting for costs of work performed by one DOE office or site/facility management contractor for another. IWO's are not procurement actions but are a mechanism to transfer responsibility of work/services between DOE cost type contractors.
 1. The buyer/subcontracting officer should utilize the format PD IWO-1 accessible through the Procurement "P" drive when processing IWO's.
 2. Supporting file documentation associated with executing purchase orders/subcontracts is not required for IWO's (except see paragraph a)18.3(d), below)
 3. Although primarily intended for work with other DOE National Laboratories, IWO's may be issued to other DOE cost type subcontractors covered by the DOE Accounting Hand- book.
- b. IWO's are generally performed on a cost reimbursement basis. A standard clause will be included similar to the boxed area below which provides the basis for transferring costs to JSA/JLab by direct billing (i.e. the submission of invoices by the performing DOE contractor and the issuance of checks by JSA/JLab) rather than through the use of accounting documents (other than the IWO document signed by both parties.)

“This document is not a subcontract. It is an Inter-Entity Work Order (IWO) issued for services, equipment, or materials which are necessary and required in connection with Laboratory subcontract #DE-AC05-06OR23177 to be performed under (name of other DOE subcontractor) # (insert other DOE subcontract number). Billing shall be in accordance with DOE Accounting Practices and Procedures. “

- c. IWO's that exceed One Million Dollars require DOE Contracting Officer approval (see DOE Accounting Handbook Chapter 12.)
- d. Buyer's/subcontracting officers should exercise discretion when issuing IWO's for work/services that could potentially be performed by private industry, particularly small business firms. In such cases, the buyer/subcontracting officer should document the reason(s) why issuing an IWO is prudent and in the best interest of JSA and DOE.
- e. To initiate an IWO, JSA/JLab users must complete a purchase requisition which names the collaborating institution and DOE contract number, and includes a statement of work to be performed. In addition, the User shall provide justification for the noncompetitive action and a brief statement as to the reasonableness of the total amount required. The following documentation does not apply to IWO's as the performing organization's activity will have a DOE approved system:
 1. Cost and Pricing Data
 2. Pre-award or Post award Audits
 3. Representations and Certifications
 4. JSA/JLab terms and conditions and other JSA/JLab clauses normally applied to fixed price or cost type purchase orders/subcontracts
 5. Cost Accounting Standards

- f. Incoming IWO's are normally processed through the responsible DOE entity with the final step being receipt of a IWO from the DOE cognizant site office (in JSA's case the TJSO Contracting Officer)
 - 1. IWO's received are signed by the Buyer within the Buyer's signature authority. A copy is sent to JSA's Budget Office.
 - 2. In the event JLab receives an IWO directly from another DOE cost type contractor the Procurement Department must contact the TJSO CO and DOE Oak Ridge Finance Group to coordinate transferring the funds into JSA's DOE contract.

4. Cooperative Research and Development Agreements (CRADA's)

- a. JSA/JLab encourages the establishment of special mechanisms with non-federal partners (such as commercial firms, not-for-profit laboratories, educational institutions) to jointly conduct the development of laboratory technology in order to strengthen U.S. manufacturing capabilities and increase trade by bringing new products or processes to the marketplace.
- b. JSA/JLab develops Joint Work Statements (JWS's) and executes Cooperative Research and Development Agreements (CRADA's) subject to DOE approval when the participating parties agree to jointly conduct R&D. The CRADA is an agreement entered into between JSA/JLab as operator of the Laboratory and one or more parties, including at least one non-federal party under which the Laboratory, through its laboratory, provides personnel, services, facilities, equipment, and other resources with or without reimbursement (but not funds to non-federal parties). The non-federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory, except that such terms do not include a procurement subcontract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code. JSA/JLab utilizes the most current DOE Model CRADA Terms and Conditions as the basis for its agreements.
- c. DOE assesses a 3% Federal Administrative Charge (FAC) on the amount of funds provided to JLab by the CRADA partner unless otherwise exempted. Exemptions include Small Businesses and Educational Institutions. A DOE ORO Exception to Full Cost Recovery Form is completed and sent to the DOE Site Office with the JWS and CRADA Agreement. DOE will approve form with the package.

5. Joint Work Statements

The Joint Work Statement (JWS) is a proposal submitted on a standard JSA/JLab CRADA/JWS form from the Laboratory Director, or his designated representative, to the DOE Oak Ridge Operations Office through the DOE JSA/JLab Site Office. The JWS describes the purpose and scope of the proposed CRADA and broadly assigns rights and responsibilities among the parties. It is intended to provide sufficient information to the DOE to permit their prompt review and approval of the proposed project in principle.

- a. Purpose
A brief introduction to the proposed cooperation, describing the parties and providing background or contextual information, the expected goals or accomplishments, and reasons for cooperation; a clear statement of the desired result or what the product of the effort should be.
- b. Scope
A summary of the desired work program in concise form, describing the proposed division of responsibilities among the parties and tasks, if known; an outline of the phases of the project, technical objectives, deliverables, level of effort, and any known limitations on time or resources.
- c. Estimated Cost and Source of Support
Estimated costs to each party and projected sources of funds and other resources. Summary totals are sufficient for contributions from external, private participants to be spent inside their organizations. Any funds into the Laboratory should be listed in sufficient detail to identify the DOE funding sources (programs and B&R codes), if available and other sources such as internal supporting research funds.
- d. Benefits/Impacts to Parties
What each party expects to receive from the cooperation and how it is expected to impact them. This should include intangible benefits such as experience and knowledge how, as well as tangible products

and intellectual property rights provisions, if known. Benefits to DOE programs should be identified. Impact to the DOE Sponsor's Program should be described including slippage, if any, to milestones and/or deliverables agreed upon in existing work authorizations.

e. Special Considerations

Information on other subjects likely to arise in negotiation, such as small business preference, domestic location and manufacture preference (or justification, if foreign), any health, safety, and environmental issues, and potential conflict of interest; any inventions, background rights, or previously existing information that is to be specifically carved out or excluded from the CRADA; any known relationship of the proposed CRADA to other, similar work funded by the Laboratory; any expected use of proprietary information, protected CRADA information, and plans or special conditions for publication of results of work performed under the CRADA. Also, any special provisions of the approved CRADA guidelines that are known or expected in advance should be identified. The purpose of this section is to alert DOE to any special or unusual elements of the interaction.

1. JSA officials involved in CRADA formation will individually submit in writing a declaration of no conflict of interest, at the initiation of negotiations of CRADAs. This declaration will be in the form as set forth in CONFLICT OF INTEREST CERTIFICATION FOR COOPERATIVE RESEARCH AND DEVELOPMENT (CRADA) OR STRATEGIC PARTNERSHIP PROJECT (SPP) # (attached), which will be available from Procurement. Procurement will obtain these Certifications from JSA officials, approve them upon execution and maintain them in the respective CRADA files. JSA will provide completed Certifications upon request to the Contracting Officer. These certification forms will be secured in addition to the Certifications as is set forth in the Joint Work Statement (JWS)

f. Background Intellectual Property

All background property shall be identified by one or both parties in the CRADA agreement executed between the partner firm and JSA. If background intellectual property is identified by JSA, coordinate with Legal Counsel regarding the need for a nondisclosure agreement.

g. Procedures

1. Prior to CRADA negotiations with a foreign sponsor, submit to JSA Legal Counsel a proposed statement of work / proposal for CRADA with foreign partners. JSA Legal Counsel will advance the statement of work / proposal for CRADA with foreign partners to the DOE Office of International Cooperative Activities (IA-31) for DOE Headquarters coordination and approval. The absence of a response from IA-31 to JSA General Counsel within 10 Business Days shall be deemed consent for JSA to draft, negotiate and execute the CRADA in accordance with procedures prescribed in this Operations Manual and procedures prescribed in the respective DOE Orders. Issues identified by Headquarters to JSA Legal Counsel within the 10 business days, must be satisfactorily resolved before proceeding with a CRADA, will be authorized.

2. Submittal of JWS to DOE.

The Laboratory Director, or authorized representative, submits the fully coordinated JWS to the DOE JSA/JLab Site Office Buyer/subcontracting officer for approval. If DOE requests modifications to the JWS and the Laboratory Director concurs, the revised JWS may be resubmitted to DOE.

3. Negotiation of the CRADA and Changes to the JWS

The CRADA agreement formalizes the intent of the JWS, describing the detailed obligations of each party. Formal approval of the JWS authorizes the Laboratory to make commitments consistent with the terms of the JWS. The Laboratory and DOE should maintain close, informal communication, as negotiations of the CRADA proceed in order to facilitate final approval of the CRADA.

4. Submittal of the CRADA

The final form of the negotiated CRADA should follow the model CRADA and the approved DOE guidelines, except where indicated in the approved JWS. The Laboratory Director or designated representative, submits the negotiated CRADA to DOE, along with a restatement of the JWS, reflecting any changes resulting from the completed negotiation. A revised JWS is only required if there have been substantial changes or new information generated during the negotiations. If terms are unchanged, the original JWS should suffice. The DOE review should be accomplished within

30 days.

5. Simultaneous Submittal of the JWS and the CRADA

It is expected that in many cases, the JWS and the CRADA can be negotiated quickly and be submitted to DOE simultaneously. In this case, DOE attempts to conclude its review process for both documents within 30 days. Disapproval or recommendations for specific changes shall be made in writing, with approvals confirmed in writing.

6. Execution of the CRADA (Copy of Record)

- i. With the express, prior approval of DOE, the Laboratory Director, (or designated representative,) or a Procurement official within his/her limits of authority may execute the CRADA. After all parties to the CRADA have executed the agreement, a copy of the fully executed CRADA will be sent to the DOE JSA/JLab Site Office. The copy of record sent to the DOE shall not contain any information considered proprietary to any non-federal or non-subcontractor party to the CRADA. If a CRADA covers work of a proprietary nature, the parties shall prepare a non-proprietary version of the statement of work for the official CRADA copy of record and create a separate de-tailed Work Statement containing any proprietary information. The detailed Work Statement may be referenced in the CRADA but does not become a part of the agreement and is not sent to the DOE.
- ii. The following is required before JSA staff members can begin work on the CRADA:
- iii. Approval of the JWS by DOE
- iv. Full execution of the CRADA agreement
- v. If funds-in CRADA, invoice sent to partner organization by Accounts Receivable
- vi. Funds incorporated by modification into JSA DOE Contract
- vii. Billing account established by Budget/Accounting group
 - a. Start date shall be established by one of the following:
 1. Date of which funds are incorporated into JSA DOE contract or
 2. If no funds in CRADA-date on which the CRADA agreement was signed by JSA (last of the parties to sign)
 - b. End date shall be established by the performance period (number of months) shown on the approved CRADA
 - c. Procurement and Budget shall coordinate on the establishment of the start and end dates.
- viii. Copies of the approved JWS and fully executed CRADA shall be sent to Sponsor organization, Accounting, Budget, and Accounts Receivable.

7. CRADA modifications

Modifications that change the scope of work and/or incorporate additional funds in from the Partner are approved by the DOE. Modifications that extend the completion date with no change to scope or funding are approved through the Chief Financial Officer with email notification to DOE Contracting Officer. Approval by the Chief Operating Officer and DOE are not required on a no-cost extension.

The following is required before any work can begin on the CRADA modification

- i. DOE approval of the JWS
- ii. Full execution of the CRADA agreement by the Laboratory Director, designated representative, or a Procurement official within his/her limits of authority
- iii. If funds-in CRADA, invoice sent to partner organization by Accounts Receivable
- iv. If additional funds are required- funds must be incorporated by modification into JSA DOE Contract (this will require an invoice payment received by Oak Ridge Operations from the partner organization)
- v. Billing account established by Budget/Accounting group
- vi. Copies of the approved JWS and fully executed CRADA modification agreement shall be sent to Sponsor organization, Accounting, Budget, and Accounts DOE will be notified via email of modifications that only extend the performance period and do not change any other terms and conditions.

- a. End dates for the CRADA will be revised as appropriate in accordance with the modification.
8. CRADA Administration and Closeout
- i. Funds-in CRADA during the CRADA performance period, the account shall be monitored to insure sufficient funds remain for the entire performance period. If funds are exhausted prior to the end of the performance period, the account shall be closed and all work by JSA staff members be stopped until such time additional funds are provided by the partner.
 - ii. No funds-in CRADA during the Performance.-The Account shall be monitored to insure the established funding limit is not exceeded. At such time that the established funding limit is depleted, all work by JSA personnel shall stop until an approved modification is executed.
 - iii. At the end of the performance period a letter will be sent to the sponsor to confirm that all requirements under the CRADA have been met. Any unused funds-in from the partner shall be returned to the partner at the end of the fiscal year in which the work stopped (In addition to the letter, a final report is also required of the Partner before the CRADA can be closed and funds reimbursed.) . When the report is received a copy is forwarded to the JSA Library Assistant for inclusion in the Office of Science and Technical Information (OSTI). No funds shall be reimbursed until the report is received.

6. User Facility Agreements

JSA/JLab is authorized to enter into User Facility Agreements for those situations where a sponsor requests the use of and will pay for certain JSA/JLab facilities for research and development activities. It can be for other Federal Agencies, state, regional, and local Laboratory's, commercial firms, not-for-profit organizations, universities, or private individuals.

a. Approval

JSA/JLab approves use of its facilities when the proposed work:

1. Is consistent with the mission of JSA/JLab as specified in JSA/JLab's Management and Operating Subcontract with DOE;
2. Complements and does not adversely affect programs that are included in the Institutional Plan;
3. Does not place JSA/JLab in direct competition with domestic, private or public sectors;
4. Is based on specialized scientific capability and/or unique facilities which exist at JSA/JLab; and
5. Is fully funded and reimbursed by the sponsor.
6. The Technical Representative is the JSA/JLab individual responsible for technical liaison with the sponsor. This individual is responsible for oversight of the activity from inception to work completion.

b. Responsibilities

1. Procurement Services supports JLab's user facilities by providing assistance in the development of applicable procedures; advice, assistance, and recommendations to JSA/JLab staff in the application of and compliance with applicable JSA/JLab procedures; guidance in the preparation of materials by the divisions (appropriate documentation, approvals, etc.); assistance in describing the mechanisms and procedures to be followed by outside organizations in placing work at JSA/JLab; preparing required documentation for external coordination; assisting the respective Technical Representative in overseeing the work; and coordinating all User Facility Agreements with the Accounting Group Manager to establish appropriate financial controls and accounts.
2. Prior to entering into any user facility commitment, the Technical Representative must coordinate with the Office of Technology Applications to establish the nature and scope of the work, to develop a budget profile and advance payment criteria, to identify sponsors and describe the situation and relationships among the participating parties, and to coordinate the necessary administrative requirements to process the approval package.
3. The Office of Technology Applications will work closely with the Technical Representative to provide the guidance and recommendations necessary to complete the administrative process of the proposal.

4. A proposal from the sponsor to the Office of Technology Applications containing the following is required before the sponsor will be authorized to use JSA/JLab Facilities:
 - i. The specific facilities requested,
 - ii. The reason the requested facilities cannot be obtained from the private sector,
 - iii. The authority to enter into the necessary agreement by state and local Government if required,
 - iv. A description of the work to be accomplished and schedule,
 - v. Assurance of funding, and
 - vi. Agreement to the User Facility Agreement Terms and Conditions
5. The proposal will be coordinated with the appropriate division(s), Legal Counsel and approved by the Associate Directors;
6. The following is required before the sponsor may commence work:
 - i. Execution of the User Facility Agreement;
 - ii. Establishment of a billing account

7. Strategic Partnership Project (SPP)

a. General

This is work accomplished by JSA/JLab for funding sponsors other than the DOE. It can be for other Federal Agencies, state, regional, and other laboratories, commercial firms, not-for-profit organizations, universities, or private individuals. JSA/JLab is not authorized to respond to Federal Agency Requests for Proposals (RFP's). Intelligence related activities will be conducted in accordance with applicable Executive Orders, US Laws, Presidential Directives and Director of CIA Intelligence Directives.

1. For work involving non-Federal entities, the following items, including DOE approval, are required before JSA/JLab may commence the work:
 - i. A letter from the non-Federal entity to DOE containing the following:
 - ii. The specific services requested of JSA/JLab,
 - iii. The reason why the requested services cannot be obtained from the private sector,
 - iv. The authority to enter into the necessary agreement by state and local Government if required, and
 - v. Agreement to fund the work and if precluded from advance payment site the legislation
 - vi. A Proposal Information Form (PIF) submitted by the Laboratory Director or Designee and approved by DOE;
 - vii. An executed agreement; and
 - viii. Advance payment in accordance with DOE directives
2. The Accounting Group must assure that a budget and reporting code (appropriate billing account) has been established.
3. Personal Property (equipment) acquired will be coordinated with, accounted for and managed by JLab Property Office.
4. Procurement Services will ensure that all subcontracting is accomplished in accordance with JLab Procurement Procedures.

b. Authority

Non-DOE funded work may be performed when the proposed work:

1. Is consistent with the mission of JSA/JLab as specified in JSA/JLab's Management and Operating Subcontract with the DOE;
2. Complements and does not adversely affect programs that are included in the Institutional Plan or create a detrimental future burden on DOE resources.
3. Does not place JSA/JLab in direct competition with domestic private sectors;
4. Is based on specialized scientific capability and/or unique facilities which exist at JSA/JLab; and
5. Is funded by the sponsor by any required advance payments
6. Coordinate all SPP proposals with the Accounting Group to ensure that all billing and cost accounts are appropriately established.

7. The Principal Investigator is the JSA/JLab individual responsible for developing a specific SPP. This individual is responsible for management of the activity from inception to completion.
- c. Procedures
1. Prior to SPP negotiations with a foreign sponsor, submit to JSA Legal Counsel a proposed statement of work / proposal for SPP with foreign partners. JSA Legal Counsel will advance the statement of work / proposal for WFO with foreign partners to the DOE Office of International Cooperative Activities (IA-31) for DOE Headquarters coordination and approval. The absence of a response from IA-31 to JSA General Counsel within 10 Business Days shall be deemed consent for JSA to draft, negotiate and execute the SPP in accordance with procedures prescribed in this Operations Manual and procedures prescribed in the respective DOE Orders. Issues identified by Headquarters to JSA Legal Counsel within the 10 business days, must be satisfactorily resolved before proceeding with a SPP, will be authorized.
 2. Prior to entering into any commitment to perform SPPs, the Principal Investigator should hold discussions with a Procurement representative to establish the nature and scope of the work, to develop a detailed budget profile and advance payment criteria, to identify potential sponsors and describe the situation and relationships among the participating parties, and to coordinate the necessary administrative requirements to process the SPP package. The budget profile shall include the estimated amount that will be used for Laboratory Directed Research and Development (LDRD). The SPP Agreement shall state " Consistent with the Department of Energy's (DOE) full cost recovery policy, doe collects, as part of its standard indirect cost rate, a laboratory directed research and development (LDRD) cost. Based on the amount of funds accepted for this project, \$ _____ represents an estimated amount that will be used for LDRD.
 3. The Procurement representative will work closely with the Principal Investigator to initiate the documentation and/or provide the guidance and recommendations necessary to complete the administrative process of the PIF.
 4. JSA/JLab SPP proposals requiring DOE approval are approved by the respective division's Associate Director and submitted to the DOE Site Office Contracting Officer by the Laboratory Director or authorized representative.
 5. The following is required before a JSA staff member can begin work on the SPP:
 - i. Approval of the PIF by DOE
 - ii. Full execution of the SPP Agreement by the Laboratory Director, designated representative, or a Procurement official within his/her limits of authority
 - iii. Invoice sent to sponsor organization by AR
 - iv. Invoice payment received by Oak Ridge Operations from sponsor organization
 - v. Funds incorporated by modification into the JSA DOE Contract
 - vi. Billing account established by the Accounting and Budgeting Groups.
 - a. Start date shall be established by one of the following:
 1. Date of which funds are incorporated into JSA DOE contract or
 2. If no funds in CRADA-date on which the CRADA agreement was signed by JSA (last of the parties to sign)
 - b. End date shall be established by the performance period (number of months) shown on the approved CRADA
 - c. Procurement and Budget shall coordinate on the establishment of the start and end dates.
 - vii. Copies of the approved PIF and fully executed SPP agreement shall be sent to sponsor organizations, Accounting, Budget, and Accounts Receivable
- d. SPP modifications
1. Modifications that change the scope of work and/or incorporate additional funds in from the Partner are approved by the DOE.
 2. The following is required before JSA staff members can begin work on the SPP modification:
 - i. Approval of the PIF modification by DOE
 - ii. Full execution of the SPP Modification Agreement by the Laboratory Director, designated representative, or a Procurement official within his/her limits of authority

- iii. Invoice sent to sponsor organization by AR
 - iv. Invoice payment received by Oak Ridge Operations from sponsor organization
 - v. Funds incorporated by modification into the JSA DOE Contract
 3. Copies of the approved PIF and fully executed SPP agreement shall be sent to sponsor organizations, Accounting, Budget, and Accounts Receivable
 - i. End dates for the SPP will be revised as appropriate in accordance with the modification.
 4. DOE will be notified via email of modifications that only extend the performance period and do not change any other terms and conditions. Approval is not required by the Chief Operating Officer. For No cost extensions, approval is through the Chief Financial Officer.
- e. DOE Added Factor
 1. DOE assesses a 3% Federal Administrative Charge (FAC) on the amount of funds provided to JLab to fund the SPP project unless exempted. Exemptions include Small Businesses and Educational Institutions. A DOE ORO Exception to Full Cost Recovery Form is completed and sent to the DOE Site Office with the PIF and SPP Agreement. DOE will approve form with the package.
- f. SPP Administration and Closeout
 1. During the SPP performance period, the account shall be monitored to insure sufficient funds remain for the entire performance period. If funds are exhausted prior to the end of the performance period, the account shall be closed and all work by JSA staff members shall stop until such time additional funds are provided by the sponsor and a modification is approved and full signed.
 2. At the end of the performance period, a letter is sent to the partner to confirm that all requirements under the SPP have been met. Any unused funds from the sponsor shall be returned to the sponsor as soon as possible following the end of the fiscal year in which the work was stopped.

8. Other Federal Agencies

- a. For work involving Other Federal Agencies (OFA), the following items are required before JSA/JLab may commence the work:
 1. A Statement of Work (SOW) prepared by JSA/JLab
 2. An interagency agreement (funding authorization) signed by DOE and the OFA. The OFA must certify on the agreement that the agreement is in compliance with requirements of the Economy Act of 1932 (31 U.S.C. 1535) and FAR 6.002 and that to the best of its knowledge the work requested will not place DOE and its subcontractor in direct competition with the domestic private sector;
 3. DOE Approval of the PIF
 4. DOE full execution of the Interagency Agreement
 5. Military Interdepartmental Purchase Request (MIPR)) form 448 received and signed by DOE
 6. DOE authorization of funds (normally through modification of the DOE Contract)
 - i. Project start date shall be established on the date the funds are incorporated into JSA's DOE contract.
 - ii. End date for use of the funds shall be established through the MIPR.

SUBCHAPTER D. SOCIOECONOMIC PROGRAMS (PART 19-26)

Part 19 SMALL BUSINESS PROGRAM

1. Small Business Set asides

- a. Purchases that do not exceed the Simplified Acquisition Threshold (excluding micro-purchases) and construction estimated to cost \$3,000,000 or less (including repair and alteration of structures and new construction) shall be reserved exclusively for small business firms where there is an expectation that offers, competitive as to price, quality, and delivery will be obtained from two or more responsible small business firms.
- b. Buyer/subcontracting officers have authority to dissolve required set asides up to \$50,000; all other set asides may only be dissolved by the Small Business Program Manager or the Procurement Manager.
- c. Solicitations exceeding the Simplified Acquisition Threshold and construction estimated to exceed \$3,000,000 that are not set aside for small business should be reviewed by the Small Business Program Manager prior to issuance
- d. HUBZone set-asides: Subcontracting Officer may set aside acquisition for competition restricted to HUBZone small business concerns when the all of the following are met:
 1. Offers are expected to be received from two or more HUBZone small business concerns: and
 2. Award will be made at a fair market price
- e. Service-disabled veteran-owned small business concerns set-asides: Subcontracting Officer may set aside acquisition for competition restricted to Service-disabled veteran-owned small business concerns when the all of the following are met:
 1. Offers are expected to be received from two or more Service-disabled veteran-owned small business concerns: and
 2. Award will be made at a fair market price

2. Eligibility

- a. To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of written self-certification. An offeror may represent that it is a small business concern in connection with a specific solicitation if it meets the definition of a small business concern applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small business.
- b. The buyer/subcontracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless:
 1. Another offeror or interested party challenges the concern's small business representation,
 2. The buyer/subcontracting officer has a reason to question the representation.
- c. Challenges shall be referred to the Procurement Manager for directions and disposition.

3. Non-competitive Small Business Awards

- a. Buyer/subcontracting officers may award purchase orders/subcontracts with a value not to exceed \$3,500,000 (\$5,500,000 or less for manufacturing NAICS codes), on a non-competitive basis to firms certified as participants in the Small Business Administration 8(a) program, and without dollar limitations to firms that are participating as a bona-fide Laboratory sponsored "Mentor- Protégé". A list of approved Mentor-Protégé agreements may be obtained from the Laboratory's Small Business Program Manager.
- b. Awards of subcontracts to HUBZone small business concerns can be made on a sole source basis provided all the following are met:
 1. The subcontracting Officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns.
 2. The anticipated price of the subcontract, including options, will not exceed -

- i. \$5.5 million for a requirement with the North American Industry Classification System (NAICS) codes for manufacturing; or
 - ii. \$3.5 million for a requirement within any other NAICS code;
 3. The requirement is not currently being performed by an 8(a) participant under the SBA 8(a) program.
 4. The acquisition is greater than the simplified acquisition threshold
 5. The HUBZone small business concern has been determined to be a responsible subcontractor with respect to performance; and
 6. Award can be made at a fair and reasonable price.
- c. Awards of subcontracts to Service-disabled veteran-owned small business concerns can be made on a sole source basis provided all the following are met:
 1. The subcontracting Officer does not have a reasonable expectation that offers would be received from two or more Service-disabled veteran-owned small business concerns.
 2. The anticipated price of the subcontract, including options, will not exceed -
 - i. \$5.5 million for a requirement with the North American Industry Classification System (NAICS) codes for manufacturing; or
 - ii. \$3.5 million for a requirement within any other NAICS code;
 3. The requirement is not currently being performed by an 8(a) participant under the SBA 8(a) program.
 4. The Service-disabled veteran-owned small business concern has been determined to be a responsible subcontractor with respect to performance; and
 5. Award can be made at a fair and reasonable price.
- d. Non-competitive awards not exceeding the Simplified Acquisition Threshold may be awarded to a small business firm if they are the only known small business. Such awards shall be made at fair market prices.

4. Price Evaluation for Hubzone Small Business Concerns

- a. Evaluation preference. (See Contract Clause I16C)
 1. Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—
 - i. Offers from HUBZone small business concerns that have not waived the evaluation preference; and
 - ii. Otherwise successful offers from small business concerns.
 2. The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
 3. [Deleted Rev 6.].
- b. Waiver of evaluation preference.
 1. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference. Offer elects to waive the evaluation preference.

5. Utilization of Indian Organizations and Indian-Owned Economic Enterprises

- a. General
 1. Buyers/subcontracting officers shall use best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in JLab work consistent with efficient performance.
 2. The Subcontracting Officer, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Subcontracting Officer has independent reason to question that status.
 3. In the event of a challenge to the representation of a subcontractor, the Subcontracting Officer will refer the matter to the U.S. Department of the Interior Bureau of Indian Affairs (BIA)

Attn: Chief, Division of Contracting and Grants Administration
1849 C Street, NW, MS-2626-MIB
Washington, DC 20240-4000

4. The BIA will determine the eligibility and notify the Subcontracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.
- b. Incentive
 1. The Contractor may request an adjustment under the Indian Incentive Program to the following:
 - i. The estimated cost of a cost-type subcontract.
 - ii. The target cost of a cost-plus-incentive-fee prime subcontract.
 - iii. The target cost and ceiling price of a fixed-price incentive prime subcontract.
 - iv. The price of a firm-fixed-price prime subcontract.
 2. The amount of the adjustment to the prime contract is 5 percent of the estimated cost target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.
 3. The Subcontractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of subcontract performance.
- c. The Subcontracting Officer, subject to the terms and conditions of the subcontract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures

Part 20 RESERVED

Part 21 RESERVED

Part 22 APPLICATION OF LABOR LAWS TO LABORATORY ACQUISITIONS

1. Labor Standards Involving Supplies

- a. Clause H10 of JSA's DOE Contract requires requirements concerning labor standards for supply acquisitions exceeding \$15,000 and are otherwise subject to FAR 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014)
- b. The JSA standard formats incorporate all Labor standards required pursuant with JSA's DOE Contract

2. Labor Standards Involving Construction

- a. Clause H44 of JSA's DOE Contract includes various FAR requirements concerning labor standards for construction work (see listing below). The Construction Wage Rate Requirement and required labor standards are included in JSA formats.
- b. All requirements exceeding \$2,000 for construction, alteration and repair of public buildings and public works, including painting and decorating must be submitted to DOE to review applicability of Construction Wage Rate Requirement . The following provides the procedures for processing Wage Determination requests to DOE:
 1. Procurement receives a Construction Wage Rate Requirement memo from an end user requesting review and determination of Construction Wage Rate Requirement applicability for any given project. This memo should include a description of the scope of work to be performed, a list of labor classifications to be used in performance of the work, and a breakdown of the cost estimate to include labor, materials, equipment, and overhead.
 2. Procurement completes the "Labor Standards Determination" request spreadsheet and emails it to all members of the Labor Standards review committee that meets each Thursday in Oak Ridge. The email request should be sent no later than 4:00 p.m. on Wednesday.
 3. The review committee responds with a "Labor Standards Committee Case Report". This case report indicates whether a project is Davis-Bacon Act covered or not.
 4. After receipt of the Labor Standards Case (LSC) report from the committee, Procurement then emails the "Davis-Bacon and Service Contract Act Wage Determination Request Form" to DOEWageDeterminations@oro.doe.gov. The appropriate wage determination will then be provided to Jefferson Lab.
- c. The DOE Contract clause "Subcontracts (Labor Standards)" requires JSA subcontractors to submit Standard Form 1413 to the JSA Buyer/subcontracting officer. In lieu of forwarding this form to the DOE Contracting officer as indicated in the clause, the DOE Contracting Officer has approved JSA to maintain the SF 1413 in the Procurement Department subcontract files
 1. The files shall be available to the DOE upon their request.
 2. Buyer/subcontracting officers should ensure SF Form 1413 is returned for all construction subcontracts having additional subcontracting opportunities and place the returned form in the applicable subcontracts file.
- d. Payrolls and statements
 1. Submission of Payroll Records

In accordance with the clause at 52.222-8, Payrolls and Basic Records, the subcontractor must submit their payrolls and ensure lower-tier subcontractor payrolls are submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the subcontract, and (2) weekly payroll statements of compliance. The subcontractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.
 2. Withholding for non-submission

If the subcontractor fails to submit copies of its or its subcontractors' payrolls promptly, the subcontracting officer shall, from any payment due to the contractor including progress payments,

withhold approval of an amount that the Buyer/Subcontracting officer considers necessary to protect the interest of the Laboratory/Government and the employees of the subcontractor or any lower tier subcontractor.

3. Examination of Payroll records

The Subcontracting officer or designee shall examine the payrolls and payroll statements to ensure compliance with the subcontract and any statutory or regulatory requirements. The following shall be checked for each payroll:

- i. Is the payroll accompanied by a signed "Statement of Compliance" that certifies to the correctness of the information provided and to compliance with the payment provisions of the Davis-Bacon Act and applicable Department of Labor wage determination?
- ii. Are the classifications shown for employees consistent with the classifications listed in the applicable wage determination?
- iii. Are the basic hourly rates of pay consistent with the rates established in the applicable wage determination for each classification of work listed on the payroll?
- iv. If the basic hourly rate being paid is less than that prescribed in the wage determination, are fringe benefits being provided in an amount that is at least equal to the difference between the basic hourly rate being paid and the rate prescribed by the wage determination?
- v. Are the fringe benefits being provided in the amounts and types prescribed by the wage determination?
- vi. If the fringe benefit called for by the wage determination is not prescribed in the wage determination as an hourly rate, has the Subcontractor either paid the benefit as stated or paid another bona fide fringe benefit or an hourly cash equivalent thereof?
- vii. If a cash equivalent is being paid for a fringe benefit, has the subcontractor provided documentation supporting that the equivalent has been correctly determined?
- viii. Are fringe benefits being paid in cash?
- ix. If fringe benefits are not being paid in cash, are they being paid to approved plans, funds, or programs?
- x. If the answer to (c) is yes, do we have evidence that the plans, funds, or programs have been approved?
- xi. Are all deductions that have been taken from employees' pay considered permissible deductions (tax, social security, health insurance, pensions, etc.)?
- xii. Have employees who have worked more than 40 hours in a week been paid at least 1.5 times their basic hourly rate of pay?
- xiii. If an apprentice or trainee is shown on the payroll, has evidence of individual registration in a bona fide apprenticeship program been provided?
- xiv. Is the ratio of apprentices to journeymen on the job not greater than the ratio prescribed in the registered program?
- xv. Is the rate of pay and fringe benefits for apprentices or trainees at least equal to that prescribed by the wage determination after adjusting the basic hourly rate of pay for the time the apprentice has worked in the apprenticeship program?
- xvi. If any question above is answered No, refer the payroll to the Subcontracting Officer for review and appropriate action.
- xvii. Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

4. Preservation of Payroll records

JSA shall retain payrolls and statements of compliance for 3 years after completion of the subcontract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a subcontractor or lower-tier subcontractor

for any reason, but copies thereof may be furnished to the subcontractor or lower-tier subcontractor who submitted them.

5. Protection and Disclosure of Payroll Records

Payroll records in JSA's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain Personal Identifiable Information (PII) or other business sensitive information. Any third-party request for such information must be referred to the Procurement Manager.

6. Payroll Discrepancies

All discrepancies found between payroll records and applicable Davis-Bacon Wage Determination shall be brought to the attention of the subcontractor for resolution. Restitution and resolution of all payroll issues shall be accomplished before final payment is made to the subcontractor. Subcontractor shall provide evidence of restitution and/or problem resolution.

7. Conforming Rates

Labor categories utilized by the Subcontractor and shown on the Payroll submitted but are not found on the applicable Davis-Bacon Wage Determination shall be conformed in accordance with the Labor Standard Provisions.

8. Other

- i. Subcontractor shall complete SF Form 1444-Request for Additional Classification and Authorization of Rate.
- ii. Buyer/Subcontracting Officer shall determine the reasonableness of the rate proposed by the Subcontractor and document on the SF 1444 the rationale and reasonableness of the rate(s).
- iii. Buyer/Subcontracting Officer shall forward to the Department of Labor via the DOE Site Office.

3. Compliance Checking

- a. The subcontracting officer shall make checks and investigations on all subcontracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the subcontract.
- b. Regular compliance checking includes the following activities:
 1. Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Government Standard Form 1445.)
 2. On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.
 3. Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.
 4. Comparison of the information with available data, including daily inspector's report and daily logs of construction, to ensure consistency
- c. Situations that may require special compliance checks include inconsistencies, errors, or omissions detected during regular compliance checks; and/or receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information.

4. Labor Standards Involving Services

- a. Clause H9 of JSA's DOE Contract includes requirements concerning labor standards for services subcontracts.
- b. See subpart 37.2, Service Contract Act Process for obtaining SCA Wage Rates for solicitations and subcontracts
- c. The Subcontractor shall post the applicable wage determination at the job site. If allegations of nonconformity to the wage determination are brought to the attention of the Buyer/Subcontracting

Officer he/she is then required to investigate the complaint. If allegations are proven to be true, Buyer/Subcontracting Officer shall bring the matter to the attention of the Subcontractor for resolution. Until resolution is made, the subcontracting officer shall, from any payment due to the contractor including progress payments, withhold approval of an amount that the Buyer/Subcontracting officer considers necessary to protect the interest of the Laboratory/Government and the employees of the subcontractor or any lower tier subcontractor.

- d. In addition to terms and conditions referenced in paragraph (a) above, the subcontracting officer should refer to DOE Contract Modification in the conformed DOE contract.

Part 23 ENVIRONMENT, SAFETY, AND HEALTH

1. General

The Procurement Department has responsibility for incorporating standard and project specific Jefferson Laboratory environment, safety and health (ESH&Q) terms and conditions in solicitations and resulting subcontracts.

- a. Roles and responsibilities for implementing the JLab ESH&Q program are delineated in the Jefferson Lab Policy Statement on Environment, Safety, Health and Quality (ESH&Q) and the ESH& Q Manual. This Manual is the primary directive and guidance document for all staff to use in fulfilling their ESH&Q responsibilities.
- b. Jefferson Lab considers no activity to be so urgent or important that the Lab's standards for environmental protection, safety, or health will be compromised.
- c. The Jefferson Lab ESH&Q Policy empowers all JSA employees, subcontractors, and users with the responsibility and expectation - without reprisal - to stop work that endangers people, environment, property, or quality.

2. Procurement Staff Responsibilities

a. Procurement Manager

1. Review all changes to the Laboratory ESH&Q Manual to determine if the change requires a revision to the APM and/or POM. The result of each review will be documented in the Department files.
2. Ensure that Jefferson Lab's standard and appropriate project specific ESH&Q terms and conditions are included in solicitations and resulting subcontracts.
3. Ensure that SOTR's receive information to assist them in performing their responsibility for oversight of the subcontractor's performance, including those related to compliance with the ESH&Q requirements.

b. Buyer/Subcontracting Officer

For all Purchase Requests (PR's) involving work at the JLab site, the buyer/subcontracting officer shall:

1. Require the requisitioner to provide the appropriate ESH&Q terms and conditions to include in the solicitation and resulting subcontract.
2. Compare the PR Risk Code and Work on Site designations with the work described. If inconsistencies are noted the buyer/subcontracting officer will send the PR and specifications to the ESH&Q Division (Deputy Director of ESH&Q and the ESH&Q Professional assigned to Administration) for resolution.
3. Determine if a JLab ESH&Q professional has reviewed the project specifications for work characterized with an unmitigated Risk Code 2 or higher.
 - i. If ESH&Q professional has not reviewed project specifications, the specifications will be forwarded to the ESH&Q Division (Deputy Director of ESH&Q and the ESH&Q Professional assigned to Administration) to review the specifications and assist requisitioner in preparing ESH&Q terms and conditions required for the project.
 - ii. Validate written direction (email, memorandum, etc.) from the ESH&Q professional to proceed with the procurement action
4. Include ESH&Q performance criteria when Past Performance is used as an evaluation factor for work with an unmitigated Risk Code 2 or higher.
5. Ensure SOTR's are aware of their ESH&Q oversight responsibilities, see JLab form PD 10.
6. Determine need for pre-proposal and pre-work meetings with subcontractors, SOTR, and other managing or affected JLab division representatives. Include ESH&Q staff for all un- mitigated Risk Code 2 or higher work and when otherwise considered necessary. Coordinate meetings with all applicable parties.

7. Ensure subcontract award clearly states limitations on proceeding with on-site work prior to ESH&Q documents being submitted and approved by JLab (e.g. activity hazard analysis, safety plan, ESH&Q training, etc.).
8. Ensure subcontractor submitted ESH&Q documents are approved by ESH&Q professional and SOTR.
9. Authorize subcontractor to proceed with on-site work after all ESH&Q limitations have been resolved (e.g., approval of vendor's Activity Hazard Analysis, Safety Plan, completed ESH&Q training, etc.).
10. Visit work sites, observe work in progress, and address safe and unsafe behaviors. Coordinate your visits with the SOTR and ESH&Q professionals to ensure safety professionals are present for observation of safety conditions.
11. Keep personal ESH&Q training current to enable access to subcontractor work sites necessary for administering assigned subcontracts.
12. Discuss ESH&Q performance at all progress meetings.
13. Ensure that all known ESH&Q proficiencies and deficiencies are documented in the Department's Vendor Portal.

3. Requisition Process and ESH&Q Considerations

- a. The Maximo Requisition System (Maximo) requires requisitioners to indicate on the PR whether any work will be performed at JLab site, and if so, to assign a Risk Code consistent with ESH&Q Manual section 3210 Hazard ID and Characterization.
- b. Maximo automatically notifies the ESH&Q Division (Deputy Director of ESH&Q and the ESH&Q Professional assigned to Administration) of all requisitioned work characterized with an unmitigated Risk Code 2 or higher.
- c. Requisitioners shall follow ESH&Q Manual Chapter 3420, ESH&Q Aspects of Procured Services & Construction and Appendix 3420-T1, Evaluation of Proposed Subcontracted Activities when preparing the PR, specifications and project specific ESH&Q terms and conditions.
- d. Equipment and material purchased and brought to Jefferson Lab may have the potential to create health, safety, and environmental hazards. Therefore, requisitioners shall follow ESH&Q Manual Chapter 3410, ESH&Q Aspects of Material Acquisitions and Appendix 3410-T1, Evaluation Checklist for Procured Materials when preparing the PR, specifications and project specific ESH&Q terms and conditions.

4. Temporary Labor Personnel

Temporary labor personnel, also referred to as "Contract Labor", are procured from outside employment agencies to perform work at Jefferson Lab. Temporary labor personnel are not JSA employees, but are employees of the company we contract with. These contract labor personnel operate under the direct control of Jefferson Lab supervisors, who are responsible for ensuring the workers receive all appropriate Jefferson Lab training and follow Jefferson Lab regulations and procedures.

Part 24 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

1. Protection of Privacy

- a. If a procurement action specifically provides for the design, development, or operation of a system of records on individuals on behalf of the Laboratory, the buyer/subcontracting officer shall insert the following clause in applicable solicitations and subcontracts:
 1. The clause Privacy Act Notification, FAR 52.224-1 2.
The clause Privacy Act, FAR 52.224-2
- b. A "system of records on individuals", as used herein, means a group of any records under the control of the Laboratory from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

2. Freedom of Information Act (FOIA) Requests

- a. JSA/Jefferson Lab is not subject to the statutory requirements of FOIA.
- b. Buyer/subcontracting officers shall notify the Procurement Manager regarding any FOIA request.

3. Obtaining and Releasing Information from Vendors

- a. Although the Procurement Department is the normal point of contact between the Laboratory and its suppliers, other JLab staff may contact suppliers for technical or cost data when information relevant to future procurements is needed, (e.g., sources, delivery, or pricing data)
- b. Vendors requesting to place equipment at JSA/JLab for the purpose of testing its use should complete a Subcontractor Release Letter - (Equipment).
- c. The Procurement staff should refer supplier representatives to other JLab personnel as necessary to make full use of the information and services offered by suppliers.
- d. Procurement staff should normally be the lead negotiator.
- e. When debriefing a vendor, refer to Part 15, Section 15.26, Debriefing Unsuccessful Offerors
- f. Refer also to Release of Information under Standard of Conduct.

4. Vendor Presentations at JSA/JLab

A Subcontractor Release Of Information form should be completed by each vendor that requests to provide a formal presentation at JSA/JLab. If the purpose of the meeting is for technical discussions on an active JSA/JLab solicitation or subcontract, the form is not required, but the meeting should be coordinated with the cognizant buyer/subcontracting officer.

Part 25 FOREIGN ACQUISITIONS

1. General

- a. The Buy American Act Clause contained in JSA's prime contract (see DEAR 970.2570):
 1. Restricts the purchase of supplies that are not domestic end products, for use within the United States. A foreign end product may be purchased if the subcontracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see FAR subpart 25.1); and
 2. Requires, with some exceptions, the use of only domestic construction materials in subcontracts for construction in the United States (see FAR Subpart 25.2)
- b. Pursuant to the Buy American Clause, the buyer/subcontracting officer is authorized to document and approve determinations of non-availability of individual items not exceeding \$50,000.
- c. Pursuant to the Buy American Clause, the Procurement Manager is authorized to document and approve determinations of non-availability of individual items as established in writing by DOE Contracting Officer for items \$500,000 or less..

2. Preference for Domestic End Products

- a. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- b. The DOE Contracting Officer may provide a list of foreign articles that the JSA buyer/subcontracting officer will treat as domestic for procurements at the Laboratory.
- c. A subcontractor shall use only domestic end products except to the extent that it specified use of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

3. Determining Reasonableness of Cost

- a. If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the buyer/subcontracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—
 1. 6 percent, if the lowest domestic offer is from a large business concern; or
 2. 12 percent, if the lowest domestic offer is from a small business concern. The subcontracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see FAR Subpart 19.5).
 3. The cost of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at FAR Subpart 25.5.)

4. Evaluating Offers of Foreign Construction Material

- a. Offerors proposing to use foreign construction material other than that listed by the Laboratory in the applicable clause at FAR 52.225-9, paragraph (b)(2), or FAR 52.225-11, paragraph (b)(3), must provide the information required by paragraphs (c) and (d) of the respective clauses.
- b. The subcontracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the subcontracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.
- c. See additional guidance relative to this section at FAR 25.204.

5. Foreign Visits and Assignments

All JLab sponsored meetings and conferences that involve a non-U.S. citizen shall be conducted in accordance with requirements for Unclassified Foreign Visits and Assignments contained in JLab

Administration Manual (see Part 301.05). In such cases coordinate foreign visitors with JLab Security Office.

- a. When interacting with vendors and subcontractors that potentially involve meetings, work assignments or visits to JLab with foreign nationals, Department staff shall notify the vendor or subcontractor as far in advance as reasonably possible of JLab's requirements governing visits by foreign nationals. The following excerpt from JLab's website may be used to communicate this important issue.

"International Visitor Registration

The U.S. Department of Energy requires all non-U.S. citizens to provide passport, visa, and U.S. Citizenship and Immigration Services information before entry to Jefferson Lab. In addition, DOE headquarters approval is required before entry of persons whose country of origin is Cuba, Iran, Libya, North Korea, Sudan, or Syria. All non-U.S. citizens must bring and present Laboratory issued picture identification, i.e. passport or green card, and current USCIS documents for review. Entry to Jefferson Lab may be denied if identification and current immigration status cannot be verified. JLab Registration/International Services can assist in your visit preparations by calling 757-269-6380 or 757-269-7687. JLab Registration/International Services is located at VARC building 28 on the Jefferson Lab campus."

- b. Solicitation and subcontract documents that require visits/work at JLab site should include the above information in the solicitation and/or subcontract.

6. Duty-Free

- a. Except as otherwise approved by the DOE Contracting Officer, the Buyer/Subcontracting Officer shall not include in the subcontract price any amount for duties on supplies specifically identified in the DOE Contract Schedule to be accorded duty-free entry. The DOE Contracting Officer is the only individual authorized to issue Duty Free Entry Certificates for Jefferson Lab.
- b. The DOE Jefferson Lab Site Office Contracting Officer has determined that work done at JLab may be exempt from import duties (under the authority of "HTSUS 9808.00.50 - Articles for the Nuclear Regulatory Commission or the Department of Energy"). This solely in cases where JSA/Jefferson Lab is the Importer of Record. Therefore, all items that are non-domestically manufactured (foreign) and shipped to Jefferson Lab from the foreign source will be accorded Duty Free Entry.
- c. Duty Free Procedures-Except as provided in paragraph (d) the following procedures apply to supplies not identified in the DOE Contract Schedule to be accorded duty-free entry:
 1. The Buyer/Subcontracting Officer shall notify the DOE Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under the DOE Prime Contract, either as end products or for incorporation into end products. The notice to the DOE Contracting Officer shall be issued at least 20 calendar days before the importation and shall identify the—
 - i. Foreign supplies;
 - ii. Estimated amount of duty; and
 - iii. Country of origin.
 2. The DOE Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify JLab within 10 calendar days after receipt of JLab's notification in paragraph 1. above.

3. Except as otherwise approved by the DOE Contracting Officer, the subcontract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable under the subcontract if the supplies were not entered duty-free.
- d. JLab is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—
 1. The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
 2. Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- e. JSA shall claim duty-free entry only for supplies to be delivered to the JSA/Government under the DOE Prime Contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- f. The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the JSA in obtaining duty-free entry for these supplies.
- g. Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—
 1. Delivery address of the Contractor (or contracting agency, if appropriate);
 2. Government prime contract number;
 3. Identification of carrier;
 4. Notation
UNITED STATES GOVERNMENT, [agency], Duty-free entry to be claimed pursuant to Item No(s) [from Tariff Schedules] , Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
 5. Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
 6. Estimated value in United States dollars.
- h. The Buyer/Subcontracting Officer shall instruct the foreign supplier to—
 1. Consign the shipment as specified in paragraph (g) of this clause;
 2. Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and
 3. Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- i. The Subcontractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—
 1. Foreign supplies;
 2. Country of origin;
 3. Subcontract number; and
 4. Scheduled delivery date(s).
- j. The Subcontractor shall include the substance of the clause at FAR 52.225-8 Duty-Free Entry in any subcontract if— Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
- k. Specific delivery instructions apply to procurements to be delivered duty free. Additional guidance is provided under standard terms "FOB: Destination, Inco term DAP Jefferson Lab".

Part 26 ENVIRONMENTALLY PREFERABLE PURCHASING PROGRAM

1. General

- a. General Executive Order (E.O.) 13423 directs Federal agencies to incorporate into their procurement programs a requirement to:
 1. Use sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and
 2. Use paper of at least 30 percent post-consumer fiber content.
- b. Requirements

Procurement of products identified on the EPA list of designated products and categories must be recycled content. The EPA webpage is: Products | Comprehensive Procurement Guidelines (CPG) | US EPA.

- c. Exceptions
 1. Items not included in (b) above can be exempted from the designated recycled product requirement if:
 - i. The cost is too high,
 - ii. Is not available, or,
 - iii. Performs poorly or does not meet JSA performance standards
 2. Recognizing the significant market response to federal requirements, there are no exceptions for: book paper, carbonless paper, computer printout paper, copy paper, cotton fiber paper, cover stock, file folders, forms bond, office paper (such as notepads), and white woven envelopes.

2. Preference Program

The preference program should demonstrate that JLab has a preference for products that contain recovered materials and these materials meet the standard for recycled content established by EPA. Additionally, the term preferable may also include products that may not contain recycled content but are environmentally preferable over the recycled version because they are made from environmentally sustainable materials or are manufactured using environmentally sound processes. Buyers/subcontracting officers will document the recycling status of each procurement action.

3. Green Purchasing

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of Federal employees and contractor service providers. In the performance of work under this contract, JSA shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and well-being of Federal employees, [sub]contract service providers and visitors using the facility. Green purchasing or environmentally preferable contracting includes the initiatives described below:

Alternative Fuels and Vehicles are described at: <http://www.afdc.energy.gov/afdc/>

Biobased Products are described at <http://www.biopreferred.gov/>

Energy efficient products are described at <http://energystar.gov/products> for Energy Star products and at <http://www.eere.energy.gov/femp/procurement> for FEMP designated products Environmentally Preferable Computers are described at <http://www.epeat.net>. Also, refer to <https://cc.jlab.org/pcpurchasing> for JLab

"PC Environmental Rating Requirements."

Non-Ozone Depleting Products are described at <http://www.epa.gov/Ozone/snap/index.html>

Recycled Products are described at <http://epa.gov/cpg>

Water efficient products are described at <http://epa.gov/watersense/>

To the extent that the services require the provision of any of the above types of products, the environmentally preferable type of product is to be furnished unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the Purchasing/Subcontracting Requirements (Parts 27- 33)

SUBCHAPTER E. PURCHASING/SUBCONTRACTING REQUIREMENTS (PARTS 27-33)

Part 27 PATENTS, DATA AND COPYRIGHTS

1. Required Flow down Clauses

- a. The buyer/subcontracting officer shall include the requirements of the clause DEAR 970.5204-3 Access to and Ownership of Records in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 1. The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 2. The DOE contracting officer determines that the subcontract is, or involves, a critical task related to JSA's DOE Contract; or
 3. The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.
- b. The buyer/subcontracting officer shall include in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data- General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the JSA shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel.
- c. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The buyer/subcontracting officer Contractor shall use in- stead the Rights in Data--Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- d. It is the responsibility of the buyer/subcontracting officer to obtain from subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill JSA's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the buyer/subcontracting officer shall make it known to the Procurement Manager who shall notify the DOE Contracting Officer:
 1. Promptly submit written notice to the DOE Contracting Officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 2. Not proceed with the subcontract without the written authorization of the DOE Contracting Officer.
- e. Neither JSA nor higher-tier subcontractors shall use power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.
- f. The buyer/subcontracting officer shall include, and require inclusion of, the Authorization and Consent clause at FAR 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed the Simplified Acquisition Threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
- g. The buyer/subcontracting officer shall include, and require inclusion of, paragraph (a) of the Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at

any tier for research and development activities expected to exceed the Simplified Acquisition Threshold.

Part 28 BONDS AND INSURANCE

1. Performance Bonds

A performance bond shall be required for all fixed price and unit-price construction subcontracts exceeding \$150,000 and shall be considered in fixed price non construction subcontracts where appropriate. The penal amounts shall be as specified at FAR 28.102-2.

1. This requirement may be waived by the Subcontracting Officer for as much work as is to be performed in a foreign country upon finding that it is impracticable for the Subcontractor to furnish such bond; or
2. As otherwise authorized by the Miller Act or other law

2. Payment Bond/guarantee

- a. A payment bond is required for all fixed price and unit-price construction subcontracts in excess of \$150,000. The penal amounts shall be as specified at FAR 28.102-2.
- b. For construction subcontracts greater than \$35,000 but not greater than \$150,000, the subcontracting officer shall require the subcontractor to furnish one of the following payment guarantees:
 1. A payment bond
 2. An irrevocable letter of credit (ILC)
 3. A certificate of deposit (the Subcontractor deposits certificates of deposit from a federally insured financial institution with the Subcontracting Officer, in an acceptable form, in an acceptable form executable by the Subcontracting Officer)
 4. A deposit of the types of security listed in FAR 28.204-1 and 28.204-2
- c. Payment bonds/guarantees may be utilized in other than construction subcontracts when the buyer/subcontracting officer determines that it is necessary on an individual subcontract to require payment bonds in connection with the work (i.e. credit standing).
- d. The Subcontracting Officer may reduce the amount of security to support a bond, subject to the conditions of FAR 28.203-5(c) or 28.204(b)

3. Bid Bonds

The subcontracting officer shall not require a bid guarantee unless a performance bond or a performance and payment bond are also required (FAR Parts 28.102 and 28.103). The buyer/subcontracting officer shall determine a bid guarantee amount that is adequate to protect JSA/JLab from loss should the successful offeror fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed \$3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stat- ed.

- a. When a bid guarantee is required, the solicitation shall contain a statement to that effect, and provide sufficient details for offerors to determine the amount of the bid guarantee.
- b. Non-compliance with a solicitation requirement for a bid guarantee requires rejection of the offer.

4. Solicitation Requirements

When performance, payment bonds or alternate payment protections are required, the solicitation shall specify:

- a. The requirements for the bond(s) or alternate payment protections;
- b. The sum of each bond or alternate payment protection (expressed either as a fixed sum or percentage of the subcontract price) or coverage required; and
- c. The deadline for submitting acceptable bonds or alternate payment protection

5. Sureties

Acceptable forms of surety or security to protect JSA from financial losses are:

- a. Corporate surety for the bond or alternate payment protection
- b. Irrevocable letter of credit (for guidance see FAR Part 28.204-3)
- c. A deposit of a certified or cashier's checks, bank drafts, money orders, or currency in an amount equal to the penal sum of the bond or alternate payment protection

6. Insurance

- a. Work on the JLab Site

When work is being performed on the JLab site, appropriate insurance provisions should be included in solicitations and subcontracts. For solicitations and subcontracts which are determined to be a Risk Code 2 or higher, a certificate of insurance, as prescribed in the applicable insurance provision, shall be obtained from the subcontractor's insurer(s) before the subcontractor is permitted to commence work on site. The certification of insurance for purchase orders or subcontracts which are determined to be a Risk Code 1 or 0 exceeding the micro-purchase threshold may be made by the subcontractor on the RFQ form, or may be provided verbally for micro-purchases or emergency procurements.

- b. Types of Insurance and Minimum Amounts

When the subcontractor is required to provide insurance coverage, minimum amounts shall be as stated in JSA-107-Insurance. Jefferson Lab's risk management staff will periodically review established limits. FAR clause 52.228-7, Insurance-Liability to Third Persons shall be incorporated in all cost- reimbursement solicitations.

Part 29 VIRGINIA SALES AND USE TAXES

JSA/JLab acquisitions are normally subject to Virginia Sales and Use Taxes. Tangible personal property items such as equipment, unique tools, computers, instrumentation, and other such components utilized in the accelerator, or equipment to be used directly and exclusively in basic research or in research and development (in the experimental or laboratory sense as described in the tax regulations) are normally not subject to Virginia Sales Tax (Sales and Use Certificate of Exemption).

Part 30 COST ACCOUNTING STANDARDS

1. General

In accordance with DOE/JSA contract, "Cost Accounting Standards" (CAS) apply to negotiated subcontracts in excess of \$750,000 unless otherwise exempted as specified in 48CFR 9903.201.1 (See FAR Appendix 1, Subpart 9903.201-2).

2. Exemptions to Cost Accounting Standards

- a. The following categories of contracts and subcontracts are exempt from all CAS requirements (48 CFR 9903.201-1):
 1. Sealed bid subcontracts.
 2. Negotiated contracts and subcontracts not in excess of \$750,000.
 3. Contracts and subcontracts with small businesses as determined by FAR Subpart 19.3
 4. Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.
 5. Contracts and subcontracts in which the price is set by law or regulation.
 6. Firm fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.
 7. Contracts or subcontracts of less than \$7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at \$7.5 million or greater.
 8. Firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

3. Type of CAS Coverage & Required CAS Provisions

If CAS will apply to a proposed procurement, see FAR Appendix 1, Subpart 9903.201-2 to determine the type of CAS coverage that will apply; and FAR Appendix 1, Subpart 9903.201-3 and 9903.201-4 to determine the specific solicitation provisions and subcontract clauses that should be incorporated.

4. JSA Liability

DOE/JSA Contract clause I.122, Liability with Respect to Cost Accounting Standards, requires that the below language be included in subcontracts and lower tier subcontracts that include CAS clauses:

"In the event subcontractor fails to comply with the Cost Accounting Standard clauses set forth in this subcontract, the subcontractor shall be liable to the Laboratory/DOE for increased costs or interest resulting from the subcontractor's failure to comply with applicable CAS clauses ("Cost Accounting Standards" and "Administration of Cost Accounting Standards")."

5. Required CAS Notification to Subcontractors

- a. For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—
 1. So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
 2. Include the substance of clause 52.230-6, Administration of Cost Accounting Standards, in all negotiated subcontracts;

6. Guidance

For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, requires the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

Part 31 COST PRINCIPLES

- a. Refer to FAR Part 31 whenever a cost analysis is performed for the pricing of subcontracts, modification of subcontracts and determination, negotiation or allowance of costs when required by a contract clause.
- b. Cost analysis is used to evaluate the reasonableness of individual cost elements when cost or pricing data are required, not to be confused with price analysis.
- c. Price analysis is used when cost or pricing data are not required and is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Part 32 CONTRACT FINANCING

1. Payments

JSA shall pay the Subcontractor, upon the submission of proper invoices or vouchers, the prices stipulated in the subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in the subcontract. Unless otherwise specified in the subcontract, payment shall be made on partial deliveries accepted by JSA if -

- a. The amount due on the deliveries warrants it; or
- b. The Subcontractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total subcontract price.

2. Payment Methods

- a. JSA shall pay the subcontractor in accordance with the subcontract price as provided in payment terms of the subcontract. The Subcontracting Officer shall determine and incorporate which payment method is most appropriate for the type of procurement. Below are payment methods other than full payment at the completion of the subcontract:
 1. Based on the type of procurement, JSA may authorize partial payments.
 2. Payments based on costs are made on the basis of costs incurred by the subcontractor as work progresses under the subcontract. See Far Subpart 32.5 for guidance
 3. Payments are made based on performance measured by objective, quantifiable methods; accomplishment of defined events or other quantifiable measures of results. Guidance concerning payment for reaching milestones in the project are covered at Far Subpart 32.10
- b. Refer to FAR Parts 32.11 & 52.232 for guidance concerning use of specialized payment clauses.

3. Procurement Approval of Invoices

- a. Normally the buyer/subcontracting officer will not request invoices to be sent to Procurement for payment of commercial supply requirements that are delivered through shipping and receiving.
- b. The buyer/subcontracting officer should request the Accounts Payable Department to forward vendor invoices for Procurement approval in the following circumstances:
 1. When the PO/subcontract is for personal or non-personal services that require ongoing subcontract administration by the buyer/subcontracting officer
 2. When the PO/subcontract is a cost type (including time and materials)
 3. When the PO/subcontract provides for progress or milestone payments
 4. When the PO/subcontract provides for advance payment
 5. When the PO/subcontract involves acceptance of a first article or other performance criteria for acceptance
 6. When the PO/subcontract involves a "drop shipment" to a location other than JLab
 7. When the PO/subcontract provides for partial payments and close monitoring of vendor performance is required for a critical requirement
 8. When the PO/subcontract includes Davis-Bacon Act provisions
 9. Whenever deemed in the best interest of the Laboratory

4. Subcontract Funding

- a. The Subcontracting Officer must establish whether the procurement is going to be fully funded or incrementally funded. If the subcontract is fully funded, funds are obligated to cover the price or target price of a fixed-price subcontract or the estimated cost and any fee of a cost-reimbursement subcontract. If the subcontract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.
- b. Subcontracts Conditioned Upon Availability of Funds.
 1. Fiscal year subcontracts.

- i. The Subcontracting Officer may initiate a subcontract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the subcontract includes the Availability of Funds clause (JSA Clause 119). This authority may be used only for operation and maintenance and continuing services (e.g. rentals, utilities, and supply items not financed by stock funds)
 - ii. Necessary for normal operations; and
 - iii. For which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.
2. Indefinite-quantity or requirements subcontracts
A one-year indefinite-quantity or requirements subcontract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided that—
 - i. Any specified minimum quantities are certain to be ordered in the initial fiscal year (See Far Subpart 37.106) and
 - ii. The subcontract includes the clause at JSA Clause 119, Availability of Funds for the Next Fiscal Year.
3. Acceptance of supplies or services
JSA shall not accept supplies or services under a subcontract conditioned upon the availability of funds until the Subcontracting Officer has given the Subcontractor notice, to be confirmed in writing, that funds are available
4. Subcontracts Crossing Fiscal Years
See Far Subpart 32.703-3 for guidance

Part 33 VENDOR OBJECTIONS, CLAIMS, AND DISPUTES

1. Objections to Award

- a. All objections either formal or informal regarding the award of a procurement, whether received before or after award, shall be immediately referred to the Laboratory Procurement Manager
- b. Where a written objection against the making of an award is issued to JSA/JLab, satisfactory disposition of the protest should normally precede the making of an award.
- c. The Procurement Manager may decide not to defer the award if warranted by the circumstances of the protest: In such event, the protester shall be advised of the decision and the basis upon which it is made.
- d. If it appears that a protest may not be resolved before the expiration date of offers, and the Procurement Manager has elected to withhold award, each offeror should be informed that there has been a protest and requested to extend the time for acceptance of its offer, with consent of surety, if any, until a date set by the Procurement Manager. If the firm that has been tentatively selected for award refuses to extend its bid, the Procurement Manager may decide it is in the best interest of JSA/JLab to proceed with the award.
- e. If a protest cannot be resolved and probability of litigation exists, JSA/JLab may utilize the Alternative Disputes Resolution (ADR) process outlined below.

2. Claims and Disputes

- a. Resolution of controversies through some means of alternative dispute resolution (ADR) is preferred by JSA/JLab over litigation.
- b. Alternative dispute resolution means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini trials, and arbitration.
- c. The primary purpose of ADR is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. ADR procedures are designed to reduce the costs associated with formal adjudication; and reduce the time necessary to reach a decision.

3. Essential Elements of ADR

- a. Existence of an issue in controversy that continues after issuance of a final decision of the Buyer/subcontracting officer that is approved by the Procurement Manager
- b. A voluntary election by both parties to participate in the ADR process
- c. An agreement on alternative procedures and terms to be used in lieu of formal litigation
- d. Participation in the process by officials of both parties who have the authority to resolve the issue in controversy
- e. ADR procedures may be introduced into an issue in controversy at any point in its development, including before, during, and after discovery. However, it is preferable that ADR be considered as early as possible in the life-cycle of a contractual issue in controversy.
- f. Buyer/subcontracting officers are empowered to creatively resolve issues in controversy without resort to formal litigation at the lowest level possible. Appropriate ADR procedures shall be developed by the Buyer/subcontracting officer to accomplish this objective.
- g. Development of the ADR procedures to be used in controversies will be coordinated with the JSA/JLab Legal Counsel.
- h. When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties. Use of a neutral person will be coordinated with JSA/JLab Legal Counsel and approved by the Procurement Manager.

SUBCHAPTER F. SPECIAL CATEGORIES OF SUBCONTRACTING (PARTS 34-41)

Part 34 MAJOR SYSTEM ACQUISITION [RESERVED]

Part 35 RESEARCH AND DEVELOPMENT SUBCONTRACTS

The primary purpose of subcontracted Research and Development (R&D) programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve the laboratory mission. Unlike subcontracts for supplies and services, most R&D subcontracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success. The subcontracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

a. Use of Subcontracts

Subcontracts shall be used only when the principal purpose is the acquisition of supplies or services for the direct benefit of or the use of JSA/the Government. Cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support R&D for another public purpose.

- b. Cost sharing policies (which are not otherwise required by law) under subcontracts shall be in accordance with FAR Parts 16.303, 42.707a.
- c. Specific guidance on R&D subcontracting is found in FAR Part 35.

Part 36 CONSTRUCTION AND A&E SUBCONTRACTS

1. Architect-Engineer Subcontracts

This part describes procedures peculiar to subcontracts for architect-engineer (A-E) services as defined in FAR 36.102. Subcontracts will be negotiated for these services based on the demonstrated competence and qualifications of prospective subcontractors to perform the services at fair and reasonable prices. While the Brooks Act (Public Law 92-582) is not applicable to JSA/JLab's procurement practices regarding selection of A-E subcontractors, JSA/JLab's selection approach reflects the essence of the Act, but cost and price factors may be considered in addition to factors related to competence and qualifications.

- a. Buyer/subcontracting officers should avoid potential conflict of interest situations when awarding A-E services (see Organizational Conflict of Interest).
- b. A-E subcontracts may either be fixed price (FP) subcontracts for single purpose projects or Indefinite Delivery Indefinite Quantity (IDIQ) task order based subcontracts for multiple project work.
- c. The following procedures apply to both FP and IDIQ subcontracts with the exception of price proposal submission.
 1. Under an IDIQ task order subcontract, the offeror shall submit a labor rate schedule. This rate schedule will be evaluated by the technical representative and Subcontracting Officer for reasonableness of the rates. A Request for Proposal will be solicited for each task order subsequently issued under the subcontract.
 2. The IDIQ requires that a minimum and maximum ceiling be established and be specified in the sources sought and solicitation phase and incorporated into the subcontract.

2. Evaluation Boards

- a. Formal architect-engineer evaluation boards shall be used for the selection of professional architect-engineer services when the estimated cost of the subcontract exceeds \$500,000. Less formal procedures and practices may be followed for subcontracts estimated to be \$500,000 or less than \$500,000, with the specific evaluation procedures and practices being adapted to the size, type and complexity of the project. As a minimum, the following individuals will be appointed to evaluate sources for award of architect-engineer subcontracts.
- b. Formal evaluation boards for actions that exceed \$500,000 should include:
 1. Buyer/subcontracting officer (Chairperson/Non-voting)
 2. Program Manager or Designated Representative (Voting)
 3. Technical Representative (Designated by the Program Manager/Voting)
- c. Evaluation boards for \$500,000 or less may only include:
 1. Buyer/subcontracting officer (Chairperson/Non-voting)
 2. Technical Representative (Designated by the Program Manager/Voting)
- d. Evaluation Board Functions
Under the general direction of the assigned Group Manager, the Evaluation Board shall perform the following functions:
 1. Review the current data files on eligible firms and responses to a public notice (if applicable) concerning the particular project.
 2. Evaluate the firms in accordance with the applicable criteria in subpart 36.5 below.
 3. Hold discussions with at least three of the most highly qualified firms regarding capabilities, concepts and the relative utility of alternative methods of furnishing the required services.
 4. Prepare a selection report for the Source Selection Official (SSO) that includes, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of the discussions and evaluations conducted by the board to allow the SSO to review the considerations upon which the recommendations are based.

3. Design Competition

When the use of design competition is approved by the Procurement Manager, evaluation of firms on the basis of their conceptual design of the project may be made when:

- a. Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual significance;
- b. Sufficient time is available for the production and evaluation of conceptual designs; and
- c. The design competitions, with its costs, will substantially benefit the project.

4. Selection Criteria

- a. The following criteria may be considered for applicability in selecting an A-E subcontractor.
 1. Reputation and standing of the firm and its principal members
 2. Experience and technical competence of the firm in comparable work
 3. Past record in performing work for DOE, other Laboratory agencies, and private industry, including projects or subcontracts implemented with no overruns; performance from the standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of subcontractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) where applicable
 4. The volume of past and present workloads
 5. Interest of company management in the project and expected participation and contribution of top officials
 6. Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required
 7. Geographic location of the home office and familiarity with the locality in which the project is located
 8. Specific experience and qualifications of personnel proposed for assignment to the project for various phases of the work
 9. Technical skills and abilities in planning, organizing, executing, and controlling
 10. Abilities in overall project coordination and management
 11. Experience in working together as a team
 12. Proposed project organization, delegations of responsibility, and assignments of authority
 13. Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately
 14. Experience and qualifications of proposed consultants and subcontractors
 15. Ability to assign adequate qualified personnel from the proposed organization (firm's own organization, joint-venture organizations, consulting firms, etc.), including key personnel and a competent supervising representative.
- b. Additional (or special) criteria developed for the specific project shall be considered and evaluated as may be appropriate.

5. Appraising Firms Qualifications

- a. To be considered for architect engineer subcontracts, a firm must submit GSA Standard Form 330 "Architect-Engineer and Related Qualifications"
- b. Every opportunity and encouragement shall be given to small business, small disadvantaged businesses and women-owned small business concerns. Toward this end, groups that propose to form a joint venture or engage the services of small consulting firms for portions of the effort shall be given full consideration by the Evaluation Board and the Selection Official of their combined qualifications.
- c. Prior to selection, firms may be asked to submit rate information and price proposals. Request for supplemental information shall be used only to obtain information that will enable JSA/JLab to select the best qualified subcontractor. When a request for supplemental information is made,

some wording should be included to identify it with the discussion phase of the selection process.

6. Selection Authority (Source Selection Official)

- a. The SSO will review the recommendations of the Evaluation Board and will, with the advice of appropriate technical and staff representatives, make the final selection. The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most highly qualified by the Evaluation Board, the SSO shall provide a written determination for the reason for the preference. All firms on the final selection list are considered "selection firms" with which the buyer/subcontracting officer may negotiate in accordance with this POM.
- b. The SSO will not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the SSO will record the reasons and return the report to the Evaluation Board for appropriate revision.
- c. The Evaluation Board will be promptly informed of the final selection.
- d. A short selection process will be used for subcontracts <\$25,000. For these actions, the Evaluation Board will review and evaluate architect-engineer firms and submit the selection report, which will serve as the final selection list, directly to the buyer/subcontracting officer. The report shall serve as an authorization for the buyer/subcontracting officer to commence negotiations.

7. Cost Estimate

- a. Prior to the initiation of negotiations for architect-engineer services valued over \$25,000, an independent JSA/JLab estimate of the cost of the required architect-engineer services will be prepared based on a detailed analysis of the costs expected to be generated by the work. Consideration shall be given to the estimated value of the services to be rendered, and to the scope, complexity, and nature of the project.
- b. The independent JSA/JLab estimate shall be revised as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the architect-engineer.
- c. On construction projects, a fee estimate based on the application of percentage factors to project cost estimates of the various segments of the work involved may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent JSA/JLab estimate.
- d. A written statement should be included which gives the extent to which the services of the architect-engineer include any of the services such as Conceptual Design, Title I, Title II, Title III.

8. Negotiations

- a. The buyer/subcontracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude them from proposing the use of modern design methods.
- b. The buyer/subcontracting officer shall inform the firm that no construction subcontract may be awarded to the firm that designed the project.
- c. During negotiations, the buyer/subcontracting officer should seek advance agreement on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (e.g., computer-assisted design), the buyer/subcontracting officer should discuss this topic with the firm.
- d. Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause at FAR 52.244-4 Subcontractors and Outside Associates and Consultants should be utilized in the solicitation proposal package.
- e. The buyer/subcontracting officer shall request the selected architect-engineer firm to submit its price proposal with supporting cost or pricing data in accordance with this manual. Revisions of

the price and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of work to be performed by the architect-engineer or findings derived from pre-award audits conducted pursuant to this manual.

- f. The buyer/subcontracting officer shall negotiate a price considered fair and reasonable based on a comparative study of the independent JSA/JLab estimate and the architect-engineer's proposal. Significant differences between elements of the two figures and between the overall figures shall be discussed and the buyer/subcontracting officer shall ascertain the reasons there for.
- g. Promptly at the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiation shall be prepared for inclusion in the subcontract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the price and other terms of the subcontract.
- h. If the A-E selection process is based on a best value evaluation of labor rates and price proposals submitted by the selected firms, the offerors will be ranked from best to worst by making a series of paired comparisons among them, trading off the differences in capability (non-price factors) against the difference in price between the members of each pair. The firm determined to be the responsible offeror that offers the best value to Jefferson Lab for performing the work that is required will be selected.
- i. If the A-E selection process is not based on best value and only one firm will be chosen with which to negotiate, the firm shall be notified that if a mutually satisfactory subcontract cannot be negotiated, Jefferson Lab will terminate negotiations and select another qualified firm to negotiate the requirement. The buyer/subcontracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory subcontract has been negotiated. If negotiations fail with all selected firms, the buyer/subcontracting officer shall brief the SSO as to why a subcontract cannot be negotiated. The SSO may direct the Evaluation Board to recommend additional firms.

9. Construction Subcontracts

- a. The term "construction" means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property.
- b. The buyer/subcontracting officer shall obtain a Davis-Bacon Act determination from the Oak Ridge Operations Labor Standards Committee prior to award of all construction requirements exceeding \$2,000 by obtaining the review and approval of the DOE Oak Ridge Davis-Bacon Committee. (Reference Part 21-Application of Labor Laws to Laboratory Acquisitions, paragraph 21.1(b).
- c. Pursuant with DOE/JSA Subcontract Clause I.76, potential conflict of interest situations, especially if it involves award of a construction subcontract to the firm (including its subsidiaries or affiliates) that was awarded a separate subcontract to design the project, should be avoided or mitigated.

10. Pre-bid Conference and Site Visits

Pre-bid conferences and site visits may be mandatory for work that is to be done in, or in close proximity to any operational area at JSA/JLab. Conferences and site visits will also be held for projects that will involve close interface with JSA/JLab personnel or will affect the working environment during construction.

11. Notice to Proceed Under Construction Subcontracts- See part 4.14(c)

12. Pre-work Conference

- a. Buyer/subcontracting officers shall conduct pre-construction conferences prior to the start of work on all construction projects exceeding the Simplified Acquisition Threshold. Conferences should also be held on Projects that might include unmitigated risk code 2 or higher environmental, health or safety (ESH&Q) considerations, are complex in nature, involve

multiple-lower tier subcontractors, have extended performance periods, and/or exceed the Simplified Acquisition Threshold shall have periodic status conferences. The conferences will include, at a minimum, safety, project status, and schedule of work for the next period, problems/issues, and change orders.

- b. Projects that include environmental, health or safety (ESH&Q) considerations or exceed the Simplified Acquisition Threshold, the appropriate ESH&Q representative should also be requested to attend the conference.
- c. The Conferences will include discussions of the project specifications, labor standards clauses of the subcontract and ESH&Q requirements of the subcontract. A Pre-construction Meeting Subcontract Checklist will also be addressed.

13. Liquidated Damages

The buyer/subcontracting officer may include liquidated damages in construction subcontracts. The SOTR shall provide the buyer/subcontracting officer a justification for the use of liquidated damages and a calculation of how the damages were derived.

14. Additional Labor Requirements

Pursuant with M&O Contract Clause H51, Additional Labor requirements, JSA shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis-Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Laboratory shall report them to the DOE Contracting Officer. The Contracting Officer may require JSA to assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

JSA shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Laboratory shall assist DOE and or/the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

Part 37 SERVICE SUBCONTRACTS

1. General

- a. A service subcontract is a subcontract where the principal purpose is to perform an identifiable task rather than to furnish an end item of supply. Services may be either personal or non-personal. See Definitions under Part 2 for a description of Personal and Non-personal Services
- b. Performance-based contracting is the preferred method for acquiring services.

2. Service Contract Act Process

- a. When a requisition is for service work, or if the Labor Standards committee reviews a Davis-Bacon request and determines the scope of work to be service, a request for Service Contract Act wage determination is to be made by emailing the Service Contract Act Wage Determination Request Form" to DOEWageDeterminations@oro.doe.gov. The appropriate wage determination will be provided to Jefferson Lab.
- b. If the solicitation must be issued before the Department of Labor wage determination is received, the buyer/subcontracting officer should include the latest known wage determination, with a notice to offerors that the wage determination is pending.
- c. If there is an urgent requirement that necessitates award prior to receipt of the wage determination, the award must be approved by a Procurement Group Manager and shall include a provision that states:

"Award is being made prior to receipt of a wage determination for this subcontract. When the applicable wage determination is received it will be incorporated, retroactive to the subcontract start date. Any price change associated with a change in the wage determination will be negotiated in accordance with the provisions in FAR 52.222.43, Fair Labor Standards Act and Service Contract Act."

- d. The Service Contract Act does not apply to bona fide executive, administrative or professional employees. See FAR 22.1102.

3. Temporary/Contract Labor

- a. Temporary personnel ("contract labor") may be subcontracted through temporary employment agencies to augment regular JSA/JLab staff. Services furnished by temporary help firms should not be regarded or treated as personal services.
- b. Contract Labor is normally purchased through blanket ordering agreements with temporary help agencies. BOA's shall be updated annually.
- c. Individual contract labor requirements are initiated by the end user in coordination with JLab Human Resources (HR).
- d. Position requirements may be posted on the electronic solicitation bulletin board (typically used for professional positions) or sent to individual agencies by fax or e-mail. Resumes should be sent directly to the hiring manager.
- e. When an individual is selected, the buyer/subcontracting officer will negotiate the hourly rate with the agency, using guidelines provided by HR, and place the order upon receipt of an approved purchase requisition.
- f. Original approved time sheets are submitted to Procurement and matched against agency invoices before releases are entered into Costpoint. If a time sheet charges time to a POA other than the one(s) on the original purchase requisition, the signature on the time sheet is authorization to charge the time to the new POA.

4. Consultant Agreements

Consultant agreements are issued for specialized expert and advisory professional personal services not readily available at JSA/JLab. As such, consultant agreements are generally not subject to

Service Contract Act requirements. The daily rate that requires DOE approval is listed in the Department's Acquisition Policy Manual

- a. Buyers/subcontracting officers should carefully review the proposed work scope to avoid/mitigate potential Organizational Conflict of Interest issues.

5. Nondisplacement of Qualified Workers (MAY 2014)

For all service subcontracts exceeding the simplified acquisition threshold, JSA and its subcontractors shall, except as otherwise provided in FAR 52.222-17 or as prescribed in 48 CFR 22.1207, in good faith offer those service employees employed under the predecessor subcontract whose employment will be terminated as a result of award of a new subcontract or the expiration of the subcontract under which the service employees were hired, a right of first refusal of employment under the new subcontract in positions for which the service employees are qualified.

Part 38 USE FEDERAL SUPPLY SCHEDULE SUBCONTRACTS

JSA is authorized to use Government supply sources which include Federal Supply Schedule subcontracts. However, use of Federal Supply Schedules is not mandatory. It is to be treated as another source of supply. The DOE Contracting Officer has issued an authorization to use government supply sources for JSA to provide Federal Supply sources as needed. See Procurement Web Site.

When utilizing a Federal Supply Source buyers subcontracting officer should follow guidance provided FAR 8.4.

Part 39 ACQUISITION OF INFORMATION TECHNOLOGY

1. General

This Part establishes procedures for the acquisition of Automatic Data Processing Equipment (ADPE). There are various procurement alternatives to procure ADP materials and services for the Laboratory, see below. The approach selected should offer the best value for the Laboratory when considering the cost, technical requirements and system life of the ADP item. The normal acquisition approaches to procure ADP equipment (ADPE), proprietary software, and maintenance services are as follows:

- a. ADPE
 1. Purchase
 2. Lease to ownership;
 3. Lease with option to purchase;
 4. Straight lease; and
 5. Trade-in
- b. Proprietary Software:
 1. Perpetual license to use;
 2. License to use for more than 12 months
 3. License to use on a monthly basis.
- c. Maintenance Services:
 1. On-site maintenance capability;
 2. On-call maintenance; and
 3. Time and materials
- d. When the value of the ADP requirement is expected to exceed the Simplified Acquisition Threshold, the cognizant buyer/subcontracting officer shall coordinate the method of acquisition (approach) with the Computer Center's technical representative.

2. Acquiring Commercial Software

When acquiring commercial software, the Buyer should consider the following:

- a. Avoid restrictive clauses that limit the use of the software to a specific ADP system, installation, or organization; and
- b. Subcontractor's long-term support and maintenance capability

3. Approval Requirements

- a. The Computer Center approves ADP/EDP requirements prior to receipt of the purchase requisition in the Procurement Group.
- b. Components that are embedded in other systems or subsystems do not normally require ADP approval by the Computer Center, e.g., control computers in air conditioning systems; control computers in power supplies; and hardware, software, or services embedded in major magnet systems, etc.

4. Acquiring Laptop or Desktop Computers

When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient and meet applicable performance requirements.

5. Information Technology Acquisitions

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov>

commensurate with the mission of the contract and conducive to the research and development efforts of the laboratory. This requirement shall be included in all subcontracts which are for information technology acquisitions; and the Laboratory CIO shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

Part 40 EMERGENCY REQUIREMENTS

1. General

An emergency is an unplanned event that significantly disrupts normal operations, or cannot be managed by routine response, or requires a quick and coordinated response across multiple departments or divisions.

- a. The Procurement Department website provides guidance for processing emergency procurement needs.
- b. The buyer/subcontracting officer shall notify the Procurement Manager if a PR for an emergency requirement is not submitted to the Procurement Department within the 72 hour requirement.
- c. Awards for an emergency requirement shall be adequately documented to justify the basis for the emergency action taken.

2. Emergency Requests

- a. Procurement staff shall respond immediately to an emergency requirement from JSA/JLab Staff, even if a purchase requisition has not been generated in the Maximo system.
- b. If an action is taken without a corresponding purchase requisition, the buyer/subcontracting officer should advise the requester that an approved purchase requisition (including all required supporting documentation) is required to be issued to the Procurement Department within 72 hours following the emergency request.

3. Emergency Procurement Tools and Systems

The Emergency Procurement Procedures provide detailed instruction and information for use in an emergency situation or where normal operating systems are unavailable.

4. Procurement Sourcing and Guidance:

- a. While it is incumbent upon the buyer/subcontracting officer to respond immediately to an emergency request, the buyer/subcontracting officer should utilize the sourcing techniques identified below to expedite response time. If the response to an emergency request exceeds the buyer/subcontracting officer's warrant authority, and the appropriate level approval cannot be obtained, the buyer/subcontracting officer shall proceed with the action and will have the action certified by the appropriate level individual at the first opportunity.
 1. Procurement staff and other authorized users are encouraged to maximize the use of credit cards, within the limits of their authority. All Credit Card purchases shall be tracked on the Buyers Credit Card Purchase Log if the web-based system is not available. If increased Buyer Credit Card Authority is required, contact the Purchase Card Administrator or alternate.
 2. If the required supplies or services are within the scope of existing Subcontracts, Basic Ordering Agreements (BOA's), or other appropriate existing subcontract vehicle, the buyer/subcontracting officer should utilize these subcontract vehicles to the maximum extent practicable.
 3. While buyer/subcontracting officer should attempt to obtain competition where practicable, buyers may liberally use the authority in Section 6.4(b) to award non-competitive procurements as needed.
- b. Buyer/subcontracting officers are authorized to enter into undefinitized orders and subcontracts, when it is not practicable to definitize all terms prior to award. Undefinitized actions should, where practicable, include a not to exceed amount. All undefinitized subcontracts and orders will be formalized, in accordance with normal procedures, as soon as practicable after normal laboratory operations are resumed.

5. Approvals:

- a. For DOE approvals during an emergency, the buyer/subcontracting officer may contact the DOE TJSO Contracting Officer.

Part 41 ACQUISITION OF UTILITY SERVICES

Refer to the Acquisition Policy Manual for procurement of utility services

SUBCHAPTER G. SUBCONTRACT MANAGEMENT (PARTS 42-51)

Part 42 SUBCONTRACT ADMINISTRATION

1. General
 - a. Subcontract administration is the responsibility of designated procurement professionals within the Procurement Department.
 - b. The buyer/subcontracting Officer shall assign a SOTR to a procurement action as indicated below:
 1. Construction, installation, or fabrication work on site
 2. Services performed at JLab with unmitigated Risk Code 2 or higher
 3. Procurements estimated >\$150K using JLab specifications
 4. When deemed necessary by the Subcontracting Officer (SO)
 - i. Consider when the subcontractor is accountable for Government Furnished (or acquired)
 - ii. Property
 - iii. Consider for all cost type work regardless of the dollar value of the work
 - c. The buyer/subcontracting officer may authorize the Subcontracting Officer's Technical Representative (SOTR) to perform selected subcontract administration tasks, and shall work together to ensure performance meets the requirements of the subcontract/purchase order.
 1. The SOTR's authority shall be strictly limited to technical direction within the scope of the subcontract, including: interpretation and clarification of technical requirements and technical acceptance.
 2. Any purchase order or subcontract changes/modifications must be directed by the buyer/subcontracting officer.
 3. Any technical guidance which potentially impacts cost, scope or schedule must be coordinated with the buyer/subcontracting officer.
 4. The buyer/subcontracting officer shall advise the SOTR that technical correspondence issued by the SOTR or vendor should be copied to the cognizant buyer/subcontracting officer.
 5. Buyer/subcontracting officers shall ensure SOTR's are adequately notified of the extent and limitations of their authority (See PD Form 10).
 6. For subcontracts exceeding the simplified purchase threshold or for subcontracts that are for on-site work with an unmitigated risk code of 2 or higher, the buyer/subcontracting officer shall ensure a SOTR is designated to monitor technical performance and report any potential or actual problems to the buyer/subcontracting officer. The Subcontracting Officer shall notify the SOTR of his/her duties as soon as possible after being assigned and prior to any site visit informing the SOTR of his/her specific responsibilities by sending the SOTR PD Form 10, and requiring the SOTR to acknowledge they have read and understand their responsibilities as outlined in PD Form 10 and in the Training for SOTR's package at http://www.jlab.org/div_dept/admin/business/secure/sotr.html.
 - d. Development of a subcontract administration plan should be considered for complex procurements involving numerous subcontractor activities, a lengthy performance period, and/or submittal/approval cycles.
 - e. The buyer/subcontracting officer should review assigned procurement actions to determine which actions may require close monitoring to ensure performance meets the terms and conditions of the subcontract, including timely delivery of supplies, construction, or services. Critical program requirements should always be monitored. Normally, delivery status for non-critical simplified procurement requirements that do not exceed the Simplified Acquisition Threshold will not be tracked unless specifically requested by the customer.

- f. Buyers/subcontracting officers should utilize guidance in FAR 42.3 when conducting subcontract administration activities. In conjunction with this responsibility, buyer/subcontracting officers should ensure that each purchase/subcontract action adequately documents:
 - 1. Any changes in scope, schedule and cost including appropriate justification;
 - 2. Evidence of progress meetings, delivery and date delivered;
 - 3. Timely notification to exercise options;
 - 4. Administrative follow-up in response to issues cited in the file correspondence;
 - 5. Administrative actions addressing late deliveries or poor performance and negotiations with, or considerations from delinquent vendors; and
 - 6. Other required subcontract documentation.

2. Records and Reports

JSA/JLab shall maintain subcontract files that present an accurate and adequate record of all purchasing transactions. All documentation generated for Laboratory funded purchase orders and subcontracts are considered official Laboratory records.

3. Subcontractor Change of Name and Novation Agreements

- a. A change of name agreement means a legal instrument (modification to subcontract or purchase order) executed by the subcontractor and JSA/JLab that recognizes the legal change of name of the subcontractor without disturbing the original contractual rights and obligations of the parties. The subcontractor must submit a written request to recognize a name change to the appropriate buyer/subcontracting officer.
- b. A novation agreement means a legal instrument (modification to a subcontract or purchase order) that recognizes a successor in interest when the subcontractor's assets are transferred (generally due to merger or acquisition).
 - 1. Normally the subcontractor (transferor) guarantees continued performance of the subcontract, the successor in interest (transferee) assumes all obligations of the subcontract and JSA/JLab recognizes the transfer of the subcontract and related assets.
 - 2. Such agreements are executed by the subcontractor (transferor), the successor in interest (transferee) and a JSA/JLab Buyer/subcontracting officer.
 - 3. The subcontractor must submit a written request with all applicable information to the appropriate buyer/subcontracting officer. The buyer/subcontracting officer shall determine whether or not it is in JSA/JLab's best interest to recognize the proposed successor in interest, and shall obtain JSA/JLab legal review prior to issuing a subcontract modification.

4. Late Delivery or Performance Deficiencies

- a. The buyer/subcontracting officer shall take such action as deemed necessary to preserve the right to terminate the subcontractor for default. If the subcontractor is permitted to continue performance, a revised delivery schedule and/or correction plan should be established with the vendor and incorporated in a modification to the subcontract/purchase order.
- b. When practicable, the buyer/subcontracting officer should protect the interest of JSA/JLab and attempt to obtain consideration for delays or non-performance in those instances where JSA/JLab is adversely affected.
- c. Buyer/subcontracting officers shall document notable deficiencies, particularly regarding ESH&Q performance.
- d. Details of the deficiency should be documented in the purchase order/subcontract file.
- e. The buyer/subcontracting officer shall also make a notation in the Procurement Vendor Portal data-base for reference in the event the vendor is contemplated for future work.

5. Invoice and Payment Processing

- a. The purchase order/subcontract shall require the original invoice to be sent to the JSA/JLab Accounts Payable Office.
- b. The Buyer/subcontracting officer shall obtain technical concurrence when approving invoices for payment.
- c. The buyer/subcontracting officer shall request the Accounts Payable Department to forward vendor invoices for procurement approval in the circumstances listed in Part 32.3(b). The buyer/subcontracting officer's name shall be added to the PO "Deliver To" block.
- d. Payments on all purchase orders/subcontracts are subject to the specific payment provisions incorporated in the purchase order/subcontract. Buyers/subcontracting officers must adhere to the specified payment provision, which may include but not be limited to restrictions on amounts paid, withholding from payments, conditions for suspension of progress payments, requirements for subcontractor certifications, and/or requirements for subcontractor release of claims before final payment.

6. Closeout of Purchase Orders and Subcontracts

- a. To close a subcontract/purchase order means to transfer it from active to inactive status by taking the necessary administrative action, after delivery and/or performance have been completed.
 1. The close out process for actions exceeding the Simplified Purchase Threshold should normally be initiated within six months following completion of the required delivery or service.
 - i. The buyer/subcontracting officer shall complete the Compliance Criteria Checklist - Subcontract Close-out (PD 7E)
 2. Purchase Orders within the Simplified Acquisition Threshold are considered closed nine months following the required delivery date or at the time of final acceptance of all quantities listed under the purchase order, whichever is sooner
- b. The closeout process shall ensure that:
 1. All contractual obligations have been met,
 2. All pending items have been resolved,,
 3. Subcontractors performance issues (notable proficiencies and deficiencies) are adequately documented
 4. Government furnished or acquired property has been returned and accounted for
 5. Remaining funds have been appropriately deobligated,
 - i. PO/subcontract deobligations may only be authorized by Accounts Payable or the Buyer/subcontracting officer
 6. Final payment has been made.
- c. Buyer/subcontracting officer should review the file to ensure that the sequence of events from receipt of requisition through receipt of goods or services is sufficiently documented.
 1. If the subcontractor was obligated by the terms of the purchase order/subcontract to include such deliverables as reports, operating manuals, etc., with the item(s) being furnished, ascertain that all deliverables have been received.
 2. Review receiving reports(s) as needed to determine that all ordered material has been received, inspected and accepted, or that all work has been performed, inspected and accepted.
 3. If notified by the User that the supplies are not acceptable, purchase order/subcontracts should not be closed until all necessary actions to protect the interests of the Lab/Government have been completed.
- d. Firm fixed price subcontracts should be closed out within six (6) months after items are fully accepted; and final payment is made.
- e. Simplified purchases will be considered closed upon expiration of the delivery date unless the purchase order includes provisions such as the Davis-Bacon Act, Government Furnished

Property, etc., that require action to verify that all subcontractor responsibilities have been completed.

- f. Closeout Checklist (complete the following as applicable for the type of subcontract being closed)
 - 1. If all subcontract terms and conditions were met you may refer to FAR 4.804-5, procedures for additional guidance if needed for closing the subcontract
 - 2. Receive final patent/royalty report clearance if applicable
 - 3. Ensure there are no outstanding value engineering change proposals
 - 4. Ensure property coordinate is recorded with the JLab Property Office
 - 5. Settle all interim or disallowed costs
 - 6. Complete all pending pricing revisions
 - 7. Settle prior year indirect cost rates
 - 8. Ensure submission of final subcontracting plan report
 - 9. Completed subcontract audit
 - 10. Ensure receipt of subcontractor's closing statement (release)
 - 11. Review/submit contractor's final invoice/voucher
 - 12. Ensure final voucher has been paid
 - 13. Complete subcontract funds review and deobligate excess funds
 - 14. All wage determination issues must be resolved and all payrolls received prior to closing construction subcontracts

7. Special closeout requirements

- a. All purchase orders/subcontracts that involve furnishing or acquiring Government Property shall be coordinated with the JSA/JLab Property Officer prior to closeout.
- b. In cases where the effective warranty period exceeds the time required for retention of the subcontract file, buyer/subcontracting officers shall ensure preservation of the subcontract record through the effective warranty period.
- c. In accordance with DOE/JSA Subcontract Clause I.120, Accounts, Records, and Inspection, the cognizant Buyer/subcontracting officer should conduct or arrange for a close out audit on all cost type contracts and fixed price or unit priced subcontracts where, under the terms of the subcontract (or purchase order), costs incurred are a factor in determining the amount payable to a subcontractor of any tier. This should be completed as soon as practicable following completion of work.
- d. Audits conducted or arranged by the JSA Subcontracting Officer shall be consistent with one or more of the following methods:
 - 1. Quick Closeout Procedures pursuant with FAR 42-708
 - 2. A Government sponsored/authorized source (e.g.,DCAA) requested through the DOE Contracting Officer
 - 3. A CPA firm or individual(s) with special pricing audit expertise may be used with the consent of the JSA Procurement Mgr.
 - 4. Closeout audits may be conducted internally by JSA/JLab personnel with the approval of the Procurement Mgr.
 - 5. Final audit requests should include a copy of the subcontract document, copy of the final voucher, and summary settlement statement.
 - 6. The Buyer/subcontracting officer is responsible for resolution of audit report findings relating to the specific subcontract. JLab's internal auditor or the Group's cost/price resource person should be consulted on audit report findings.

Part 43 SUBCONTRACT MODIFICATIONS

1. General

Subcontract modifications are any written change in the terms of the subcontract. The types of subcontract modifications are:

1. Unilateral Modification

A unilateral modification is a subcontract modification that is signed only by the buyer/subcontracting officer. Unilateral modifications are used, for example, to:

- i. Make administrative changes;
- ii. Exercise options;
- iii. Issue change orders;
- iv. Make changes authorized by clauses other than a changes clause (e.g. property clause, options clause, suspension of work clause, etc.);
- v. Issue termination notices in writing that do not affect the substantive rights of the parties; or
- vi. Reflect other modifications in situations when there is written evidence of the subcontractor's agreement.

2. Bilateral Modification

A bilateral modification is a subcontract modification that is signed by the subcontractor and the buyer/subcontracting officer. Bilateral modifications are used to:

- i. Make negotiated equitable adjustments resulting from the issuance of a change order;
- ii. Definitize letter subcontracts; and
- iii. Reflect other agreements of the parties modifying the terms of the subcontract.

2. Procedure

- a. Upon notification of a change to an existing subcontract or purchase order, the buyer/subcontracting officer will:
 1. Evaluate the alleged or proposed change and confirm that it is in fact a change,
 2. Direct the mode of further performance and obtain funding, if required, for the change, or
 3. Countermand the change.
- b. In all cases, the buyer/subcontracting officer will notify the vendor and the appropriate JSA/JLab technical and financial personnel of his or her decision relative to said change.
- c. Changes and modifications should be priced prior to issuance whenever possible. In case of a directed change where the price/cost is not established, an equitable adjustment shall be negotiated by the buyer/subcontracting officer in the shortest practicable time after issuing the directed change.
- d. The buyer/subcontracting officer will coordinate with the User on any subcontract modifications that will impact cost or schedule.
- e. Buyer/subcontracting officers should use FAR Part 43- Subcontract Modifications as guidance when processing changes.

3. Non Substantive Modifications

A Payment/Expediting Memorandum (PEM) form signed by the buyer/subcontracting officer may be used to support administrative changes and to correct minor discrepancies between a vendor's invoice and the subcontract/purchase order, when the amount does not exceed \$500 over the total subcontract/purchase order amount. However, a funded PR is required for increases when the amount exceeds \$100. A PEM may also be used to deobligate funds when closing out a subcontract or purchase order. If a formal modification is not issued, the procurement file should be documented to show the vendor's concurrence with the change.

Part 44 PROCUREMENT TRAINING REQUIREMENTS

1. General

- a. This establishes training requirements necessary to develop and sustain a highly skilled procurement workforce. The training program includes a curriculum of general procurement courses (Core I) to be taken by all exempt Procurement staff, as well as a curriculum of more in-depth training (Core II) needed for mission specific objectives.
- b. In many cases Core I and Core II training will have already been completed by incumbent staff. In these cases the Procurement Individual Training Plan (PD Form 42) should be annotated to indicate previous completion dates.
- c. Procurement staff are encouraged to attend JLab and other mission related courses to enhance career development and overall business and professional effectiveness. This training should be coordinated with the employee's supervisor.

2. Curriculum

- a. Core I (Required for all exempt Procurement staff)
The following core requirements are considered important to the fundamental understanding of Procurement inputs and outputs necessary to effectively support the project team. Accordingly, these requirements should be completed within the first 18 months of employment at JLab [see but sec a.) 44.1(b) above].
 1. Introduction to Business Law
 2. Contracts in Commercial Transactions
 3. Business Ethics
 4. Procurement Planning
 5. Solicitation of Goods and Services
 6. Source Selection
 7. Contract Management
 8. Introduction Procurement-Project Mgt. Process
 9. Doing Business with The Federal Government Basic Contract Pricing Core II (Specialized Requirements Determined by Supervisor)
- b. Core II training requirements listed below are normally applicable to more complex procurement actions but will not be required in all cases based on the subcontracting officer's assigned responsibilities, experience, and past training. Accordingly, the supervisor and subordinate should meet at least annually to identify training needed for subordinate's career development as well as training needed to accomplish both short and long term objectives of the Laboratory.
 1. Cost and Price Analysis
 2. Negotiation Strategies and Techniques
 3. Intermediate/Advanced Source Selection (Best Value, Tradeoffs, Discussions/Clarifications, etc.)
 4. Intermediate/Advanced Contract Administration
 5. Contract Disputes, Claims Resolution, and Terminations
 6. Design-Build Contracting
 7. Foreign/International Acquisitions
 8. Performance Based and/or Incentive Contracting
 9. Contracting for Services
 10. R&D Contracting
 11. A&E Contracting
 12. IT Contracting
 13. Construction Contracting
 14. Cost Reimbursement Contracting
 15. Patents and Data Rights

3. Responsibilities

- a. Procurement Manager
 - 1. Implement and enforce the POM training requirements
 - 2. Review submitted ITP's and allocate budget to optimize requested training
 - 3. Identify subject matter experts to assist in the development and delivery of periodic training sessions
 - 4. Conduct training sessions for Department staff that cover relevant and current procurement topics
- b. Supervisor

The supervisor is responsible to recommend training and document completed training for each subordinate (utilize PD Form 42- Procurement Individual Training Plan Review, and PD Form 43- Procurement Department Training Matrix.) The supervisor should also review completed training to determine if refresher training is needed to update the procurement skill. To wit, the supervisor shall:

 - 1. Identify Core II training needs for each subordinate staff
 - 2. Ensure the Procurement Department Training Matrix is current for each subordinate staff
 - 3. Complete subordinate's ITP and forward to the Procurement Manager for budget review/approval by 7/30/xxxx.
- c. Buyer/Subcontracting Officer
 - 1. The buyer/subcontracting officer may be asked to provide an overview of completed training to Department staff.
 - 2. Submit travel/training requisition requests for supervisor and Department approval

Part 45 LABORATORY (GOVERNMENT) PROPERTY

1. General

Buyer/subcontracting officers are responsible for coordinating closely with the JSA/JLab Property Officer to ensure that Subcontractors properly safeguard and manage Laboratory property that is in their possession.

- a. Buyer/subcontracting officers shall ensure that the appropriate Property Clause is inserted in all solicitations and subcontract documents that involve Laboratory Furnished or Laboratory Acquired Property.
 1. JSA/JLab provides use of working space, office equipment, office furniture and equipment to individuals (such as university personnel, contract labor, consultants etc.) to perform assigned work while at JLab.
 2. Property furnished for use in this manner is not considered Government/Laboratory Furnished property and the assigned property custodian retains accountability for such property.
- b. The Subcontract file shall be documented by the Buyer/subcontracting officer to clearly identify the Laboratory Furnished or Laboratory Acquired property that is in the possession of the Subcontractor. Proper disposition of such property shall be documented in the subcontract file prior to close-out of the subcontract.
- c. Buyer/subcontracting officers shall provide a copy of all applicable portions of subcontracts or purchase orders which involve furnishing or acquisition of Laboratory property to the JSA/JLab Property Officer.
- d. The Department's Data Entry Form shall be annotated in the blank that states "Subcontractor to Acquire (or be furnished) Government/Laboratory Property".

2. Drop Shipments

Drop-shipments of Government/JSA property to a location other than JLab (see POM paragraph 47.4) shall be coordinated with Property Management.

- a. The Procurement document (including CRADA's, MOU's, etc.) shall clearly specify the drop location and specific instructions for the recipient. Subcontracting Officer will direct vendors making drop shipments to forward a copy of the drop shipment delivery documents to the Property Office.
- b. Buyers/subcontracting Officer shall complete form PD 22 when ordering goods that will be shipped to destinations other than the Laboratory.

3. Property Trade-in

Trading-in Government/Laboratory Property for a new or upgraded item is allowed when deemed in the best interest of JSA and the Government (also see JSA Property Manual).

- a. The property trade-in must be consistent with JSA's Property Manual.
- b. The requester or buyer/subcontracting officer shall coordinate all trade-ins with the JSA Property Office and provide a copy of the subcontract/purchase order to the JSA Property Office.
- c. The Requester/SOTR shall complete the shipping form located on the Property Office website.
- d. The subcontract file must document the benefit (price savings) achieved by the trade-in.

4. Real Property

In accordance with DOE/JSA Subcontract Clause I.66, Acquisition of Real Property, acquisition of real property requires DOE approval and shall be acquired in accordance with the DOE/JSA Subcontract.

Part 46 QUALITY ASSURANCE

1. General

Purchase orders/subcontracts shall include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the interests of JSA/JLab. Generally, purchase orders/subcontracts for commercial items rely on the vendor's existing quality assurance system as a substitute for compliance with JLab inspection and testing. However, for some procurements, further inspection, testing, and/or other quality requirements are essential and necessary to assure the integrity of the supplies or services obtained.

2. Purchasing Quality Significant Items

- a. The following requirements are considered Quality Significant Items (QSI)
 1. Hazardous or environmentally harmful materials
 2. Critical use items with potential for counterfeiting (S/CI)
 3. Pressure systems and structural systems (involving Class A & B welding/brazing)
 4. Custom electronic devices not listed by a nationally recognized testing lab
 5. Work performed at the Jefferson Lab site
- b. Normally the Maximo Requisition Process routes QSI items through subject matter experts prior to Procurement processing; however, buyers/subcontracting officer should coordinate with ESH&Q if they suspect subject matter expert review did not occur.

3. Inspection Requirements

- a. The type and extent of "inspection" required for a subcontract depends on the particular acquisition and may range from routine inspection by JSA/JLab after delivery of off-the-shelf supplies to a requirement that the vendor implement a comprehensive program for controlling quality. Inspection may take place at vendor's facility (at source) or at JLab (destination) depending on the inspection requirements, type of testing involved and special testing equipment required, etc.
- b. JSA/JLab may rely on the vendor/subcontractor to accomplish inspection and testing needed to ensure that standard commercial supplies conform to subcontract quality requirements before they are tendered to JSA/JLab.
- c. For procurements that require any testing, inspection or other special quality assurance requirements, buyer shall coordinate with subject matter expert/SOTR to ensure that:
 1. The JSA/JLab specifications and/or subcontracts state the appropriate onsite, off-site inspection(s), testing or any other quality assurance requirements.
 2. That the appropriate "Inspection" clause is included in the solicitation and resulting subcontract, see FAR Subpart 46.3, Contract Clauses, for guidance.
 3. Any test reports and/or other quality assurance documentation is received, reviewed and approved by the appropriate subcontract SOTR or technical representative prior to acceptance of the supply/services.
 4. All decisions regarding the non-acceptability of the supply/services and requirements are documented and communicated to the subcontractor; including ensuring that nonconformance's are identified and corrected by the subcontractor.
- d. In the event that buyer becomes aware that a supplier has provided a suspect or counterfeit item (S/CI) to Jefferson Lab, buyer shall immediately notify the Procurement Manager and JSA DOE site office.

4. Acceptance

- a. Acceptance constitutes acknowledgment by JSA/JLab that the supplies delivered (or services performed) by the Subcontractor conform to the Laboratory requirements. Acceptance is the act of JSA/JLab assuming ownership after receipt, satisfactory inspection (as applicable), and satisfactory testing (if applicable and required by subcontract). "Conditional acceptance" means

conditionally accepting supplies/services that do not conform to the subcontract, or are otherwise incomplete, with the requirement that the vendor is to correct or otherwise complete the order by a particular date.

- b. The effects of acceptance are that:
 - 1. Except as indicated in the applicable Inspection clause invoked, the Subcontractor is no longer responsible for correcting defects discovered in the supplies or services;
 - 2. JSA/JLab becomes obligated to pay the Subcontractor for the accepted supplies or services; and
 - 3. When supplies have been delivered F.O.B. Origin, the Subcontractor generally does not bear the risk of loss of or damage to the delivered supplies.
- c. Purchase orders/subcontracts that provide for JSA/JLab inspection and testing at source shall ordinarily provide for acceptance at source. Purchase orders/subcontracts that provide for JSA/JLab inspection and testing at destination shall ordinarily provide for acceptance at destination. Supplies accepted at a place other than destination shall not generally be reinspected at destination for acceptance purposes, but should be examined at destination for quantity, damage in transit, and possible substitution or fraud.
- d. Acceptance by JSA/JLab may occur in the following ways:
 - 1. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the subcontract.
 - 2. Through a process similar to that specified above, by the issuance of a receiving report indicating completion of the Subcontractor's obligations;
 - 3. Receipt of and payment for supplies and services;
 - 4. Unreasonable delays in rejecting nonconforming supplies or services;
 - 5. Altering supplies before rejecting them; or
 - 6. Using delivered supplies without inspecting or paying for them.
 - 7. The appropriate "Inspection" clause in the terms and conditions provides that acceptance is "conclusive" (i.e., the Subcontractor is no longer liable for defects in the supplies) except for:
 - i. "Latent defects" (i.e., defects that existed at the time JSA/JLab accepted the supplies but that could not have been discovered by a reasonable inspection);
 - ii. "Fraud" (i.e., circumstances when a Subcontractor deliberately misrepresents or conceals material facts with the intention of inducing acceptance of defective supplies or services);
 - iii. "Gross mistakes amounting to fraud" (i.e., serious misrepresentations of material facts, made without the intention to deceive, but which induce JSA/JLab to accept nonconforming supplies or services); and
 - iv. Liabilities "otherwise provided in the subcontract" (for example, under the warranty clause of the terms and conditions).

5. Certification of Conformance

A certificate of conformance may be used in certain instances instead of source inspection (whether the subcontract calls for acceptance at source or destination) at the discretion of the buyer/subcontracting officer. For further guidance consult FAR 46.504.

6. Warranties

- a. The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the buyer/subcontracting officer shall consider the nature and use of the supplies or services and ensure the SOTR or technical representative concurs. This includes such factors as: complexity and function, degree of development, state of the art, end use, difficulty in detecting defects before acceptance, cost, the extent that the item is commercialized, and other potential harm to JSA/JLab, if the item is defective, etc.

- b. The buyer/subcontracting officer, prior to the inclusion of a nonstandard warranty clause in a solicitation or subcontract, shall document the file to support the necessity of said clause.
- c. Buyer/subcontracting officers may use FAR subparts 46.703 through 46.710 as guidance in determining use of applicable warranty provisions.
- d. Standard commercial warranties offered by suppliers should be documented in the purchase order/subcontract file when practicable.
- e. To the maximum extent practicable solicitations should require offerors to offer at least the same warranty terms offered to the general public in customary commercial practice.

7. First Article Testing

- a. "First article" includes preproduction models, initial production samples, test samples, first lots, pilot models, and pilot lots. "Approval" involves testing and evaluating the first article for conformance with specified subcontract requirements before or in the initial stage of production under a subcontract.
- b. First article testing and approval is designed to assure that the Seller can furnish a product that conforms to subcontract requirements. In determining whether first article testing and approval are to be required, consideration shall be given to increased cost and time of delivery by reason of the test, risk to JSA/JLab of foregoing such tests, and the availability to JSA/JLab of other less costly methods of achieving the desired quality.
- c. First article testing and approval may be appropriate when the product to be purchased:
 - 1. Has not been previously furnished by the Seller;
 - 2. Has been previously furnished by the Seller but there have been subsequent changes in processes or specifications, or production has been discontinued for an extended period of time; or
 - 3. Is described by a performance specification
- d. See FAR Subpart 9.3—First Article Testing and Approval for additional guidance

Part 47 TRANSPORTATION

1. Insurance

Jefferson Science Associates, LLC will not purchase individual insurance coverage for property in the possession of commercial carriers.

2. Required Clauses

- a. FAR 52.247-63, Preference for U.S. Flag Air Carriers (JUN 2003) shall be included in each subcontract or purchase order that may involve international air transportation.
- b. FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (APR 2003) shall be included in all subcontracts or purchase orders except for a contract agreement for ocean transportation services or a construction subcontract.

3. Delivery Terms

- a. The subcontracting officer shall determine F.O.B. terms generally on the basis of overall costs. Refer for guidance in FAR 47.304. Normally, F.O.B. Destination is preferred by JSA as it shifts the risk of loss to the vendor.
- b. Solicitations shall specify whether offerors must submit offers F.O.B. Origin, F.O.B. Destination, or both; or whether offerors may choose the basis on which they make an offer. The subcontracting officer shall consider the most advantageous delivery point, such as F.O.B. Origin, carrier's equipment, wharf, or specified freight station near contractor's plant.
- c. In determining whether O/P Handling or F.O.B. Destination is more advantageous to the JSA, subcontracting officer shall consider the availability of lower freight.

4. Shipping and Delivery Addresses

All property delivered or brought to Jefferson Lab must be delivered through the Laboratory's central Shipping and Receiving function. This includes property on loan from other research facilities, new purchases, property acquired via transfer from other agencies, and property returned from being repaired. The only exceptions are the tanker truck delivery of helium, nitrogen, and fuel oil, material delivered as part of a construction subcontract, and books. These items are received separately under the supervision of the Subcontracting Officer's Technical Representative (SOTR).

- a. The shipping address for all purchases other than books is:

Jefferson Lab
Shipping & Receiving, Bldg. 90
12000 Jefferson Ave
Newport News, VA 23606
Ref: Purchase Order Number

- b. All books are delivered directly to the Library for cataloging and marking. The shipping address is:

Jefferson Lab
Library, Suite 1126
12050 Jefferson Ave
Newport News, VA 23606

5. Shipments Originating Outside CONUS

Unless there are valid reasons to the contrary, acquisition of supplies originating outside CONUS for ultimate delivery to destinations within CONUS or elsewhere, regardless of the quantity of the shipments, shall be on the basis of F.O.B. Origin or F.O.B. Destination whichever is more advantageous to JSA.

Part 48 VALUE ENGINEERING

1. General

Value engineering is the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Laboratory methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

- a. There are two value engineering approaches:
 1. The first is an incentive approach in which the subcontractor participation is voluntary and the subcontractor uses its own resources to develop and submit any value engineering change proposals (VECP's). The subcontract provides for sharing of savings and for payment of the contractor's allowable development and implementation costs only if a VECP is accepted. This voluntary approach should not in itself increase costs to the Laboratory.
 2. The second approach is a mandatory program in which the Laboratory requires and pays for a specific value engineering program effort. The subcontractor must perform value engineering of the scope and level of effort required by the Laboratory and included as a separately priced item of work in the subcontract Schedule.
 - i. No value engineering sharing is permitted in architect engineer contracts. All other subcontracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach.
 - ii. The objective of this value engineering program requirement is to ensure that the subcontractor's value engineering effort is applied to areas of the subcontract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract

2. Use of Value Engineering Clauses

- a. Insert the Value Engineering Clause at FAR 52.248-1, Value Engineering in supply and services solicitations and subcontracts that exceed the Simplified Acquisition Threshold except for the following type subcontracts:
 1. For research and development other than full-scale development;
 2. For engineering services from not-for-profit or nonprofit organizations;
 3. For personal services (see FAR Subpart 37.1);
 4. Providing for product or component improvement, unless the value engineering incentive application is restricted to areas not covered by provisions for product or component improvement;
 5. For commercial products that do not involve packaging specifications or other special requirements or specifications
- b. Insert the Value Engineering Clause at FAR 52.248-3, Value Engineering- Construction in solicitations and subcontracts for construction that exceed the Simplified Acquisition Threshold, unless an incentive subcontract is contemplated.

3. Processing Value Engineering Change Proposals (VECP)

VECP's shall be processed consistent with the guidelines established in FAR Part 48.

Part 49 TERMINATION OF PURCHASE ORDERS AND SUBCONTRACTS

JSA may terminate a subcontract for convenience or cause when such a termination would be in the best interests of JSA. A temporary stoppage of work due to a stop work order from the buyer/subcontracting officer is not a termination. A reduction in the scope of work resulting from a programmatic change and settled under a bilateral agreement is not a termination.

1. General

- a. Complete termination - The complete cessation of all remaining work subcontracted, on the effective date of termination.
- b. Partial termination - The termination of a portion of the work contracted for, on the effective date of termination.
- c. Termination inventory - Any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a subcontract subsequently terminated and properly allocable to the terminated portion of the subcontract. It includes Laboratory furnished property.
- d. JSA/JLab's standard termination clauses (default and convenience) provide four (4) different bases for termination of subcontracts:
 1. Failure to deliver the product or complete the work or service within the stated time period,
 2. Failure to make progress in prosecuting the work which endangers timely completion,
 3. Breach of other terms and conditions of the subcontract, and
 4. For the convenience of JSA/JLAB and/or the Laboratory
- e. The buyer/subcontracting officer is responsible for issuing all terminations and Stop Work orders.

2. Termination for Convenience

- a. When it has been determined that termination, in whole or in part, is in the best interest of JSA/JLab and the Laboratory, notification and settlement shall be processed by the buyer/subcontracting officer in accordance with the terms and conditions of the subcontract. In a termination for convenience, the subcontractor is entitled to recover reasonable costs incurred and reasonable settlement cost incurred as a result of the termination. Prior to any action regarding termination for convenience, the buyer/subcontracting officer will advise the appropriate group manager and Procurement Manager and Legal Counsel of the pending situation. For additional guidance, consult FAR Part 49.
- b. A formal notice to the subcontractor is required to terminate the subcontract for convenience. The notice shall specify that the subcontract is terminated for the convenience of JSA/JLab and cite the subcontract clause that authorizes such action. Also, the following information shall be included in the notice:
 1. The effective date of the termination
 2. The extent of termination
 3. Any special instructions, and
 4. The steps the subcontractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the subcontractor's work force.
- c. The buyer/subcontracting officer must follow through on the termination notice and ensure that all work is stopped as stated in the notice in order to avoid the possibility that costs incurred thereafter will be disallowed. (Certain costs may not be able to be stopped on the day of the notice despite all reasonable efforts to do so, and certain costs for storing and protecting inventory items may be required after termination.) By prompt and clear communications with the supplier, smooth transition of termination should be accomplished.
- d. At the outset, there should be an immediate inventory verification and screening to determine the serviceable and usable property in the hands of the subcontractor and its lower tier suppliers and

subcontractor. Then, with the approval of property management, the following order of priority should be agreed to:

1. JSA/JLab will acquire inventory that it chooses.
 2. The subcontractor will purchase or retain at cost the items that it will accept.
 3. The subcontractor will return items to suppliers for full credit less the supplier's normal restocking charge.
 4. The subcontractor will sell or make other disposition of items as agreed to. Proceeds from sales, retention or restocking will be credited to the subcontract. Sales will generally require competitive bids.
- e. At the earliest reasonable date following termination, the buyer/subcontracting officer shall initiate a meeting with the subcontractor. In preparation for the meeting, the buyer/subcontracting officer should become thoroughly familiar with the termination for convenience clause of the subcontract. A checklist of topics for discussion at the meeting should include the following:
1. General principles relating to the settlement of any termination claim
 2. Obligations of the subcontractor under the termination clause of the subcontract
 3. Extent of termination and the point at which the work is stopped
 4. Status of plans, drawings and other data that were to be delivered under the subcontract
 5. Status of any work that was not terminated, if any
 6. Names of lower tier suppliers and subcontractors and dates when termination notices were sent to them
 7. Subcontractor's method of review and settlement of lower tier subcontractor claims
 8. General principles and procedures to be followed to protect, preserve and dispose of inventory in the hands of the subcontractor and his lower tier suppliers and subcontractors.
 9. The format in which settlement proposals, inventory schedules and accounting data will be submitted
 10. Tentative time schedules for submitting proposals, inventory schedules and other data.
- f. It is the subcontractor's responsibility to settle lower tier supplier claims, and lower tier suppliers may not make direct claims against JSA/JLab.
- g. All termination claims shall be submitted on either the inventory or total cost basis (refer to FAR 49.206-2 for an explanation of these terms), and the total amount payable to the subcontractor on a fixed price termination settlement shall not exceed the total subcontract price, exclusive of settlement costs. Refer to FAR 53.301-1435 thru 53.301-1438 for examples of termination proposal formats.

3. Termination for Default or Cause

- a. When a subcontractor does not comply with the terms and conditions of the subcontract and the mission of JSA/JLab will be impacted by either non-performance or non-delivery, the subcontract may be terminated for default or cause if the subcontract is for a commercial item. Prior to any action regarding such termination, the buyer/subcontracting officer will advise the appropriate Group manager and Procurement Manager of the pending situation. The buyer/subcontracting officer will review the proposed action with legal counsel and coordinate with the Procurement Manager of the actions to be taken.
- b. Before terminating a subcontract for default or cause, the buyer/subcontracting officer should consider the following matters:
 1. The specific reason(s) for the subcontractor's failure(s) and/or nonperformance
 2. Whether the supplies/services are available from other sources
 3. The urgency of the need and the lead time required to obtain the materials or services from another source
 4. The degree to which the subcontractor is essential to JLab's procurement program and the effect of the termination on the subcontractor

4. Mutual Cancellation

Before issuing a formal Notice of Termination, the buyer/subcontracting officer may, under certain conditions, undertake to negotiate an informal termination agreement with the subcontractor. This will involve a relatively simple "walk away" agreement (normally cancellation of JSA's PO/subcontract) that can be accomplished with minimal impact to the parties involved. Once a formal Notice of Termination is issued, the formal termination process may have to be followed to its conclusion. A "walk-away" settlement may be typically advantageous very early in the PO/subcontract stage prior to significant commitment by the parties.

- a. The SOTR or Technical Representative must approve cancellation of the requirement
- b. The Procurement Mgr. must approve the final cancellation action

Part 50 PRECIOUS METALS

In accordance with JLab's Property Policy, only JLab's Precious Metals Control Officer or Property Manager may issue a purchase requisition to purchase Precious Metals at the Laboratory. Any purchase requisition containing a requirement for Precious Metals that was not initiated by either the Precious Metals Control Officer or Property Manager should not be processed until approved by the JLab Precious Metals Control Officer or Property Manager. (See Property link <http://www.jlab.org/fm/property/> for further information).

Part 51 USE OF GOVERNMENT SOURCES

Use of Government Supply Sources is not mandatory except in the use of printing requirements. The following printing requirements apply to JSA/JLab requirements: a) Insert the provision at DEAR 970.5204-19, Printing in all subcontracts there under that require printing (as that term is defined in Title I of the U. S. Government Printing and Binding Regulations). Also see Part 8 of this POM. The DOE Contracting Officer provides JSA authorization to use Government supply sources such as GSA contractors. Buyers/subcontracting officers should obtain a copy of the most recent DOE approval to ensure compliance with Government procurement requirements.

Part 52 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS

- a. JSA shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- b. JSA shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.
- c. The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 1. In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that JSA is not in compliance with the provisions of this clause.
 2. The Government may seek any available remedies in the event JSA fails to comply with the provisions of this clause.

SUBCHAPTER H. FORMATS, FORMS, AND LIST OF POM ATTACHMENTS

Part 53 FORMATS

1. General

- a. The Department's standard formats provide the correct flow down provisions based on the type of the procurement action. Current formats approved for use can be found on the Department's P- Drive under the folder entitled "1- New JSA Forms and Formats".
- b. Only the Procurement Manager or duly authorized representative may alter, modify, or delete an approved standard format.
- c. A standard format may be changed or modified for a specific procurement action if the change does not substantially affect the intent of the requirement. The buyer's/subcontracting officer's supervisor shall approve these type of changes.
- d. Other changes to a JSA approved format that substantially changes or materially impacts the original terms and/or conditions of the clause shall be approved by the Procurement Manager.

Part 54 FORMS

- a. The Department's current forms approved for use can be found on the Department's P-Drive under the folder entitled "1- New JSA Forms and Formats". Alteration or deletion of an approved form for an instant procurement that materially changes the intended purpose of the form requires approval of the Procurement Manager.
- b. No changes shall be made to a JSA approved template form located in the above Directory without approval of the Procurement Manager.
- c. The buyer/subcontracting officer shall access forms and formats through the hyperlink master form and format file located in the "Q Directory" to ensure use of the most current forms and formats

Part 55 POM ATTACHMENTS

- a. JSA/Jefferson Lab Purchase Card Handbook

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**CONFLICT OF INTEREST CERTIFICATION
FOR COOPERATIVE RESEARCH AND DEVELOPMENT (CRADA) OR STRATEGIC
PARTNERSHIP PROJECT (SPP)**

JSA

In accordance with Clause I. 107, Technology Transfer Mission, § (n)(5) Conflicts of Interest of Contract No. DE-AC05-06OR23177, and as a JSA employee with a substantial role in the preparation, negotiation or approval (including an advisory role) of the above CRADA or SPP.

I _____ hereby certify that to the best of my knowledge neither I, nor my spouse, child, parent, sibling, or partner, or an organization in which I/we serve as officer, director, trustee partner, or employee:

1. holds financial interest in _____ or any entity, other than JSA, which has a substantial interest in the preparation, negotiation, or approval of this CRADA or SPP;

2. has received a gift or gratuity from the above organization or any entity, other than JSA, that has a substantial interest in the preparation, negotiation or approval of this CRADA; and

I further certify that I have no financial interest in _____ or any entity, other than JSA, that has a substantial interest in the preparation, negotiation, or approval of the CRADA or SPP, is held by any person or organization with whom I am negotiating or have any arrangement concerning prospective employment.¹

Except as follows:

(Insert "none," or information about the conflict. The fact that you are an inventor on an existing patent or future patent which may be developed under a CRADA or SPP and that you might receive royalty payments does not need to be reported. Any other type of positive disclosure should be included and will be reviewed by the DOE Contracting Officer to determine whether a waiver or disqualification is appropriate.)

Furthermore, I understand that during the term of the CRADA or SPP if the above information changes, that I have an obligation to provide written notification to the JSA Subcontracting Officer.

By:

Review and Approval by Procurement:

Name

Name

Date

Date

I am not negotiating nor do I have an arrangement concerning current or prospective

employment with an organization or entity other than JSA, which has a substantial interest in the preparation, negotiation, or approval of this CRADA or SPP.