




POLICY FLASH 2011-102

DATE: September 23, 2011

TO: Procurement Directors/Contracting Officers

FROM: Director 
Contract and Financial Assistance Policy Division
Office of Policy
Office of Procurement and Assistance Management

SUBJECT: Acquisition Guide Chapter 70.7 Subcontract Management-For
Commercial Items & Services under \$100,000

SUMMARY: The Contracting Officer must ensure that the contractor is sufficiently managing its purchasing system. Contracting Officers for our Management & Operating (M&O) contracts should ensure that the best commercial practices are being utilized by the M&O contractors.

Balancing the requirements of federal rules and policies with best commercial practices can be challenging. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions. DOE should require its M&O contractors to flow down only the minimum number of clauses and requirements necessary to implement applicable provisions of law, regulations or executive orders. As part of DOE efforts to eliminate unnecessary requirements, we have performed a review of the FAR and DEAR terms and conditions that must be flowed down in **commercial item and services subcontracts under \$100,000** as a matter of law.

The following Clauses must be included in subcontracts awarded by M&O contractors valued below \$100,000 for commercial items and services. Please note that the following list does not include DOE Directives (e.g., Order requirements made applicable via Contractor Requirements Documents, Manuals) that may be applicable to subcontracts or local clauses that require flow-down. This list is not all inclusive of specialized purchases that may require additional clauses.

Applicable to all agreements under \$100,000

FAR 52.222-21	Prohibition of Segregated Facilities (Feb 1999)
FAR 52.222-26	Equal Opportunity (Mar 2007)
FAR 52.222-36	Affirmative Action for Workers with Disabilities (Oct 2010) – in subcontracts over \$15K
FAR 52.222-50	Combating Trafficking in Persons (Feb 2009)
FAR 52.225-13	Restrictions on Certain Foreign Purchases (Jun 2008)
FAR 52.222-54	Employment Eligibility Verification (Jan 2009) – in subcontracts for more than \$3K; not applicable to services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications) and performed by the COTS provider
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) - in subcontracts over \$10K.
FAR 52.223-15	Energy Efficiency in Energy-Consuming Products (Dec 2007) – when ENERGY STAR® Program or FEMP products will be delivered, acquired, furnished, or specified
FAR 52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) - in all subcontracts that exceed the micro-purchase threshold
FAR 52.244-6	Subcontracts for Commercial Items (Dec 2009)
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

Applicable if services are performed on DOE Site

FAR 52.204-9	Personal Identity Verification of Contractor Personnel
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (Dec 2000)
DEAR 970.5223-1	DOE Approved Worker Safety and Health Program
DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites – in subcontracts over \$25K that involve: (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 (iii) Transportation of hazardous materials to or from a DOE site

Applicable if performance involves special items and services

FAR 52.208-8	Required Sources for Helium and Helium Usage Data (Apr 2002) – in any subcontract or order that involves a major helium requirement.
FAR 52.224-1	Privacy Act Notification (Apr 1984)

FAR 52.224-2	Privacy Act (Apr 1984)
FAR 52.225-8	Duty-Free Entry (Feb 2000) Supplies over \$15K - substance of the clause must be included in a subcontract if (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or (2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States
DEAR 952.247-70	Foreign Travel (Aug 2009) - when foreign travel may be required under the subcontract

When Subcontract involves Security or access to classified information

DEAR 952.204-2	Security (Aug 2009)
DEAR 952.204-70	Classification/Declassification (Sep 1997) – in subcontracts that may involve access to classified information
DEAR 952.204-77	Computer Security – in subcontracts that may provide access to computers owned, leased or operated on behalf of the DOE

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<http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/policy-flashes>.

Questions concerning this policy flash should be directed to Ronald Cone, of the Office of Contract Management at (202) 287-1336 or at Ronald.Cone@hq.doe.gov.