Attachment I
Subcontracts, Purchase Orders And Other Actions Requiring DOE Review And Approval And Other Agreements Between The Parties

This Attachment, implementing the Article entitled Contractor Purchasing System, sets forth the requirements for DOE's approval under the prime contract for the operation of the National Renewable Energy Laboratory.

Subcontracts not binding on DOE

Subcontracts and purchase orders shall be made in the name of Alliance, shall not bind nor purport to bind the Government, shall not relieve the Alliance of any obligation under this contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall contain such provisions as are required by this contract or as DOE may prescribe because of statutes, regulations or DOE policies as directed by the Contracting Officer.

As used herein, the term "subcontract" includes purchase orders, letter agreements, and similar contractual arrangements which will result in costs being properly charged to the prime contract with DOE.

All subcontracts in excess of ten percent of the small purchase schedule set forth in FAR Part 13, including those for services (except employment), material, supplies and equipment (or for their use) shall be reduced to writing.

Prior DOE review and written approval are required for subcontract actions which fall within any one of the following categories:

(a) Non-competitive subcontract actions (fixed price, cost-type, time and material and labor hour) in excess of $3,000,000 and competitive subcontract actions (fixed price, cost-type, time and material, and labor hour) in excess of $5,000,000. This includes subcontracts for construction and architect-engineer services.

(b) For all types of subcontracts (including construction or architect-engineer), any modification that will increase the initial award by 100 percent or more.

(c) For all types of subcontracts (including construction or architect-engineer), any modification that will increase the scope of the initial award by $1,000,000 or more.

~~(d)~~ Any consultant fees must have the prior written approval of DOE when the daily rate is in excess of $1,600; and/or when the total cost of the agreement exceeds $25,000, or modification of the agreement increases the total cost by more than $25,000; or for employees of another Government or DOE organization, or former employees of NREL and their subcontractors.

(e) All subcontracts and purchase orders which involve the acquisition (purchase or lease) of motor vehicles, aircraft, and printing equipment.

(f) All subcontracts and purchase orders which involve the acquisition of commercial printing in excess of $2,500.

(g) All procurement of Special Items referenced in DEAR 970.5244-1(q) through channels or sources different from those specified in such regulation.

(h) The furnishing of a foreign-made end product or component as defined in the article(s) I.56, *52.225-1 Buy American Act- Supplies* and I.57, *52.225-9 Buy American Act – Construction Materials* of the prime contract, except such supplies as are excepted from the operation of the Act(s). Determinations of non-availability may be made by the Contractor's Business Team leader or Administrative Associates for individual procurement actions not in excess of $500,000.

(i) Any subcontract which entails the payment of royalties or the purchase of a license.

(j) Purchase of patents or patent license rights, including the payment of royalties, and permits or license fees except for license agreements for commercial software.

(k) The recognition of proprietary rights, including the recognition of technical data as trade secrets.

(l) Any restriction of DOE's use of the supplies or data procured under a subcontract.

(m) The cancellation or termination of a subcontract or any part hereof which may result in termination or cancellation costs, or which results in a need to purchase the cancelled supplies or services from another supplier, require approval by DOE.

(n) Intracompany transfers.

(o) All leases for property, plant, or equipment when the lease must be classified and accounted for as a capital lease under generally accepted accounting principles.

(p) Leasing, purchasing, or otherwise acquiring real property, for the cost of which reimbursement will be claimed under the contract.

(q) All acquisitions of integrated data processing equipment in excess of $250,000.

(r) All subcontracts or purchase orders which contain an "indemnification" or "hold harmless" provision in favor of the subcontractor.

Pursuant to Department of Energy Acquisition Regulation 970.4401-3, *Advance Notification*, advance notice to the DOE Contracting Officer of the proposed award of the following specified types of subcontracts:

(a) Cost reimbursement type contracts of any award value.

(b) Fixed-price type contracts which exceed $25,000.

(c) Purchases from contractor-affiliated sources over a value established by the HCA.

(d) Advance notification shall contain, at a minimum, the following:

(1) Description of work;

(2) Estimated cost (and estimated fee, if any);

(3) Type of contract or reimbursement provisions;

(4) Anticipated period of performance. If modifying an existing subcontract, the previous performance periods and dollar values;

(5) Proposed subcontractor or vendor, if known;

(6) Extent of competition, or justification for a non-competitive procurement; and

(7) Subcontract Administrator, Program Manager, and telephone numbers.

(e) Notification should be forwarded to the Contracting Officer as soon as information is known and before solicitation. The Contracting Officer may at any time request additional information that must be furnished promptly and prior to award of the procurement.

Unless otherwise directed by the Contracting Officer, the approval request for subcontracts required in Attachment I above shall include:

(a) A description of the supplies or services to be called for by the subcontract.

(b) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained.

(c) The subcontractor's current, complete and accurate cost or pricing data and Certificate of Current Cost and Pricing Data when such data and certificate required by other provisions of this contract are to be obtained from the subcontractor. Cost and Pricing data shall be obtained, in accordance with FAR 15.403 and 15.403-1 through 15.403-4.

(d) Identification of the type of subcontract to be used.

(1) A memorandum of negotiation which sets forth the principle elements of the contract price negotiations. A copy of this memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was or was not required, and if it was or was not required in accordance with FAR 15.403, and 15.403-1 through 15.403-4, a statement of the basis for the determination. If cost or pricing data was submitted and a certificate of current cost or pricing data was required, the memorandum shall reflect the extent to which this data was used by the Contractor in determining the total price cost objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was

recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result and the effect, if any, of such defective data in the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective the memorandum shall explain this difference.