

U.S. Department of Labor

**Employment and Training Administration
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July 19, 2004

DIRECTIVE:	REGION 2 PRH SUPPLEMENT NO.	5.6R1
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TO ALL REGION 2 CENTER DIRECTORS
ALL REGION 2 CENTER OPERATORS
ALL REGION 2 AGENCY CENTER OPERATORS
ALL REGION 2 OUTREACH & ADMISSIONS CONTRACTS

FROM: LYNN INTREPIDI
Regional Director,
Office of Job Corps

SUBJECT: SUBCONTRACT CONSENT

1. Purpose:

To advise you of Job Corps' policy regarding requirements for consent to subcontracts entered into under cost-reimbursement contracts.

2. Policy:

Under the terms of cost reimbursement contracts, the contractor must request the Contracting Officer's consent prior to entering into specified subcontracts.

If the contractor has an approved purchasing system, consent is required only for subcontracts specifically identified by the Contracting Officer in the subcontracts clause of the contract. Even if the contractor has an approved purchasing system and consent to subcontract is not required under 44.201-1, the contractor is required by statute (10 U.S.C. 2306(e) or 41 U.S.C. 254(b)) to notify the agency before the award of the following:

- Any cost-plus-fixed-fee subcontract; or
- Any fixed-price subcontract that exceeds either the simplified acquisition threshold (**\$100,000**) or 5 percent of the total estimated cost of the contract

If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts.

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A. The below grids outline Subcontracts requiring consent:

1. Contractors without approved purchasing systems

Consent to subcontract shall be required as follows:

Subcontract Type	<\$25,000	>\$25,000	\$100,000 +
Cost Reimbursable	Required		
Consultants	Required		
Labor Hour	Waived	Required	
Time & Material	Waived	Required	
Fixed Price Supply or Services	Waived		Required
Health Professional Services	Required		
Other subcontracts as specified by the Contracting Officer ✚ All ACT/OCT Contracts ✚ All Concurrent Enrollment Agreements	Required		

2. Contractors with approved purchasing systems

Consent to subcontract shall be required as follows:

Subcontract Type	<\$25,000	>\$25,000	\$100,000 +
Cost Reimbursable	Not Required		
Consultants			
Labor Hour			
Time & Material			
Fixed Price Supply or Services			
Health Professional Services	Required		
Other subcontracts as specified by the Contracting Officer ✚ All ACT/OCT Contracts ✚ All Concurrent Enrollment Agreements	Required		

Although approval shall not be required, the contractor shall notify the Contracting Officer prior to award of the following:

- Any cost-plus-fixed-fee subcontract; or
- Any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

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B. Subcontracts identified in offeror's proposals

For subcontracts specifically identified in an offeror's proposal, advance notification or consent requirements may be considered to be satisfied if the subcontracts have been evaluated as part of the negotiations, and the Contracting Officer has specifically identified those subcontracts in the contract, paragraph (k) of Clause 52.244-2, Consent to Subcontracts.

C. **Construction: All construction subcontracts over \$2,000, subject to the Davis Bacon Act, must be forwarded to the Regional Office for approval. The operation must also certify that funds to cover the project are available via CRA.**

D. Multi-year Subcontracts

The Contracting Officer may consent to multi-year subcontracts (base contract plus option years) if, at the outset of the base contract period, the following conditions are met:

1. Exercise of any option year is contingent on the Government's award of an option year to the prime, and subject to the availability of continued funding
2. If any single option year exceeds the simplified acquisition threshold (\$100,000), a separate approval shall be required for that option period.
3. Any substantial change in the terms or conditions of the subcontract requires approval.

3. Action:

Operators and Regional Office staff shall comply with the requirements of this PRH Supplement for the administration of all subcontracts entering into under cost-reimbursable contracts.

A. Operator (OA/CTS or Center)

Under the terms of cost reimbursement contracts, the contractor must request the Contracting Officer's consent prior to entering into specified subcontracts, listed above.

Requests for subcontract consent must be submitted in sufficient time for review and approval prior to the proposed effective date of the subcontract. Verbal approval can be obtained for *bona fide* emergencies. All such approvals shall be documented with a signed subcontract consent form.

A subcontract consent form will be submitted to the Contracting Officer for approval of all

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subcontract agreements and/or purchase orders requiring Contracting Officer approval. Approval of the contractor's purchasing system/policies does not relieve the contractor from obtaining the approvals noted above.

All procurement activity shall provide for full and open competition through use of the competitive procedure(s) contained in the FAR subpart 6.1, which are best suited to the circumstances of the contract action and consistent with the need to fulfill the requirements efficiently.

At a minimum, submission of a Subcontract Consent Forms shall include the following:

1. Evidence of competition (FedBizOps – all procurements over \$25,000) or an explanation otherwise.
2. Award Justification Narrative and Cost Comparison/Bid Abstract
3. Purchase Order including Scope of Work and Terms
4. Current License and Insurance documents (Operators should require subcontractors to list their organization as an additional insured).

The operator shall complete the header information on Exhibits A and B and forward the exhibits along with the above information to the Regional Office COTR.

B. Review of Subcontracts – Regional Office

The Contracting Officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. The Contracting Officer's review shall be documented in writing (including supporting facts and rationale) and made a part of the contract file. The Contracting Officer may waive consent requirements for certain subcontract actions, provided that the waiver is in writing and made a part of the contract.

Prior to approving subcontracts, the COTR, shall determine if the following conditions apply, (**See Exhibit A, Subcontract Review Checklist**):

1. Supplies, equipment or services are consistent with program needs
2. Prime contractor has complied with contract requirements for subcontracting with small businesses and Javits-Wagner-O'Day sources
3. Price competition was obtained (or sole source justification documented)
4. Basis for selection is documented
5. Subcontractor is determined to be responsible
6. Subcontractor is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs
7. Cost or price analysis was conducted or price comparisons were obtained

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8. Contract type is appropriate
9. Appropriate pass-down clauses are included

The COTR will forward his/her recommendation on Exhibits A and B to the Contracting Office for review and approval. Concurrence of the Regional Office Division Chief, Contract Specialist, and Medical Consultant, as necessary, will be obtained prior to forwarding to the Contracting Officer.

C. Consent

Consent to subcontract shall be issued in writing and signed by the Contracting Officer, (See Exhibits A and B).

Contracting Officers shall not consent to subcontracts that:

1. Provide for payment of cost-plus-a-percentage-of-cost.
2. Obligate the Contracting Officer to deal directly with the subcontractor.
3. Are cost-reimbursement with fees that exceed the fee limitations of FAR 16.

4. Inquiries:

Questions regarding this PRH Supplement may be addressed to the Regional Director, Division Chief, or the COTR.

5. Rescissions:

This PRH Supplement is effective immediately and supercedes the prior issuance of 10/28/03.

Exhibit A

SUBCONTRACT REVIEW CHECKLIST

Prime Contractor	
Contract Title:	
Contract No:	
Contractor Name:	
Proposed Subcontractor	
Subcontractor Name & Address:	
Purpose of Subcontract: (Description)	
Effective Date:	
Period of Performance:	
Subcontract Amount:	

Subcontract Review	Yes	No
Supplies, equipment or services are consistent with program needs		
Prime contractor has complied with contract requirements for subcontracting with small businesses and Javits-Wagner-O'Day sources		
Price competition was obtained (or sole source justification documented)		
Basis for selection is documented		
Subcontractor is determined to be responsible		
Subcontractor is not on the List of Parties Excluded from Federal Procurement and Non-procurement Programs (attach documentation)		
Cost or price analysis was conducted or price comparisons were obtained (fixed price, cost reimbursement, time & materials, labor hour)		
Contract type is appropriate		
Appropriate pass-down clauses are included		
Current License & Insurance are included		

- Consent recommended (Comments)
- Consent not recommended (Comments)

COTR/Reviewer's Signature/Title

Date

Exhibit B

CONSENT TO PLACE SUBCONTRACT/PURCHASE ORDER

Prime Contractor	
Contract Title:	
Contract No:	
Contractor Name:	
Proposed Subcontractor	
Subcontractor Name & Address:	
Purpose of Subcontract: (Description)	
Effective Date:	
Period of Performance:	
Subcontract Amount:	

Consent is hereby given to the above referenced subcontract/purchase order, subject to the conditions of Federal Acquisition Regulations, Clause 52.244-2, Subcontracts Under Cost Reimbursement and Letter Contracts.

Consent is conditioned upon the information furnished by the contractor in support of the request for consent to place a subcontract.

This consent shall in no way relieve the prime contractor of any responsibilities it may otherwise have under the contract or under law. It shall not create any obligations of the Government to, or privity with the subcontractor or vendor, and shall be without prejudice to any right or claim of the Government under the Prime Contract. The amount and funding of this prime contract are not changed by this consent to place a subcontract.

Recommended for consent by:

 Contracting Officer's Technical Representative

 Division Chief - Deputy

 Contract Specialist

 Regional Health Consultant (when applicable)

Consent to place subcontract approved by:

 Contracting Officer

 Date