

BONNEVILLE PURCHASING INSTRUCTIONS TRANSMITTAL SHEET

Issued by Purchasing/Property Governance – DGP-7



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SUBJECT: BPI UPDATE 13-1 EFFECTIVE DATE December 21, 2012

SUMMARY OF CHANGES: An online copy of the BPI is available at <http://www.bpa.gov/corporate/business/bpi/>. The online BPI is a conformed copy with all changes included as of the current date and shall be effective until superseded. Archived editions of the BPI are retained by the Head of Contracting Activity and located in the agency approved Electronic Records Management System.

The following changes are implemented via this transmittal:

| Topic | BPI section | Change | Clauses |
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| Substantive changes: | | | |
| Thresholds for Limitations on Payment of Funds to Influence Federal Transactions | 3.5.2; 3.5.3; 3.5.5; 3.5.5.1; 25.1.1 | Limitation on Payment of Funds to Influence Federal Transactions dollar thresholds increased to \$150,000. | Revised clause text and clause usage prescription: 3-3 Certification, Disclosure, and Limitation Regarding Payments to Influence Certain Federal Transactions |
| Contractor Policy to Ban Text Messaging While Driving | 3.7.1.1 25.1.1 | Clarified that Clause 3-4 Contractor Policy to Ban Text Messaging While Driving shall be included in all IGCs, except those with federal agencies. | Revised clause usage prescription: 3-4 Contractor Policy to Ban Text Messaging While Driving |
| Thresholds for Congressional Notification Requirements | 4.5(a) &(b) | Thresholds for congressional notification requirement increased to \$4 million for contracts. Supersedes and cancels BPI Temporary Instruction 12-1. | n/a |
| Preference Awards | 8.3.1 8.3.4 | <ul style="list-style-type: none"> • Thresholds for subcontracting plans increased to \$650,000 and \$1.5 million for construction. • Clarified that Clauses 8-3, 8-4 and 8-5 are applicable to solicitations and contracts for procurements where subcontracting is a possibility. | Revised clause usage prescription: 8-3 Utilization of Small Business Concerns & Small Disadvantaged. 8-4 Subcontracting Plan Requirement. 8-5 Liquidated Damages-Small Business Subcontracting Plan. |
| Thresholds & Countries for Trade Agreements-Updated Countries List | 9.1 9.4 9.4.1 9.4.2 | <ul style="list-style-type: none"> • Trade Agreement parties and thresholds updated to include Columbia and Korea. • List of countries subject to waiver of Buy American Act updated. • Definitions of Caribbean Basin, Free Trade Agreement, and WTO GPA countries updated. • US Code citations for Buy American Act updated. | Revised clause text and clause usage prescription: 9-2 Waiver of Buy American for Civil Aircraft and Related Articles Revised clause text: 9-3 Buy American Act – Supplies 9-5 Buy American Act – Construction Materials 9-7 Buy American Notice |

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| Subcontracting with Debarred or Suspended Entities | 11.8 11.8.1 25.1.1 | <ul style="list-style-type: none"> • Location for Excluded Parties List System (EPLS) updated to www.sam.gov. • Clarified that contractors shall not subcontract with entities that have been debarred or suspended, unless the subcontract is for COTS items. • New BPI Clause to be included in solicitations and contracts greater than \$30,000, flowing restrictions to contractors, including IGCs. | New Clause: 11-7 Subcontracting with Debarred or Suspended Entities |
| Packing Slip Requirement | 12.8.10.1 | Requires vendors to label shipments with BPA purchase order/contract number and to include complete itemized packing slip with each shipment. | Revised clause text: 12-5 Delivery or Performance |
| Scientific and Technical Reporting | 14.14 25.1.1 | BPI Section 14.14 and Clause 14-15 have been deleted. BPA has exemption from cited federal reporting requirement. Any required reports should be identified as a deliverable in the subject solicitation and contract. | Deleted clause: 14-15 Scientific and Technical Reporting Requirement |
| Critical Information Homeland Security- | 14.5.2 14.18.1 14.18.2 14.18.3 17.4.1.1 17.4.3.1 17.6.1.3.1 | <ul style="list-style-type: none"> • Updated references in policy and clause text to "Critical Information" to align with BPAM referenced terminology. • Clarified clause usage prescription for Homeland Security clause. | Revised clause usage prescription and clause text: 14-17 Homeland Security |
| US Flag Vessel Requirement | 14.15.1 | Clarified clause text that requirement to use US flag vessels for shipment shall not apply to subcontracts for commercial items or components. | Revised clause text: 14-16 Requirement for US Flag Vessels |
| Threshold for Performance and Payment Bonds | 16.1.1.1 16.1.1.3 | Increased dollar threshold to \$150,000 for performance and payment bond requirement for construction contracts. | Revised clause usage prescription: 16-1 Performance and Payment Bond |
| Insurance-Named Insured | 16.3 | Clarified requirement that BPA be a named insured where BPA receives certificate of insurance. | Revised clause text: 16-2 Insurance |
| Noncommercial Intellectual Property | 17.5 17.5.3.3 17.6 | Clarified application of BPI 17.5 and 17.6 to noncommercial procurements involving intellectual property by removing reference to IT in section title. | n/a |
| Contracting with Foreign Nationals-Restrictions on Citizenship | 17.6.1.2 | Removed prohibition on contracting with foreign nationals for procurements involving IT and intellectual property rights; aligns with BPAM requirements on foreign nationals. | Revised clause usage prescription: 14-17 Homeland Security |
| Performance Location Restriction | 17.6.1.3 17.6.1.3.1 | Removed requirement that IT and intellectual property contracts be performed within the U.S, subject to the Sensitive Countries and Terrorist Countries List. | n/a |
| Information Assurance | 17.6.1.4.1 | Revised clause usage prescription to clarify applicability of Information Assurance clause to solicitations and | Revised clause usage prescription: 17-20 Information Assurance |

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| | | contracts under which contractors receive BPA information subject to FISMA as well as to solicitations and contracts where contractors will have access to BPA information systems. | |
| Contractor Use & Disposal of Property | 19.3 19.9 19.11 | Clarified that contractor use of government furnished and contractor acquired property is restricted to official business use only; disposal of government property shall be in accordance with Federal, state and local laws and regulations. | Revised clause text: 19-1 BPA-Furnished/Contractor Acquired Property 19-4 BPA Property to be Transferred to the Contractor |
| Termination | 20.1.1 20.3 20.3.1 20.4.1 20.5.6 25.1.1 | <ul style="list-style-type: none"> • Clarified policy regarding termination clauses including Clause 20-1 Termination for Convenience of Either Party which is restricted to IGCs. • Removed reference to contractor's termination rights from Clause 7-6 Master Agreement: Basic Terms. • Clarified policy for use of Clause 20-2 Termination for Convenience of BPA. • Removed dollar thresholds for Clauses 20-2 and 20-3. • Updated dispute resolution references in policy and clause text. • Updated CO's final decision text. | Revised clause text: 7-6 Master Agreement: Basic Terms Revised clause text and clause usage prescription: 20-1 Termination for Convenience of Either Party Revised clause usage prescription: 20-2 Termination for the Convenience of BPA Revised clause usage prescription: 20-3 Termination for Default |
| Applicable Law | 21.1.2 21.1.2.1 | <ul style="list-style-type: none"> • Clarified that federal law will apply to resolve any claim of breach of contract, deleting reference to state law. • Clarified that 21-5 shall be included in IGCs of any dollar amount. | Revised clause text and clause usage prescription: 21-5 Applicable Law |
| Financial Assistance Certifications | App 2-A: Section 2.3.3.1(a)(2) | Clarified that Financial Assistance certification may be obtained at Certification Levels 1, 2 or 3. | n/a |
| Miscellaneous clean-up/typos: | | | |
| Master Agreement | 7.50 | Updated reference to date on contract signature page. | Revised clause text: 7-6 Master Agreement-Basic Terms |
| NLRA Notice | 10.3.1 | <ul style="list-style-type: none"> • Corrected reference to Executive Order in clause text. • Corrected typographical error in clause usage prescription. | Revised clause text and clause usage prescription: 10-6 Notification of Employee Rights Under the National Labor Relation Act |
| Labor Policies for Service Contracts | 10.4.4 | Corrected numbering in clause usage prescription. | n/a |
| E-Verify | 10.7 | Corrected policy title from Equal Employment Opportunity (E-Verify) to Employment Eligibility Verification (E-Verify). | n/a |
| Support agreements | 17.2.9(b)(1) | Corrected typographical error in policy text. | n/a |
| Settling Contracts Terminated for Convenience | 20.4.4(f) | Corrected typographical error in policy text. | n/a |
| Part 22 clauses | 22.50 | Corrected BPI citation in clause titles. | Revised clause titles: 22-14 Taxes-Indefinite Delivery Contracts, citation corrected. |

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| | | | 22-15 Federal, State and Local Taxes, citation corrected. 22-16 Taxes and Duties, citation corrected. 22-17 Washington State Sales and Use Taxes, citation corrected. 22-18 State of Idaho Use Tax, citation corrected. 22-22 Contracts for Expert/Consultant Services with Independent Contractors, citation corrected. 22-23 Contracts for Supplemental Labor, citation corrected. |
| IGCs | 25.1.1 | Corrected BPI citation in clause titles. | Revised clause title: 25-5 Audit-Intergovernmental Contracts, citation corrected. 25-6 Socio-Economic Requirements, citation corrected. 25-7 Classified Information, citation corrected. 25-9 Endangered Species Act Requirements, citation corrected. 25-12 Termination for Convenience by Either Party-Federal Agencies, citation corrected. 25-13 Termination by Mutual Consent, citation corrected. |
| IGCs | 25.2.1 | Corrected BPI citation in clause titles. | Revised clause title: 25-2 Payment in-Arrears, citation corrected. 25-3 Advance Payment & Financial Reports, citation corrected. |
| IGCs | 25.4.1 | <ul style="list-style-type: none"> • Corrected BPI citation in clause titles. • Corrected reference to Clause 21-2 Disputes in IGC clause usage prescription. | Revised clause title: 21-2 Disputes 25-4 Changes 25-8 Publication/Presentations 25-10 Applicable Law-State of Idaho |
| Dispute Resolution Process-Federal Agencies | 25.4.1 | <ul style="list-style-type: none"> • Updated clause text to refer to updated Treasury Financial Manual. • Corrected BPI citation in clause title. | Revised clause text: 25-11 Dispute Resolution Process-Federal Agencies |
| Unsolicited Proposals | Appendix 12A Section 4 | Updated submission information for unsolicited proposals in policy text. | n/a |

DETAILS OF SUBSTANTIVE CHANGES

1. **Thresholds:**

- a) Limitation on Payments to Influence Federal Transactions: The dollar threshold has been increased to \$150,000.
- b) Performance and Payment Bonds: The dollar threshold has been increased to \$150,000.
- c) Congressional Notification: The dollar threshold for congressional notification for contracts has been increased to \$4,000,000. This BPI Update supersedes and cancels BPI Temporary Instruction 12-1, issued 08/01/12, by incorporating the content of the instruction into BPI 4.5(a) and (b). COs should not use the DOE automated notification process, the Advanced Notification of Awards (ANA) system, as BPA does not use STRIPES. COs should continue to use the manual process of scanning the signed DOE Form 4220.10 Congressional Grant/Contract Notification form and transmitting in PDF format to DOE at the DOE Office of Congressional and Intergovernmental Affairs using the following email address: CI-ANA@hq.doe.gov.
- d) Trade Agreements: The BPI 9.4.2 trade agreement threshold matrix has been updated to include Columbia and Korea and their respective dollar thresholds for supplies/services and construction.
- e) Small Business Subcontracting Plan requirement: The dollar threshold for the subcontracting plan requirement has been increased to \$650,000 (\$1.5 million for construction).
- f) Termination clause thresholds: The dollar thresholds for Clauses 20-2 Termination for the Convenience of BPA and 20-3 Termination for Default have been removed.

The policy, clause usage prescriptions and clause texts have been updated. The revised clauses shall be used in solicitations and contracts issued after the effective date of this BPI Update.

2. **Trade agreements:**
 - a) Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten have been added to the list of Caribbean Basin Countries in BPI 9.4.1.
 - b) Korea and Columbia have been added to the list of Free Trade Agreement countries in BPI 9.4.1.
 - c) Armenia has been added to the list of World Trade Organization Government Procurement Agreement countries in BPI 9.4.1.
 - d) BPI 9-2 Waiver of Buy American Act for Civil Aircraft and Related Articles has been updated to include additional countries as parties to the Agreement on Trade in Civil Aircraft.

The policy and clause texts have been updated. The revised clause shall be used in solicitations and contracts issued after the effective date of this BPI Update.

3. **Insurance:** Requirement that contractors provide certificates of insurance has been revised to include clarification that Bonneville Power Administration be identified as a named insured on insurance certificates. This will give BPA standing to assert a claim against the identified policy. The policy and clause text has been updated. The revised clause shall be used in solicitations and contracts issued after the effective date of this BPI Update.

4. **Contracting with Foreign Nationals:** The restriction against contracting with foreign nationals on IT procurements and procurements involving intellectual property rights has been aligned with the requirements in BPAM Chapter 1074. The policy and clause usage prescription have been revised. Solicitations and contracts issued after the effective date of this BPI Update should follow the guidance in BPAM Chapter 1074. COs may modify existing contracts to reflect the revised policy after obtaining appropriate approvals pursuant to BPAM Chapter 1074. COs shall submit BPA Form 5632.08(a) Unclassified Visits and Assignments-Foreign National Registration (Long Form for Sensitive Country Foreign National) or 5632.08(e) Unclassified Visits and Assignments-Short Form as directed on the form.

5. **Location restrictions:** The restriction requiring contract performance within the United States for IT projects and procurements involving intellectual property rights has been removed, subject to verification of the Sensitive Countries and Terrorist Countries Lists.

The policy and clause usage prescription has been revised. Any restrictions on place of performance should be identified in the solicitation and statement of work. COs may modify existing contracts as appropriate.

5. **Preference Awards:** The policies on small business utilization apply to all procurements for goods and services. The clause usage prescriptions have been clarified for Clauses 8-3 Utilization of Small Business Concerns & Small Disadvantaged, 8-4 Subcontracting Plan Requirement, and 8-5 Liquidated Damages-Small business Subcontracting Plan. COs should always consider small business opportunities where practicable when procuring goods and services.

6. **EPLS and Subcontracting with Debarred or Suspended Entities:**
 - a) The requirement to contract with responsible and reputable firms and individuals extends not just to BPA but to BPA's contractors and their subcontractors. BPI policy has been clarified that contractors shall not subcontract with entities that have been debarred or suspended, as identified on www.sam.gov, unless the subcontract is for COTS items. New BPI Clause 11-7 Subcontracting with Debarred or Suspended Entities flows down the restrictions to contractors and subcontracts. COs shall include Clause 11-7 in solicitations and contracts issued after the effective date of this BPI Update, where the contract value exceeds \$30,000. Clause 11-7 shall be included in IGCs, except those with federal agencies.
 - b) The Excluded Parties List System (EPLS) reference in BPI 11.8 has been updated to the System for Award Management (SAM) at www.sam.gov. Policy has also been clarified that SAM shall be verified prior to soliciting or initial award of a contract and all subsequent awards, including modifications, releases, and options.

7. **Packing Slip requirement:** Clause 12-5 Delivery or Performance has been modified to require that shipments be labeled with a BPA purchase order or contract number and accompanied by a complete itemized packing slip. COs shall include Clause 12-5 in solicitations and contracts issued after the effective date of this BPI Update and may modify existing contracts where appropriate to include the revised clause.

8. **Scientific & Technical Reporting Requirement:** BPI 14.14 and Clause 14-15 have been deleted. BPA has a named exemption from the subject DOE Order. COs should include any reporting requirements as a deliverable in the statement of work. Existing contracts should be modified only where necessary.

9. **US Flag Vessel Requirement:** The requirement to use US flag vessels does not apply to subcontracts for the purchase of commercial items or components. The clause usage prescription and the clause text for Clause 14-16 Requirement for US Flag Vessels have been clarified that subcontracts for the purchase of commercial items or components are exempt from the flag vessel requirement. CO shall include Clause 14-16 in solicitations and contracts issued after the effective date of this BPI Update. Existing contracts may be modified where appropriate.

10. **Applicable Law:** Federal law applies to resolve any contract dispute or breach of contract claims for contracts issued under the BPI. References to applicability to state law have been deleted. COs shall include Clause 21-5 in solicitations and contracts issued after the effective date of this BPI Update, including IGCs.

11. **Noncommercial Intellectual Property:** BPI 17.5 and 17.6 apply to noncommercial procurements involving intellectual property rights. References to Information Technology have been removed from the section titles and policy text to clarify applicability.

12. **Information Assurance:** BPI 17.6.1.4 Information Assurance policies (Federal Information Security Management Act-FISMA) apply to solicitations and contracts:

- a) where a contractor's software will operate on, or come in contact with, BPA's systems or networks; or
- b) where contractors have access to BPA information or data that is subject to FISMA.

The clause usage prescription has been clarified to identify the two types of procurements that FISMA currently applies to. COs shall include Clause 17-20 in solicitations and contracts issued after the effective date of this BPI Update. COs are instructed to contact Cyber Security for a determination of FISMA applicability.

13. **Contractor Use & Disposal of Property:** Contractor use of government furnished and contractor acquired property is limited to official business use only. Contractor disposal of property is directed by the CO and shall be in conformance with applicable laws.

BPI policy and Clause 19-1 and 19-4 have been updated to reflect clarified policy. COs shall include revised Clause 19-1 and 19-4 in solicitations and contracts after the effective date of this BPI Update.

14. **Termination clauses:** Policy has been clarified regarding use of termination clauses. Every contract shall include at least one termination clause, Clause 20-2 Termination for the Convenience of BPA. Additionally, most contracts shall include Clause 20-3 Termination for Default. The dollar thresholds for Clauses 20-2 Termination for the Convenience of BPA and 20-3 Termination for Default have been removed. Clause 20-1 Termination for the Convenience of Either Party is restricted for Intergovernmental Contract use only.

BPI policy and clause usage prescriptions have been updated. COs shall include the appropriate termination clauses in solicitations and contracts after the effective date of this BPI Update.

15. **Contractor Policy to Ban Text Messaging While Driving:** Executive Order 13513 required all federal procurement contracts, grants and cooperative agreements to include a clause encouraging contractors to adopt and enforce policies that ban text messaging while driving. Clause usage prescription for Clause 3-4 Contractor Policy to Ban Text Messaging While Driving has been clarified to apply to intergovernmental contracts, except those with federal agencies which are already required to prohibit texting while driving. COs shall include Clause 3-4 in new intergovernmental solicitations and contracts, except those with federal agencies.

16. **Financial Assistance Certifications:** Effective the date of this BPI Update, the financial assistance certification requirements have been revised to allow certification at Levels I, II, or III.