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- **Research**
- **Partnership to**
- **Secure Energy**
- **for America**
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**Wiley Wells, Contracts Director**  
**RPSEA Solicitation Process Overview**  
**November 20, 2008**

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Secure Energy for America



# Outline

- Overview
- Eligibility
- Small Business Opportunities
- Improvement for this years program
  - Policies and procedures
  - Streamlined DOE approval process
  - Two step proposal process
- Review of Terms & Conditions
- Questions and Answers



# Federal Regulations

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RPSEA is administering federal funds in accordance with Section 999 of the Energy Policy Act of 2005 and in compliance with our prime contract. As such, federal regulations apply.

RPSEA's prime contract is a procurement contract issued in accordance with the Federal Acquisition regulations (FAR)

One of RPSEA's goals is to make compliance with the federal regulations as transparent as possible. We have developed resources to assist in bidder compliance with federal regulations:

- Relevant documents posted on our website
- Frequently asked questions (FAQ) on website
- Hyperlinks to relevant materials embedded in RFP's
- Questions submitted in writing will be answered and posted to our website



# Eligibility

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To receive an award, an entity must be a United States-owned entity organized under the laws of the United States; or the entity is organized under the laws of the United States and has a parent entity organized under the laws of a country that affords—

- (i) to United States-owned entities opportunities, comparable to those afforded to any other entity, to participate in any cooperative research venture similar to those authorized under subtitle J of the EPO Act;
- (ii) to United States-owned entities local investment opportunities comparable to those afforded to any other entity; and
- (iii) adequate and effective protection for the intellectual property rights of United States-owned entities.



# Small Business Opportunities

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- RPSEA encourages the participation of small businesses in program opportunities
  - Small business goals were established during development of the RPSEA annual plan
  - RPSEA participates in the Houston Area Small Business Administration meetings
  - Active outreach program to small business at conferences and seminars
  - Opportunity to award sole source contracts to qualified small businesses



# Improvements from 2007

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- 1<sup>st</sup> and foremost – systems are established
  - Approved purchasing system
  - Approved property management system
  - Approved RFP and subcontract templates
- Streamlined DOE approval process
- Two step proposal process
  - Step 1 – technical proposal
  - Step 2 – all the remaining details



# Streamlined DOE Approval Process

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- Our first awards involved significant DOE review of all of our award documentation
- With demonstrated performance and establishment of standard award documents, DOE issued an approval of our purchasing system
- DOE approval is now reduced from several days or weeks to 1-2 days on average.



# New Two-Phase Proposal Process

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- RPSEA is implementing a Two-Phase proposal process
  - Phase 1 – Technical and cost summary response
  - Phase 2 – Detailed cost and other supporting documentation for those proposals selected to negotiate toward award
- This Two-Phase approach alleviates unnecessary effort for proposals not selected to negotiate toward award.



# New Two-Phase Proposal Process

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- **Phase 1** – Request for Technical Proposal
  - Submit technical response and summary cost information
  - RPSEA review teams evaluate and score proposals
  - Review teams recommend selection to RPSEA President
  - RPSEA President recommends selections to DOE
  - DOE approves selections



# New Two-Phase Proposal Process

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- **Phase 2**

- Selected organizations prepare final documentation to support negotiations toward award.
  - Detailed cost proposal
  - Other government required forms (next slide)



# Phase 2 Documentation

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While NOT required to be submitted with the proposal, if selected for negotiation Offerors will be required to download and complete the following documents as applicable:

1. [Government Property Questionnaire](#)  
This Questionnaire will be required before a RPSEA subcontract is awarded.
2. [Annual Representations & Certifications](#)  
This Certification will be required before a RPSEA subcontract is awarded.
3. [Cost Accounting Standard \(CAS\) Certification](#)  
This Certification is required to be signed and returned if the dollar value of the proposal exceeds \$650,000
4. [Standard subcontracting plan](#)  
A subcontracting plan is required if the dollar value of the proposal exceeds \$550,000.
5. [Representations and Certifications Part D, Department of Energy](#)  
This Certification must be signed and returned if the dollar value of the proposal exceeds \$100,000
6. [DOE Environmental Questionnaire](#)  
This form will be required before award of a sub contract.



# Cost Accounting Standard (CAS) Certification

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Required for federally funded, cost reimbursable contracts if the contract value is over \$650,000.

- AND -

Your organization has more than \$7.5 million in CAS covered contracts.

CAS was promulgated to ensure consistency in accounting practices applied to federal subcontracts. If your organization is exempt from CAS, there are still some specific accounting rules that must be followed to support cost reimbursable subcontracting; however, they are much less onerous than full CAS requirements.



# Cost Accounting Requirements

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- The standards are designed to ensure allowability of direct and indirect cost and an equitable allocation of indirect costs
- Organizations unfamiliar with government subcontracting typically do not have accounting systems that are adequate to support cost reimbursable subcontracting
  - Do not segregate unallowable cost (entertainment, advertising, interest, etc.)
  - Do not collect nor allocate indirect costs consistent with federal cost principles
- RPSEA has negotiated an option with NETL to be used on a limited basis to alleviate the need for a commercial firm to implement new accounting practices
  - Fixed hourly rates



# Fixed Hourly Rates

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- Cost reimbursable subcontracting requires that cost be invoiced as actual cost incurred
  - For labor, that means each individual's actual wages plus their actual indirect costs (fringe, OH, G&A)
  - The project begins with a provisional indirect rate
  - Costs are tracked for the duration of the project and the final actual indirect costs are reconciled
- In lieu of this approach, RPSEA may offer the option of establishing a predetermined fixed hourly rate not subject to final reconciliation
- A fixed hourly rate would be established for each individual performing work on the project



# Fixed Hourly Rates

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- Two options for determining a fixed hourly rate are available
  - Full cost recovery
  - Recovery of direct wages and fringe benefits only
- In either case, you would develop a company budget for the duration of the project to determine anticipated indirect costs and direct cost base
- Rates could be different each year for multi-year projects
- Rates could be renegotiated if conditions significantly change
- Once supporting documentation for these rates have been developed, RPSEA will audit and, if found acceptable, establish the rates in the subcontract



# DOE Environmental Questionnaire

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- This form has caused quite a bit of confusion; however, in most cases the completion of the form is fairly straight forward
- 10 page form
- For paper studies, one checkmark on the first page and sign
- For lab/bench/pilot scale research in existing facilities, etc. additional information is required but fairly straight forward
- New laboratory construction, new wells, etc. need to complete the entire form
- In almost all cases, we anticipate analysis of the form by DOE will result in a categorical exclusion from NEPA requirements
- A separate form must be completed for each performing organization (prime and sub contractors) and for each location where work is being performed



# Terms and Conditions

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- RPSEA has developed three sample subcontract documents
  - Commercial and Non-Profit firms
  - Educational Institutions
  - National Laboratories
- Commercial and Non-Profit & Educational subcontracts composed of five parts
  1. Schedule A – Commercial T's & C's
  2. Schedule B, Part 1 – Federal Acquisition Regulation (FAR) references
  3. Schedule B, Part 2 – Full text prime contract flow downs
  4. Appendix 1 - Scope of Work
  5. Attachment A – Subcontractor Acquired Property Checklist



# Schedule A – Commercial T's & C's

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- Schedule A is negotiable within reason
- Tailored for each type of entity, but in general contain the following:

Period of Performance	Changes
Cost	Disclosure
Funding	Key Personnel
Allowable Cost & Payment	Insurance
Inspections	Indemnification
Invoices	Confidentiality
Payment	Disputes
Audit	Default
Representations or Warranty	Closeout
Contacts	Applicable State Law

# Schedule B, Part 1 – FAR References

- Mandatory flow downs from RPSEA's prime contract with DOE
- Self-deleting if not applicable

DEAR 952.208-70	PRINTING (APR 1984)
FAR 52.216-7	ALLOWABLE COST AND PAYMENT (DEC 2002),
FAR 52.216-12	COST SHARING CONTRACT – NO FEE (APR 1984), ALTERNATE I (APR 1984)
FAR 52.216-15	PREDETERMINED INDIRECT COST RATES (APR 1998)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995) – ALTERNATE I (APR 1984)
FAR 952.227-11	PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)



# Schedule B, Part 2 – Full Text

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- Mandatory flow downs from RPSEA's prime contract with DOE

### **3. CONTRACTOR PRESS RELEASES (APR 1998)**

The DOE policy and procedure on news releases requires that all Contractor and SUBCONTRACTOR press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

### **4. PERMITS AND LICENSES (AUG 1999)**

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected start/finish schedule. The COR



# Appendix 1 - Scope of Work

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## APPENDIX 1

### Scope of Work

*NOTE: The final negotiated Scope of Work will be added to this section and include the following mandatory statements:*

All Monthly Reports and Deliverables must be uploaded to the RPSEA Sharepoint web site. The hyperlink to access the Sharepoint site and "Instructions for using and Uploading Invoices, Reports, and Deliverables" are provided and attached hereto. SUBCONTRACTOR shall supply RPSEA with the name, email address, and phone number for a point of contact (POC) responsible for uploading. SUBCONTRACTOR shall provide the POC within 10 business days from the effective date of the subcontract. RPSEA will have the Sharepoint site activated for SUBCONTRACTOR within 20 business days from the effective date of the subcontract. Reports and Deliverables sent in any other manner will not be acknowledged and will be rejected.

RPSEA will designate its Managing Coordinator to SUBCONTRACTOR in writing.

RPSEA will provide templates for monthly, final, and technical reports.

# Attachment A – Subcontractor Acquired Property Checklist

## ATTACHMENT A SUBCONTRACTOR(S) ACQUIRED PROPERTY CHECKLIST

### DESCRIPTION OF PROPERTY

### ESTIMATED ACQUISITION COST

#### EQUIPMENT

[Insert a description and quantity of tangible, nonexpendable personal property charged directly to the award having a useful life of more than two years and an acquisition cost of \$5,000 or MORE per unit.]

Equipment	UM	Unit Cost	Total Cost

#### NON-EXPENDABLE PROPERTY

[Insert a description and quantity of tangible, nonexpendable personal property charged directly to the award having a useful life of more than two years and an acquisition cost of LESS than \$5,000 per unit. DO NOT include expendable property (i.e. paper, pens, pencils, gases, chemicals, etc.)]

Non-Expendable Property	UM	Unit Cost	Total Cost

#### EXPENDABLE MATERIALS AND SUPPLIES

[Insert a summary of the types of tangible, expendable personal property charged directly to the award]



# T's & C's Highlights

- Government Property
- Intellectual Property
- Travel and Per Diem
- Insurance



# Government Property

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- In general, ownership of materials, supplies, and equipment (property) purchased under a RPSEA project vests with the government
- Subcontractors must manage such property in accordance with a government approved property management system
- If a subcontractor does not have a government approved (PMS), then the property will be tracked by RPSEA
- Universities have certain other provisions that vest ownership of certain items with the university



# Intellectual Property

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- University or Small Business
    - University or Small Business retains ownership
    - Government has nonexclusive license
  - Large Business
    - Government retains ownership\*
    - Contractor has nonexclusive license
- \* RPSEA has obtained a class waiver that affords to Large Business' the same rights as Universities and Small Business



# Patent Rights

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## •Government Rights

- Government May Take Ownership
  - If contractor elects not to retain title
  - Failure to disclose within statutory timeframes
- Residual Non-Exclusive License
  - Revoked for failure to achieve practical application
- Government Retains March in Rights
  - Right to grant license if contractor refuses
  - Contractor has failed to achieve practical application
  - Necessary for health or safety needs
  - To meet public use requirements
  - Contractor or licensee in breach



# Travel and Per Diem

## 10.0 TRAVEL AND PER DIEM COSTS (FEB 1998)

Costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any revision of such subchapter; and are allowable pursuant to the "Allowable Cost and Payment" clause, FAR 52.216-7. Applicable to educational institutions, costs incurred by personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent that such costs do not exceed the limits and principles provided in government-wide regulation of such costs established by the Director of the Office of Management and Budget [i.e., OMB Circular A-21].

Foreign travel shall be subject to DEAR 952.247-70.



# Insurance

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- Standard commercial insurance provisions are included in the sample subcontract
- RPSEA will negotiate and accept reasonable alternative coverage considering the nature of the work and the entities involved
- Educational Institution clause already tailored to fit most Universities

## 6.0 INSURANCE PROVISION

Without prejudice to SUBCONTRACTOR's liability to indemnify RPSEA as stated in any Indemnification provision contained in this Agreement, SUBCONTRACTOR shall procure at its expense and maintain for the duration of this Agreement, and ensure that any of its subcontractors used in connection with this Agreement procure and maintain, the insurance policies required below with financially responsible insurance companies, and with policy limits not less than those indicated below.

- (a) Workers' Compensation: Coverage for statutory obligations imposed by laws of any State in which the work is to be performed, including where applicable, coverage under the United States Longshoremen's and Harbor Workers' Act (USL&H), the Jones Act, and the Defense Base Act (DBA). In addition, the policy shall be endorsed to waive the insurer's rights of



# QUESTIONS