COST REIMBURSEMENT CONSTRUCTION SUBCONTRACTS

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The following Special Conditions include Federal Acquisition Regulation (FAR) Provisions that are required to be flowed down into this subcontract. Special Conditions which are not preceded with a [ ] are included in all Subcontracts. Clauses preceded with a [ ] are included only if marked with an "x". The text of these clauses has been modified to reflect the appropriate relationship of the Government, Purchaser and Subcontractor. Unless the clause is designated as "modified", no substantive changes were made in the text of the clause. There are clauses where the Purchaser Subcontract Manager does not have authority to perform as the Government Contracting Officer. In such cases the text is modified to reflect that the Purchaser will process the request or documentation through the Government Contracting Officer. This is not considered a substantive change in the clause text.

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COST REIMBURSEMENT CONSTRUCTION

1. FAR 52.202-1 DEFINITIONS (NOVEMBER 2013) (MODIFIED)

(a) When a solicitation provision or subcontract clause uses a word or term that is defined in the Federal Acquisition Regulations (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the subcontract was awarded, unless –

(1) The subcontract provides a different definition;
(2) The contracting parties agree to a different definition;
(3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning;
(4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures; or
(5) A different definition is provided in this provision.

(b) The FAR Index is a guide to words an terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at http://www.acquisition.gov/far, at the end of the FAR, after the FAR Appendix.

(c) Purchaser's Subcontract Manager means a person with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings on behalf of the Purchaser's. The term includes certain authorized representatives of the Purchaser's Subcontract Manager acting within the limits of their authority as delegated by the Purchaser's Subcontract Manager.

(d) "Government Contracting Officer and Contracting Officer ", means the Contracting Officer of the cognizant Government Agency or Government that awarded the prime contract.

(e) "Subcontractor" means the entity entering into the Subcontract with Logistics Services International, Inc. to perform the sublet work described in the Subcontract documents.

(f) The term "Purchaser" means Logistics Services International, Inc. Purchaser and Logistics Services International, Inc. are used interchangeably throughout the Subcontract documents.

(g) "Prime Contract" means the Prime Contract entered into between Purchaser and the Government under which the subject subcontract is being performed.

(h) "Subcontract" or "Subcontract Documents" means the document of which these Standard General Provisions form a part, and includes all appendices and provisions incorporated by reference.

(i) "Lower Tier Subcontractor" means a person or organization having a subcontract with Subcontractor, or receiving a Purchase Order from Subcontractor, for performance of sublet work under this Subcontract Agreement.

2. FAR 52.203-3 GRATUITIES (APRIL 1984)

(a) The right of the Subcontractor to proceed may be terminated by written notice from the Purchaser if, after notice and hearing, the agency head or a designee determines that the Subcontractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this subcontract is terminated under paragraph (a) above, the Purchaser is entitled--

(1) To pursue the same remedies as in a breach of the Subcontract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Subcontractor in giving gratuities to the person concerned, as determined by the agency head or a designee.

(This subparagraph (c)(2) is applicable only if this subcontract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Purchaser provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this subcontract.

3. FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)

(a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Purchaser may, or the Government shall have the right to direct the Purchaser to, annul this Subcontract without liability or to deduct from the Subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor or subcontractor and subject to the contractor's or subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

4. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPTEMBER 2006)

(a) Except as provided in (b) below, the Subcontractor shall not enter into any agreement with an actual or prospective lower tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower tier subcontractors directly to the Government of any item or process (including computer software) made or furnished by the lower tier subcontractor under this subcontract or under any follow-on production subcontract.

(b) The prohibition in (a) above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower tier subcontracts under this subcontract which exceed the simplified acquisition threshold.

5. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) Definitions.
"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause,
(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and
(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The 41 U.S.C. chapter 87, Kickbacks, prohibits any person from --
(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) Reserved in subcontracts.

(2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) in all subcontracts under this Subcontract which exceed $150,000.

6. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCTOBER 2010)

(a) *Definitions.* As used in this clause—

"Agency" means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

"Covered Federal action" means any of the following actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other

Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes the Subcontractor and all lower tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition*. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Subcontractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of the Prime contract, this subcontract or the extension, continuation, renewal, amendment, or modification of the Prime Contract or this Subcontract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Subcontractor can demonstrate that the Subcontractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions*. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees*.

(i) Payment of reasonable compensation made to an officer or employee of the Subcontractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services*.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that

Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure*.

(1) If the Subcontractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Subcontractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties*.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability*. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts*.

(1) The Subcontractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this subcontract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Subcontractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.

7. FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APRIL 2010)

This clause applies to subcontracts over $5 million over 120 days

(a) *Definitions.* As used in this clause—

"Agent" means any individual, including a director, an officer, an employee, or an independent Subcontractor, authorized to act on behalf of the organization.

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Subcontractor from—

(i) Conducting an internal investigation; or
(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contractor a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States," means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Subcontractor shall—

(i) Have a written code of business ethics and conduct; and
(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Subcontractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and
(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Subcontractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or subcontractor of the Subcontractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Subcontractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Subcontractor. The Government may transfer documents provided by the Subcontractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Subcontractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Subcontractor's standards and procedures and other aspects of the Subcontractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Subcontractor's principals and employees, and as appropriate, the Subcontractor's agents and lower tier subcontractors.

(2) An internal control system.

(i) The Subcontractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Subcontractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Subcontractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Subcontractor or a lower tier subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or lower tier subcontractor of the Subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Subcontractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts*.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

8. FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DECEMBER 2007)

This clause applies to subcontract over $5 million.

(a) *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During subcontract performance in the United States, the Subcontractor shall prominently display in common work areas within business segments performing work under this Subcontract and at Subcontract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Subcontractor shall display an electronic version of the poster(s) at the website.

(3) Upon request, the Purchaser shall provide the appropriate agency name and website pr other contact information for obtaining the poster.

(c) If the Subcontractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Subcontractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

9. FAR 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUNE 2010)

(a) The Subcontractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Subcontractor shall include the substance of this clause including this paragraph (b) in all lower tier subcontracts that are funded in whole or in part with Recovery Act funds.

10. FAR 52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (DECEMBER 2011)

(a) *Definitions.* As used in this clause—

"Acquisition function closely associated with inherently governmental functions" means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

"Covered employee" means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the Subcontractor; or
(2) A lower subcontractor that is a self-employed individual treated as a covered employee of the Subcontractor because there is no employer to whom such an individual could submit the required disclosures.

"Non-public information" means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

"Personal conflict of interest" means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A de minimis interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real Estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) *Requirements.* The Subcontractor shall—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by—

(i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee--

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the Subcontract for which the Subcontractor has identified a personal conflict of interest for the employee that the Subcontractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Purchaser any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Subcontractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—

(i) Failure by a covered employee to disclose a personal conflict of interest;

(ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) *Mitigation or waiver*.

(1) In exceptional circumstances, if the Subcontractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Subcontractor may submit a request through the Purchaser to the Contracting Officer for—

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.

(2) The Subcontractor shall include in the request any proposed mitigation of the personal conflict of interest.

(3) The Subcontractor shall—

(i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

(ii) Remove the Subcontractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Subcontract flowdown*. The Subcontractor shall include the substance of this clause, including this paragraph (d), in lower tier subcontracts—

(1) That exceed $150,000; and

(2) In which lower tier subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).

11. FAR 52.203-17 SUBCONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APRIL 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Subcontractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Subcontractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

12. FAR 52.204-2 SECURITY REQUIREMENTS (AUGUST 1996)

(a) This clause applies to the extent that this subcontract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Subcontractor shall comply with (1) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual For Safeguarding Classified Information (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Subcontractor.

(c) If, subsequent to the date of this subcontract, the security classification or security requirements under this subcontract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this subcontract, the sub-contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this subcontract.

(d) The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d), in all lower tier subcontracts under this subcontract that involve access to classified information.

13. FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (MAY 2011)

(a) Definitions. As used in this clause—
Postconsumer fiber means—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Subcontractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data that must be submitted to the Government.

14. FAR 52.204-9 PERSONAL IDENTITY OF SUBCONTRACTOR PERSONNEL (JANUARY 2011)

This clause applies when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(a) The Subcontractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Subcontractor shall account for all forms of Government-provided identification issued to the Subcontractor employees in connection with performance under this contract. The Subcontractor shall return such identification to the Purchaser at the earliest of any of the following, unless otherwise determined by the Government;

(1) When no longer needed for contract performance.
(2) Upon completion of the Subcontractor employee's employment.
(3) Upon Subcontract completion or termination.

(c) The Purchaser may delay final payment under a Subcontract if the Subcontractor fails to comply with these requirements.

(d) The Subcontractor shall insert the substance of clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the Purchaser to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Government Contracting Officer.

15. FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JULY 2013)

Subcontractor shall provide all required data to enable Purchaser's compliance with the Prime Contractor reporting obligations under this provision.

(a) *Definitions.* As used in this clause:

"Executive" means officers, managing partners, or any other employees in management positions.

"First-tier subcontract" means a subcontract awarded directly by a Prime Contractor (Purchaser) for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Prime Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Prime Contractor's general and administrative expenses or indirect costs.

"Months of award" means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Prime Contractor.

"Total compensation" means the cash and noncash dollar value earned by the executive during the Prime Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified*.

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Prime Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Prime Contractor is responsible for notifying its first tier subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d) *First-tier subcontract information.*

(1) Unless otherwise directed by the Government contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, the Prime Contractor shall report the following information at http://www.fsrs.gov for that first-tier subcontract.

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
(ii) Name of the subcontractor.
(iii) Amount of the subcontract award.
(iv) Date of the subcontract award.
(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
(vi) Subcontract number
(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
(ix) The prime contract number, and order number if applicable.
(x) Awarding agency name and code.
(xi) Funding agency name and code.
(xii) Government contracting office code.
(xiii) Treasury account symbol (TAS) as reported in FPDS.
(xiv) The applicable North American Industry Classification System code (NAICS).

(2) *Executive compensation of the first-tier subcontractor*. Unless otherwise directed by the Government Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at http://www.fsrs.gov , if—
(i) In the subcontractor's preceding fiscal year, the subcontractor received—
(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(e) The Prime Contractor shall not split or break down first-tier subcontract awards to a value less than $25,000 to avoid the reporting requirements in paragraph (d).

(f) The Purchaser required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Purchaser is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Prime Contractor in the previous tax year had gross income, from all sources, under $300,000, the Prime Contractor is exempt from the requirement to report subcontractor awards.
(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Purchaser does not need to report awards for that subcontractor.

(h) The FSRS database at http://www.fsrs.gov will be prepopulated with some information from CCR and FPDS databases. If FPDS information is incorrect, the Purchaser contractor should notify the contracting officer. If the CCR database information is incorrect, the Purchaser is responsible for correcting this information.

16. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUGUST 2013)

(a) Definition. "Commercially available off-the-shelf (COTS) item," as used in this clause--

(1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form

in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any subcontract in excess of $30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Subcontractor shall require each proposed subcontractor whose subcontract will exceed $30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Subcontractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Subcontractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Subcontractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceed $30,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

17. FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APIRL 2008)

This is a rated order certified for national defense use, emergency preparedness and energy program use, and the Subcontractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

18. FAR 52.215-2 AUDIT AND RECORDS - NEGOTIATION (OCTOBER 2010)

This clause applies if the subcontract exceeds the simplified acquisition threshold.

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price- redeterminable subcontract, or any combination of these, the Subcontractor shall maintain, and the Government Contracting Officer or representatives of the Government Contracting Officer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the subcontract.

(c) Cost or pricing data. If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the Government Contracting Officer or representatives of the Government Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections related to (1) the proposal for the subcontract or modification; (2) the discussion conducted on the proposal(s), including those related to negotiating; (3) pricing of the subcontract or modification; or (4) performance of the subcontract or modification.

(d) Comptroller General - (l) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract and to interview any current employee regarding such transactions.

` (2) This paragraph may not be construed to require the Subcontractor to create or maintain any record that the Subcontractor does not maintain in the ordinary course of business of pursuant to a provision of law.

(e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Government Contracting Officer or representatives of the Government Contracting Officer shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Subcontractor shall make available at its office at all reasonable times the materials described in paragraphs (a), (b), (c), (d) and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract, or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition-

(1) If this subcontract is completely or partially terminated, the Subcontractor shall make available records relating to the work until 3 years after any resulting final termination settlement; and

(2) The Subcontractor shall make available the records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract until such appeals, litigation, or claims are finally resolved.

(g) The Subcontractor agrees to insert a clause containing all the terms of this clause, including this paragraph (g) in all subcontracts that exceed the simplified acquisition threshold, and (1) that are cost-reimbursement, incentive, time and materials, labor hour, or price redeterminable type of any combination of these; (2) for which certified cost or pricing data are required or (3) that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the government prime contract.

19. FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUGUST 2011)

(a) If any price, including profit or fee, negotiated in connection with the Purchaser's Contract, or any cost reimbursable under the Purchaser's Contract, was increased by any significant amount because (1) the Subcontractor or a Lower Tier Subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a lower-tier subcontractor or prospective Lower Tier Subcontractor furnished the Subcontractor certified cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.

(b) Any reduction in the Purchaser's Contract price under paragraph (a) above due to defective data from a prospective Lower Tier Subcontractor that was not subsequently awarded the lower tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower tier subcontract or (2) the actual cost to the Subcontractor, if there was no subcontract, was less than the prospective lower tier subcontract cost estimate submitted by the Subcontractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Government Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

(i) The Subcontractor or Lower Tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete certified cost or pricing data had been submitted.

(ii) The Purchaser or the Government Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Subcontractor or Lower Tier Subcontractor took no affirmative action to bring the character of the data to the attention of the Purchaser.

(iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.

(iv) The Subcontractor or lower tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Government Contracting Officer based upon the facts shall be allowed against the amount of a subcontract price reduction if --

(A) The Subcontractor certifies to the Purchaser that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and

(B) The Subcontractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data was known by the Subcontractor to be understated before the as of date specified on the Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the as of date specified on the Certificate of Cost or Pricing Data.

(d) If any reduction in the Subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the United States at the time such overpayment is repaid --

(1) Interest compounded daily, as required by 26U.S.C. 6622), on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Subcontractor or lower tier subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate or noncurrent.

20. FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA -- MODIFICATIONS (AUGUST 2011)

(a) This clause shall become operative only for any modification to this Subcontract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exemption under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under the Prime Contract, was increased by any significant amount because (1) the Subcontractor or a lower tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective lower tier subcontractor furnished the Subcontractor certified cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the Subcontract price under paragraph (b) of this clause due to defective data from a prospective lower tier subcontractor that was not subsequently awarded the lower tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower tier subcontract or (2) the actual cost to the Subcontractor, if there was not lower tier subcontract, was less than the prospective subcontract cost estimate submitted by the Subcontractor; *provided*, that the actual lower tier subcontract price was not itself affected by defective certified cost or pricing data.

(d) (1) If the Government Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

(i) The Subcontractor or lower tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Purchaser or Government Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Subcontractor or lower tier subcontractor took no affirmative action to bring the character of the data to the attention of the Purchaser or Government Contracting Officer.

(iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.

(iv) The Subcontractor or Lower Tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a subcontract price reduction if --

(A) The Subcontractor certifies to the Purchaser that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and

(B) The Subcontractor proves that the certified cost or pricing data were available before the date of agreement on the price of the Subcontract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data was known by the Subcontractor to be understated before the as of date

specified on the Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the Subcontract price would not have increased the amount to be offset even if the available data had been submitted before the as of date specified on the Certificate of Current Cost or Pricing Data.

(e) If any reduction in the Subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the Purchaser at the time such overpayment is repaid --

(1) Interest compounded daily, as required by 26U.S.C. 6622), on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Subcontractor or lower tier subcontractor knowingly submitted certified cost or pricing data which were incomplete, inaccurate or noncurrent.

21. FAR 52.215-12 LOWER TIER SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCTOBER 2010)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Subcontractor shall require the Lower Tier Subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the lower tier subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exemption under FAR 15.403-1 applies.

(b) The Subcontractor shall require the Lower Tier Subcontractor to certify in substantially the form prescribed in Subsection 15.406-2 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the Subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Subcontractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of certified cost or pricing data for the Subcontract; or

(2) The substance of the clause at FAR 52.215-13, Lower Tier Subcontractor Certified Cost or Pricing Data-Modifications.

22. FAR 52.215-13 LOWER TIER SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS (OCTOBER 2010)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this Subcontract involving a pricing adjustment expected to the threshold for submission of certified cost or pricing data at FAR 15.403-4 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Subcontractor shall require the Lower Tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the lower tier subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless the unless an exemption under FAR 15.403-1 applies.

(c) The Subcontractor shall require the lower tier subcontractor to certify in substantially the form prescribed in Subsection 15.406-2 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the Subcontract or subcontract modification.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission for certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

23. FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCTOBER 2010)

(a) Any proposal submitted for the negotiation of prices for items or supplies shall distribute costs within lower tier subcontracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Purchasers' Subcontract Manager, the Subcontractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

(c) The Subcontractor shall insert the substance of this clause, less paragraph (b) in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

24. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCTOBER 2010)

(a) The Subcontractor shall promptly notify the Purchaser's Subcontract Manager in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be –

(1) For contracts subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and lower tier subcontracts that are not subject to full coverage under CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to FAR Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Subcontractor, or such assets are constructively received by it for any reason, the Subcontractor shall at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart.

(d) The Subcontractor shall include the substance of this clause in all subcontracts under this subcontract which meet the applicability requirement of FAR 15-408(g).

25. FAR 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUNE 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated subcontract, if the criteria for allowability in subparagraph 31.205-10(b) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective Subcontractor to propose facilities capital cost of money in its offer.

(b) If the prospective Subcontractor does not propose this cost, the resulting subcontract will include the clause Waiver of Facilities Capital Cost of Money.

26. FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCTOBER 1997)

The Subcontractor did not include facilities capital cost of money as a proposed cost of this subcontract. Therefore it is an unallowable cost under this subcontract.

27. FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JULY 2005)

This clause applies to this subcontract if the requirements of FAR 15.408(j) are met:

(a) The Subcontractor shall promptly notify the Purchaser in writing when it determines that it will terminate or reduce a PRB plan.

(b) If PRB fund assets revert, or inure, to the Subcontractor or are constructively received by it under a plan termination or otherwise, the Subcontractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiation, the Government Contracting Officer shall designate the method of recovery.

(c) The Subcontractor shall include the substance of this clause in all lower tier subcontracts under this subcontract which meet the applicability requirements of FAR 15.408(j).

28. FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCTOBER 1997)

(a) The Subcontractor shall make the following notification in writing:

(1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify the Purchasers' Subcontract Manager who shall in turn notify the Government Administrative Contracting Officer (ACO) within (30) days.

(2) The subcontractor shall also notify the Purchasers' Subcontract Manager within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of change in ownership.

(b) The Subcontractor shall: (l) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide the Purchasers' Subcontract Manager for the ACO or the ACO's designated representative ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

(c) The Subcontractor shall include the substance of this clause in all lower tier subcontracts which meet the applicability requirement for FAR 15.408(k).

29. 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCTOBER 2009)

(a) *Definitions*. As used in this clause—

"Added value" means that the Subcontractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (*e.g.*, processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for subcontract requirements, coordinating deliveries, performing quality assurance functions).

"Excessive pass-through charge", with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing lower tier subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

"No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

"Subcontract" means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor", as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting*. Required reporting of performance of work by the Subcontractor or a lower tier subcontractor. The Subcontractor shall notify the Purchaser in writing if—

(1) The Subcontractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Subcontractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges*. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the subcontract price.

(e) *Access to records*.

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those lower tier subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown*. The Subcontractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement lower tier subcontracts under this subcontract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement lower tier subcontracts and fixed-price lower tier subcontracts, except those identified in 15.408(n)(2)(i)(B)(*2*), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

30. FAR 52.216-7 ALLOWABLE COST AND PAYMENT (JUNE 2013)

(a) *Invoicing*. (1) The Purchaser will make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more than once every two weeks, in amounts determined to be allowable by the Purchaser's Subcontract Manager in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the Purchaser's Subcontract Manager, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.

(2) Subcontract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act

(b) *Reimbursing costs*. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--

(i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;

(ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

(A) Supplies and services purchased directly for the subcontract and associated financing payments to lower tier subcontractors, provided payments determined due will be made (i) in accordance with the terms and conditions of a lower tier subcontract or invoice and (2) ordinarily within 30 days of the submission of the Subcontractor's payment request to the Purchaser;

(B) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Purchaser subcontracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to the Subcontractor's Lower Tier Subcontractors.

(2) Accrued costs of subcontractor contributions under employee pension plans shall be excluded until actually paid unless

(i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to the Purchaser shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Reserved

(d) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) (i) The Subcontractor shall submit an adequate final indirect cost rate proposal to the cognizant federal agency official and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted by the cognizant federal agency official. The Subcontractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative and Subcontractor shall establish the final indirect cost rates as promptly as practical.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.
(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as indentified in accounting records (Chart of Accounts).
(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.
(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
(F) Facilities capital cost of money factors computation.
(G) Reconciliation of books of account (*i.e*., General Ledger) and claimed direct costs by major cost element.
(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
(J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contract information).
(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General Organizational information and limitation on allowability of compensation for certain subcontractor personnel. See 31.205-6(p). Additional salary reference information is available at http://www.whitehouse.gov/omb/procurement_index_exec_comp/ .

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Subcontractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.

(3) The Subcontractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

(i) the agreed-upon final annual indirect cost rates,

(ii) the bases to which the rates apply,

(iii) the periods for which the rates apply,

(iv) any specific indirect cost items treated as direct costs in the settlement, and

(v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Government Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6) (i) If the Subcontractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Subcontractor under the Subcontract; and

(B) Record this determination in a unilateral modification to the Subcontract.

(ii) This determination constitutes the final decision of the Purchaser in accordance with the Disputes clause.

(e) *Billing rates*. Until final annual indirect cost rates are established for any period, the Purchaser shall reimburse the Subcontractor at billing rates established by the Purchaser's Subcontract Manager or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures*. Quick close-out procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Purchaser's Subcontract Manager may have the Subcontractor's invoices or vouchers and statements of cost audited by the cognizant Government audit agency. *Any payment may be (1) reduced by amounts found not to constitute allowable costs or (2) adjusted for prior overpayment or underpayment.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (d)(4) of this clause, and upon the Subcontractor's compliance with all terms of this subcontract, the Purchaser shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Subcontractor shall pay to the Purchaser any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by the Purchaser. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Purchaser's Subcontract Manager. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--

(i) An assignment to the Purchaser, in form and substance satisfactory to the Purchaser's Subcontract Manager, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by the Purchaser under this subcontract; and

(ii) A release discharging the Purchaser, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract, except--

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; provided, that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the Purchaser's Subcontract Manager within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of the Purchaser against patent liability.

31. FAR 52.216-8 FIXED FEE (JUNE 2012)

(a) The Purchaser shall pay the Subcontractor for performing this subcontract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the Purchaser withholds a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Purchaser’s interest. The Purchaser shall release 75 percent of all fee withholds under this Subcontract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this Subcontract, provided the Subcontractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years’ settlements. The Purchaser may release up to 90 percent of the fee withholds under this contract based on the Subcontractor’s past performance related to the submission and settlement of final indirect cost rate proposals.

32. FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCTOBER 2014)

(a) Definitions. As used in this contract-

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern", consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d) (1) Subcontractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Subcontractor shall confirm that a lower tier subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include-

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

33. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCTOBER 2014)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause –

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plan, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Government-wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The Subcontractor, if requested, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Purchaser's Subcontract Manager. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The Subcontracting Plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Plan shall include all subcontracts that contribute to subcontract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
(v) Total dollars planned to be subcontracted to HUBZone small business concerns;
(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;
(ii) Veteran-owned small business concerns;
(iii) Service-disabled veteran-owned small business concerns;
(iv) HUBZone small business concerns;
(v) Small disadvantaged business concerns; and
(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);
(ii) Veteran-owned small business concerns;
(iii) Service-disabled veteran-owned small business concerns;
(iv) HUBZone small business concerns;
(v) Small disadvantaged business concerns (including ANC and Indian tribes); and
(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this subcontract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $650,000 ($1,500,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will

(i) Cooperate in any studies or surveys as may be required;
(ii) Submit periodic reports so that the Government can determine the extent of compliance with the subcontracting plan;
(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports

shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that are have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged small business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g. SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged small business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged small business, and women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $150,000, indicating –

(A) Whether small business concerns were solicited and, if not, why not;
(B) Whether veteran-owned small business concerns were solicited and, if not, why not;
(C) Whether service-disabled veteran-owned small business concerns were solicited and if not, why not;
(D) Whether HUBZone small business concerns were solicited and, if not, why not;
(E) Whether small disadvantaged business concerns were solicited and, if not, why not;
(F) Whether women-owned small business concerns were solicited and, if not, why not; and
(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact –

(A) Trade associations;
(B) Business development organizations; and
(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged and women-owned small business sources.
(D) Veteran service organizations.

(v) Records of internal guidance and encouragement provided to buyers through –

(A) Workshops, seminars, training, etc.; and
(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts of the simplified acquisition threshold in which a small business concern received preference, upon determination of the successful subcontract Offeror, the Subcontractor must inform each unsuccessful small business subcontractor offeror in writing of the name and location of the apparent successful offeror prior to award of the subcontract

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided –

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this subcontract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Purchaser in determining the responsibility of the offeror for award of the contract.

(i) A Subcontract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) The failure of the Subcontractor or lower tier subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
(2) An approved plan required by this clause, shall be a material breach of the Subcontract.

(k) The Subcontractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United Sates or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United Sates or its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of

each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR.*

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $650,000 (over $1,500,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

34. FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION (JULY 2013)

(a) *Definitions.* As used in this clause—

Long-term subcontract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field

of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Subcontractor represented that it was a small business concern prior to award of this contract, the Subcontractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the subcontract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the subcontract.

(3) For long-term subcontracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the subcontract; and

(ii) Within 60 to 120 days prior to the date specified in the subcontract for exercising any option thereafter.

(c) The Subcontractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this subcontract. The small business size standard corresponding to this NAICS code can be found at http://www.sba.gov/content/table-small-business-size-standards.

(d) The small business size standard for a Subcontractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Subcontractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications section of SAM and its other data in SAM, as necessary, to ensure they reflect the Subcontractor's current status. The Subcontractor shall notify the Purchaser by e-mail, or otherwise in writing within the timeframe specified in paragraph (b) of this clause, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Subcontractor represented that it was other than a small business concern prior to award of this subcontract, the Subcontractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Subcontractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this Subcontract, the Subcontractor is required to complete the following rerepresentation and submit it to the Purchaser, along with the contract number and the date on which the rerepresentation was completed:

The subcontractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code _____ assigned to contract number _____.[Subc*ontractor to sign and date and insert authorized signer's name and title*].

35. FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JULY 1990)

(a) The use of overtime is authorized under this subcontract if the overtime premium cost does not exceed $0 (unless changed in the Subcontract Schedule) or the overtime premium is paid for work-

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Purchaser.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for subcontract completion and shall--

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Purchaser's Subcontract Manager to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Purchaser subcontracts, together with identification of each affected subcontract; and

(4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

36. FAR 52.222-3 CONVICT LABOR (JUNE 2003)

(a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not employ in the performance of this subcontract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Subcontractor is not prohibited from employing persons –

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if -

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

37. FAR 52.222-4 SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the subcontractor and subcontractors are liable for liquidated damages payable to the Government. The Purchaser's Subcontract Manager will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) *Withholding for unpaid wages and liquidated damages.*. The Purchaser's Subcontract Manager will withhold from payments due under the subcontract sufficient funds required to satisfy any Purchaser's Subcontract Manager liabilities for unpaid wages and liquidated damages. If amounts withheld under the subcontract are insufficient to satisfy Purchaser's Subcontract Manager liabilities, the Purchaser's Subcontract Manager will withhold payments from other Federal or Federally assisted subcontracts held by the same Subcontractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Subcontractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the subcontract during the subcontract and shall make them available to the Government until 3 years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate requirements statute.

(2) The Subcontractor and subcontractors shall allow authorized representatives of the Government Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraphs (d)(1) of this clause. The Subcontractor or

subcontractor also shall allow authorized representatives of the Government Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts*. The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require lower tier subcontractors that may require or involve laborers and mechanics in any such lower tier subcontract. The Subcontractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set fort in paragraphs (a) through (d) of this clause.

38. FAR 52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014) (MODIFIED)

This clause applies if invoked in the Subcontract Schedule and a Wage Rate determination is included.

(a) Definition.—"Site of the work"—

(1) Means—

(i) *The primary site of the work*. The physical place or places where the construction called for in the subcontract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the subcontract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the subcontract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Subcontractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in subcontract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements statute (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Subcontractor and its lower tier subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Purchaser shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the subcontract shall be classified in conformance with the wage determination. The Purchaser will request Contracting Officer approval of an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Purchaser through the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Purchaser for transmittal to the Contracting Officer or will notify the Purchaser for transmittal to the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Subcontractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Purchaser based on input from the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the subcontract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Subcontractor does not make payments to a trustee or other third person, the Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Subcontractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

39. FAR 52.222-7 WITHHOLDING OF FUNDS (MAY 2014)

The Purchaser Subcontract Manager shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor under this subcontract or any other Federal subcontract with the same Prime Contractor, or any other Federally assisted subcontract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subcontractor or any Subcontractor the full amount of wages required by the subcontract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the subcontract, the Purchaser Subcontract Manager may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

40. FAR 52.222-8 PAYROLLS AND BASIC RECORDS (MAY 2014)

(a) Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address,

and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Subcontractor shall submit weekly for each week in which any subcontract work is performed a copy of all payrolls to the Purchaser Subcontract Manager. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except the full social security numbers and home addresses shall not be included in the weekly transmittals. The payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at http://www.dol.gov/whd/forms/wh347.pdf. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subcontractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the subcontract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the subcontract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the subcontract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Subcontractor or Lower Tier Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Subcontractor or Lower Tier Subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Purchaser Subcontract Manager, the Prime Contracting Officer, or authorized representatives of the Prime Contracting Officer, or the Department of Labor. The Subcontractor or Lower Tier Subcontractor shall permit the Purchaser Subcontract Manager or representatives of the Purchaser Subcontract Manager or the Department of Labor to interview employees during working hours on the job. If the Subcontractor or Lower Tier Subcontractor fails to submit required records or to make them available, the Purchaser Subcontract Manager may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

41. FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be

eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subcontractor's or lower tier subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity*. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

42. FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEBRUARY 1988)

The Subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this subcontract.

43. FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Subcontractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this subcontract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements , and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;
(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this subcontract);
(3) Apprentices and Trainees;
(4) Payrolls and Basic Records;
(5) Compliance with Copeland Act Requirements;
(6) Withholding of Funds;
(7) Subcontracts (Labor Standards);
(8) Contract Termination—Debarment;
(9) Disputes Concerning Labor Standards;
(10) Compliance with Construction Wage Rate Requirements; and
(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the subcontract, the Subcontractor shall deliver to the Purchaser a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Subcontractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Subcontractor shall insert the substance of this clause, including this paragraph (e) in all lower tier subcontracts for construction within the United States.

44. FAR 52.222-12 SUBCONTRACT TERMINATION--DEBARMENT (MAY 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the subcontract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

45. FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)

All rulings and interpretations of the Constructions Wage Rate Requirements and related statutes contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this subcontract.

46. FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEBRUARY 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

47. FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

(a) By entering into this subcontract, the Subcontractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded subcontracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(b) No part of this subcontract shall be subcontracted to any person or firm ineligible for award of a subcontract by virtue 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

48. FAR 52.222-16 APPROVAL OF WAGE RATES (MAY 2014)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this subcontract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Construction Wage Rate Requirements minimum wage determination included in the subcontract. Any amount paid by the Subcontractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subcontractor and shall not be reimbursed by the Purchaser. If the Purchaser refuses to authorize the use of the overtime, the Subcontractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

49. FAR 52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (JANUARY 2014)

(a) *Applicability*. This clause does not apply to the extent that the Subcontractor is supplying end products mined, produced, or manufactured in-

(1) Canada, and the anticipated value of the acquisition is $25,000 or more;

(2) Israel, and the anticipated value of the acquisition is $50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is $79,507 or more; or

(4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or the United Kingdom and the anticipated value of the acquisition is $204,000 or more.

(b) *Cooperation with Authorities*. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Subcontractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations*. The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Subcontractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Subcontractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Subcontractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Subcontractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Subcontractor knew of the violation.)

(d) *Remedies*.

(1) The Purchaser may terminate the subcontract.

(2) The subcontract may be suspended in accordance with procedures in FAR Subpart 9.4.

(3) The debarring official may debar the Subcontractor for a period not to exceed 3 years in accordance with the procedures in FAR Subpart 9.4.

Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

50. FAR 52.222-20 CONTRACTS MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $15,000 (MAY 2014)

If this Subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

(a) All stipulations required by 41 U.S.C. chapter 65 and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this Subcontract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 6508).

51. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APRIL 2015)

(a) Definitions

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Segregated facilities," means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this subcontract.

(c) The Subcontractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this subcontract.

52. FAR 52.222-26 EQUAL OPPORTUNITY (APRIL 2015)

(a) *Definition.*

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Subcontractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United

States. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

(2) If the Subcontractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Subcontractor's activities (41 CFP 60-1.5)

(c) (1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to –

(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(3) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Purchaser Subcontract Manager that explain this clause.

(4) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Purchaser Subcontract Manager advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Subcontractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the Subcontractor shall, with 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Subcontractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the Purchaser to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further Purchaser contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Subcontractor shall take such action with respect to any subcontract or purchase order as the Purchaser Subcontract Manager may direct as a means of enforcing these terms and conditions, including sanctions for non-compliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

53. FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APRIL 2015)

If this Subcontract involves any construction trade and exceeds $10,000 the following clause applies.

(a) Definitions.
"Covered area," as used in this clause, means the geographical area described in the solicitation for this Subcontract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance Programs, United States Department of Labor, or a designee.

"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Gender Identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs and is found at www.dol.gov/ofccp/LGBT/LGBT.FAQs.html.

"Minority," as used in this clause, means:

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); or

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov.ofccp/LGBT/LGBT.FAQs.html.

(b) If the Subcontractor, or a Subcontractor at any tier, Subcontracts a portion of the work involving any construction trade, each such Subcontract or purchase order in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for the Prime Contract.

(c) If the Subcontractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Subcontractor participating in an approved plan is also required to comply with its obligation under the Equal Opportunity clause, and to make a good-faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Subcontractors toward a goal in an approved plan does not excuse any Subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Subcontractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for the Prime Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractors should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the Subcontractor's obligations under this clause, Executive Order 11246, as amended, or the regulations there under.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Subcontractor during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two or more women to each construction project. The Subcontractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Subcontractor by the union or, if referred back, not employed by the Subcontractor, this shall be documented in the file, along with whatever additional actions the Subcontractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Subcontractor has a collective bargaining agreement has not referred back to the Subcontractor a minority or woman sent by the Subcontractor, or when the Subcontractor has other information that the union referral process has impeded the Subcontractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Subcontractor employment needs, especially those programs funded or approved by the Department of Labor. The Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Subcontractor's equal employment policy by:

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Subcontractors and Subcontractors with which the Subcontractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Subcontractor's work force.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Subcontractor's obligations under this Subcontract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for Subcontractors for minority and female construction Subcontractors and suppliers, including circulation of solicitations to minority and female Subcontractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Subcontractor's equal employment policy and affirmative action obligations.

(h) The Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a Contractor association, joint Contractor-union, Contractor-community, or similar group of which the Subcontractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Subcontractor:

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Subcontractor's minority and female work force participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Subcontractor. The obligation to comply is the Subcontractor's and failure of such a group to fulfill an obligation shall not be a defense for the Subcontractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Subcontractor shall not use goals or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.

(k) The Subcontractor shall not enter into any Subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Subcontractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Subcontractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subcontractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Subcontractor shall designate a responsible official to:

(1) Monitor all employment-related activity to ensure that the Subcontractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade,

union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

54. FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JULY 2014)

(a) Definitions. As used in this clause--

(a) Definitions. As used in this clause--

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.

(b) Equal opportunity clause. The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Lower Tier Subcontracts. The Subcontractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

55. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JULY 2014)

The following clause applies to this Subcontract if the Subcontract exceeds $15,000 and is not exempted by rules, regulations or orders of the Secretary of Labor as of the date of the Prime Contract:

(a) Equal opportunity clause. The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Subcontractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Subcontractor shall include the terms of this clause in every lower tier subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

56. FAR 52.222-37 EMPLOYEE REPORTS VETERANS (JULY 2014)

The following clause applies to this subcontract if the subcontract is $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(a) Definitions. As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) Unless the Subcontractor is a State or local government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Subcontractor or lower tier subcontractor at each hiring location during the period covered by the report.

(c) The Subcontractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Subcontractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12–month period preceding the ending date selected for the report. Subcontractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Subcontractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

57. FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DECEMBER 2010)

(a) During the term of this Subcontract, The Subcontractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the national Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about The Subcontractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contact.

(2) If The Subcontractor customarily posts notices to employees electronically, then The Subcontractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by The Subcontractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-5609, Washington, DC 20210, (202) 693-0123, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO13496.htm ; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.
(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Subcontractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Subcontractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this Subcontract may be terminated or suspended in whole or in part, and The Subcontractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4 Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the Unites States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Subcontractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Subcontractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if The Subcontractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, The Subcontractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

58. FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (MARCH 2015)

(a) *Definitions*. As used in this clause—

"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Commercially available off-the-shelf (COTS) item" means--

(1) Any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a

commercial sex act.

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract, including this subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, including the firm entering into this agreement with Purchaser.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the subcontract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The Subcontractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Subcontractor requirements*. The Subcontractor shall—

(1) Notify its employees of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this

clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification*.

(1) The Subcontractor shall inform the Purchaser immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Subcontractor has credible evidence of fraud); and

(ii) Any actions taken against a Subcontractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Subcontractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies*. In addition to other remedies available to the Government, the Subcontractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Subcontractor to remove a Subcontractor employee or employees from the performance of the contract;
(2) Requiring the Subcontractor to terminate a subcontract;
(3) Suspension of contract payments until the Subcontractor has taken appropriate remedial action;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Subcontractor non-compliance;

(5) Declining to exercise available options under the contract;
(6) Termination of the contract for default or cause, in accordance with the termination clause of this Subcontract; or
(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors*. The Subcontractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Subcontractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation*.

(1) The Subcontractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Subcontractor rights arising in law, the FAR, or the terms

of the contract. It does not—

(i) Require the Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Subcontractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*.

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The Subcontractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform Subcontractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Subcontractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting*.

(i) The Subcontractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Subcontractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Subcontractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Subcontractor shall provide the compliance plan to the Purchaser upon request.

(5) *Certification*. Annually after receiving an award, the Subcontractor shall submit a certification to the Purchaser that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Subcontractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Subcontractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Subcontractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Subcontractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

59. FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (AUGUST 2013)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"--

(1) Means any item of supply that is--

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 401012(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

"Employee assigned to the Subcontract" means an employee who was hired after November 6, 1986 (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a Subcontract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a Subcontract if the employee--

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the Subcontract.

"Subcontract" means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

"United States", as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) If the Subcontractor is not enrolled as a Federal Contractor in **E-Verify** at time of contract award, the Subcontractor shall--

(i) Enroll. Enroll as a Federal Contractor in the **E-Verify** program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the **E-Verify** program, begin to use **E-Verify** to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the Subcontract. For each employee assigned to the Subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the Subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal Contractor in **E-Verify** at time of contract award, the Subcontractor shall use **E-Verify** to initiate verification of employment eligibility of--

(i) All new employees.

(A) Enrolled 90 calendar days or more. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in **E-Verify,** the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the Subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Employees assigned to the contract. For each employee assigned to the contract, the Subcontractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the Subcontract, whichever date

is later (but see paragraph (b)(4) of this section).

(3) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the Subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986(after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of--

(i) Enrollment in the **E-Verify** program; or

(ii) Notification to **E-Verify** Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the **E-Verify** program Memorandum of Understanding (MOU).

(5) The Subcontractor shall comply, for the period of performance of this contract, with the requirements of the **E-Verify** program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the **E-Verify** system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in **E-Verify.**

(c) Web site. Information on registration for and use of the **E-Verify** program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/**E-Verify.**

(d) Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using **E-Verify** for any employee--

(1) Whose employment eligibility was previously verified by the Subcontractor through the **E-Verify** program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each lower tier subcontract that--

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,000; and

(3) Includes work performed in the United States.

60. FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS (SEPTEMBER 2013)

(a) In the performance of this Subcontract, the Subcontractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the Subcontract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3 (e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.
(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this Subcontract, the Subcontractor shall—

(1) Report to http://www.sam.gov, with a copy to the Purchaser on the product types and dollar value of any USDA-designated biobased products purchased by the Subcontractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report no later than—
(i) October 31 of each year during contract performance; and
(ii) At the end of contract performance; and

61. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JANUARY 1997)

(a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the subcontract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this subcontract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number of Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this subcontract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the subcontract whenever the Subcontractor determines that any other material to be delivered under this subcontract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Subcontractor shall promptly notify the Purchaser's Subcontract Manager and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government or the Purchaser shall relieve the Subcontractor of any responsibility or liability for the safety of Government, Purchaser's, Subcontractor, or lower tier subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Purchaser and Government's rights in data furnished under this subcontract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to --

(i) Appraise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this subcontract providing for rights in data.

(3) The Purchaser or Government is not precluded from using similar or identical data acquired from other sources.

62. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)

(a) Definitions. As used in this clause-

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101--13109).

(c) The Subcontractor shall provide all information needed by the Federal facility to comply with the following

(1) The emergency planning reporting requirements of Section 302 of EPCRA

(2) The emergency notice requirements of Section 304 of EPCRA

(3) The list of Material Data Safety Sheets, required by Section 311 of EPCRA

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and Executive Order 13514.

63. FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause –

"Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 – 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statues.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Subcontractor in connection with a specific contract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Subcontractor directly engaged in the performance of work under a Purchaser contract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/subcontractor that has no more than one employee including the offeror/subcontractor.

(b) The Subcontractor, if other than an individual, shall – within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration –

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about –

(i) The dangers of drug abuse in the workplace;
(ii) The Subcontractor's policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this subcontract, the employee will –

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Purchaser's Subcontract Manager in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or
(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Subcontractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.

(d) In addition to other remedies available to the Purchaser, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

64. FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JANUARY 1997)

(a) The Subcontractor shall notify the Purchaser's Subcontract Manager or designee, in writing, ____ days prior to the delivery of, or prior to completion of any servicing required by this Subcontract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this subcontract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Subcontractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this Subcontract or prior subcontracts, the Subcontractor may request that the Purchaser's Subcontract Manager or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall --

(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

65. FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DECEMBER 2007)

(a) *Definition.* As used in this clause—

"Energy-efficient product"—

(1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of Subcontract award, for products that are—

(1) Delivered;
(2) Acquired by the Subcontractor for use in performing services at a Federally-controlled facility;
(3) Furnished by the Subcontractor for use by the Government; or
(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Subcontractor (including any lower tier subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the Purchaser upon authorization from the Contracting Officer.

(d) Information about these products is available for—

(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

66. FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION SUBCONTRACTS (MAY 2008)

(a) In the performance of this subcontract, the Subcontractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;
(2) Meeting subcontract performance requirements; or
(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designated items is available at http://www.epa.gov/cpg/products.htm.

67. FAR 52.223-18 ENCOURAGING SUBCONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUGUST 2011)

(a) Definitions. As used in this clause--

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a

commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Subcontractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

68. FAR 52.225-5 TRADE AGREEMENTS (NOVEMBER 2013)

(a) Definitions. As used in this clause—

"Caribbean Basin country end product"—

(1) Means an article that—

(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at http://www.usitc.gov/tata/hts/. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saint Eustatius, Saint Maarten, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

"End product" means those articles, materials, and supplies to be acquired under the Subcontract for public use.

"Free Trade Agreement country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Least developed country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Government Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Subcontractor shall deliver under this Subcontract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

69. FAR 52.225-9 BUY AMERICAN – CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions*. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.

(1) This clause implements 41 U.S.C., chapter 83, Buy American by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). The Subcontractor shall use only domestic construction material in performing this Subcontract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction material or components listed by the Government as follows:

_____

[Purchaser to list applicable excepted materials or indicate "none"]

(3) The Purchaser may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1) (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Subcontractor request for a determination submitted after Subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before Subcontract award. If the Subcontractor does not submit a satisfactory explanation, the Purchaser need not make a determination.

(2) If the Government determines after Subcontract award that an exception to the Buy American Act applies and the Purchaser and the Subcontractor negotiate adequate consideration, the Purchaser will modify the Subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____

Domestic construction material	_____	_____	_____
Item 2:	_____	_____	_____
Foreign construction material	_____	_____	_____
Domestic construction material			

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
[*Include other applicable supporting information.*]
[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*]

70. FAR 52.225-11 BUY AMERICAN – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(a) *Definitions.* As used in this clause—

"Caribbean Basin country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El

Salvador, Guatemala, Honduras, Korea (Republic of),Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

"Free Trade Agreement country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements 41 U.S.C., chapter 83, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907 the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Government Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American statute restrictions are waived for designated county construction materials.

(2) The Subcontractor shall use only domestic or designated country construction material in performing this Subcontract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item

or to the construction materials or components listed by the Government as follows:

_____

[*Purchaser to list applicable excepted materials or indicate "none"*]

(4) The Government Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1) (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Subcontractor request for a determination submitted after Subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before Subcontract award. If the Subcontractor does not submit a satisfactory explanation, the Purchaser need not make a determination.

(2) If the Government determines after Subcontract award that an exception to the Buy American statute applies and the Purchaser and the Subcontractor negotiate adequate consideration, the Purchaser will modify the Subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act statute, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	**Unit of Measure**	**Quantity**	**Cost (Dollars)***
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			

Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
[*Include other applicable supporting information.*]
[** Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*]

71. FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC), in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services if any proclamation, Executive Order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.treas.gov/offices/enforcement/ofac/sdn*. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at *http://www.treas.gov/offices/enforcement/ofac.*

72. FAR 52.225-21 REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS – BUY AMERICAN STATUTE – CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* As used in this clause—

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies); or

(2) A manufactured construction material that is manufactured in the United States, and if the construction material consists of wholly or predominantly of iron or steel was produced in the United States (Section 1605 of the Recovery Act applies).

"Foreign construction material" means a construction material other than a domestic construction material.

"Manufactured construction material" means any construction material that is not unmanufactured construction material.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that manufactured construction material in the project is manufactured in the United States and, of the construction material consists wholly or predominantly of iron, steel, the iron or steel was produced in the United States [produced in the United Sates means that all manufacturing processes of the iron or steel must take place in the United Sates, except metallurgical processes involving refinement of steel additives]; and

(ii) 41 U.S. Code, Chapter 83, Buy American statute by providing a preference for unmanufactured domestic construction material mined or produced in the United Sates over unmanufactured construction material mined or produced in a foreign country.

(2) The Subcontractor shall use only domestic construction material in performing this Subcontract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

_____

[*Purchaser to list applicable excepted materials or indicate "none"*]

(4) The Government Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of comparable foreign unmanufactured construction material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American statute

(1) (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Cost;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Subcontractor request for a determination submitted after Subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before Subcontract award. If the Subcontractor does not submit a satisfactory explanation, the Purchaser need not make a determination.

(2) If the Government determines after Subcontract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Purchaser and the Subcontractor negotiate adequate consideration, the Purchaser will modify the Subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic

construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Construction Material Description	**Unit of Measure**	**Quantity**	**Cost (Dollars)***
Item 1:			
Foreign material	construction _____	_____	_____
Domestic material	construction _____	_____	_____
Item 2:			
Foreign material	construction _____	_____	_____
Domestic material	construction _____	_____	_____

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary*.]
[*Include other applicable supporting information*.]
[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*]

73. FAR 52.225-23 REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS – BUY AMERICAN STATUTE – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(a) *Definitions*. As used in this clause—

"Component" means and article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saint Eustatius, Saint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

“Foreign construction material” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Non-designated country” means a country other than the United Sates or a designated country.

“Recovery Act designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Subcontractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

_____

[*list applicable excepted materials or indicate "none"*.]

(4) The Government Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured construction material, other than Recovery Act designated country construction material, will increase the overall cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material, other than designated country construction material, by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.

(1)(i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Cost;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost

comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Subcontractor request for a determination submitted after contract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Subcontractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Purchaser will negotiate adequate consideration based on applicable input from the Subcontractor, the Purchaser will modify the subcontract to allow use of the foreign construction material if agreed to be the Government. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country is noncompliant with the applicable statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign (Nondesignated Country) and Domestic Construction Materials Cost Comparison

Construction Material Description	**Unit of Measure**	**Quantity**	**Cost (Dollars)***
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
[*Include other applicable supporting information*.]
[* *Include all delivery costs to the construction site*.]

74. FAR 52.227-1 AUTHORIZATION AND CONSENT (DECEMBER 2007)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this subcontract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower tier subcontractor with (i) specifications or written provisions forming a part of this Subcontract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any lower subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

75. FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DECEMBER 2007)

(a) The Subcontractor shall report to the Purchaser, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.

(b) In the event of any claim or suit against the Government or Purchaser on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government and/or Purchaser, when requested by the Contracting Officer and/or Purchaser, all evidence and information in the Subcontractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government and/or Purchaser.

(c) The Subcontractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold

76. FAR 52.227-4 PATENT INDEMNITY – CONSTRUCTION SUBCONTRACTS (DECEMBER 2007)

Except as otherwise provided, the Subcontractor shall indemnify the Purchaser, Government and their officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Purchaser of supplies furnished or work performed under this subcontract.

77. FAR 52.227-5 WAIVER OF INDEMNITY (APRIL 1984)

Any provision or clause of this Subcontract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this Subcontract, of any invention covered by the United States patents identified below and waives indemnification by the Subcontractor with respect to such patents: ..... [Purchaser's Subcontract Manager identify the patents by number or by other means if more appropriate].

78. FAR 52.227-9 REFUND OF ROYALTIES (APRIL 1984)

NOTE - This provision applies if royalties in excess of $250 were reported during negotiations.

(a) The Subcontract price includes certain amounts for royalties payable by the Subcontractor or Lower Tier Subcontractors or both, which amounts have been reported to the Purchaser's Subcontract Manager.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any subcontract hereunder.

(c) The Subcontractor shall furnish to the Purchaser's Subcontract Manager, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and subcontracts hereunder together with the reasons.

(d) The Subcontractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the Subcontract price and are determined by the Purchaser's Subcontract Manager to be properly chargeable to the Purchaser and allocable to the Subcontract. To the extent that any royalties that are included in the Subcontract price are not in fact paid by the Subcontractor or are determined by to Purchaser's Subcontract Manager not to be properly chargeable to the Purchaser and allocable to the Subcontract, the Subcontract price shall be reduced. Repayment or credit to the Purchaser shall be made as the Purchaser's Subcontract Manager directs.

(e) If, at any time within 3 years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (d) above, the Subcontractor shall promptly notify the Purchaser's Subcontract Manager of that fact and shall reimburse the Purchaser in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during a negotiation of the Subcontract exceeds $250.

79. FAR 52.228-2 ADDITIONAL BOND SECURITY (OCTOBER 1997)

The Subcontractor shall promptly furnish additional security required to protect the Purchaser and persons supplying labor or materials under this Subcontract if –

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this Subcontract becomes unacceptable to the Purchaser;

(b) Any surety fails to furnish reports on its financial condition as required by the Purchaser;

(c) The Subcontract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Purchaser; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of the requested security. If the Subcontractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Purchaser Subcontract Manager has the right to immediately draw on the ILC.

80. FAR 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (MAY 2014)

In accordance with section 806(a)(3) of Pub. L. 102-190, as amended by sections 2091 and 8105 of Pub. L. 103-355 (10 U.S.C. 2302 note), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

81. FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APRIL 2003)

(a) Within thirty (30) days after award of this Subcontract, the Subcontractor shall advise the State of New Mexico of this Subcontract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the subcontract number.

(b) The Subcontractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the Subcontract fee and costs paid for performance of this Subcontract, or any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Subcontractor or its Lower Tier Subcontractors will be determined in accordance with the Allowable Costa and Payment Clause of this Subcontract except as provided in paragraph (d) of this clause.

(c) The Subcontractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630 Santa Fe, NM 87509. Then the Type 15 Nontaxable Transaction Certification is issued by the Revenue Division, the Subcontractor shall use these certificates strictly in accordance with this Subcontract, and the agreement between the [appropriate agency name shall be inserted] and the New Mexico Taxation and Revenue Department.

(d) The Subcontractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Subcontractor for use in the Performance of this Subcontract. Failure to provide a Type 15 Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and shall not be reimbursable as an allowable cost by the Government.

(e) The Subcontractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Subcontractor only if such property is not used for Federal purposes.

(g) The [name of agency] may receive information regarding the Subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the agency, may participate in any matters or proceedings pertaining to this clause or the above named agreement. This shall not preclude the Subcontractor from having its representative nor does it obligate the Agency or Purchase to represent the Subcontractor.

(h) The Subcontractor agrees to insert the substance of this clause, including this paragraph (h) in each Lower Tier Subcontract which meets the criteria in FAR 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR part 29.

(i) Paragraphs (a) though (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

82. FAR 52.232-20 LIMITATION OF COST (APRIL 1984)

(a) The parties estimate that performance of this subcontract, exclusive of any fee, will not cost the Purchaser more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing subcontract, the Purchaser's share of the estimated cost specified in the Schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both the Purchaser's and the Subcontractor's share of the cost.

(b) The Subcontractor shall notify the Purchaser's Subcontract Manager in writing whenever it has reason to believe that--

(1) The costs the Subcontractor expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Subcontractor shall provide the Purchaser's Subcontract Manager a revised estimate of the total cost of performing this subcontract.

(d) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause--

(1) The Purchaser is not obligated to reimburse the Subcontractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing subcontract, the estimated cost to the Purchaser specified in the Schedule; and

(2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Purchaser's Subcontract Manager (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Purchaser's Subcontract Manager, shall affect this subcontract's estimated cost to the Purchaser. In the absence of the specified notice, the Purchaser is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost-sharing subcontract, for any costs in excess of the estimated cost to the Purchaser specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Purchaser's Subcontract Manager issues a termination or other notice directing that the increase is solely to cover termination of other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Purchaser specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this subcontract is terminated or the estimated cost is not increased, the Purchaser and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

83. FAR 52.232-22 LIMITATION OF FUNDS (APRIL 1984)

(a) The parties estimate that performance of this subcontract will not cost the Purchaser more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing subcontract, the Purchaser's state of the estimated cost specified in the Schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both the Purchaser's and the Subcontractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Purchaser and allotted to this subcontract, the items covered, the Purchaser's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Purchaser will allot additional funds incrementally to the subcontract up to the full estimated cost to the Purchaser specified in the Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by the Purchaser under the subcontract approximates but does not exceed the total amount actually allotted by the Purchaser to the subcontract.

(c) The Subcontractor shall notify the Purchaser's Subcontract Manager in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the subcontract by the Purchaser or, (2) if this is a cost-sharing subcontract, the amount then allotted to the subcontract by the Purchaser plus the Subcontractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Subcontractor shall notify the Purchaser's Subcontract Manager in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Subcontractor's written request the Purchaser's Subcontract Manager will terminate this subcontract on that date in accordance

with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Purchaser's Subcontract Manager may terminate this subcontract on that later date.

(f) Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause-

(1) The Purchaser is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the Purchaser to this subcontract; and

(2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of (i) the amount then allotted to the subcontract by the Purchaser or, (ii) if this is a cost-sharing subcontract, the amount then allotted by the Purchaser to the subcontract plus the Subcontractor's corresponding share, until the Purchaser's Subcontract Manager notifies the Subcontractor in writing that the amount allotted by the Purchaser has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Purchaser to this subcontract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Purchaser or, (2) if this is a cost-sharing subcontract, the amount then allotted by the Purchaser to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Purchaser's Subcontract Manager, shall affect the amount allotted by the Purchaser to this subcontract. In the absence of the specified notice, the Purchaser is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by the Purchaser to this subcontract, whether incurred during the course of the subcontract or as a result of termination.

(i) When and to the extent that the amount allotted by the Purchaser to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of (1) the amount previously allotted by the Purchaser or, (2) if this is a cost-sharing subcontract, the amount previously allotted by the Purchaser to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Purchaser's Subcontract Manager issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Purchaser specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Purchaser to terminate this subcontract. If this subcontract is terminated, the Purchaser and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

(l) If the Purchaser does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of the completion of the work contemplated by this subcontract.

84. FAR 52.232-23 ASSIGNMENT OF CLAIMS (MAY 2014)

(a) The Subcontractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this subcontract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this subcontract.

(c) The Subcontractor shall not furnish or disclose to any assignee under this subcontract any classified document (including this subcontract) or information related to work under this subcontract until the Purchaser’s Subcontract Manager authorizes such action in writing.

85. FAR 52.236-5 MATERIAL AND WORKMANSHIP (APRIL 1984)

(a) All equipment, material, and articles incorporated into the work covered by this subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Purchaser Subcontract Manager, is equal to that named in the specifications, unless otherwise specifically provided in this subcontract.

(b) The Subcontractor shall obtain the Purchaser Subcontract Manager's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to the Purchaser Subcontract Manager the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this subcontract or by the Purchaser Subcontract Manager, the Subcontractor shall also obtain the Purchaser Subcontract Manager's approval of the material or articles which the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this subcontract shall be performed in a skillful and workmanlike manner. The Purchaser Subcontract Manager may require, in writing, that the Subcontractor remove from the work any employee the Purchaser Subcontract Manager deems incompetent, careless, or otherwise objectionable.

86. FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOVEMBER 1991)

The Subcontractor shall, without additional expense to the Purchaser, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the subcontract.

87. FAR 52.236-10 OPERATIONS AND STORAGE AREAS (APRIL 1984)

(a) The Subcontractor shall confine all operations (including storage of materials) on Purchaser premises to areas authorized or approved by the Purchaser Subcontract Manager. The Subcontractor shall hold and save the Purchaser, its officers and agents, free and harmless from liability of any nature occasioned by the Subcontractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Subcontractor only with the approval of the Purchaser Subcontract Manager and shall be built with labor and materials furnished by the Subcontractor without expense to the Purchaser. The temporary buildings and utilities shall remain the property of the Subcontractor and shall be removed by the Subcontractor at its expense upon completion of the work. With the written consent of the Purchaser Subcontract Manager, the buildings and utilities may be abandoned and need not be removed.

(c) The Subcontractor shall, under regulations prescribed by the Purchaser Subcontract Manager, use only established roadways, or use temporary roadways constructed by the Subcontractor when and as authorized by the Purchaser Subcontract Manager. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Subcontractor shall protect them from damage. The Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

89. FAR 52.236-18 WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION SUBCONTRACTS (APRIL 1984)

The extent and character of the work to be done by the lower tier subcontractor shall be subject to the general supervision, direction, control, and approval of the Purchaser Subcontract Manager.

89. FAR 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APRIL 1984)

(a) When this subcontract is executed, the Subcontractor shall submit to the Purchaser Subcontract Manager a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this subcontract, and their respective duties. The Subcontractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this subcontract shall be under the full-time resident direction of: (1) the Subcontractor, if the Subcontractor is an individual; (2) one or more principal partners, if the Subcontractor is a partnership; or (3) one or more senior officers, if Subcontractor is a corporation, association, or similar legal entity. However, if the Purchaser Subcontract Manager approves, the Subcontractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

90. FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APRIL 1984)

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to the Government as the Purchaser directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the Subcontract price.

91. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APRIL 1984)

(a) Notwithstanding any other clause of this subcontract--

(1) The Purchaser's Subcontract Manager may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this subcontract that have been determined not to be allowable under the subcontract terms; and

(2) The Subcontractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Purchaser's Subcontract Manager, with justification for allowance of the costs. If the Subcontractor does respond within 60 days, the Purchaser's Subcontract Manager shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Purchaser's rights to take exception to incurred costs.

92. FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2014)

(a) Definition. "Proposal," as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Subcontractor after the expiration of its fiscal year which –

(i) Relates to any payment made on the basis of billing rates; or
(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Subcontractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. chapter 43, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Subcontractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Purchaser’s Subcontract Manager determines that a cost submitted by the Subcontractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Subcontractor shall be assessed a penalty equal to –

(1) The amount of the disallowed cost allocated to this subcontract; plus
(2) Simple interest, to be computed –

(i) On the amount the Subcontractor was paid (whether as a progress or billing payment) in excess of the amount to which the Subcontractor was entitled; and
(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Purchaser’s Subcontract Manager determines that a cost submitted by the Subcontractor in its proposal includes a cost previously determined to be unallowable for that Subcontractor, then the Subcontractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this subcontract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.

(g) Pursuant to the criteria in FAR 42.709-5, the Purchaser’s Subcontract Manager may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Subcontractor of any penalty assessed under this clause does not constitute repayment to the Purchaser of any

unallowable cost which has been paid by the Purchaser to the Subcontractor.

93. FAR 52.242-13 BANKRUPTCY (JULY 1995)

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail, or electronic commerce method if any is recognized by the subcontract, written notification of the bankruptcy to the Purchasers' Subcontract Manager responsible for administering the subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

94. FAR 52.242-15 STOP-WORK ORDER, ALT I (AUGUST 1989)

(a) The Purchaser's Subcontract Manager may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allowable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the Purchaser's Subcontract Manager shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Purchaser, clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The Purchaser's Subcontract Manager shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the Subcontract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allowable to, the performance of any part of this subcontract; and

(2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Purchaser's Subcontract Manager decides the facts justify the action, the Purchaser's Subcontract Manager may receive and act upon the claim submitted at any time before final payment under this subcontract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Purchaser, the Purchaser's Subcontract Manager shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Purchaser's Subcontract Manager shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

95. FAR 52.243-2 CHANGES -- COST-REIMBURSEMENT (AUGUST 1987) (MODIFIED)

(a) The Purchaser's Subcontract Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Purchaser in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change cause an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the Purchaser's Subcontract Manager shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the subcontract accordingly.

(c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Purchaser's Subcontract Manager decides that the facts justify it, the Purchaser's Subcontract Manager may receive and

act upon a proposal submitted before final payment of the subcontract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, of this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this subcontract.

(f) All change proposals which require a financial adjustment shall include a detailed cost breakdown covering all costs and profit associated with the change in at least the minimum detail shown below:

(1) Direct Labor (labor categories and rates)
(2) Labor Overhead
(3) Materials
(4) Material Overhead
(5) Equipment
(6) Other Direct Costs
(7) Subcontracts
(8) General and Administrative Expense
(9) Profit

96. FAR 52.243-6 CHANGE ORDER ACCOUNTING (APRIL 1984)

The Purchaser's Subcontract Manager may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Purchaser's Subcontract Manager or the matter is conclusively disposed of in accordance with the Disputes clause.

97. FAR 52.243-7 NOTIFICATION OF CHANGES (APRIL 1984)

(a) Definitions. "Purchaser's Subcontract Manager," as used in this clause, does not include any representative of the Purchaser's Subcontract Manager. "Specifically authorized representative (SAR)," as used in this clause, means any person the Purchaser's Subcontract Manager has so designated by written notice (a copy of which shall be provided to the Subcontractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Purchaser conduct that the Subcontractor considers to constitute a change to this subcontract. Except for changes identified as such in writing and signed by the Purchaser's Subcontract Manager, the Subcontractor shall notify the Purchaser's Subcontract Manager in writing promptly, within five calendar days from the date that the Subcontractor identifies any Purchaser conduct (including actions, inactions, and written or oral communications) that the Subcontractor regards as a change to the Subcontract terms and conditions. On the basis of the most accurate information available to the Subcontractor, the notice shall state

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Purchaser individual and Subcontractor Official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of subcontract performance for which the Subcontractor may seek an equitable adjustment under this clause, including-

(i) What subcontract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to subcontract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Subcontractor's estimate of the time by which the Purchaser must respond to the Subcontractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by (b) above, the Subcontractor shall diligently continue performance of this subcontract to the maximum extent possible in accordance with its terms and conditions as construed by the Subcontractor, unless the notice reports a direction of the Purchaser's Subcontract Manager or a communication from a SAR of the Purchaser's Subcontract Manager, in either of which events the Subcontractor shall continue performance; provided, however, that if the Subcontractor regards the direction or communication as a change as described in (h) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Subcontractor and to the Purchaser's Subcontract Manager. The Purchaser's Subcontract Manager shall promptly countermand any action which exceeds the authority of the SAR.

(d) Purchaser response. The Purchaser's Subcontract Manager shall promptly, within ..... calendar days after receipt of notice, respond to the notice in writing. In responding, the Purchaser's Subcontract Manager shall either-

(1) Confirm that the conduct of which the Subcontractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Subcontractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Subcontractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Subcontractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Purchaser will respond.

(e) Equitable adjustments.

(1) If the Purchaser's Subcontract Manager confirms that Purchaser conduct effected a change as alleged by the Subcontractor, and the conduct causes an increase or decrease in the Subcontractor's cost of, or the time required for, performance of any part of the work under this subcontract, whether changed or not changed by such conduct, an equitable adjustment shall be made (i) In the Subcontract price or delivery schedule or both; and (ii) In such other provisions of the Subcontract as may be affected.

(2) The Subcontract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Purchaser is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Subcontractor in attempting to comply with the defective drawings, designs or specifications before the Subcontractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Purchaser's Subcontract Manager under this clause is included in the equitable adjustment, the Purchaser's Subcontract Manager shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Subcontractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

98. FAR 52.244-2 SUBCONTRACTS (OCTOBER 2010)

(a) Definitions. As used in this clause--

“Approved purchasing system” means a contractor’s purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation.

“Consent to subcontract” means the Purchaser’s written consent for the Subcontractor to enter into a particular lower tier subcontract.

"Lower tier Subcontract," means any subcontract, as defined in FAR Part 2.1, entered into by a lower tier subcontractor to furnish supplies or services for performance of this Subcontract Agreement. It includes, but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed price type subcontract, consent to subcontract is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Subcontractor does not have an approved purchasing system, consent to subcontract is required for any lower tier subcontract that --

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) Is fixed-price and exceeds --

(i) for a lower tier subcontract awarded under a Prime Contract awarded by the Department of Defense, the Coast Guard, or NASA, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the subcontract; or

(ii) for a lower tier subcontract awarded under a prime contract awarded by a civilian agency other than the Coast Guard and NASA, either the simplified acquisition threshold or 5 percent of the total estimated cost of the subcontract.

(d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the Purchaser Subcontract Manager's consent for any lower tier subcontracts specifically identified in the schedule articles of the Subcontract Agreement.

(e)(1) The Subcontractor shall notify the Purchaser Subcontract Manager reasonably in advance of placing any lower tier subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

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

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant consideration controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Subcontractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the lower tier subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower tier subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Subcontractor is not required to notify the Purchaser's Subcontract Manager in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Purchaser Subcontract Manager to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this subcontract, or (3) to relieve the Subcontractor of any responsibility for performing this subcontract.

(g) No subcontract placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).

(h) The Subcontractor shall give the Purchaser Subcontract Manager immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from the Purchaser.

(i) The Purchaser reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

99. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DECEMBER 1996)

(a) The Subcontractor shall select Lower Tier Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Subcontract.

(b) If the Subcontractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the subcontractor may award subcontracts under this subcontract on a noncompetitive basis to its protégés.

100. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APRIL 2015)

(a) Definitions. As used in this clause –

"Commercial item" has the meaning contained in FAR 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its lower tier subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this subcontract.

(c) (1) The Subcontractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (April 2010) (41 U.S.C 3509) if the subcontract exceeds $5,000,000, and has a period of more than 120 days. In altering the clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or Federal criminal law shall be deemed to the agency Office of Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 737(d)(2) and (3)), if the subcontract offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1,500,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting.

(iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
(v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
(vi) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212(a));
(vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
(viii) 52.222-37, Employments Reports on Veterans (Jul 2014) (38 U.S.C. 4212).
(ix) 52.222-40, Notification of Employee Rights under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
(x) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627) or Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
(xi) 52.222-55, Establishing a Minimum Wage for Contractors (E.O. 13658) (Dec 2014).
(xii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
(xiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.
(xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Subcontractor may flow down to subcontracts for commercial items a minimal number of

additional clauses necessary to satisfy its contractual obligations.

(d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in lower tier subcontracts awarded under this subcontract.

101. FAR 52.245-1 GOVERNMENT PROPERTY (APRIL 2012)

This clause applies if the subcontract involves Government Property as defined in this clause. Government furnished property will be identified in the subcontract agreement.

(a) Definitions. As used in this clause—

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Cannibalize" means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

"Lower tier subcontractor-acquired property" means property acquired, fabricated, or otherwise provided by the Lower tier subcontractor for performing a subcontract, and to which the Government has title.

"Lower tier subcontractor inventory" means—

(1) Any property acquired by and in the possession of a lower tier subcontractor under a subcontract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire subcontract;

(2) Any property that the Government is obligated or has the option to take over under any type of subcontract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the subcontract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire subcontract.

(4) "Subcontractor's managerial personnel" means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Subcontractor's business;
(2) All or substantially all of the Subcontractor's operation at any one plant or separate location; or
(3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a subcontract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government or Purchaser and subsequently furnished to the Subcontractor for performance of a subcontract.

"Government property" means all property owned or leased by the Government or Purchaser. Government property includes Government-furnished, Purchaser-furnished, and Subcontractor-acquired property.

"Loss of Government property" means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;
(2) Theft;
(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

"Material" means property that may be consumed or expended during the performance of a subcontract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Plant equipment" as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment. "Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Production scrap" means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, *e.g.*, textile and metal clippings, borings, and faulty castings and forgings

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Purchaser appointed in accordance with agency procedures, responsible for administering the subcontract requirements and obligations relating to Government property in the possession of a Subcontractor.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Unit acquisition cost" means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For subcontractor-acquired property, the cost derived from the Subcontractor's records that reflect consistently applied generally accepted accounting principles.

(b) *Property management.*

(1) The Subcontractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Subcontractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Subcontractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Subcontractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this subcontract (except where inconsistent with law or regulation).

(2) The Subcontractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Subcontractor's accountability, stewardship, possession or control, including its vendors or lower tier subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Subcontractor shall include the requirements of this clause in all lower tier subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Subcontractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) Use of Government property. The Subcontractor shall use Government property, either furnished or acquired under this subcontract, only for performing this subcontract, unless otherwise provided for in this subcontract or approved by the Purchaser. The Subcontractor shall not modify, cannibalize, or make alterations to Government property unless this subcontract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) Government-furnished property.

(1) The Purchaser shall deliver to the Subcontractor the Government-furnished property described in this subcontract. The Purchaser shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Subcontractor as contractor-acquired property and subsequently transferred to another subcontract with this Subcontractor.

(2) The delivery and/or performance dates specified in this subcontract are based upon the expectation that the Government-furnished property will be suitable for subcontract performance and will be delivered to the Subcontractor by the dates stated in the subcontract.

(i) If the property is not delivered to the Subcontractor by the dates stated in the subcontract, the Purchaser shall, upon the Subcontractor's timely written request, consider an equitable adjustment to the subcontract.

(ii) In the event property is received by the Subcontractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Purchaser shall, upon the Subcontractor's timely written request, advise the Subcontractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Purchaser shall consider an equitable adjustment to the subcontract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Purchaser or Government, at its option, may furnish property in an "as-is" condition. The Subcontractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government and Purchaser make no warranty with respect to the serviceability and/or suitability of the property for subcontract performance. Any repairs, replacement, and/or refurbishment shall be at the Subcontractor's expense.

(3) (i) The Purchaser may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this subcontract;
(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Subcontractor for the Government under this subcontract; or
(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Subcontractor's timely written request, the Purchaser shall consider an equitable adjustment to the subcontract.

(e) Title to Government property.

(1) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Subcontractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Subcontractor retains title to all property acquired by the Subcontractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Subcontractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.*

(i) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;
(B) Commencement of processing of the property for use in contract performance; or
(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) Subcontractor plans and systems.

(1) Subcontractors shall establish and implement property management plans, systems, and procedures at the subcontract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Subcontractor shall document that all property was acquired consistent with its

engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Subcontractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Subcontractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Subcontractor-acquired property. The Subcontractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Subcontractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Subcontractor shall create and maintain records of all Government property accountable to the subcontract, including Government-furnished and Subcontractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional identification tracking and/or disposition) and other data elements as necessary and required in accordance with the terms and conditions of this subcontract;

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable subcontract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of this s
Subcontract).

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Subcontractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical Inventory. The Subcontractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon subcontract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Subcontractor's system or the property is to be transferred to a follow-on subcontract).

(v) Lower tier subcontractor control.

(A) The Subcontractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Subcontractor shall ensure appropriate flow down of subcontract terms and conditions (e.g., extent of liability for loss of Government property).

(B) The Subcontractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the lower tier subcontractor's property management system.

(vi) Reports. The Subcontractor shall have a process to create and provide reports of discrepancies; loss of Government property; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Purchaser.

(vii) Relief of stewardship responsibility. The Subcontractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Subcontractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The data elements required under (f)(1)(iii)(A).

(3) Quantity.

(4) Accountable contract number.

(5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Subcontractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

(11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Subcontractor shall be relieved of stewardship responsibility and liability for property when—

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Subcontractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Subcontractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.

(A) The Subcontractor shall utilize, consume, move, and store Government Property only as authorized under this subcontract. The Subcontractor shall promptly disclose and report Government property in its possession that is excess to subcontract performance.

(B) Unless otherwise authorized in this subcontract or by the Property Administrator the Subcontractor shall not commingle Government property with property not owned by the Government.

(ix) Maintenance. The Subcontractor shall properly maintain Government property. The Subcontractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Subcontractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Subcontractor shall promptly perform and report to the Property Administrator subcontract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this subcontract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Subcontractor shall establish and maintain Government accounting source data, as may be required by this subcontract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(3) The Subcontractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis.

(1) The Government shall have access to the Subcontractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Subcontractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this subcontract, and/or present an undue risk to the Government, the Subcontractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Subcontractor shall ensure Government access to lower tier subcontractor premises, and all Government property located at lower tier subcontractor premises, for the purposes of reviewing, inspecting and evaluating the lower tier subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Subcontractor Liability for Government Property.

(1) Unless otherwise provided for in the subcontract, the Subcontractor shall not be liable for loss of Government property furnished or acquired under this subcontract, except when any one of the following applies—

(i) The risk is covered by insurance or the Subcontractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel. Subcontractor's managerial personnel;

(iii) The Purchaser, based on direction from the Government, has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Subcontractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Subcontractor failed to take timely corrective action. If the Subcontractor can establish by clear and convincing evidence that the loss of Government property occurred while the Subcontractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Subcontractor's failure to maintain adequate property management practices, the Subcontractor shall not be held liable.

(2) The Subcontractor shall take all reasonable actions necessary to protect the Government property from further loss. The Subcontractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Subcontractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) Upon the request of the Purchaser, the Subcontractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy and the Government shall not be liable to suit for breach of subcontract for the following:

(1) Any delay in delivery of Government-furnished property.
(2) Delivery of Government-furnished property in a condition not suitable for its intended use.
(3) An increase, decrease, or substitution of Government-furnished property.
(4) Failure to repair or replace Government property for which the Government is responsible.

(j) Subcontractor inventory disposal. Except as otherwise provided for in this subcontract, the Subcontractor shall not dispose of Subcontractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) Predisposal requirements.

(i) If the Subcontractor determines that the property has the potential to fulfill requirements under other contracts, the Subcontractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Subcontractor to credit the costs of Subcontractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered Subcontractor inventory.

(ii) For any remaining Subcontractor-acquired property, the Subcontractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules*.

(i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Subcontractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Subcontractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Subcontractor may annotate inventory disposal schedules to identify property the Subcontractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) The Subcontractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) *Submission requirements*.

(i) The Subcontractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Subcontractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Subcontractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) *Corrections*. The Plant Clearance Officer may—

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Subcontractor to correct an inventory disposal schedule.

(5) *Postsubmission adjustments*. The Subcontractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Subcontractor may make the necessary adjustments to the inventory schedule.

(6) *Storage*.

(i) The Subcontractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Subcontractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Subcontractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Subcontractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Subcontractor of any liability for such property under this contract.

(7) Disposition instructions.

(i) The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Subcontractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Subcontractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Subcontractor to demilitarize the property prior to shipment or disposal. In such cases, the Subcontractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds*. As directed by the Contracting Officer, the Subcontractor shall credit the net proceeds from the disposal of Subcontractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) *Lower Tier Subcontractor inventory disposal schedules*. The Subcontractor shall require its Subcontractors to submit inventory disposal schedules to the Subcontractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) *Abandonment of Government property*.

(1) The Government shall not abandon sensitive property or termination inventory without the Subcontractor's written consent.

(2) The Government, upon notice to the Subcontractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts and subcontracts outside the United States. If this subcontract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

102. FAR 52.245-9 USE AND CHARGES (APRIL 2012)

This clause applies if FAR 52.245-1 is applicable.

(a) *Definitions.* As used in this clause:

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Government property" means all property owned or leased by the Government. Government property includes Government-furnished and subcontractor-acquired property.

"Plant equipment," as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Real property" means land and rights in land, ground improvement, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Rental period" means the calendar period during which Government property is made available for nongovernmental purposes.

"Rental time" means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property*. The Subcontractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Government Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer through the Purchaser, or if it is specifically provided for in the Schedule, the Subcontractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Subcontractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.*

(1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Subcontractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Subcontractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.—*

(1) *Real property and associated fixtures.*

(i) The Subcontractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Subcontractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Subcontractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Subcontractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Subcontractor desires the continued use of property for

nongovernmental use. The Subcontractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Subcontractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Subcontractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) *Rental payments.*

(1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Subcontractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in the contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the *Federal Register* semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Subcontractor stemming from the Subcontractor's unauthorized use of Government property or any other failure to perform this Subcontract according to its terms

(g) *Use revocation.* At any time during the rental period the Government may revoke nongovernmental use authorization and require the Subcontractor, at the Subcontractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both under 18 U.S.C. 641.

103. FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUGUST 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this subcontract conforms to subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to the Purchaser. All work shall be conducted under the general direction of the Purchaser Subcontract Manager and is subject to Purchaser inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the subcontract.

(c) Purchaser inspections and tests are for the sole benefit of the Purchaser and do not--

(1) Relieve the Subcontractor of responsibility for providing adequate quality control measures;

(2) Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Purchaser after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Purchaser inspector does not relieve the Subcontractor from any subcontract requirement, nor is the inspector authorized to change any term or condition of the specification without the Purchaser Subcontract Manager's written authorization.

(e) The Subcontractor shall promptly furnish, at no increase in subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Purchaser Subcontract Manager. The Purchaser may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Purchaser shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the subcontract.

(f) The Subcontractor shall without charge replace or correct work found by the Purchaser not to conform to subcontract requirements, unless in the public interest the Purchaser consents to accept the work with an appropriate adjustment in subcontract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.

(g) If the Subcontractor does not promptly replace or correct rejected work, the Purchaser may (1) by subcontract or otherwise, replace or

correct the work and charge the cost to the Subcontractor or (2) terminate for default the Subcontractor's right to proceed.

(h) If, before acceptance of the entire work, the Purchaser decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its Subcontractors, the Subcontractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet subcontract requirements, the Purchaser Subcontract Manager shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the subcontract, the Purchaser shall accept, as promptly as practicable after completion and inspection, all work required by the subcontract or that portion of the work the Purchaser Subcontract Manager determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Purchaser's rights under any warranty or guarantee.

104. FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003)

(a) *Definitions.* As used in this clause-

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and Lower Tier Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Subcontractor, in performing work under this subcontract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

State reasons

(End of statement)

(e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this subcontract that may involve international air transportation.

105. FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEBRUARY 2006)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Purchasers' Subcontract Manager and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Subcontractor.

(2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(i) Sponsoring U.S. Government agency.
(ii) Name of vessel.
(iii) Vessel flag of registry.
(iv) Date of loading.
(v) Port of loading.
(vi) Port of final discharge.
(vii) Description of commodity.
(viii) Gross weight in pounds and cubic feet if available.
(ix) Total ocean freight revenue in U.S. dollars.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this subcontract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to--

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders for the acquisition of commercial items unless-

(i) The prime contract is

(A) A contract or agreement for ocean transportation
(B) A construction contract, or

(ii) The supplies being transported are –

(A) Items the Subcontractor is reselling or distributing to the Government without adding value. (Generally the subcontractor does not add value to items when it subcontracts for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military -

(1) contingency operations;
(2) exercises; or
(3) forces deployed in connection with United Nations or North Atlantic Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington, DC 20590
Phone: 202-366-4610.

106. FAR 52.248-3 VALUE ENGINEERING-CONSTRUCTION (OCTOBER 2010)

(a) General. The Subcontractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Subcontractor shall share in any instant subcontract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions.

"Collateral costs," as used in this clause, means costs of operation, maintenance, logistic support, or Purchaser-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Subcontractor's development and implementation costs," as used in this clause, means those costs the Subcontractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Subcontractor incurs to make the contractual changes required by Purchaser acceptance of a VECP.

"Purchaser costs," as used in this clause, means those costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant subcontract savings," as used in this clause, means the estimated reduction in Subcontractor cost of performance resulting from acceptance of the VECP, minus allowable Subcontractor's development and implementation costs, including Lower Tier Subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant subcontract, to implement; and

(2) Results in reducing the subcontract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the subcontract type only.

(c) VECP preparation. As a minimum, the Subcontractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing subcontract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the subcontract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing subcontract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Subcontractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Purchaser may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a subcontract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the subcontract completion time or delivery schedule.

(d) Submission. The Subcontractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Purchaser action.

(1) The Purchaser's Subcontract Manager shall notify the Subcontractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Purchaser's Subcontract Manager shall notify the Subcontractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Purchaser will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Purchaser's Subcontract Manager shall notify the Subcontractor in writing, explaining the reasons for rejection. The Subcontractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Purchaser. The Purchaser may require that the Subcontractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Purchaser's award of a modification to this subcontract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Subcontractor a notice to proceed with the change. Until a notice to proceed is issued or a subcontract modification applies a VECP to this subcontract, the Subcontractor shall perform in accordance with the existing subcontract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Purchaser.

(f) Sharing.

(1) Rates. The Purchaser's share of savings is determined by subtracting Purchaser costs from instant subcontract savings and multiplying the result by (i) 45 percent for fixed-price subcontracts or (ii) 75 percent for cost- reimbursement subcontracts.

(2) Payment. Payment of any share due the Subcontractor for use of a VECP on this subcontract shall be authorized by a modification to this subcontract to--

(i) Accept the VECP;

(ii) Reduce the subcontract price or estimated cost by the amount of instant subcontract savings; and

(iii) Provide the Subcontractor's share of savings by adding the amount calculated to the subcontract price or fee.

(*g) Collateral savings.* If a VECP is accepted, the Purchaser's Subcontract Manager will increase the instant subcontract by 20 percent of any project collateral savings determined to be realized in a typical year of use after subtracting any Purchasers costs not previously offset. However, the Subcontractor's share of collateral savings shall not exceed (1) the subcontract's firm-fixed-price or estimate cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Purchaser's Subcontract Manager is the sole determiner of the amount of collateral savings.

(*h) Lower Tier Subcontracts.* The Subcontractor shall include an appropriate value engineering clause in any subcontract of $55,000 or more and may include one in subcontracts of lesser value. The Subcontractor may choose any arrangement for Lower Tier Subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Purchaser's share of the savings resulting from the VECP.

(i) Data. The Subcontractor may restrict the Purchaser's or Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering- Construction clause of subcontract ....., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Purchaser's or Government's right to use information contained in these data if it has been obtained or is otherwise available from the Subcontractor or from another source without limitations."

If a VECP is accepted, the Subcontractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the subcontract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

107. FAR 52.249-6 TERMINATION (COST –REIMBURSEMENT CONSTRUCTION) (MAY 2004)

(a) The Purchaser may terminate performance of work under this subcontract in whole or, from time to time, in part, if--

(1) The Purchaser's Subcontract Manager determines that a termination is in the Purchaser's interest; or

(2) The Subcontractor defaults in performing this subcontract and fails to cure the default within 10 days (unless extended

by the Purchaser's Subcontract Manager) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Purchaser's Subcontract Manager shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of the Purchaser, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Purchaser.

(c) After receipt of a Notice of Termination, and except as directed by the Purchaser's Subcontract Manager, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Purchaser, as directed by the Purchaser's Subcontract Manager, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case the Purchaser shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Purchaser's Subcontract Manager, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Purchaser's Subcontract Manager, deliver to the Purchaser (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the Purchaser, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Purchaser's Subcontract Manager may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Purchaser has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Purchaser's Subcontract Manager, any property of the types referred to in subparagraph (c)(6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any Purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Purchaser's Subcontract Manager. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Purchaser under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the Purchaser's Subcontract Manager.

(d) The Subcontractor shall submit complete termination inventory schedules no later than 100 days from the effective date of termination, unless extended in writing by the Purchaser's Subcontract Manager upon written request of the Subcontractor within this 100 day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the FAR, the Subcontractor may submit to the Purchaser Subcontract Manager a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Purchaser Subcontract Manager. The Subcontractor may request that the Purchaser remove those items or enter into an agreement for their storage. Within 15 days, the Purchaser will accept the items and remove them or enter into a storage agreement. The Purchaser Subcontract Manager may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before inclusion in the Purchasers termination report.

(f) After termination, the Subcontractor shall submit a final termination settlement proposal to the Purchaser in the form and with the certification prescribed by the Purchaser Subcontract Manager. The Subcontractor shall submit the proposal promptly, but no later than 6 months from the effective date of termination, unless extended in writing by the Purchaser Subcontract Manager upon request of the Subcontractor within this 6 month period. However, if the Purchaser Subcontract Manager determines that the facts justify it, a termination settlement proposal may be received and acted on after the 6 month period or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the Purchaser Subcontract Manager may determine on the basis of information available the amount, if any, due to the Subcontractor that will be included in the Purchaser's termination proposal to the Government.

(g) Subject to paragraph (f) above, the Subcontractor and the Purchaser's Subcontract Manager may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.

(h) If the Subcontractor and the Purchaser's Subcontract Manager fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Purchaser's Subcontract Manager shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay that amount subject to the approval of the Government, which shall include the following:

(1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by the Purchaser; however, the Subcontractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (h)(1) above.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the subcontract, determined as follows:

(i) If the subcontract is terminated for the convenience of the Purchaser, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in Lower Tier Subcontractors' termination proposals, less previous payments for fee.

(ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total wok in place required by the subcontract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) above.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the Purchaser's Subcontract Manager under paragraph (f) or (h) above or paragraph (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Purchaser's Subcontract Manager has made a determination of the amount due under paragraph (f), (h) or (l), the Purchaser shall pay the Subcontractor (1) the amount determined by the Purchaser's Subcontract Manager if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract;

(2) Any claim which the Purchaser has against the Subcontractor under this subcontract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the Purchaser.

(l) The Subcontractor and Purchaser's Subcontract Manager must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Purchaser's Subcontract Manager shall amend the subcontract to reflect the agreement.

(m) (1) The Purchaser may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the Purchaser's Subcontract Manager believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the

Purchaser upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Purchaser's Subcontract Manager because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this subcontract does not include a fee.