

**FERMILAB SUBCONTRACT**  
**GENERAL PROVISIONS**  
**Fermi Research Alliance, LLC d/b/a Fermilab**

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**1. DEFINITIONS (NOV 2013)**

**1.1** As used throughout this subcontract, the following terms shall have the meanings set forth below:

- (a) The term "Government" shall mean the Government of the United States acting through the United States Department of Energy or its successor.
- (b) The term "Department" shall mean the United States Department of Energy or any duly authorized representative thereof.
- (c) The term "Fermilab" shall mean Fermi Research Alliance, LLC, and includes the successor to or any duly authorized representatives thereof.
- (d) Except as otherwise provided in this subcontract, the term "sub-subcontracts" includes purchase orders under this subcontract.
- (e) "Manager" shall mean the person in charge of business services for Fermilab or his written designee.

**1.2** As used in any FL that is a part of this subcontract, the term "outlying areas" shall mean-

- (a) The Commonwealths of Puerto Rico and the Northern Mariana Islands;
- (b) The Territories of American Samoa, Guam, and the U.S. Virgin Islands; and
- (c) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

**1.3** When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures. When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

**2. COVENANT AGAINST CONTINGENT FEES (MAY 2014)**

**2.1** (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty Fermilab shall have the right 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.

(c) "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor'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.

(d) "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.

(e) "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. For purposes of this clause, the term "Government" includes "Fermilab."

**3. SUB-SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2014)**

(a) DEFINITIONS. AS USED IN THIS CLAUSE—

- (i) Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
- (ii) Sub-subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or sub-subcontractor at any tier.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its Sub-subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

- (c) (i) The Subcontractor shall insert the following clauses in sub-subcontracts for commercial items:
  - (A) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (41 U.S.C. 3509), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. 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.

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(C) 52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontractor offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(E) 52.222-35, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212(a));

(F) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

(G) 52.222-37, Employment Reports on Veterans (JUL 2014) (38 U.S.C. 4112).

(H) 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.

(I) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(J) 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).

(K) 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.

(L) 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.

(ii) 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 subcontracts awarded under this contract.

#### **4. CONVICT LABOR (JUN 2003)**

**4.1** Except as provided in paragraph 4.2 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.

**4.2** The Subcontractor is not prohibited from employing persons-

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

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

(c) 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.

#### **5. FEDERAL, STATE AND LOCAL TAXES**

##### **5.1 AS USED IN THIS CLAUSE—**

(a) "Contract date," means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.

(b) "All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

(c) "After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

(d) "After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

(e) "Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the subcontract is performed wholly or partly in any of those areas.

5.2 The subcontract price includes all applicable Federal, State, and local taxes and duties.

5.3 The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.

5.4 The subcontract price shall be decreased by the amount of any after-relieved Federal tax.

5.5 The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes that the Subcontractor is required to pay or bear or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of Fermilab.

5.6 No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.

5.7 The Subcontractor shall promptly notify Fermilab of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as Fermilab directs.

5.8 Fermilab shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

## 6. EQUAL OPPORTUNITY FOR VETERANS (JUL 2014)

### 6.1 DEFINITIONS.

(a) "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 in FAR 22.1301.

(b) "All employment openings" includes all positions except executive and senior management, those positions that will be filled from within the subcontractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

(c) "Executive and senior management" means—

(i) Any employee—

(A) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(B) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(C) Who customarily and regularly directs the work of two or more other employees; and

(D) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(ii) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

(d) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

(e) "Positions that will be filled from within the Subcontractor's organization" means employment openings for which the Subcontractor will give no consideration to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization

### 6.2 GENERAL.

(a) This subcontractor and sub-subcontractor shall abide by the requirements of 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

### 6.3 EQUAL OPPORTUNITY FOR VEVRRAA PROTECTED VETERANS.

(a) The definitions set forth in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

(b) The subcontractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veterans(s)") in regard to any position for which the employee or applicant for employment is qualified. The subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the subcontractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the subcontractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

#### 6.4 LISTING OPENINGS.

(a) The subcontractor agrees to immediately list all employment openings which exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract and including those occurring at an establishment of the subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, subcontractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the subcontractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

(b) Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the subcontractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

(c) Whenever a subcontractor, other than a state or local governmental subcontractor, becomes contractually bound to the listing provisions in paragraphs 6.3(a) and 6.3(b) of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal subcontractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The subcontractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the subcontractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the subcontractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the subcontractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the subcontractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent subcontracts. The subcontractor may advise the employment service delivery system when it is no longer bound by this contract clause.

(d) The provisions of paragraphs 6.3(a) and 6.3(b) of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

#### 6.5 NONCOMPLIANCE.

(a) The subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(b) In the event of the subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

#### 6.6 POSTINGS & NOTICE.

(a) The subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through Fermilab. Such notices shall state the rights of applicants and employees as well as the subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The subcontractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the

notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the subcontractor, a subcontractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the subcontractor provides computers that can access the electronic posting to such employees, or the subcontractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the subcontractor to notify job applicants of their rights if the subcontractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

(b) The subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the subcontractor is bound by the terms of the VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

#### **6.7 SUB-SUBCONTRACTS.**

The subcontractor will include the provisions of this clause in every sub-subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each sub-subcontractor or vendor. The subcontractor will take such action with respect to any sub-subcontract or purchase order as the Director, office of Federal Contract Compliance programs, may direct to enforce such provisions, including action for noncompliance.

**6.8** The subcontractor must, 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 their protected veteran status.

#### **7. NOTICE OF LABOR DISPUTES**

**7.1** If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice, including all relevant information, to Fermilab.

**7.2** The Subcontractor agrees to insert the substance of this clause, including this paragraph 7.2, in any sub-subcontract to which a labor dispute may delay the timely performance of this subcontract; except that each sub-subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the sub-subcontractor shall immediately notify the next higher tier sub-subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

#### **8. UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)**

(This clause applies to all subcontracts in excess of \$650,000 or \$1,500,000 for construction subcontracts)

##### **8.1 DEFINITIONS AS USED IN THIS SUBCONTRACT—**

(a) "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.

(b) "Service-disabled veteran-owned small business concern"—

(i) Means a small business concern—

(A) 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

(B) 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.

(ii) 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).

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

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

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

(A) 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

(B) 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 124.102(c)(2); and

(ii) 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 (i)(A) and (i)(B) of this definition.

(e) "Veteran-owned small business concern" means a small business concern—

(i) 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

- (ii) The management and daily business operations of which are controlled by one or more veterans.
- (f) "Women-owned small business concern" means a small business concern—
  - (i) 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
  - (ii) Whose management and daily business operations are controlled by one or more women.

**8.2** It is the policy of the United States, the Department of Energy, and Fermilab 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 subcontracts let by Fermilab, including subcontracts and sub-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.

**8.3** The Subcontractor hereby agrees to carry out this policy in the awarding of sub-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 Department as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

**8.4 (a)** Subcontractors acting in good faith may rely on written representations by their sub-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.

**(b)** The Subcontractor shall confirm that a sub-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](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](mailto:hubzone@sba.gov).

## **9. ASSIGNMENT**

Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by Fermilab. Fermilab may assign the whole or any part of this subcontract to the Government or its designee or to a successor contractor, and in such event this subcontract shall continue in full force and effect.

## **10. AUDIT AND RECORDS**

**10.1** This clause applies if this subcontract exceeds \$100,000.

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

### **10.3 EXAMINATION OF COSTS.**

If this is a cost reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable subcontract, or any combination of these, the Subcontractor shall maintain and Fermilab, or an authorized representative of Fermilab, shall have the right to examine and audit all records and other evidence incurred or anticipated to be incurred directly or indirectly in performance of 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.

### **10.4 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, Fermilab, or an authorized representative of Fermilab, 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—

- (a) The proposal for the subcontract, sub-subcontract, or modification;
- (b) The discussions conducted on the proposal(s), including those related to negotiating;
- (c) Pricing of the subcontract, sub-subcontract, or modification; or
- (d) Performance of the subcontract, sub-subcontract or modification.

### **10.5 COMPTROLLER GENERAL –**

(a) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract a sub-subcontract hereunder.

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

### **10.6 REPORTS.**

If the Subcontractor is required to furnish cost, funding, or performance reports, Fermilab or an authorized representative of Fermilab shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- (a) The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objective of these reports and
- (b) The data reported.

**10.7 AVAILABILITY.**

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs 10.2 through 10.6 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, Contractor 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 –

- (a) If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (b) Records relating to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such litigation or claims are finally resolved.

**10.8** The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph 10.8, in all under this subcontract that exceed \$100,000, and –

- (a) That are cost-reimbursement, incentive, time-and materials, labor-hour, or price-determinable type or any combination of these;
- (b) For which cost or pricing data are required; or
- (c) That require the sub-subcontractor to furnish reports as discussed in paragraph 10.6 of this clause. The clause may be altered only as necessary to identify properly the contracting parties.

**10.9. COST ACCOUNTING STANDARDS (MAY 2014).**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the Subcontractor, in connection with the subcontract, shall –

(i) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and sub-subcontracts being performed by the Subcontractor and which contain the Cost Accounting Standards (CAS) clause. If the Subcontractor has notified Fermilab that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of Fermilab the Government.

(ii) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting subcontract performance cost data concerning the subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or sub-subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement must be amended accordingly. If the subcontract price of cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(iv) and (a)(v) of this clause, as appropriate.

(iii) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9904 in effect on the date of award of this subcontract or, if the Subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS), which hereafter become applicable to a contract or subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(iv) (A) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (a)(iii) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.

(B) Negotiate with Fermilab to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(iv) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the Fermilab.

(C) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(iv)(A) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.

(v) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or Sub-subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the Fermilab. Such adjustment shall provide for recovery of the increased costs to the Fermilab, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by Fermilab was made to the time the adjustment is affected. In no case shall Fermilab recover costs greater than the increased costs to Fermilab, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Subcontractor made a change in this cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to Fermilab.

(b) The Subcontractor shall permit any authorized representatives of Fermilab to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(c) The Subcontractor shall include in all negotiated Sub-subcontracts which the Subcontractor enters into, the substance of this clause, and shall require such inclusion in all of other sub-subcontracts, of any tier, including the obligation to comply with all CAS in effect on the sub-subcontractor's award date or if the sub-subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the sub-subcontractor's signed Certificate of Current Cost or Pricing Data. If the sub-subcontract is awarded to a business unit which, pursuant to 48 CFR 9903.201-2, is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated sub-subcontracts in excess of \$700,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

## **11. EQUAL OPPORTUNITY**

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

**11.2** 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.

**11.3** 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 CFR 60-1.5).

**11.4** During performance of this subcontract, the Subcontractor agrees as follows:

(a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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.

(b) 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, 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.

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

(d) 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, or national origin.

(e) The Subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, the notice, to be provided by Fermilab, 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.

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

(g) The Subcontractor shall furnish to Fermilab 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 subcontract award, the Subcontractor shall, within 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.

(h) The Subcontractor shall permit access to its premises, during normal business hours, by Fermilab, or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit Fermilab or the Government 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.

(i) 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 contract may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government 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.

(j) The Subcontractor shall include the terms and conditions of this clause in every sub-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 sub-subcontractor or vendor.

(k) The Subcontractor shall take such action with respect to any sub-subcontract or purchase order as Fermilab may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a sub-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.

**11.4** Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

## **12. APPLICABLE LAW**

To the extent that Federal law does not exist and state law could become applicable to this subcontract, the Law of Illinois shall apply.

## **13. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)**

(a) This subcontractor and sub-subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) as of March 24, 2014. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

(b) **SUBCONTRACTS.** The subcontractor shall include the terms of this clause in every sub-subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each sub-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.

**13.1 FERMILAB SUBCONTRACTS.** Each subcontracting agency and each subcontractor shall include the following equal opportunity clause, found at 41 CFR 60-741.5(a) as of March 24, 2014 in each of its covered Fermilab subcontracts or sub-subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

(a) **EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2013).** The subcontractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the subcontractor;
- (vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the subcontractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(b) **NONCOMPLIANCE.** The subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

(c) In the event of the subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

(d) **POSTINGS & NOTICE.** The subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through Fermilab. Such notices shall state the rights of applicants and employees as well as the subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The subcontractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower viewing height for easy viewing by a person in a wheelchair). With respect to employees who do not work at a physical location of the subcontractor, a subcontractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the subcontractor provides computers, or access to computers, that can access the electronic posting to such employees, or the subcontractor has actual knowledge that such employees otherwise

are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the subcontractor to notify job applicants of their rights if the subcontractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

(e) The subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the subcontractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

(f) SUB-SUBCONTRACTS. The subcontractor will include the provisions of this clause in every sub-subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each sub-subcontractor or vendor. The subcontractor will take such action with respect to any sub-subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

#### **14. MODIFICATION PROPOSALS-PRICE BREAKDOWN**

**14.1** The Subcontractor, in connection with any proposal he makes for a subcontract modification, shall furnish a price breakdown, itemized as required by Fermilab. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, sub-subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for sub-subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The justification shall be furnished by the date specified by Fermilab.

**14.2** When costs are a factor in any determination of a subcontract price adjustment under any clause of this subcontract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.2 of the Federal Acquisition Regulation (48CFR 31.2) and Subpart 931.2 of the Department's Acquisition Regulation in effect on the date of this subcontract.

#### **15. RESTRICTION ON CERTAIN FOREIGN PURCHASES**

**15.1** Unless advance authorization has been obtained by Fermilab from 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 contract, 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.

**15.2** 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>.

**15.3** The Contractor shall insert this clause, including this paragraph 15.3, in all subcontracts.

#### **16. EMPLOYMENT REPORTS VETERANS AND COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (JUL 2014)**

**16.1** DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "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.

**16.2** 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—

(a) The total number of employees in the subcontractor'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;

(b) 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

(c) The maximum number and minimum number of employees of the Subcontractor or sub-subcontractors at each hiring location during the period covered by the report.

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

**16.4** The Subcontractor shall submit VETS-100A Reports no later than September 30 of each year.

**16.5** The employment activity report required by paragraphs 16.2(2) and 16.2(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—

(a) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(b) As of December 31, if the Subcontractor 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).

**16.6** The number of veterans reported must be based on data known to the Subcontractor when completing the VETS-100A. The Subcontractor'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 subcontractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](#).

**16.7** The Subcontractor shall insert the terms of this clause in sub-subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**16.8** By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of [38 U.S.C. 4212\(d\)](#) (i.e., if it has any contract or subcontract containing Federal Acquisition Regulation clause [52.222-37](#) [clause 6 above], Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

## **17. FERMILAB-FURNISHED PROPERTY**

### **17.1 FERMILAB PROPERTY.**

(a) Fermilab shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Fermilab-furnished property described elsewhere in the subcontract together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Fermilab-furnished property").

(b) The delivery or performance dates for this subcontract are based upon the expectation that Fermilab-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated elsewhere in the subcontract or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

(c) If Fermilab-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify Fermilab, detailing the facts, and, as directed by Fermilab and at Fermilab expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, Fermilab shall make an equitable adjustment as provided in paragraph 17.8 of this clause.

(d) If Fermilab-furnished property is not delivered to the Subcontractor by the required time, Fermilab shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph 17.8 of this clause.

### **17.2 CHANGES IN FERMILAB-FURNISHED PROPERTY.**

(a) Fermilab may, by written notice,

(i) Decrease the Fermilab-furnished property provided or to be provided under this subcontract, or

(ii) Substitute other Fermilab-furnished property for the property to be provided by Fermilab, or to be acquired by the Subcontractor for Fermilab, under this subcontract. The Subcontractor shall promptly take such action as Fermilab may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(b) Upon the Subcontractor's written request, Fermilab shall make an equitable adjustment to the subcontract in accordance with paragraph 17.8 of this clause, if Fermilab has agreed in the subcontract to make the property available for performing this subcontract and there is any –

(i) Decrease or substitution in this property pursuant to subparagraph 17.2(a) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

### **17.3 TITLE IN GOVERNMENT PROPERTY.**

(a) The Government shall retain title to all Fermilab furnished property.

(b) All Fermilab-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Fermilab property"), are subject to the provisions of this clause. However, special tooling accountable to this subcontract is subject to the special tooling clause and is not subject to the provisions of this clause. Title to Fermilab-furnished property shall not be affected by its incorporation into or attachment to any property not owned by Fermilab, nor shall Fermilab-furnished property become a fixture or lose its identity as personal property by being attached to any real property.

(c) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for Fermilab under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when Fermilab has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(d) If this subcontract contains a provision directing the Subcontractor to purchase material for which Fermilab will reimburse the Subcontractor as a direct item of cost under this subcontract –

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon –

(A) Issuance of the material for use in subcontract performance;

(B) Commencement of processing of the material or its use in subcontract performance; or

(C) Reimbursement of the cost of the material by Fermilab, whichever occurs first.

### **17.4. USE OF FERMILAB-FURNISHED PROPERTY.**

The Fermilab-furnished property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by Fermilab.

### **17.5. PROPERTY ADMINISTRATION.**

(a) The Subcontractor shall be responsible and accountable for all Fermilab-furnished property provided under this subcontract and shall comply with the Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.

(b) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Fermilab-furnished property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(c) If damage occurs to Fermilab-furnished property, the risk of which has been assumed by Fermilab under this subcontract, Fermilab shall replace the items or the Subcontractor shall make such repairs as Fermilab directs. However, if Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by Fermilab. When any property for which Fermilab is responsible is replaced or repaired, Fermilab shall make an equitable adjustment in accordance with paragraph 17.8 of this clause.

(d) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which Fermilab is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

#### **17.6 ACCESS.**

Fermilab and all its designees shall have access at all reasonable times to the premises in which any Fermilab furnished property is located for the purpose of inspecting the Fermilab-furnished property.

#### **17.7 RISK OF LOSS.**

Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Fermilab-furnished property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph 17.3 of this clause. However, the Subcontractor is not responsible for reasonable wear and tear to Fermilab-furnished property or for Fermilab-furnished property properly consumed in performing this subcontract.

#### **17.8 EQUITABLE ADJUSTMENT.**

When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, Fermilab may initiate an equitable adjustment in favor of Fermilab. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. Fermilab shall not be liable to suit for breach of subcontract for –

- (a) Any delay in delivery of Fermilab-furnished property;
- (b) Delivery of Fermilab-furnished property in a condition not suitable for its intended use;
- (c) A decrease in or substitution of Fermilab-furnished property; or
- (d) Failure to repair or replace Fermilab-furnished property for which Fermilab is responsible.

#### **17.9 FINAL ACCOUNTING AND DISPOSITION OF FERMILAB-FURNISHED PROPERTY.**

Upon completing this subcontract, or at such earlier dates as may be fixed by Fermilab, the Subcontractor shall submit, in a form acceptable to Fermilab, inventory schedules covering all items of Fermilab-furnished property (including any resulting scrap) not consumed in performing this subcontract or delivered to Fermilab. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Fermilab-furnished property as may be directed or authorized by Fermilab. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to Fermilab as it directs.

#### **17.10 ABANDONMENT AND RESTORATION OF SUBCONTRACTOR'S PREMISES.**

Unless otherwise provided herein, Fermilab –

- (a) May abandon any Fermilab-furnished property in place, at which time all obligations of Fermilab regarding such abandoned property shall cease; and
- (b) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if Fermilab furnished property is withdrawn or is unsuitable for the intended use, or if other Fermilab-furnished property is substituted, then the equitable adjustment under paragraph 17.8 of this clause may properly include restoration or rehabilitation costs.

#### **17.11 COMMUNICATIONS.**

All communications under this clause shall be in writing.

### **18. INDEPENDENT CONTRACTOR**

In all respects pertaining to this subcontract the Subcontractor is, and shall act as an independent Subcontractor and the Subcontractor shall not be or act as the agent, employee or servant of Fermilab or the Government. Without limiting the generality of the foregoing it is understood and agreed:

- (a) That all persons employed by the Subcontractor in the performance of this agreement shall be employees of the Subcontractor and not employees of Fermilab or the Government, and
- (b) That the Subcontractor shall not enter into any contract with a third party which purports to obligate or bind Fermilab or the Government.

### **19. SUBCONTRACTOR CERTIFIED COST OR PRICING DATA AND SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS**

**19.1** Before awarding any sub-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 sub-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 sub-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 sub-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 exception under FAR [15.403-1](#) applies.

**19.2** The Subcontractor shall require the sub-subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (19.1) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the sub-subcontract or sub-subcontract modification.

**19.3** In each sub-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—

(a) The substance of this clause, including this paragraph (19.3), if paragraph (19.1) of this clause requires submission of certified cost or pricing data for the sub-subcontract; or

(b) The substance of the clause at FAR [52.215-13](#), Subcontractor Certified Cost or Pricing Data—Modifications.

**19.4** The requirements of paragraphs 19.5 and 19.6 of this clause shall—

(a) 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](#); and

(b) Be limited to such modifications.

**19.5** Before awarding any sub-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 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 sub-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 sub-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 exception under FAR [15.403-1](#) applies.

**19.6** The Subcontractor shall require the sub-subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph 19.5 of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the sub-subcontract or sub-subcontract modification.

**19.7** The Subcontractor shall insert the substance of this clause, including this paragraph 19.7, in each sub-subcontract that exceeds 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.

## **20. RESTRICTIONS ON SUB-SUBCONTRACTOR SALES TO THE GOVERNMENT**

(Applicable only if this subcontract exceeds the simplified acquisition threshold)

**20.1** Except as provided in 20.2 below, the Subcontractor shall not enter into any agreement with an actual or prospective sub-subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such sub-subcontractors directly to the Government of any item or process (including computer software) made or furnished by the sub-subcontractor under this subcontract or under any follow-on production subcontract.

**20.2** The prohibition in 20.1 above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

**20.3** The Subcontractor agrees to incorporate the substance of this clause, including this paragraph 20.3, in all sub-subcontracts that exceed the simplified acquisition threshold.

## **21. ANTI-KICKBACK PROCEDURES (MAY 2014)**

(Applies to subcontracts over \$150,000.)

**21.1** DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "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 contractor in connection with a subcontract relating to a prime contract.

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

(c) "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.

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

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

(f) "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.

(g) "Subcontractor," as used in this clause,

(i) 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 subcontract entered into in connection with such prime contract, and

(ii) Includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier Subcontractor.

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

**21.2** 41. U.S.C. chapter 87, Kickbacks, prohibits any person from—

(a) Providing or attempting to provide or offering to provide any kickback;

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

(c) 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.

**21.3** (a) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph 21.2 of this clause may have occurred, the Subcontractor 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.

(b) The Subcontractor shall cooperate fully with and Federal agency investigating a possible violation described in paragraph 21.2 of this clause.

(c) The Manager may –

(i) Offset the amount of the kickback against any monies owed by Fermilab under this subcontract

and/or

(ii) Direct that the Subcontractor withhold from sums owed the sub-subcontractor under the prime contract, the amount of the kickback. The Manager may order that monies withheld under subdivision 21.3(d)(i) of this clause be paid over to Fermilab unless Fermilab has already offset those monies under subdivision 21.3(d)(ii) of this clause. In either case, the Subcontractor shall notify the Manager when the monies are withheld.

(d) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph 21.3(d), in all sub-subcontracts that exceed \$150,000.

## **22. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)**

(Applicable only if this subcontract exceeds \$150,000.)

**22.1** This subcontract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

### **22.2 OVERTIME REQUIREMENTS.**

No Subcontractor or sub-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.

### **22.3 VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.**

The responsible Subcontractor and sub-subcontractor are liable for unpaid wages if they violate the terms in paragraph 22.2 of this clause. In addition, the Subcontractor and sub-subcontractor are liable for liquidated damages payable to the Government. Liquidated damages will be assessed 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).

### **22.4 WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.**

The Procurement Administrator will withhold from payments due under this Subcontract sufficient funds required to satisfy any subcontractor or sub-subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the subcontract are insufficient to satisfy the subcontractor or sub-subcontractor liabilities, the Procurement Administrator 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 statute.

### **22.5 PAYROLLS AND BASIC RECORDS.**

(a) The Subcontractor and its sub-subcontractor 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 Fermilab and 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.

(b) The Subcontractor and its sub-subcontractors shall allow authorized representatives of Fermilab, DOE or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph 22.5(a) of this clause. The Subcontractor or sub-subcontractor also shall allow authorized representatives of Fermilab, DOE or Department of Labor to interview employees in the workplace during working hours.

### **22.6 SUB-SUBCONTRACTS.**

The Subcontractor shall insert the provisions set forth in paragraphs 22.2 through 22.5 of this clause in sub-subcontracts that may require or involve the employment of laborers and mechanics and require sub-subcontractors to include these provisions in any

such lower tier sub-subcontracts. The Subcontractor shall be responsible for compliance by any Sub-subcontractor or lower tier Sub-subcontractor with the provisions set forth in paragraphs 22.2 through 22.5 of this clause.

### **23. PREFERENCE FOR U.S. FLAG AIR CARRIERS**

**23.1** (a) "International air transportation," as used in this clause, 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.

(b) "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas (see paragraph 1.2).

(c) "U.S. Flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

**23.2** Section 5 of the International Air Transportation Fare Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and 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.

**23.3** If available, the Subcontractor, in performing work under this *subcontract*, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

**23.4** 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)

**23.5** The Subcontractor shall include the substance of this paragraph, including this subparagraph 23.5, in each sub-subcontract or purchase order under this subcontract that may involve international air transportation.

### **24. PROHIBITION OF SEGREGATED FACILITIES**

**24.1** "Segregated facilities," as used in this clause, 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, 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.

**24.2** 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.

**24.3** The Subcontractor shall include this clause in every sub-subcontract and purchase order that includes the Equal Opportunity clause (see clause 11).

### **25. PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS**

**25.1** Except as provided in paragraph 25.5 of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 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 –

(a) Acquired for a U.S. Government agency account;

(b) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(c) 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

(d) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

**25.2** 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 25.1 above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

**25.3** (a) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both

(i) Fermilab and

(ii) The Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, D.C. 20590. Sub-subcontractor bills of lading shall be submitted through Fermilab.

(b) 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:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

**25.4** The Subcontractor shall insert the substance of this clause, including this paragraph 25.4, in all sub-subcontracts or purchase orders under this subcontract, except those described in paragraph 25.5(d).

**25.5** The requirement in paragraph 25.1 does not apply to:

(a) Cargoes carried in vessels as required or authorized by law or treaty;

(b) 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);

(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(d) Sub-subcontracts or purchase orders for the acquisition of commercial items unless -

(i) This subcontract is -

(A) A subcontract or agreement for ocean transportation services; or

(B) A construction subcontract; 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 the items when it subcontracts items 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 Treaty Organization

humanitarian or peacekeeping operations.

**25.6** 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, D.C. 20590, Phone: 202-366-4610

## **26. PROTECTING FERMLAB AND THE GOVERNMENT'S INTEREST WHEN SUB-SUBCONTRACTING WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)**

**26.1** DEFINITIONS AS USED IN THIS CLAUSE—

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

(i) Means any item of supply (including construction material) that is—

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

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

(C) Offered to Fermilab, under a subcontract or sub-subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

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

**26.2** The Government suspends or debar Contractors to protect the interests of the Government and Fermilab. Other than a sub-subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any sub-subcontract in excess of \$30,000 with a Subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

**26.3** The Subcontractor shall require each proposed Sub-subcontractor whose subcontract will exceed \$30,000, other than a Sub-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 sub-subcontract, the Sub-subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

**26.4** A corporate officer or a designee of the subcontractor shall notify Fermilab, in writing, before entering into a sub-subcontract with a party (other than a sub-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 System for Award Management (SAM) Exclusions). The notice must include the following:

(a) The name of the sub-subcontractor.

(b) The Subcontractor's knowledge of the reasons for the sub-subcontractor being listed with an exclusion in SAM.

(c) The compelling reason(s) for doing business with the sub-subcontractor notwithstanding its being listed with an exclusion in SAM.

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

#### **26.5 SUB-SUBCONTRACTS.**

Unless this is a contract for the acquisition of commercial items, the Subcontractor shall include the requirements of this clause, including this paragraph 26.5 (appropriately modified for the identification of the parties), in each Sub-subcontract that—

(a) Exceeds \$30,000 in value; and

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

#### **27. CONTROLLED SUBSTANCES (DRUG-FREE WORK PLACE)**

**27.1** This clause applies to all work performed at the Fermilab site.

**27.2** Employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while on the Fermilab site. A "controlled substance" means a controlled substance identified in Schedules I through V of Section 202 of the Federal Controlled Substances Act (21 U.S.C. 812) and as further defined in Federal Regulation at 21 CFR 1308.11-1308.15.

#### **27.3 POLICY.**

(a) Fermilab shall require all subcontractors subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. Specifically, this clause applies to subcontracts of \$25,000 or more and which have been determined by Fermilab to involve high risk of danger to life, the environment, public health and safety, or national security; or transportation of hazardous material to or from a DOE site.

(b) Fermilab shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(c) The Subcontractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**27.4** The Subcontractor shall notify its employees working at Fermilab of this prohibition and of the disciplinary action that will be taken against employees violating the prohibition, and Subcontractor shall enforce this drug-free workplace policy, as well as implement other personnel assistance programs, as appropriate, to help ensure a drug-free workplace at Fermilab. Subcontractor employees shall be required to notify the Subcontractor of any criminal drug statute conviction for a violation that occurred in the Fermilab workplace within five (5) days of such a conviction and the Subcontractor shall, in turn, notify Fermilab within five (5) days of receiving employee's notice.

#### **28. PRINTING**

**28.1** To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

**28.2** The term "Printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

**28.3** Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed or a reduction in the subcontract price by an amount equal to the cost of the printing to the Subcontractor.

**28.4** In all sub-subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations and subsection 28.2), the Subcontractor shall include a provision substantially the same as this clause.

#### **29. NOTIFICATION OF OWNERSHIP CHANGES**

**29.1** This clause applies

(a) If certified cost or pricing data was submitted by the Subcontractor in connection with the award of this subcontract, or

(b) If the Subcontractor furnishes certified cost or pricing data under paragraph 19.4 of the clause entitled "Certified Cost or Pricing Data" in connection with a change or other modification to this subcontract.

**29.2** The Subcontractor shall make the following notifications in writing:

(a) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify Fermilab within 30 days.

(b) The Subcontractor shall also notify Fermilab within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

**29.3** The Subcontractor shall:

(a) Maintain current, accurate, and complete inventory records of assets and their costs;

(b) Provide Fermilab or designated representative ready access to the records upon request;

- (c) 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
- (d) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

**29.4** The Subcontractor shall include the substance of this clause in all sub-subcontracts under this subcontract which meet the applicability requirement of FAR 15.408(k).

### **30. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(Applicable only if this subcontract exceeds \$150,000.)

#### **30.1 DEFINITIONS AS USED IN THIS CLAUSE—**

- (a) "Agency," as used in this clause, means executive agency as defined in FAR 2.101.
- (b) "Covered Federal action," as used in this clause, means any of the following Federal actions:
  - (i) The awarding of any Federal subcontract.
  - (ii) The making of any Federal grant.
  - (iii) The making of any Federal loan.
  - (iv) The entering into any cooperative agreement.
  - (v) The extension, continuation, renewal, amendment, or modification of any Federal subcontract, grant, loan, or cooperative agreement.
- (c) "Indian tribe" and "tribal organization" as used in this clause, 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.
- (d) "Influencing or attempting to influence," as used in this clause, 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.
- (e) "Local government," as used in this clause, means a unit of government in a State and, if charged, 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.
- (f) "Officer or employee of an agency," as used in this clause, included the following individuals who are employed by an agency:
  - (i) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
  - (ii) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
  - (iii) A special Government employee, as defined in section 202, Title 18, United States Code.
  - (iv) 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.
- (g) "Person," as used in this clause, 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 with respect to expenditures specifically permitted by other Federal law.
- (h) "Reasonable compensation," as used in this clause, 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.
- (i) "Reasonable payment," as used in this clause, 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.
- (j) "Recipient," as used in this clause, includes the Subcontractor and all Sub-subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (k) "Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal subcontract, 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 subcontract. 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.
- (l) "State," as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States (see paragraph 1.2), an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

#### **30.2 PROHIBITIONS.**

- (a) Section 1352 of Title 31, United States Code, among other things, 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 of the following covered Federal actions:
  - (i) The awarding of any Federal subcontract;

- (ii) The making of any Federal grant;
  - (iii) The making of any Federal loan;
  - (iv) The entering into of any cooperative agreement; or
  - (v) The modification of any Federal subcontract, grant, loan, or cooperative agreement.
- (b) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal subcontract, grant, loan, or cooperative agreement.
- (c) The prohibitions of the Act do not apply under the following conditions:
- (i) Agency and legislative liaison by own employees.
    - (A) The prohibitions on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities nor directly related to a covered Federal action.
    - (B) For purposes of subdivision 30.2(c)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
    - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
      - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;
      - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
    - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
      - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
      - (2) Technical discussions regarding the preparation of any unsolicited proposal prior to its official submission; and
      - (3) Capability presentations 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.
    - (E) Only those agency and legislative liaison activities expressly authorized by subdivision 30.2(c)(i)(D) of this clause are permitted under this clause.
  - (ii) Professional and technical services.
    - (A) The prohibition on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of -
      - (1) A payment of reasonable compensation made to an officer or employee of a 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.
      - (2) 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.
    - (B) For purposes of subdivision 30.2(c)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a subcontract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.
    - (C) 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.
    - (D) Only those professional and technical services expressly authorized by subdivisions 30.2(c)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

### **30.3 DISCLOSURE.**

(a) The Subcontractor who requests or receives from Fermilab a Federal subcontract shall file with Fermilab a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph 30.2(a) of this clause, if paid for with appropriated funds.

(b) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph 30.3(a) of this clause. An event that materially affects the accuracy of the information the report includes-

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(iv) The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person which requests or received any sub-subcontract exceeding \$100,000 under the Federal subcontract.

(v) All sub-subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by Fermilab. Fermilab shall submit all disclosures to the Department of Energy at the end of the calendar quarter in which the disclosure form is submitted by the sub-subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

### **30.4 AGREEMENT.**

The Subcontractor agrees not to make any payment prohibited by the clause.

### **30.5 PENALTIES.**

(a) Any person who makes an expenditure prohibited under paragraph 30.2 of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph 30.3 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 Fermilab or the Federal Government from seeking any other remedy that may be applicable.

(b) Subcontractors may rely without liability on the representation made by their sub-subcontractors in the certification and disclosure form.

### **30.6 COST ALLOWABILITY.**

Nothing in this clause makes allowable or reasonable any cost 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.

## **31. SENSITIVE FOREIGN NATIONS CONTROLS**

**31.1** In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with any "Sensitive Foreign Nations Controls" requirements that may be attached to this subcontract, relating to those countries, which may from time to time, be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least 60 days' prior written notice to Fermilab if the Subcontractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding termination for convenience of Fermilab shall apply.

**31.2** The provisions of this clause shall be included in any sub-subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

## **32. DISPLACED EMPLOYEE HIRING PREFERENCE**

(Applicable only if this subcontract exceeds \$500,000)

**32.1** DEFINITION—"Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility

(a) Whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),

(b) Who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and

(c) Who is qualified for a particular job vacancy with the Department or one of its contractors or subcontractors with respect to work under a prime contract with the Department at the time the particular position is available.

**32.2** Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this subcontract.

**32.3** The requirements of this clause shall be included in sub-subcontracts at any tier (except for sub-subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**33. PERSONAL IDENTITY VERIFICATION OF SUBCONTRACTOR PERSONNEL (JAN 2011)**

**33.1** 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.

**33.2** The Subcontractor shall account for all forms of Government-provided identification issued to the Sub-subcontractor employees in connection with performance under this contract. The Subcontractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by Fermilab;

- (a) When no longer needed for contract performance.
- (b) Upon completion of the Contractor employee's employment.
- (c) Upon contract completion or termination.

**33.3** Fermilab may delay final payment under a contract if the Sub-subcontractor fails to comply with these requirements.

**33.4** The Subcontractor shall insert the substance of clause, including this paragraph 33.4, in all sub-subcontracts when the sub-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 Subcontractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph 33.2 of section 33, unless otherwise approved in writing by Fermilab.

**34. DISPUTES**

The parties agree that they will attempt in good faith to resolve through negotiation any dispute, claim, or, controversy arising out of or relating to the subcontract. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative dispute resolution (ADR). In the event that ADR fails or is not used, the parties may thereafter pursue any remedy they may have at law or in equity.

**35. SUBCONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT**

**35.1** DEFINITIONS. AS USED IN THIS CLAUSE—

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

(b) "Full cooperation"—

(i) 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;

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

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

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

(iii) Does not restrict a Contractor 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.

(c) "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).

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

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

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

**35.2** CODE OF BUSINESS ETHICS AND CONDUCT.

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

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(b) 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.

(c) The Subcontractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to Fermilab, 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 Contractor has committed—

(i) 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

- (ii) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- (d) 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 the 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 Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
- (e) 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.

**35.3 BUSINESS ETHICS AWARENESS AND COMPLIANCE PROGRAM AND INTERNAL CONTROL SYSTEM.**

This paragraph 35.3 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 Fermilab establishes a longer time period:

- (a) 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 Contractor's agents and subcontractors.
  - (b) 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 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 Fermilab, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Subcontractor or a sub-subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or 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 Fermilab procurement administrator 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 contractor 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)(ii)(F)(5) of this clause.

(5) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor'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 the Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organizations jurisdiction.

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

#### 35.4 SUB-SUBCONTRACTS.

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

(b) 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 Department of Energy Office of the Inspector General, with a copy to the Fermi Site Office Contracting Officer.

### 36. COMBATING TRAFFICKING IN PERSONS (FEB 2009)

#### 36.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "Coercion" means—

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

(ii) 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

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

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

(c) "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.

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

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

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

(ii) 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

(iii) By means of the abuse or threatened abuse of law or the legal process.

(f) "Involuntary servitude" includes a condition of servitude induced by means of—

(i) 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

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

(g) "Severe forms of trafficking in persons" means—

(i) 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

(ii) 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.

(h) "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

#### 36.2 POLICY.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Subcontractors and subcontractor employees shall not—

(a) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(b) Procure commercial sex acts during the period of performance of the contract; or

(c) Use forced labor in the performance of the contract.

#### 36.3 SUBCONTRACTOR REQUIREMENTS.

The Subcontractor shall—

(a) Notify its employees of—

(i) The United States Government's zero tolerance policy described in paragraph 36.2 of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(b) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

#### 36.4 NOTIFICATION.

The Subcontractor shall inform Fermilab immediately of—

- (a) Any information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, subcontractor, or sub-subcontractor employee has engaged in conduct that violates this policy; and
- (b) Any actions taken against Subcontractor employees, sub-subcontractors, or sub-subcontractor employees pursuant to this clause.

#### **36.5 REMEDIES.**

In addition to other remedies available to Fermilab or the Government, the Subcontractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

- (a) Requiring the Subcontractor to remove a Subcontractor employee or employees from the performance of the contract;
- (b) Requiring the Subcontractor to terminate a subcontract;
- (c) Suspension of contract payments;
- (d) Loss of award fee, consistent with the award fee plan, for the performance period in which the Fermilab or Government determined Subcontractor non-compliance;
- (e) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (f) Suspension or debarment.

#### **36.6 SUB-SUBCONTRACTS.**

The Subcontractor shall include the substance of this clause, including paragraph 36.6, in all subcontracts.

#### **36.7 MITIGATING FACTOR.**

Fermilab may consider whether the Contactor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

### **37. ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS**

#### **37.1 DEFINITIONS AS USED IN THIS CLAUSE—**

- (a) "Energy-efficient product"
  - (i) Means a product that—
    - (A) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
    - (B) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
- (b) 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).

**37.2** 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—

- (a) Delivered;
- (b) Acquired by the Subcontractor for use in performing services at a Federally-controlled facility;
- (c) Furnished by the Subcontractor for use by Fermilab or the Government; or
- (d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

**37.3** The requirements of paragraph 37.2 apply to the Subcontractor (including any sub-subcontractor) unless—

- (a) The energy-consuming product is not listed in the ENERGY STAR ® Program or FEMP; or
- (b) Otherwise approved in writing by Fermilab.

**37.4** Information about these products is available for—

- (a) ENERGY STAR ® at <http://www.energystar.gov/products>; and
- (b) FEMP at [http://www.eere.energy.gov/femp/technologies/eep\\_purchasingspecs.html](http://www.eere.energy.gov/femp/technologies/eep_purchasingspecs.html)

### **38. SUSPECT/COUNTERFEIT PARTS**

**38.1** Notwithstanding any other provisions of this agreement, the Subcontractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Subcontractor further warrants that all items used by the Subcontractor during performance of work at Fermi National Accelerator Laboratory include all genuine, original, and new components, or are otherwise suitable and fit for the intended purpose. Subcontractor's warranty extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory.

**38.2** Subcontractor shall indemnify Fermi Research Alliance, LLC and the U.S. Department of Energy, their agents and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable and fit for the intended purpose. This includes but is not limited to materials that are otherwise suitable and fit for the intended purpose. This includes but is not limited to materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

**38.3** Types of material, parts, and components known to have been misrepresented include but are not limited to fasteners; hoisting, rigging and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar shapes, channel members, and other heat treated materials and structural items: welding rod and electrodes; and computer memory modules.

**38.4** Because falsification of information or documentation may constitute criminal conduct, Subcontractor acknowledges and agrees that Fermilab may reject and retain such information or items at no cost and identify, segregate, and report such information or activities to cognizant Department of Energy Officials.

## **39. PERSONALLY IDENTIFIABLE INFORMATION**

### **39.1 GENERAL REQUIREMENTS.**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C.552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

### **39.2 SPECIFIC REQUIREMENTS.**

(a) The Subcontractor agrees to --

(i) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies --

(A) The systems of records; and

(B) The design, development, or operation work that the contractor is to perform;

(ii) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(iii) Include this clause, including this subparagraph (iii), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (i) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(ii) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(iii) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

### **39.3 MANDATORY FLOWDOWN.**

Subcontractor is responsible for flowing down the requirements of this clause to sub-subcontractors at any tier to the extent necessary to ensure the Subcontractor's or sub-subcontractor's compliance with the requirements.

## **40. EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)**

### **40.1 DEFINITIONS AS USED IN THIS CLAUSE --**

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

(i) Means any item of supply that is--

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

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

(C) Offered to the Contractor, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(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.

(b) "Employee assigned to the contract" 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 contract that is required to include the clause prescribed at FAR 22.1803. An employee is not considered to be directly performing work under a contract if the employee--

(i) Normally performs support work, such as indirect or overhead functions; and

(ii) Does not perform any substantial duties applicable to the contract.

(c) "Subcontract" means any contract, as defined in FAR 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.

(d) "Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(e) "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

#### **40.2 ENROLLMENT AND VERIFICATION REQUIREMENTS.**

(a) 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 contract, within 3 business days after the date of hire (but see paragraph 40.2(c) of this section); and

(iii) VERIFY EMPLOYEES ASSIGNED TO THE CONTRACT.

For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph 40.2(d) of this section).

(b) 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 contract, within 3 business days after the date of hire (but see paragraph 40.2(c) 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 contract, within 3 business days after the date of hire (but see paragraph 40.2(c) 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 contract, whichever date is later (but see paragraph 40.2(d) of this section).

(c) If the Contractor 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 contract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at 40.2(a) or 40.2(b), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(d) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, 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).

(e) 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 40.2 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.

#### **40.3 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>.

**40.4** Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(a) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(b) 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

(c) 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.

#### **40.5 SUB-SUBCONTRACTS.**

The Subcontractor shall include the requirements of this clause, including this paragraph (40.5) (appropriately modified for identification of the parties), in each sub-subcontract that—

- (a) 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;
- (b) Has a value of more than \$3,000; and
- (c) Includes work performed in the United States.

#### **41. INTEGRITY OF UNIT PRICES**

**41.1** Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts 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.

**41.2** When requested by the Fermilab, the Offeror/Subcontractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

**41.3** The Subcontractor shall insert the substance of this clause, less paragraph 41.2, in all sub-subcontracts for other than: acquisitions at or below the simplified acquisition threshold (\$150,000) 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.

#### **42. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**

**42.1** 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 subcontract, 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).

(a) 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 subcontract.

(b) If the Subcontractor customarily posts notices to employees electronically, then the Subcontractor shall also post the required notice electronically by displaying prominently, on any website 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 website that contains the full text of the poster. The link to the Department's website, as referenced in 42.2(c) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

**42.2** This required employee notice, printed by the Department of Labor, may be—

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

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

(c) Downloaded from the Office of Labor-Management Standards website at [www.dol.gov/olms/regs/compliance/EO13496.htm](http://www.dol.gov/olms/regs/compliance/EO13496.htm); or

(d) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

**42.3** The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

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

**42.5** In the event that the Subcontractor does not comply with the requirements set forth in paragraphs 42.1 through 42.4 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.

#### **42.6 SUB-SUBCONTRACTS**

(a) The Subcontractor shall include the substance of this clause, including this paragraph 42.6, in every sub-subcontract that exceeds \$10,000 and will be performed wholly or partially in the United 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 sub-subcontractor.

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

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

(d) However, if the Subcontractor becomes involved in litigation with a sub-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.

#### **43. SUBCONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

##### **43.1 DEFINITIONS. AS USED IN THIS CLAUSE—**

(a) “Driving”–

(i) 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.

(ii) 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.

(b) “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.

**43.2** This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

**43.3** The Subcontractor should—

(a) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles, Government-owned vehicles, or Fermilab-owned vehicles; or

(ii) Privately-owned vehicles when on official Government or Fermilab business or when performing any work for or on behalf of the Government or Fermilab.

(b) 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.

##### **43.4 SUB-SUBCONTRACTS.**

The Subcontractor shall insert the substance of this clause, including this paragraph 43.4, in all sub-subcontracts that exceed the micro-purchase threshold.

#### **44. DISPLAY OF HOTLINE POSTER(S)**

**44.1** DEFINITION— “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

**44.2** Display of fraud hotline poster(s). Except as provided in paragraph (44.3)—

(a) 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 44.3 of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by Fermilab.

(b) Additionally, if the Subcontractor 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.

(c) Required posters may be obtained as follows: Poster(s) Obtain from Hotline Poster <http://ig.energy.gov/hotline.htm>

**44.3** 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 (44.2) of this clause, other than any required DHS posters.

**44.4** Sub-subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (44.4), in all sub-subcontracts that exceed \$5,000,000, except when the subcontract—

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

(b) Is performed entirely outside the United States.

#### **45. DUTY-FREE ENTRY**

**45.1** DEFINITION— “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

**45.2** Except as otherwise approved by Fermilab, the Subcontractor shall not include in the subcontract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

**45.3** Except as provided in paragraph (45.4) of this clause or elsewhere in this subcontract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(a) The Subcontractor shall notify Fermilab in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to Fermilab at least 20 calendar days before the importation. The notice shall identify the—

- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.

(b) Fermilab will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within 10 calendar days after receipt of the Subcontractor's notification.

(c) Except as otherwise approved by Fermilab, the subcontract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

**45.4** The subcontractor is not required to provide the notification under paragraph (45.3) of this clause for purchases of foreign supplies if—

(a) The supplies are identical in nature to items purchased by the subcontractor or any sub-subcontractor in connection with its commercial business; and

(b) Segregation of these supplies to ensure use only on Fermilab subcontracts containing duty-free entry provisions is not economical or feasible.

**45.5** The subcontractor shall claim duty-free entry only for supplies to be delivered to the Fermilab under this subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by Fermilab, diverted to nongovernmental use.

**45.6** Fermilab will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Subcontractor in obtaining duty-free entry for these supplies.

**45.7** Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to Fermilab in care of the subcontractor and shall include the—

(a) Delivery address of the Subcontractor or Fermilab where appropriate;

(b) Fermilab subcontract number;

(c) Identification of carrier;

(d) Notation "UNITED STATES GOVERNMENT, Fermilab, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from *Tariff Schedules*] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(e) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(f) Estimated value in United States dollars.

**45.8** The Subcontractor shall instruct the foreign supplier to—

(a) Consign the shipment as specified in paragraph (45.7) of this clause;

(b) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of Fermilab; and

(c) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

**45.9** The Subcontractor shall provide written notice to Fermilab immediately after notification by the Fermilab that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the—

(a) Foreign supplies;

(b) Country of origin;

(c) Contract number; and

(d) Scheduled delivery date(s).

**45.10** The subcontractor shall include the substance of this clause in any sub-subcontract if—

(a) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(b) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

## **46. COMPUTER SECURITY**

**46.1** DEFINITIONS AS USED IN THIS CLAUSE—

(a) Computer means desktop computers, portable computers, computer networks (including the DOE/Fermilab Network and local area networks at or controlled by DOE/Fermilab organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE or Fermilab.

(b) Individual means a DOE, Fermilab, or subcontractor employee, or any other person who has been granted access to a DOE/Fermilab computer or to information on a DOE/Fermilab computer, and does not include a member of the public who sends an e-mail message to a DOE/Fermilab computer or who obtains information available to the public on DOE/Fermilab Web sites.

**46.2** ACCESS TO DOE/FERMILAB COMPUTERS.

A Subcontractor shall not allow an individual to have access to information on a DOE/Fermilab computer unless—

- (a) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE/Fermilab computer; and
- (b) The individual has consented in writing to permit access by an authorized investigative agency to any DOE/Fermilab computer used during the period of that individual's access to information on a DOE/Fermilab computer, and for a period of three years thereafter.

#### 46.3 NO EXPECTATION OR PRIVACY.

Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE/Fermilab computer shall have any expectation of privacy in the use of that computer.

#### 46.4 WRITTEN RECORDS.

The Subcontractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (45.2) of this section. The Subcontractor agrees to provide access to these records to Fermilab, or its authorized agents, upon request.

#### 46.5 SUB-SUBCONTRACTS.

The Subcontractor shall insert this clause, including this paragraph (e), in sub-subcontracts under this subcontract contract that may provide access to computers owned, leased or operated on behalf of the DOE/Fermilab.

### 47. SUSTAINABLE ACQUISITION

47.1 The following provisions apply only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of Fermilab and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.

47.2 Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, Fermilab is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its employees and subcontractor service providers. In the performance of work under this contract, the Subcontractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions, and protects the health and well-being of Fermilab employees, subcontract service providers and visitors using Fermilab.

47.3 Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the contract award date. Fermilab may require compliance with revised initiatives from time to time. The Subcontractor may request an equitable adjustment to the terms of its contract using the procedures in the FL Changes Clauses. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

- (a) Recycled Content Products are described at <http://epa.gov/cpg>.
- (b) Biobased products are described at <http://www.biopreferred.gov/>.
- (c) Energy efficient products are at <http://energystar.gov> products for Energy Star products
- (d) Energy efficient products are at <http://www.femp.energy.gov/> procurement for FEMP designated products.
- (e) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.
- (f) Greenhouse gas emission inventories are required, including Scope 3 emissions, which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executiveorders/disposition.html>.
- (g) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.
- (h) Water efficient plumbing products are at <http://epa.gov/watersense>.

47.4 The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming products, and 52.223-17 Affirmative procurement of EPA Designated items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Subcontractor require provision of any of the above types of products, the Subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

- (a) Is not available;
- (b) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by the Department of Energy and found to be acceptable at the silver and gold level;
- (c) Does not meet performance needs; or,
- (d) Cannot be delivered in time to meet a critical need.

47.5 In the performance of this contract, the Subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, <http://www.epa.gov/greeningepa/practices/eo13423.htm> and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is

available on the internet at: <http://energy.gov/management/downloads/acquisition-guide-0>

47.6 In complying with the requirements of paragraph (c) of this clause, the Subcontractor shall coordinate its activities with and submit required reports through Fermilab's ES&H Section to complete DOE Sustainable Acquisition reporting requirements.

47.7 The Subcontractor shall prepare and submit performance reports using prescribed Fermilab formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default (see FAR 52.249-6, Termination (Cost Reimbursement)).

47.8 The Subcontractor will comply with the procedures in paragraphs 47.4 through 47.6 of this clause regarding the collection of all data necessary to generate the reports required under paragraphs 47.4 through 47.6 of this clause, and submit the reports directly to the ES&H Section at Fermilab. The Subcontractor will advise Fermilab if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph 47.4 of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multiyear in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

47.9 There are several programs under which relevant products have been evaluated.

- (a) Recycled Content <http://www.epa.gov/epawaste/conserve/tools/cpg/products/index.htm>
- (b) Energy Star and FEMP Designated Products at <http://energystar.gov/>
- (c) Water-efficient Products at <http://www.epa.gov/watersense/>
- (d) Biobased products at <http://www.biobased.oce.usda.gov/fb4p/>
- (e) EPEAT registered electronic products at <http://www.epeat.net/>
- (f) Non-Ozone Depleting Substance at <http://www.epa.gov/ozone/snap/index.html>

47.10 For a list of government-approved materials, Subcontractors can consult with <http://www.sftool.gov/greenprocurement>.

#### 48. PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (December 2013)

(a) Upon receipt of accelerated payments from Fermilab the Subcontractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

#### 49. NONDISPLACEMENT OF QUALIFIED WORKERS

##### 49.1. DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "Service employee", as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in [29 CFR part 541](#). The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

49.2 The Subcontractor and its sub-subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this subcontract or the expiration of the subcontract under which the service employees were hired, a right of first refusal of employment under this subcontract in positions for which the service employees are qualified.

(a) The Subcontractor and its sub-subcontractors shall determine the number of service employees necessary for efficient performance of this subcontract and may elect to employ fewer employees than the predecessor Subcontractor employed in connection with performance of the work.

(b) Except as provided in paragraph 49.3 of this clause, there shall be no employment opening under this subcontract, and the Subcontractor and any sub-subcontractors shall not offer employment under this subcontract, to any person prior to having complied fully with this obligation.

(i) The successor Subcontractor and its sub-subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Subcontractor and its sub-subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor subcontract, and the Subcontractor may utilize employment screening processes only when such processes are provided for by the subcontracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Subcontractor does not initially offer employment to all the predecessor subcontract service employees, the obligation to offer employment shall continue for 90 days after the successor subcontractor's first date of performance on the subcontract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bona fide offer of employment).

**49.3** (a) Notwithstanding the obligation under paragraph 49.2 of this clause, the successor Subcontractor and any sub-subcontractors:

(i) May employ under this subcontract any service employee who has worked for the subcontractor or sub-subcontractor for at least three months immediately preceding the commencement of this subcontract and who would otherwise face lay-off or discharge,

(ii) Are not required to offer a right of first refusal to any service employee(s) of the predecessor subcontractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and

(iii) Are not required to offer a right of first refusal to any service employee(s) of the predecessor subcontractor whom the Subcontractor or any of its sub-subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Subcontractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(b) In addition, any Subcontractor or sub-subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (*e.g.*, it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Subcontractor or sub-subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(c) Nothing in this clause shall be construed to permit a Subcontractor or sub-subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart [19.13](#)), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

**49.4** (a) The Subcontractor shall, not less than 30 days before completion of the Subcontractor's performance of services on the subcontract, furnish Fermilab with a certified list of the names of all service employees working under this subcontract and its sub-subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this subcontract and its predecessor subcontracts with either the current or predecessor subcontractors or their sub-subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Subcontractor shall, in accordance with paragraph 49.5(a) of this clause, not less than 10 days before completion of the services on this subcontract, furnish Fermilab with an updated certified list of the names of all service employees employed within the last month of subcontract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the subcontract and its predecessor subcontracts with either the current or predecessor Subcontractors or their sub-subcontractors.

(b) Immediately upon receipt of the certified service employee list but not before subcontract award, Fermilab shall provide the certified service employee list to the successor subcontractor, and, if requested, to employees of the predecessor subcontractor or sub-subcontractors or their authorized representatives.

(c) Fermilab will direct the predecessor Subcontractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor subcontractor. Where a significant portion of the predecessor Subcontractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

**49.5** (a) If required in accordance with [52.222-41\(n\)](#), the predecessor Subcontractor shall, not less than 10 days before completion of this subcontract, furnish Fermilab a certified list of the names of all service employees working under this subcontract and its sub-subcontracts during the last month of subcontract performance. The list shall also contain anniversary dates of employment of each service employee under this subcontract and its predecessor subcontracts either with the current or predecessor Subcontractors or their sub-subcontractors. If there are no changes to the workforce before the predecessor subcontract is completed, then the predecessor Subcontractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Subcontractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before subcontract award, Fermilab shall provide the certified service employee list to the successor subcontractor, and, if requested, to employees of the predecessor subcontractor or sub-subcontractors or their authorized representatives.

**49.6** The Subcontractor and sub-subcontractor shall maintain the following records (regardless of format, *e.g.*, paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(a) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a

summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor subcontract to whom an offer was made.

(b) A copy of any record that forms the basis for any exemption claimed under this part.

(c) A copy of the service employee list provided to or received from the subcontracting agency.

(d) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Subcontractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

**49.7** Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (52.223-1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the Subcontractor, the contracting agency, the U.S. Department of Labor, and the service employees under the subcontract or its predecessor subcontract. Fermilab will refer any service employee who wishes to file a complaint, or ask questions concerning this subcontract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: [displaced@dol.gov](mailto:displaced@dol.gov).

**49.8** The Subcontractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

**49.9** If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Subcontractor or its sub-subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Subcontractor or its sub-subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

**49.10** 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. However, if the Subcontractor, as a result of such direction, becomes involved in litigation with a sub-subcontractor, or is threatened with such involvement, the Subcontractor may request that Fermilab and the United States, through Fermilab and the Secretary, enter into such litigation to protect the interests of Fermilab and the United States.

**49.11** **Fermilab** will withhold, or cause to be withheld, from the Subcontractor under this or any other subcontract with the same Subcontractor, such sums as an authorized official of Fermilab or the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If Fermilab or the Administrator, upon final order of the Secretary, finds that the Subcontractor has failed to provide a list of the names of service employees working under the contract, Fermilab may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of subcontract funds until such time as the list is provided to Fermilab.

**49.12** SUB-SUBCONTRACTS.

In every sub-subcontract over the simplified acquisition threshold entered into in order to perform services under this subcontract, the Subcontractor shall include a provision that ensures—

(a) That each sub-subcontractor will honor the requirements of paragraphs 49.2 through 49.3 of this clause with respect to the service employees of a predecessor sub-subcontractor or sub-subcontractors working under this subcontract, as well as of a predecessor Subcontractor and its sub-subcontractors;

(b) That the sub-subcontractor will provide the Subcontractor with the information about the service employees of the sub-subcontractor needed by the Subcontractor to comply with paragraphs 49.4 and 49.5 of this clause; and

(c) The recordkeeping requirements of paragraph 49.6 of this clause.

## **50. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLE BLOWER RIGHTS (APR 2014)**

(a) This subcontract and employees working on this subcontract will be subject to the whistleblower rights and remedies in the pilot program on Contractor 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.

## **51. REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)**

**51.1** DEFINITIONS. AS USED IN THIS CLAUSE—

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

(b) "First-tier subcontract" means a subcontract awarded directly by FRA for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include FRA'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 Contractor's general and administrative expenses or indirect costs.

(c) "Month 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 FRA.

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

(i) Salary and bonus.

(ii) 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.

(iii) 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.

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

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

(vi) 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.

#### 51.2 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT.

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 FRA to report information on subcontract awards. The law requires all reported information be made public, therefore, FRA is responsible for notifying its subcontractors that the required information will be made public.

#### 51.3 DISCLOSURE OF CLASSIFIED INFORMATION.

Nothing in this clause requires the disclosure of classified information.

#### 51.4 FIRST-TIER SUBCONTRACT INFORMATION.

Unless otherwise directed by the procurement officer, or as provided in paragraph 51.6 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 subcontractor shall report the following information to the Procurement Administrator within 15 days of the award. FRA shall report the following information at <http://www.fsrs.gov> for the first-tier subcontract. (FRA shall follow the instructions at <http://www.fsrs.gov> to report the data.

(a) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(b) Name of the subcontractor.

(c) Amount of the subcontract award.

(d) Date of the subcontract award.

(e) 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.

(f) Subcontract number (the subcontract number assigned by FRA).

(g) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(h) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(i) The prime contract number, and order number if applicable.

(j) Awarding agency name and code.

(k) Funding agency name and code.

(l) Government contracting office code.

(m) Treasury account symbol (TAS) as reported in FPDS.

(n) The applicable North American Industry Classification System code (NAICS).

#### 51.5 EXECUTIVE COMPENSATION OF THE FIRST-TIER SUBCONTRACTOR.

(a) Unless otherwise directed by the Procurement Administrator, within 15 days of the subcontract award the subcontractor shall report the names and total compensation of each of the five most highly compensated executives 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>.)

(b) Unless otherwise directed by FRA, by the end of the month following the 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 first-tier subcontractor 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>.)

51.6 FRA shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph 51.4.

51.7 FRA is required to report information on a first-tier subcontract covered by paragraph 51.4 when the subcontract is awarded. Continues reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. FRA is not required to make further reports after the first-tier subcontract expires.

51.8 If the subcontractor in the previous tax year had gross income from all sources under \$300,000, FRA does not need to report awards for that subcontractor.

51.9 The FSRS database at <http://fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the subcontractor should notify FRA. If the SAM database information is incorrect, the subcontractor is responsible for correcting this information.

## 52. ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS (MAY 2008)

52.1 DEFINITIONS. AS USED IN THIS CLAUSE—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

52.2 The Subcontractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in subcontract performance, including, if applicable, the percentage of postconsumer material content; and
- (2) Submit this estimate to \_\_\_\_\_ [*FRA Procurement Officer complete in accordance with agency procedures*].

(End of clause)

*Alternate I (May 2008).*

As prescribed in 23.406(d), redesignate paragraph 52.2 of the basic clause as paragraph 52.3 and add the following paragraph 52.2 to the basic clause:

52.2 The Subcontractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

Certification

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this subcontract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable subcontract specifications or other contractual requirements.

\_\_\_\_\_  
[Signature of the Officer or Employee]

\_\_\_\_\_  
[Typed Name of the Officer or Employee]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Name of Company, Firm, or Organization]

\_\_\_\_\_  
[Date]

(End of certification)