

**PURCHASE ORDER TERMS & CONDITIONS**  
**(Applicable only to procurements less than \$10,000)**  
 Fermi Research Alliance, LLC d/b/a Fermilab

1.	Warranty	1
2.	Changes	1
3.	Inspection and Acceptance	1
4.	Variation in Quantity	1
5.	Discounts	1
6.	Foreign Supplies	2
7.	Convict Labor	2
8.	Covenant Against Contingent Fees	2
9.	Federal, State & Local Taxes	2
10.	Default-Delays	2
11.	Authorization and Consent	2
12.	For Purchase Orders in Excess of \$2,500	2
13.	Suspect/Counterfeit Parts	2-3
14.	Energy Consuming Products	3
15.	Environmentally Preferable Purchasing for Desktop or Laptop Computers or Monitors	3
16.	Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology	3
17.	Employment Eligibility Verification	3-5
18.	Personal Identity Verification of Subcontractor Personnel	5
19.	Combating Trafficking in Persons	5-6
20.	Providing Accelerated Payment to Small Business Subcontractors	6
21.	Sub-Subcontracts for Commercial Items	6-7
22.	Equal Opportunities for Workers with Disabilities	7-8

**1. WARRANTY**

The Seller warrants that the supplies or equipment delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this Order for a period of one (1) year from date such supplies or equipment are placed in use, but in no event longer than 18 months from the date of delivery of such supplies or equipment.

**2. CHANGES**

The Buyer through its Manager or his designee may at any time, by a written order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this section must be asserted within 30 days from the date of receipt by the Seller of the notification of change: provided, however, that the Buyer if it decided that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. However, nothing in this section, "CHANGES," shall excuse the Seller from proceeding with the Purchase Order as changed. Except as otherwise provided herein no payment for extra work shall be made, unless such extras and the price thereof have been authorized in writing by the Buyer.

**3. INSPECTION AND ACCEPTANCE**

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the seller unless loss results from negligence of the buyer.

**4. VARIATION IN QUANTITY**

No variation in the quantity of any item called for by this Purchase Order will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Purchase Order.

**5. DISCOUNTS**

Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the buyer, whichever is later. Payment is made, for discount purposes, when check is mailed.

**6. FOREIGN SUPPLIES**

This Purchase Order is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

**7. CONVICT LABOR**

In connection with the performance of work under this Purchase Order, the seller agrees not to employ any person undergoing sentence of imprisonment except as provided by Executive Order (EO) 11755, as amended by EOs 12608 and 12943.

**8. COVENANT AGAINST CONTINGENT FEES**

The seller, warrants that no person or selling agency has been employed or retained to solicit or secure this Purchase Order upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty the buyer shall have the right to annul this Purchase Order without liability or in its discretion to deduct from the Purchase Order price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**9. FEDERAL, STATE & LOCAL TAXES**

Except as otherwise provided in this Purchase Order, the Purchase Order price includes all applicable Federal, State, and local taxes and duties in effect on the date of this Purchase Order but does not include any taxes from which the buyer, the seller or this transaction is exempt. Upon request of the seller, the buyer shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the Purchase Order price pursuant to this clause. For the purpose of this clause, the term "date of this Purchase Order" means the date of the seller's quotation or, if no quotation, the date of this purchase order.

**10. DEFAULT-DELAYS**

Buyer may cancel this Purchase Order in whole or in part in the event that seller fails or refuses to deliver any of the items purchased, within the time provided or otherwise violates any of the conditions of this Purchase Order, or if it becomes evident that the seller is not conducting the work in accord with the specifications or with such diligence as to permit delivery on or before the delivery date. In the event the Buyer cancels this Purchase Order in whole or in part as herein provided, the buyer may procure, upon such terms and in such manner as the buyer may deem appropriate, materials or services similar to those so cancelled and the seller shall be liable to the buyer for any excess costs for such similar materials or services; provided, that the seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this article. The rights and remedies of the buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

**11. AUTHORIZATION AND CONSENT**

The Government has given its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this purchase order or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government or Fermilab under this Purchase Order or (ii) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Vendor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this Purchase Order, or (b) specific written instructions given by Fermilab or the Government directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this Purchase Order or any subcontract hereunder (including any lower-tier subcontract), and the Government has assumed liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**12. FOR PURCHASE ORDERS IN EXCESS OF \$2,500**

The following cited Federal Acquisition Regulation clauses are hereby incorporated by reference. The referenced clauses are those in effect on the date of issuance of the Purchase Order. In such clauses, the words, "Purchase Order," "buyer" and "seller" will be substituted as appropriate for "contract," "Government" or "Contracting Officer," and "Contractor" respectively.

- a) **TERMINATION FOR CONVENIENCE (FAR 52.249-1)**
- b) **CONTRACT WORK HOURS & SAFETY - STANDARDS ACT – OVERTIME COMPENSATION (FAR 52.222-4)**
- c) **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES - (FAR 52.222-36)**

**13. SUSPECT/COUNTERFEIT PARTS**

**13.1** Notwithstanding any other provisions of this agreements, 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

warrant 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.

**13.2** 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 defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials that are materially altered, damaged, deteriorated, degraded, or result in product failure.

**13.3** 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.

**13.4** 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.

#### **14. ENERGY CONSUMING PRODUCTS**

When the subcontract requires the specification or delivery of energy consuming products for use in a Federal facility, the Subcontractor will specify or deliver EnergyStar® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for EnergyStar® at [http://www.eere.energy.gov/femp/procurement/eed\\_requirements.cfm](http://www.eere.energy.gov/femp/procurement/eed_requirements.cfm).

#### **15. ENVIRONMENTALLY PREFERABLE PURCHASING FOR DESKTOP OR LAPTOP COMPUTERS OR MONITORS**

When the Subcontract requires the specification or delivery of desktop or laptop computers or monitors in a DOE facility, the Subcontractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products conforming to the IEEE 1680-2006 Standard, provided such products are available, are life cycle cost efficient, and meet applicable performance requirements. Information on EPEAT-registered computer products is available at [www.epeat.net](http://www.epeat.net).

#### **16. COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY**

**16.1** If this subcontract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology, the Subcontractor agrees that:

- (a) All deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4, and
- (b) It has IPv6 technical support for development and implementation and fielded product management available.

**16.2** If the Subcontractor plans to offer a deliverable that involves IT that is not initially compliant, the Subcontractor agrees to:

- (a) Obtain the Laboratory Procurement Official approval before starting work on the deliverable;
- (b) Provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008, and;
- (c) Have IPv6 technical support for development and implementation and fielded product management available.

**16.3** Should the Subcontractor find that the statement of work or specification of this subcontract do not conform to the IPv6 standard, it must notify Fermilab of such nonconformance and act in accordance with instructions provided by Fermilab.

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

**17.1** *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 paragraph (1) of the definition at 2.101);

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

- (C) Offered to the Government or FRA, 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 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 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.

**17.2 Enrollment and verification requirements.**

(a) If the Subcontractor is not enrolled as a Subcontractor, Independent Contractor, or Affiliate in E-Verify at time of contract award, the Subcontractor shall—

(i) *Enroll.* Enroll as a Subcontractor, Independent Contractor, or Affiliate in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph 17.2(c) of this section); and

(iii) *Verify employees assigned to the subcontract.* For each employee assigned to the subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the subcontract, whichever date is later (but see paragraph 17.2(d) of this section).

(b) If the Subcontractor is enrolled as a Subcontractor, Independent Contractor, or Affiliate in E-Verify at time of contract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract within 3 business days after the date of hire (but see paragraph 17.2(c) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Subcontractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph 17.2(c) of this section ); or

(ii) *Employees assigned to the subcontract.* For each employee assigned to the subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of subcontract award or within 30 days after assignment to the subcontract, whichever date is later (but see paragraph 17.2(d) of this section).

(c) If the Subcontractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at 17.2(a) or 17.2(b), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the subcontract.

(d) *Option to verify employment eligibility of all employees.* The Subcontractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Subcontractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(e) The Subcontractor shall comply, for the period of performance of this subcontract, with the requirement 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 17.2 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.

**17.3 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>.

**17.4** *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.

**17.5** *Sub-subcontracts.* The Subcontractor shall include the requirements of this clause, including this paragraph 17.5 (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.

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

**18.1** 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.

**18.2** 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.

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

**18.4** The Subcontractor shall insert the substance of clause, including this paragraph 18.4, 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 18.2 of section 18, unless otherwise approved in writing by Fermilab.

## **19. COMBATING TRAFFICKING IN PERSONS (FEB 2009)**

**19.1** 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.

**19.2 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.

**19.3 SUBCONTRACTOR REQUIREMENTS.**

The Subcontractor shall—

- (a) Notify its employees of—
  - (i) The United States Government's zero tolerance policy described in paragraph 19.2 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.

**19.4 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.

**19.5 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.

**19.6 SUB-SUBCONTRACTS.**

The Subcontractor shall include the substance of this clause, including paragraph 19.6, in all subcontracts.

**19.7 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>.

**20. PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEC 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.

**21. 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.

**22. 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.

**22.1 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.